

# Dangers of Indian Reform of the Colonial Land Acquisition Law

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## Abstract

Taking over possession of private land by the Government through the use of power of the eminent domain of the state for economic development has become one of the most burning issues all over the world. While the international development agencies are largely in favour of participatory methods of development and governance, the national Governments are found to fight with their own citizens over the issue of land takings, most often, with archaic laws. India is the country where the acquisition of land by the Government still takes place by a more than hundred year old British colonial law, while its law makers have also created democratic and participatory forms of Local Self-Governments, which has no place in the colonial legislation. Ironically, the recent move of the Indian Government to enact a democratic law for the acquisition of land for development downplayed the Local Self-Government by disregarding one of the basic tenets of the Indian Constitution and the various international charters.

## *Index terms—*

## 1 II.

The Global Context a) Democratic form of Governments all over the world functions not only from the top but also from the bottom. Nevertheless, Governments have to operate within societies which have hierarchies based on economic, political, cultural, linguistic and a number of other social parameters. The basic aim of any democratic form of governance is to promote equality and social justice and nations all over the world are making attempts to achieve these goals, which often clash with intra and international pecking order of nations. Countries also put a lot of their efforts to attain economic growth and development often at the cost of loss of livelihood of the citizens. Displacement and dispossession of people for the sake of industrialization, dam building, minning, construction of multi-lane highways is one of the important global phenomena which create new poverty and newer hierarchies that challenge the basic aims of democratic Governments. The universality of displacement caused by development projects has been noted by scholars in the field ??Cernea 2008: 19-20). In a recent period, these displacements become more pronounced in the developing nations as capital investments from domestic and foreign sources increase rapidly. b) The question of good governance, therefore, comes at the interface of burgeoning economic growth and development-caused forced displacement and rehabilitation since countless displacements are taking place all over the world through the application of the eminent domain laws wherein the State imposes displacement upon the people almost without any legal safety net. In the industrialized countries too, displacements are taking place by the use of the eminent domain but as Cernea pointed out succinctly, In industrialized countries, however, the impacts of displacement are partly tamed through ramified legislation (my emphasis) that tightly protects property, human rights, and judicial recourse. The DFDR processes in developing countries are of growing international concern also because both private sector globalizing industries and international aid programmes Introduction hile the US President Barack Obama greeted the new Indian Prime Minister Narendra Modi and the huge Indian crowd expressed their jubilant mood at New York nobody either in the US or in India seem to be concerned about the fate of the recent reforms in the colonial land acquisition law. Mr Modi assured the CEO's of multinationals (whom he met) at USA of investments in India and told the enthusiastic crowd that India will be shining ('shinning India' was also the slogan of the former Congress

led UPA government, which miserably failed in the last Parliamentary election) in the next decades since it has cherished the oldest tradition of humanity along with the highest percentage of young age group people. There was no hint in the rightist Indian Prime Minister's speech on how land for industries will be acquired with the new law created under the leadership of his predecessor Dr. Manmohan Singh a well educated centrist democrat of Indian politics. Just a few months after returning from USA Mr. Modi's government recommended the promulgation of an Ordinance which would make significant changes in the new Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Among others this Ordinance would allow the Central Government to acquire multi-crop fertile agricultural land without social impact assessment and consent of the farmers for Author: Vidyasagar University. e-mail: abhijitguhavanthro@rediffmail.com W Abstract-Taking over possession of private land by the Government through the use of power of the eminent domain of the state for economic development has become one of the most burning issues all over the world. While the international development agencies are largely in favour of participatory methods of development and governance, the national Governments are found to fight with their own citizens over the issue of land takings, most often, with archaic laws. India is the country where the acquisition of land by the Government still takes place by a more than hundred year old British colonial law, while its law makers have also created democratic and participatory forms of Local Self-Governments, which has no place in the colonial legislation. Ironically, the recent move of the Indian Government to enact a democratic law for the acquisition of land for development downplayed the Local Self-Government by disregarding one of the basic tenets of the Indian Constitution and the various international charters.

