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LAND ACQUISITION AND DISPLACEMENT: AN OVERVIEW

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Abstract

This research articles mainly focus on land acquisition and legal procedure for land acquisition. It contains Land Acquisition: Legal, Conceptual and Procedural Framework, Land Acquisition in Colonial India, Land Acquisition Act, 1894, Land Acquisition Act in Post-Colonial India, 1984, Lacunae in Scope of Land Acquisition Act, 1984, The Rehabilitation and Resettlement Bill, 2007, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Definition of Affected People, Social Consequences of Forced Shift, (a) Relocation Theory, (b) Impact on the Community, (c) Change in Culture, (d) Change in Caste and Class Identity, (e) Change in the Family Structure Due to Development Induced Displacement, (f) Impact of Development Induced Displacement on Women(g) Impact of Development Induced Displacement on Children (h) Impact of Development Induced Displacement on Elderly, Impact of Displacement on Economic Structure of Affected Families.

Keywords: Land Acquisition, Acts, Displacement

Land Acquisition: Legal, Conceptual and Procedural Framework

Sometimes the project authorities acquire a piece of land to starts its development projects by displacing people settled on that property. This refers to as “Land Acquisition” literally means the acquisition of land by the government agency from individual owners for some public purpose for

which government-fixed compensation is awarded to landowners to cover the incurred losses due to surrendering of their land for larger public interest. The land acquisition act of 1894 was framed to facilitate acquisition of privately held land by the government for public purposes. Land acquisition process has a long history in India and multiple amendments are made in the legal proceedings of acquisition of land, compensation award, resettlement planning and rehabilitation framework and ideology. Plethora of research studies on the displaced gives ample evidences to support that the change due to forced shift and relocation affects the affected families socially, economically and culturally up to an extent. If the project authorities are bounded by legal procedures to execute and implement rehabilitation policies then it can safeguard and secure the people who made sacrifice to pave the way of development. In this section of this chapter, various laws regulating the land acquisition in India has been covered to assess the strength and loopholes in the provisions of laws for land acquisition, compensation, resettlement and rehabilitation.

Land Acquisition in Colonial India

Land acquisition for public purpose began in India with the enactment of new law-Regulation I of 1824 of Bengal Code. Its main aim was to make land available for salt pans and other purposes. It laid down the detailed procedure for acquisition of land and also provided definite rules

for the determination of compensation. Land Acquisition Act 1894 was enacted by the British Government to remove all the difficulties. Acquisition could be prevented only if the objectives of public purpose could not be justified. It is well known that Land Acquisition Act, 1894 was passed by the colonial government to make it possible for the state to acquire private land for public purpose.

Land Acquisition Act, 1894

Any company intended to acquire land for the development purpose needs to present the application to the revenue authority demonstrating survey number, acquisition purpose and the substantial reason for choosing the particular site and the cost provision for the acquisition. Once the Government is satisfied about the purpose, least area needed, and other related matter according to the provisions land acquisition rules, acquiring party issues a notification under Section 4 of the act that the mentioned minimum land is required for public purpose. Within thirty days from the date of notification, objections are invited from all the interested people in land. Objections are valid if the stated purpose to acquire land is not public purpose, if the chosen land for the stated purpose is less or not appropriate as compared to another piece of land, excessive area under acquisition, if acquisition pose threat or impair artistic/historical monuments or if it displaces religious buildings, graveyards etc. Under Section 6 of the act the land is declared feasible for acquisition post the collector's submission of report after hearing the objections.

Government has the power to abandon the said acquisition proceedings through cancellation of notification or the proceedings can be further moved by awarding the compensation amount Section 48(2). For calculating the compensation amount the market value of land is assessed

according to the date of notification. Compensation is also awarded if remained part of any property is depreciated due to land acquisition proceedings or if the land has standing crops or trees and excess rent amount is considered in case of shift from home or business. There are certain factors which are not taken into consideration for the land acquisition purpose, these are: land can be acquired with the urgency clause with no extra payment for it, any reluctance of the individual to part with the land or any appreciation in the value of land after the development due to said purpose.

After adequate enquiries the collector is responsible for declaration of the award by marking approved area of land and declares final compensation amount and distribution of compensation in case of multiple claimants. In case project authorities exceeds time limit prescribed under the Act, then it leads to lapse of entire proceedings for land acquisition. Once the award is passed, competent authority gets the rights to take possession of the land immediately.

