

Globalisation and the Application of Rule of Law Principles in the Context of SEZ: A Study in the Context of Acquisition of Land

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Abstract

Globalization is both an 'out there' and an 'in here' phenomenon, blending the distant with the local.¹ Furthermore, it is a two-way process. As Anthony Giddens puts it, the globalization process, "link [s] distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa."² The universalization of human rights norms and the global liberalization of corporate and commercial endeavour are two especially conspicuous players on the globalization stage. Both, to some extent, rely on the notion of the Rule of Law to promote their ends, though they rely on different features of the notion in so doing—the latter more on "certainty;" the former more on "equality." In the age of globalisation, a specific and significant trend there are two that stand out—namely, corporate/commercial enterprise and human rights/humanitarian standard-setting. The corporate/commercial enterprise is characterized by the patent aggrandizement of the power of multinational enterprises, the influence of capital markets,¹⁹ and the concomitant expansion of international regimes for trade regulation—such as the World Trade Organization (WTO), the North America Free Trade Agreement (NAFTA) and the EU—and for economic development—such as the International Monetary Fund (IMF), the World Bank and the regional development banks of Africa, Asia and South America. Human rights standard setting is characterized by the spreading, though not unqualified, acceptance across states of the universality and indivisibility of human rights. It is also characterized by the emergence of new regional human rights regimes beyond the European and American progenitors—that is in Africa, the Arab States and in rudimentary form in Asia. Under the given circumstances, this paper aims to explore the relationship between the globalisation and rule of law in the context of SEZ in the context of acquisition of land.

Keywords: Globalisation; Rule of Law; SEZ; WTO; Acquisition of Land; Displacement; Rehabilitation and Resettlement; Fair Market Value; Sustainability.

Introduction

Rule of Law symbolizes the quest of civilized democratic societies', be they eastern or western,

to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes licence. The phrase can be traced back to 16th century Britain, and in the following century

the Scottish theologian Samuel Rutherford used the phrase in his argument against the divine right of kings [1]. The concept, if not the phrase, was familiar to ancient philosophers such as Aristotle, who wrote “*Law should govern*” [2]. The rule of law was further popularized in the 19th century by British jurist A. V. Dicey. To him, rule of law includes, supremacy of law, equality before law and predominance of legal spirit. This paper aims to explore the relationship between the globalisation and rule of law in the context of SEZ in the context of acquisition of land.

Concept of Rule of Law

According to the Oxford English Dictionary, The authority and influence of law in society, esp. when viewed as a constraint on individual and institutional behaviour; (hence) the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes. In the words of Justice Vivian Bose of the Supreme Court of India, Rule of Law, “is the heritage of all mankind” because its underlying rationale is belief in the human rights and human dignity of all individuals everywhere in the world. Rule of Law is “a device that enables the shrewd, the calculating, and the wealthy to manipulate its form to their own advantage” [3]. Professor BRIAN TAMANAHA has described Rule of Law as “an exceedingly elusive notion giving rise to a rampant divergence of understandings and analogous to the notion of the Good in the sense that everyone is for it, but have contrasting convictions about what it is” [4]. According to the *WORLD JUSTICE PROJECT*'s definition of the rule of law is a system in which the following four universal principles are upheld [5]:

- ✓ The government and its officials and agents as well as individuals and private entities are accountable under the law.
- ✓ The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property.
- ✓ The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient.
- ✓ Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they Serve.

The International Development Law Organization has a holistic definition of the rule of law: More than a matter of due process, the rule of law is an enabler of justice and development. The three notions are interdependent; when realized, they are mutually reinforcing. For IDLO, as much as a question of laws and procedure, the rule of law is a culture and daily practice. It is inseparable from equality, from access to justice and education, from access to health and the protection of the most vulnerable. It is crucial for the viability of communities and nations, and for the [6]. The *SECRETARY-GENERAL OF THE UNITED NATIONS* defines the rule of law as: a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency [7]. The *GENERAL ASSEMBLY* has considered rule of law as an agenda item since 1992, with renewed interest since 2006 and has adopted resolutions at its last three sessions [8]. The *COUNCIL OF THE INTERNATIONAL BAR ASSOCIATION* passed a resolution in 2009 endorsing a substantive or “thick” definition of the rule of law: An independent, impartial judiciary; the presumption of innocence; the right to a fair and public trial without undue delay; a rational and proportionate approach to punishment; a strong and independent legal profession; strict protection of confidential communications between lawyer and client; equality of all before the law; these are all fundamental principles of the Rule of Law. The Rule of Law is the foundation of a civilised society. It establishes a transparent process accessible and equal to all. It ensures adherence to principles that both liberate and protect. The IBA calls upon all countries to respect these fundamental principles. It also calls upon its members to speak out in support of the Rule of Law within their respective communities [9].