finance countless projects causing displacements, within contexts that often lack adequate financial and legal safeguards ??Cerne 2008: 19). c) How best can the countries push forward towards development with proper resettlement and rehabilitation of the affected populations is one of the most crucial issues in the era of globalization. It has been observed by the researchers in the field of development-caused forced displacement and resettlement (DFDR) that it is through changes in policy, legislation and systems of governance that the successful countries are being able to make displacement less painful for the people through sharing the benefits of the projects ??Jayewardene 2008:233-259). In a recent study done by a group of Canadian researchers recommended some benefit sharing mechanisms in the case of installation of big hydropower projects which caused large displacements. Among the five benefit-sharing mechanisms, the authors mentioned two important instruments which involved the local Governments wherein the (i) dams revenue were redistributed to local or regional authorities in the form of royalties tied to power generation or water charges and (ii) the local authorities were empowered to levy revenue generating property taxes from the dam builders ??Egre et.al. 2008:317-356). The lesson which is learnt from the experiences of a number of developing and developed countries is that one of the keys to achieve successful resettlement is to involve people at the grassroots in the process of development and that cannot be done without the participation of the Local Self-Governments, that exist all over the world and efforts are being given to strengthen these Governments at the grassroots. d) The first Global Report on local government published in 2007 illustrated how these entities in different regions of the world are taking part in the decision making processes which would affect the citizens. I quote from the report Modes of participation by local citizens —i.e. expressing voice and making choice—are the most colourful and innovative spots in the unfolding story of decentralization and democracy. Perhaps the most refreshing message in the report is that many countries in Africa (for instance Ghana, Niger and Uganda) in Asia (India and Pakistan) in East Asia (Philippines) and in Latin America draw on tradition and custom, making creative use of village councils to hear citizen opinion and deliberate. A good example is the Gram Sabha in rural India, a mandatory meeting of registered voters called to decide important issues (First World Report on Decentralization and Local Democracy 2007: 63).

i. In 2007, the UN-Habitat Guidelines agreed upon by the countries all over the world also resolved unequivocally in its global charter under governance and democracy.

Local authorities should be acknowledged in national legislation, and, if possible, in the constitution as legally autonomous sub-national entities with a positive potential to contribute to national planning and development (International Guidelines on Decentralisation and the strengthening of local authorities 2007:6).

The European Charter of Local Self-Government adopted in Strasbourg as early as 1985. Although the compulsory acquisition power is deeply rooted in virtually all legal systems, the establishment of efficient and fair legal and institutional frameworks for exercising the power remains unfinished business in many countries around the world (Lindsay 2012: 1).

The policy paper cited the Indian reform contained in LARR as an instance of limiting the powers of the eminent domain of the State through a process of seeking the consent of the majority of the farmers before the acquisition (Ibid 2012: 3). In the section on the procedural aspects of land acquisition Lindsay enumerated and suggested certain key areas on which the policy and law-makers of the countries over the world should work further to improve the existing situation. Although he did not mention explicitly about the involvement of the Local Self-Government in the process of compulsory land acquisition for development, Lindsay's description of the first and foremost key area for the improvement in the process of acquisition of land reminds us of the same. Most national laws would benefit from provisions that enhance participation and more explicitly require consultation with affected people at key decision points, ensuring for example meaningful discussion about site selection, and the amount and form of compensation, and a greater emphasis on ensuring that people know what their rights

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are and what the process entails (Ibid 2012: 9). f) The above account provides the international background of the recent reforms made in the colonial land acquisition law of India. I would now proceed on with the Indian case with specific references to its state of West Bengal in the following sections of the article.

g) The importance of the paper

The importance of this research lie in showing the downside of the new land acquisition law recently enacted by the Government of India in 2013. Despite the positive aspects of the law, which has already been pointed out by top resettlement experts like Michael Cernea, (Cernea, 2013) the law downplayed the role of the constitutional bodies, viz. the local self government. In this article, I have shown in details the importance of local governance in every affairs of development recognized and practiced globally and the several shortcomings of the new land acquisition law of India.