Land Acquisition Act in Post-Colonial India, 1984

This act is almost same as the Land Acquisition Act, 1894 with certain modifications. Compensation payable at the rate of 15% of the market value of the land acquired in consideration of the compulsory acquisition was increased to 30%. In Rajasthan, two Acts; Rajasthan Land Acquisition Act, 1953 and Rajasthan Land Acquisition Act, 1966 have been enacted. Section 4 of Land Acquisition Act necessitates publication of notification of acquisition and then empower the government to order the survey and set up boundary of the land. The main purpose of the order under section 4 of the act and under Section 4 (1) of the Rajasthan Land Acquisition Act is to undertake preliminary proceedings for the acquisition. Criteria to determine the public

purpose is that the land acquired must be available to public at large or it should be in the general interest of the community. Publication of notification should be issued before acquisition of the land and exercising the jurisdiction of the Collector in case where land is acquired for the public purpose.

Lacunae in Scope of Land Acquisition Act, 1984

This act is almost on the same ideology as that of the Land Acquisition Act, 1894 wherein the ultimate power of land is vested in the state with very few powers to challenge the acquisition and compensation in the hand of land owners who are supposed to sacrifice their land for the welfare of public at large. The state could put the land to any use it deems necessary. Activists opined that this law remains heavily biased in favour of the state, allowing it to acquire land anywhere and everywhere in the public interest, providing only cash compensation.

The Act neither contains any provision for allotting alternate land of comparable quality to those whose land has been acquired nor do the acquiring authorities have any obligation to resettle and rehabilitate those whose land is displaced by the acquisition.

Common property resources and natural resources used by the affected population are not considered for compensation. The Land Acquisition Act does not give any right to victims to prevent the acquisition of act. The government is empowered to acquire land for the public purpose. Land Acquisition Act 1984, the main law of acquisition reveals a gender bias which seems to reinforce the existing situation of woman's lack of ownership of land and property. Similar lack of gender sensitivity is present in almost all the policies and plans that govern rehabilitation and resettlement.

Though the Land Acquisition Act, 1984 has neglected various important aspects while calculating compensation, and amended from time to time but still it remained in operation till last few years. One was The Rehabilitation and Resettlement Bill, 2007 which was proposed after the admitted failures of the National Policy on Resettlement and Rehabilitation for Project Affected Families of 2004. This later policy was to address the key issues related to forcible acquisition and to promote as far as possible least displacing alternatives.

In the drafting of the Social Impact Assessment (SIA) report and/or the Environmental Impact Assessment (EIA) report of the project, participation affected people and their representatives are excluded. This policy does not make government liable for land to land compensation to the displaced families as the term "*may be allotted*" only "*if Government land is available in the resettlement area*" is written. As a result, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into existence.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is an Act of Indian Parliament that directs acquisition of land and frames the procedures to be followed for granting compensation, rehabilitation and resettlement to the affected persons due to development induced displacement project in India. The Government of India agreed that there was situation of hue and cry among people on the process related to land acquisition issues in India. Heightened concern was that despite of numerous enactments and alterations, over the years, to India's Land

Acquisition Act of 1894, there was no firm and comprehensive national law that addressed fair compensation and rehabilitation to the land owners and livelihood losers in case of acquisition of private land for the public purpose. The Government of India felt that a consolidated law was important, one that legitimately and simultaneously meets both ends i.e. acquisition of land for public purposes and just and fair rehabilitation and resettlement to the affected.

Objectives of the Article

The goal of the Act is to guarantee transparency provisions for acquisition of land to develop industries, essential infrastructural facilities and urbanisation that too with minimum disturbance to the land owners and other affected families in this act. This act focuses on providing just and fair compensation to the affected families whose land has been acquired for the development projects in the interest of public at large. The act aims to improve the post-acquisition social and economic status of the owners as well as of affected families rather than the impoverishment.

Both Land Acquisition and Resettlement & Rehabilitation Provisions will apply when:

- Land acquisition by government for its own use, hold and control.
- Land acquisition by government with the intention to transfer the land to the private companies for mentioned public purpose.
- Land acquisition by Government for Public Private Partnership Projects.

No change in public purpose is accepted for above (2) & (3) points. 80% of the affected families consent is required when acquired land is used by private companies where consent of 70% affected families is required in the public private partnership projects.

Definition of Affected People

Land Owners: It includes the acquisition of land/other immovable property of family or company or of those who are assigned land under government schemes and right holders under the Forest Rights Act, 2006.

Livelihood Losers: It includes those families whose livelihoods are primarily dependent on acquired land at least for last three years. Provisions are mentioned in the law to calculate the market value for awarding compensation. Government authorities also take into account the assets like land, trees, crops, wells etc. while calculating compensation.

In this act, solatium³ is revised as 100% of total compensation. Act propose that when land is acquired in urban area, 20% of the land which got developed by the project will be reserved and offered to project affected families (land owners), in extent to their land obtained and at a value equivalent to cost of acquired and developed land. If project affected family shows interest to get the benefit of the offer, a proportionate sum will be reduced from the area for which compensation is payable to. In either case the comparable expense of the residential property shall be offered in lieu of the house according to choice of the affected families due to displacement. Alongside the Resettlement and Rehabilitation offers, SCs/STs are qualified for one time economic help for Rs. 50,000 to each family. Free land for community get together shall also be part of their rehabilitation and resettlement package.