Rule of Law vis-à-vis the Indian Constitution

Rule of Law runs like a golden thread in the Indian Constitution. Part III of the Indian Constitution guarantees certain fundamental rights akin to a Bill of Rights. For example, Article 14 states “The State

shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". No fundamental right in the Indian Constitution is absolute. Reasonable restrictions can be imposed on the exercise of the various fundamental rights guaranteed under Article 19 but the primary requirement is that the restriction must be prescribed by law, not by administrative non-statutory instructions. Further, Art. 300 A stipulates that no person shall be deprived of property save by law. In *I.R. Coelho v. State of Tamil Nadu* [10] Rule of Law the Supreme Court regarded as part of the basic structure of the Constitution. Consequently Rule of Law cannot be abolished even by a constitutional amendment.

Issue of Displacement and the Initiatives at the International Level

- *The United Nations Comprehensive Guidelines on Development Based Displacement, 1997*

The present the United Nations Comprehensive Guidelines on Development-Based Displacement, 1997 emphasises that States should secure by all appropriate means, including the provision of security of tenure, the maximum degree of effective protection for all persons under their jurisdiction against the practice of forced evictions from their homes and/or lands and common property resources they occupy or are dependent upon, thus eliminating or limiting the possibility of an individual, group or community residing or working in a particular dwelling, residence or place. In this regard, special consideration should be given to the rights of indigenous peoples, children and women, particularly female-headed households and other vulnerable groups. These obligations are of an immediate nature and are not qualified by resource-related considerations [11]. The UN Guidelines also says that the states should ensure that eviction impact assessments are carried out prior to the initiation of any project involving all the affected persons, including women, children and indigenous peoples shall have the right to all relevant information and the right to full participation and consultation throughout the entire process and to propose any alternatives which could result in development-based displacement, with a view to fully securing the human rights of all potentially affected persons, groups and communities [12]. The states should refrain from introducing any deliberately regressive measures with respect to *de jure* or *de facto* protection against forced evictions [13]. All persons subjected to any forced eviction not in

full accordance with the present Guidelines, should have a right to compensation for any losses of land, personal, real or other property or goods, including rights or interests in property not recognized in national legislation, incurred in connection with a forced eviction. Compensation should include land and access to common property resources and should not be restricted to cash payments [14]. All persons, groups and communities have the right to suitable resettlement which includes the right to alternative land or housing, which is safe, secure, accessible, affordable and habitable [15].

- *United Nations Guiding Principles on Internally Displaced Persons, 1998*

The United Nations has declared a Guiding Principles on Internally Displaced Persons, 1998 provide protection against arbitrary displacement; offer a basis for protection and assistance during displacement. Principle 6(C) of the same prohibits the arbitrary displacement in cases of large-scale development projects. Still, the subject was gradually faded into oblivion until 2003 when the draft National Rehabilitation Policy was notified by the NDA government. This policy came into effect in February, 2004 as the National Policy on Rehabilitation Policy on Rehabilitation and Resettlement for Project Affected Families. At this, the National Advisory Council being unsatisfied with this sent its own revised policy draft to the government. The bureaucracy then brought out a revised version of the 2003 Policy in 2006 which has become the National Rehabilitation and Resettlement Policy, 2007. On this issue, again, the Parliament has brought the Rehabilitation and Resettlement Bill, 2007. and the Land Acquisition (Amendment) Bill, 2007 which includes 'land for land', to the extent Government land available in their resettlement areas [16]; preference for employment in the project to at least one person from each nuclear family subject to the availability of vacancies and suitability of affected person [17]. Now let's have a look over these steps of the government.