## 2 III.

## 3 Indian Reform

a) It is learnt from the media that the much awaited and controversial Land Acquisition Resettlement and Rehabilitation (hereafter LARR) bill 2011 of India has been approved in the cabinet of ministers in a meeting held on 12 December 2012, and the bill will now be placed before the Indian Parliament (Lok Sabha) for enactment (The Statesman 13.12.2012 & The Financial Express 13.12.2012). It seemed that after 118 years of its existence since its enactment by the British colonialists in 1894, the Indian Government was getting ready to reform this piece of draconian legislation. The colonial legislation enabled the Central and the State Governments of India in pre-and post-colonial periods to use the eminent domain of the state to acquire privately owned land for public purpose in lieu of monetary compensation determined on the basis of previous market price of the land. There is no provision for rehabilitation of the displaced and dispossessed farmers and land dependent families (landless agricultural labourers, sharecroppers, artisans etc.) in the colonial law nor was there any provision for getting the consent of the private owners before the acquisition. One of the root causes of farmers' agitation which often turned into violent conflicts between the state and the people in pre-and post colonial India lay in the forcible expropriation of land for various kinds of development projects which without rehabilitation created more pains than gains for the people who lost their livelihoods in the process. Furthermore, after the introduction of economic liberalization in India since early 90s the demand for getting land (which is very often fertile for agriculture) by the private companies have tremendously increased and the Governments are found to fight with the farmers in acquiring land for the industrialists. The Indian Parliament which adopted the 73rd Amendment Act in 1992 by a majority vote and inserted Part IX in the Constitution which contained Articles 243 to 243-0. These Articles empowered the state legislatures to confer on the panchayats such authority as may be necessary to enable them to function as institutions of Self-Government. These are empowered by the Constitution with the responsibility of preparing plans for economic development and social justice and in regard to matters listed in the 11th Schedule (inserted by the 73rd Amendment). The list contained 29 items, such as land improvement, minor irrigation, animal husbandry, fisheries, education, women and child development, social forestry, etc. Simultaneously, the Constitution under Article 243H empowered the Indian States to authorize its panchayats to collect taxes and fees for generating its own funds. It follows that acquisition of land for industries or for that matter any development work within the jurisdiction of a Local Self-Government should first be cleared by it. "there must be a comprehensive overhaul of the Panchayat law, not simply to bring it in line with the 73 rd amendment, but more importantly to give centrality to the principle of self-government." ??Mukarji and Bandopadhyay, 1993:6) But like many other recommendations of the Mukarji and Bandopadhyay report, this aforementioned recommendation has not also been implemented by the Communist led Government in West Bengal.

The legal manual published by the Department of Panchayats of the Government of West Bengal in 1994 has a section on land acquisition which states If the Gram Panchayat needs any land for its own work within the purview of the Panchayat Act, then the Panchayat can initiate a negotiation with the owner of the land for its takeover. If such negotiation fails, then the Panchayat can apply to the District Magistrate for the acquisition of the said land and the District Magistrate would acquire the land for the Panchayat (clause 44). The Panchayat, however has to take prior written permission from the State Government before taking possession of any land or corporate property. (Translated from Bengali by the author).

The above paragraph of the legal manual clearly reveals the legal and administrative superiority of the State Government over the Local Self-Governments in matters related to the acquisition of land even when it is required for the Gram Panchayat. Quite obviously, if the State Government needs legally held private land for any development project then there is nothing in the West Bengal Panchayat Act by which the panchayats may advance any legal objection to the acquisition. On the other hand, the State Governments in West Bengal, irrespective of political affiliation, has not yet shown any interest to curtail the powers of the colonial Land Acquisition Act by introducing a clause in the Act so that it becomes obligatory for the State Government to take the permission of the Gram Panchayat whenever the former wants to acquire land for big projects that would displace hundreds of farmers from their homes and/or legally owned farmland. Colonial legislation still seems to be more preferable to the ruling Governments than the 73 rd amendment of the Constitution.