The final compensation award has to consider harm to standing crops which may have been damaged as a result of land acquisition procedure (including the preliminary inspection). Further while dealing with irrigation or hydro projects, displaced and affected families might be

permitted the fishing rights in the reservoirs, on the discretion of government authority.

Now Collector can no more manipulate the calculation of compensation and property can be acquired post fulfillment of requirements provided in the law with respect to payment of compensation, rehabilitation and resettlement. The Collector is no longer empowered to acquire land citing 'urgent' reasons.

Assessment of social impact in the affected area is made compulsory except for Irrigation Projects. Any change in the specified purpose for the use of land submitted at the time of acquisition of land will not be entertained. Land acquired for the mentioned purpose, if not put into use within 5 years of acquisition, shall be transferred to the original land owner or to State Government's Land Bank. It is mandate to share 40% of the appreciated land value with the original land owner. This act includes the provision wherein the Collector is responsible for passing two distinct awards viz compensation to the affected families (land owners, landless and tenants etc.) in lieu of land acquisition and award for rehabilitation and resettlement whether they may be losing land or not. This act compels to carry out Social Impact Assessment and Rehabilitation & Resettlement report for every piece of land, irrespective of its size.

Social Consequences of Forced Shift

Multiple factors like gender, age, family size and composition, physical ability, educational levels, existing skills, and nature of social networks and the past experiences of involuntary resettlement (if any) of a displaced population determines the extent to which different members of the population react, negotiate, respond and adapt to the challenges of the different phases of displacement. Bread earners, women, children and

elderly face different consequences during and after the forced transition face in their life.

Relocation Theory

Community members facing transition respond in familiar and broadly similar manner because pressure of relocation limits the coping mechanism of affected people.

Impact on the Community

Development-induced displacement is not only a threat to individuals but to the society at large. It affects the structure of society such as families, tribes, rural communities, and even the inhabitants of entire regions. The consequences of development induced displacement must be seen in the light of community phenomenon. Rather than focusing on the quantitative aspect i.e. number of displaced people, there is need to recognize the change in qualitative aspects of displaced families, tribes, and villages. By disintegrating the local communities, development-induced displacement affects the most fundamental element of community feeling. The so claimed resettlement process basically leads to the erosion of existing relationships and community ties. Development-induced displacement reduces the most basic function of the community to a structure of economic cooperation. When displaced people are forced to change jobs or the workplace, their previous economic communities no longer function. The pains of the displaced and project affected people can be minimized by resettling the entire communities to a place of a similar nature. Even the displacement of a whole community to the same city can carry the risk to disintegrate previous structures and social ties.

Changes in Culture

The economic impoverishment of displaced people and the disruption of existing social structures stimulate negative cultural changes.

Change in Caste and Class Identity

When the long established residential sentiments, production system and kinship group disrupts due to displacement then people's life are affected in very many ways. Although displacement due to development is intended for the larger social good, but if not planned exhaustively, it can create painful experiences in the life of affected people. Displacement significantly hampers the social and cultural life of the displaced. It affects the traditional structure of society along with the informal social networks that form the very basis of community. Dislocation and relocation can save the community network to the maximum possible extent if it is planned and implemented carefully by keeping in mind the needs of the affected community.

Land Acquisition in urban areas causes certain changes in the class characteristics of affected persons. Risk of shift in class character becomes critical in case of occupational area displacement because it hits the pocket directly, if the resettlement site does not support the business class.

Change in the Family Structure Due to Development Induced Displacement

The Joint family system is still dominant in rural societies because of agricultural occupation as livelihood is directly affected with ownership of land. In urban areas, although one can witness more nuclear families but joint family system is common in business communities. Disputes in ownership titles at times increase risk of the disintegration of joint families. Children are often neglected in this period of stress.

Impact of Development Induced Displacement on Women.

Development - induced displacement induces significant alterations and profound changes in social, economic and cultural arenas of

the displaced communities. Although involuntary shift affects both men and women, but episode of displacement and relocation affects the female part of the displaced families in a particularly gendered way. Generally, policies of resettlement and rehabilitation neglect the needs of women.

Literature on development induced displacement reveals that widows and households headed by women have been excluded from compensations in the resettlement package. For affected communities, development. In the state law of Land Acquisition of Government of Orissa, although there is provision to provide compensation to divorcees but there is clause which argues that the woman has to prove herself as a divorcee to get Resettlement & Rehabilitation benefits. In case of most controversial Sardar Sarovar Project, the government of Maharashtra categorized and considered 'major unmarried daughters' as project-affected persons entitled for resettlement and rehabilitation package. The government of Gujarat framed the rehabilitation policy in a manner to include all widows after 1980 as distinct family in the Sardar Sarovar Project; however, rehabilitation and resettlement policy mentioned that women widowed prior to 1980 are not entitled for separate benefits and unmarried daughters were completely neglected. Madhya Pradesh government rehabilitation and resettlement policy had no provision for women compensation.