## 4 IV.

How the LARR Bill 2011 Ignored the Indian Constitution and the Core Issues

a) The Ministry of Rural Development, Government of India has prepared and placed in the public domain Land Acquisition and Rehabilitation and Resettlement (LARR) Bill, 2011 'as part of a prelegislative consultative process' among the citizens of the country. It was expected that the draft bill would become a good law and it was also expected that it will take into consideration the spirit and letters of the Indian constitution after passing through the highest body (Lok Sabha) of the democratically elected peoples' representatives of the country. All the democratically minded citizens of India hoped that the aforesaid bill, after due deliberations, would result into the first Land Acquisition and Rehabilitation Law of the country, six decades after the her Independence by replacing the existing colonial law enacted in 1894 and regarded by many as the root of all the adverse impacts caused by development projects. The new law was born but hopes did not match with the realities and that is the core issue of this paper.

## 5 i. Core issues

The bill has a "Preamble" or Part I and nine parts and three schedules. In this connection, it may be recalled that earlier the Government of India prepared two bills, viz., (i) The Land Acquisition (Amendment) Bill, 2007 and (ii) Rehabilitation and Resettlement Bill, 2007 on 30 November 2007 and these were placed in the public domain for discussion and the Standing Committee of the Ministry of Rural Development sought the views of the experts in the field and finally in consultation with the National Advisory Council, the present bill was prepared by the Ministry. This in brief is the background of the Land Acquisition and Rehabilitation and Resettlement Bill 2011. Before I go into the detailed discussion on the technical aspects of the bill, kindly allow me to narrate my personal experience of interaction with the Members of the Parliament (hereafter MP) on the proposed bill.

b) The Secretariat of the Lok Sabha invited the opinion from the Indian citizens on the draft bill in 2008 which was notified in the major dailies in India. I responded and sent my written suggestions on the bill along with my published articles on land acquisition to the Secretariat. Fortunately, I was invited to submit my oral depositions before the Standing Committee of the Parliament as an expert.

As result, I had the opportunity to talk to the MPs as an expert appointed by the Standing Committee on Rural Development to offer suggestions on the Land Acquisition (Amendment) Bill and Resettlement and Rehabilitation Bill, 2007. At that time there were two separate drafts, one was the Land Acquisition (Amendment) bill, and the other was the Resettlement and Rehabilitation bill. Later, these two bills were combined to prepare the present LARR bill 2011. The proceedings were held in Parliament's Library Building on 17 June 2008. My suggestions focussed on basic issues involved in the definition of 'public purpose' and 'appropriate government'. I suggested that the first aspect should be determined by the elected panchayats because they represent the people who are likely to be affected. This suggestion was based on the 73rd Amendment of the Constitution as well as the Right To Information Act of India enacted in 2005. These laws empowered the citizens with (i) the right to decide on whether their land should at all be acquired and (ii) to obtain the correct information regarding every aspect of acquisition, including alternative sites that will minimise the adverse impacts of land acquisition. The members of the Standing Committee seemed to agree with me on the basic issues. But these were skirted. Instead, the panel of MPs provided examples of purchase of agricultural land by the private companies mostly through their agents. All the MPs irrespective of political affiliations seemed to be united on this issue. Nobody supported me. I was requested to send concrete suggestions in the light of the discussions which I sent later in writing. But the hint was clear, i.e. that one should forget about the 73rd Amendment, panchayat and the Right To Information Act. One should think in terms of sale and purchase of land.

c) I will now come to the technical part of the LARR bill.

In the Preamble of the bill under the section 2 entitled 'Definitions', we find in sub-section (e)

The expression "Appropriate Government" means, — The definition of the "Appropriate Government" as enunciated in the Land Acquisition Act of 1894 and Land Acquisition and Rehabilitation and Resettlement Bill of 2011 remains same. Under subsection 3(e) of the LAA 1894 and subsection 2(e) (i)-(iv) of LARR 2011, the expression "Appropriate Government" means only the Central and State Governments. Like the colonial Land Acquisition Act of 1894, the LARR also bypassed the 73rd Amendment Act of the Constitution which empowered the panchayats to function as institutions of self-government. The issue of "Appropriate Government" is vital to any discussion on social impact assessment as enunciated in the LARR 2011 Bill( Guha 2011: ) In Part II of the Bill entitled "Determination of Social Impact Assessment" under subsection 3(1) we read:

Whenever the Appropriate Government intends to acquire land equal to or more than one hundred acres for a public purpose, a Social Impact Assessment study shall be carried out in the affected area in consultation with the Gram Sabha at habitation level or equivalent in urban areas, in such manner and within such time as may be prescribed ??LARR 2011: 9).

The above paragraph reveals the superior status of the "Appropriate Government" over the local self-government, i.e. Gram Sabha. Curiously, the new Bill of 2011 like the LAA 1894 and, which is still in force, does not have any place for the for the local self-governments under the "Appropriate Government". In order to place the new Bill in line with the 73rd amendment of the Constitution the expression 'Appropriate Government' should also include the local self-governments, otherwise mere "consultation with the Gram Sabha at habitation level or equivalent in urban areas" would be a mere formality ??Guha 2009: 6). e) Given the above alarming

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lacunae in the proposed LARR Bill, I raise a basic question: 'Why are the political parties in India and their think-tanks not raising the issue of the complete absence of the local self-government entities in the Bill?' The answer is not very difficult to explore. No political party in India wants to decentralise power at the lowest level of the Government. On the other hand, in every case of land acquisition, the protests are invariably organised at the local level and the land losers may sometimes go against the political masters. The protest by farmers in Nandigram in West Bengal—once a solid base of the left parties—is one of the best examples of this political process. If the panchayats are empowered to have the final say on land acquisition for private companies, it will only embolden the locals and the under-privileged classes to protect their source of livelihood. This may endanger corporate interest in land acquisition. Incidentally, in Nandigram, the panchayats have been won over from the communists by the Trinamul Congress. But they have not been empowered to act legally against future acquisition. Now the Trinamul Congress is at power in the state and if a major corporate wants land in Nandigram, the state Government may allow the company to buy 100 per cent of the land for their project. The panchayats will have no legal role to play and the bargain between the poor farmers and the corporate will take place at the individual level. The constitutional body, which is empowered to prepare plans for economic development and social justice, will have no role under the amended Land Acquisition Bill. The silence of the think-tanks of the Congress, the Left, the BJP and the Trinamul Congress on the incorporation of the panchayats in the Land Acquisition (Amendment) Bill is a mockery of the Constitution, indeed the people at the grassroots.

The Social Impact Assessment study in the new Bill in which the State Government has the final words to say will remain a high sounding phrase and a sheer administrative procedure(Guha 2010: 6). In the LARR bill there is a clause under 2 (y) (iv) wherein it is stated, the expression public purpose includes—the provision of land for any other purpose useful to the general public, including land for companies, for which at least 80 per cent of the project affected people have given their consent through a prior informed process; (Ibid: 5).

But, nowhere in the new bill there is any elaboration of the process of taking prior informed consent. Will the Local Self-Governments collect the consent of the people through referendum? Or will they be consulted at all in the process? Will it be done from the top by the Central or the State Governments? The new bill is silent on these crucial questions of governance and, therefore, falls far short of the brass tacks of the situation.

V.

## 6 Conclusion

Under the global context of the growing emphasis on decentralized planning and local government in various international charters and the universality of development-caused displacement, the bypassing of the constitutional local governments in the recently proposed land acquisition, resettlement and rehabilitation bill in India posed a challenge to the system of democratic governance not only in India but also for other democratic countries of the South Asian region.

Recent research has shown that the judiciary in India even after Independence of the country has largely failed to protect the poor farmers from the onslaught of forcible land acquisition by the Government. ??Gonsalves 2010:37-42). Furthermore, the loss of livelihood and pauperization of a large number of people in the absence of governmental social security measures in the colonial law, the democratic legislations, like the 73 rd and 74 th amendments of the Indian Constitution which created decentralised Local Self-Governments (panchayats) for the empowerment of the poor are also being pushed back in the era of globalisation ??Guha 2006:155-173). All these development demands reform and change not only in the spheres of policy but also in effective legislation and governance. The new LARR bill 2011 by not incorporating the Local Self-Governments in the Preamble grossly violated the Constitution of India and the democratic letters and spirit of the various international charters on decentralization and Local Self-Governments, while insertion of an apparently propeople clause of collecting the prior informed consent of at least 80 per cent of the project affected persons without the specification of the concrete modalities makes it more dependent on bureaucratic control. The makers of the new land acquisition law of India, therefore, did neither use the Constitutional provisions of Local Self-Governments to limit the powers of eminent domain to safeguard the livelihood of the displaced millions nor have they honoured the spirit of decentralization as envisaged in the various international charters.