In a broad sense, displacement results into inaccessibility of common property resources, impact on livelihood, change in services, lack of sanitation, disintegration of family life during relocation, ill health, loosens tie of community networks, issues and delays in daughter's marriage, increase in alcoholism and domestic violence, insecurity felling, changes in lifestyle etc. Women encounter greater hardship in case of breakdown of community, family and kinship network.

Fundamentally disenfranchising experience is felt by women due to insensitive compensation, resettlement & rehabilitation policies.

Displaced women from lower economic social ladder experience more stress as compared to those with sound socio- economic background. Literature on development induced displacement reveals that men migrate in search of employment females have to stay back to take care of home and children. Due to economic crunch women are compelled to indulge into prostitution to support their family demands. Displacement leads to landlessness, decreased land assets, unemployment of the men, and marginalization, it becomes imperative that females work. The survey report carried out by National Commission for Women (NCW) in India on the impact of development induced displacement on women reveals that an increase in alcohol consumption because of displacement stress has led to significant rise in domestic violence. Parsuraman studied impact due to development induced displacement on socio economic aspect of women. Replacement of land and other resources in the relocated region partially facilitates women to reestablish their socio-economic status.

The mentioned narratives of women direct that the state government policies should review these issues to encourage the involvement of women and march towards gender justice. This narrative-based approach recognizes the problems of women affected by processes of displacement for review by policy makers whose decisions in the name of “development and public purpose” have multiple consequences for women.

Resettlement and Rehabilitation policy if designed in a manner to give the equal rights to men and women in the holding of property then it can really empower the females socially and economically. Widow and divorcee too should

have say in the compensation awarded to the displaced families.

Impact of Development Induced Displacement on Children

Internal displacement alters livelihood, results in breakdown of family, community structures, affects education, nutrition, health care and the breakdown of traditional social norms, leaving children particularly vulnerable. The impact of displacement on children cannot be underestimated: it may affect the health, academics and future. The difficulty for children increases when resettlement sites lack adequate number of schools, infrastructure and transportation facility. Protection and support that the internally displaced child gets from the family and other systems in dealing with the related experience is essential in successfully overcoming such experience.

Studies have shown that involuntary displacement negatively affects the future of children because it disrupts the social and economic structure of the affected families. Because of lack of funds at times children are forced to shift from private to public school which affects the quality of education.

Impact of Development Induced Displacement on Elderly

Whenever there is involuntary displacement and affected households/ occupational land have to move from their place of origin to place of relocation, conflicting situation arise because of disputes within the family, with Government Officials and with the host community. Main reasons for the family conflicts can be due to sharing of compensation amount, purchase of land, alternate occupation, construction of new house, children education and due to unexpected changes in perceived future plans such as marriage of children, higher education of children, expansion of business etc.

The project authorities are usually more focused and concentrated on the development and design of the project rather than suitable rehabilitation and resettlement policy. When there is total communication gap between the affected people and the project authorities in that case so much of insecurities and doubts prevails in the family of affected people that irritation and anger episodes becomes frequent. Thus the initial period just after the notification of land acquisition becomes very critical and unambiguous. This is the time frame wherein due to insecurity for future bread earner of family displaces his anger on women and children. Social, Psychological and Economic structures of the family gets affected by the forced shift of households/shops/ productive assets.

Impact of Displacement on Economic Structure of Affected Families

Acquisition of land, especially occupational land, indicates changes in economic status of the affected community. Displacement and relocation can leave people worse off, and it lead to the process of impoverishment. The socio-economic dispossession due to displacement breaks the life support system, which brings about disorganization and insecurity in the lives of displaced people. Displacement and relocation not only brings change in income levels, but at times it pushes the displaced towards unemployment and joblessness. The member of family, who played a role of bread earner before displacement, may fail to feed the family after displacement. Such unseen circumstances compel other family members like woman and children to take up job. In the case where economic structures of affected families are directly hit by the development project, affected people must be actively involved to give suggestions for the best suitable site which can support their business.

Conclusion

To conclude for the overall development and to protect the affected families from the impoverishment due to involuntary displacement and relocation demands strong execution and implementation of resettlement and rehabilitation planning by the project authority. As social change affects the whole structure of society thus all the four pattern variables viz., economic, political, legal and social institution must work together for the better adjustment with the changed circumstances. The following chapter critically reviews various books and articles on development induced displacement in India.

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