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Figure 1:

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Bengal State of India have not only revealed violation of human rights but also policy and governance failures on the part of the democratically elected popular Governments. Therefore, managing the legal, administrative and policy aspects of land acquisition in India or for that matter in any country of the world is basically a problem of governance which has academic as well as practical dimensions.

b) I would look into the failure of the Indian Government and its politicians to reform the colonial Land Acquisition Act of 1894, keeping in line with the democratic letters and spirit of the Indian Constitution through the Land Acquisition Resettlement and Rehabilitation Bill (LARR) 2011 which has recently been made an Act under the name Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, 2013 which was passed on 29 August 2013 in the Lok Sabha and on 4 September 2013 in Rajya Sabha. The Act has provisions to provide fair compensation to those whose land is taken away, brings transparency to the process of acquisition of land to set up factories or buildings, infrastructural projects and assures rehabilitation of those affected for the first time in the history of the country. Despite all the merits the new law has made a gross violation of the 73 rd and 74 th amendments of the Indian Constitution which created Local Self-Governments (panchayats and municipalities) in the rural and urban areas in addition to the Central and State Governments in the country. But strangely, no political party of India, the communists included, have raised this crucial question of governance in the public domain. It is interesting to note here that in a recent debate between the internationally celebrated social activist Medha Patkar and Jairam Ramesh, the Central Government Minister of Rural Development, the issue of recognising the Local Self-Government as one of the 'Appropriate Governments' did not find any place (Patkar 2012 & Ramesh 2012).

c)

Figure 2:

policies which are frequently imposed upon the poor villagers under various types of national and international economic and political compulsions.

i. Notably enough, West Bengal is not only one of the most important states of India in terms of its post-Independence achievements in implementing land reforms and local governance with fair amount of success (Lieten1996; Dreze & Sen 2002)

government led by the Communist Party of India (Marxist) which ruled the state for thirty-four years at a stretch. Interestingly, West Bengal is also the state, which in the era of globalization became committed to invite huge capital investment at the cost of farmers under the Communist Government. The acquisition of fertile farmland for private industries in the state in the recent past had given rise to violent struggles between the people and the Government over the issue of land acquisition which among other reasons, finally led to the massive electoral defeat of the communist government in the 2011 Bengal Assembly elections.

ii. The acquisition of hundreds of acres of legally owned private agricultural land for the establishment of capital intensive industries, big dams, multi-lane highways and car racing arenas was one such high-handed game which the Left Front Government played with the panchayats while inviting foreign and domestic capital in the wake of liberalization in India. The legal instrument which the communists in West Bengal used to dispossess the small and marginal farmers as well as sharecroppers from their major means of production was the colonial Land Acquisition Act of 1894 which did not have the provision (even after the post-colonial amendments in the law) to consult the panchayats and follow the 73 rd amendment of the Indian Constitution. (Guha 2007: 58-72 & 123-126).

iii. Interestingly, the West Bengal Panchayat Act, 1973 too, does not mention anything about self-governance. The powers and duties of the Panchayats as elaborated in the various chapters of the said Act are largely development oriented. Two eminent experts, Nirmal Mukarji and Debabrata Bandopadhyay, in their report "New Horizons for West Bengal Panchayats"

e) The State of West Bengal is not an exception to this general rule. Extending the Panchayats

underdemocratically

West



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government. These are empowered by the Constitution with the responsibility of preparing plans for economic development and social justice and in regard to matters listed in the 11th Schedule (inserted by the 73rd Amendment). As we mentioned earlier in this article, the list contains 29 items, such as land improvement, minor irrigation, animal husbandry, fisheries, education, women and child development, social forestry, etc. Therefore, the acquisition of land for industries or for that matter any development work within the jurisdiction of a panchayat should first be cleared by the respective panchayats.

Figure 4:



## .1 Acknowledgements

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## 6 CONCLUSION

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