- *Indian Approach to Globalisation and Rule of Law concept in respect to SEZ*

In India, the concept of rule of law in the globalised era is clearly noticeable in the statutory form. The *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* along with the ordinances is one of the prominent example to this. Under the law, government has the power to acquire any kind of property be it land or

any property for public purpose following the doctrine of Eminent Domain. Prior to the enactment of the Right To Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Lands, were acquired according to the provisions of the Land Acquisition Act, 1894 after paying compensation [18] against the very land vest in the Government and afterwards in the company for whom the same have been acquired free from all encumbrances. Acquisition of land is associated with the following conflicting issues -

- Apprehension of inadequate compensation
- Shifting of livelihood pattern
- Uncertainty of Job guarantee
- Fear of losing shelter or place of residence
- Fear of losing balance of food security
- Fear of keeping the land idle after acquisition and there by delaying the enforcement of commitments to the project affected people
- Engulfment of the fertile agricultural lands by industry in the name of development
- Absence of separate policies of acquisition of land for the Urgent and Important projects
- Suffering from mental trauma
- Improper rehabilitation and resettlement policy of the government
- Socio- economic hardship
- Activism of touts/ land sharks in the adjacent areas

Development of state or country should not at the cost of a section of people. Generally, it has been the common picture of every displacement that the displaced people's interest is hardly respected. So, it may be submitted that state needs to pay much interest in the rehabilitation and resettlement matters of the displaced people. When, the SEZ Act, 2005 applies after the acquisition of land and the acquisition of land takes place only after the land is acquired under the Act of 2013, the issue concerning displacement is regulated with the globalised concept of rule of law.

• *The Land Acquisition Act, 1894*

The acquisition of land is done according to the Land Acquisition Act, 1894. Under the Act, 1894 the state is entitled to acquire land [19] for public purpose clause or for a company. Land is a matter which is dealt with under the State List of the Constitution. Land²⁰ as property has been subjected to acquisition under the Land Acquisition Act, 1894. The Act I of

1894 aims at promoting important public interest - *salus populi suprema lex*- which subordinates private interests on speedy payment of compensation which was originally irrelevant prior to the Amendment Act 38 of 1923. Any presumption or rule of construction or of convincing unless just and equitable cannot be applied to compulsory acquisitions of land. Under this Act, following kinds of acquisitions are covered-

- For public purpose (Sec. 6)
- For industrial concern not being a company²¹(Sec. 38A)
- For companies for the erection of dwelling houses etc. for workmen [Sec. 40(1) (a)]
- For companies engaged in work for public purpose [Sec. 40(1) (aa)]
- For companies for some work likely to prove useful for public [Sec. 40(1) (b)]
- For public purpose primarily and on behalf of a company (Sec. 6 & 40)
- For railway or other companies with which the appropriate government is bound by agreement to provide land (Sec. 43)

Bridging Right to Property with Right to Life and Personal Liberty

• *Deprivation of Property vis-à-vis Right to Minimum Human Dignity*

The Supreme Court linked and applied right to life and personal liberty with property in *Kharak Singh v. State of UP* [22], for the first time. Art. 21 to recognizes the right to mean more than mere survival and mere animal existence and embodies the right to live with minimum human dignity after *Maneka Gandhi* [23] and *Francis Coralie* [24]. In *B.D. Sharma v. Union of India* [25], it was ruled that the overreaching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of the oustees. They should be rehabilitated as soon as they are uprooted. Further, the court provided a time frame by which the rehabilitation must be complete: before six months of submergence. However, in *Chameli Singh v. State of Uttar Pradesh* [26], the Supreme Court held that "in every acquisition by its very compulsory nature for public purpose, the owner may be deprived of the land, the means of his livelihood. The state exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield place to the larger public purpose."

Deprivation of Property vis-à-vis Right to Livelihood

Again, Article 21 includes the right to livelihood also [27]. On this issue, the Supreme Court has held that if the right to life is not treated as a part of right to life, the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that Articles 39(a) and 41 require the state to secure to the citizen an adequate means of livelihood. In *New Riviera Co-operative Housing Society v. Special LAO* [28] dismissing the proposition of the land owners that such acquisition of land will deprive them of their livelihood, the court held that since the Land Acquisition Act provides for the payments of solatium and other monetary benefits for deprivation of rights of enjoyment of property, therefore any contention that it will deprive their livelihood is unsustainable. Thus, following the above judicial pronouncements, it may be assumed that, if the solatium and other monetary benefits are provided to the project affected peoples (PAP), then deprivation of property may be tenable. In *D. K. Yadav v. JMA Industries* [29], the court held Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced into animal existence. But, in a number of occasions it is seen that the poor always get a raw deal from the politics of a market driven economic paradigm. The broad contours of this story are the same all over the globe wherever the profit and growth objectives of big capital come into conflict with the livelihood rights of the economically weak, landless labourers, small farmers and artisans in villages, tribals in forests, fishing communities in relevant regions and city based vendors and workers living in slums and other low income areas. Such people are constantly denied their right of livelihoods when they come in the way of commercial projects that demand large-scale acquisition of land, water, minerals, forests and other natural resources. This is how the capital driven market works. The present statutory instruction is to pay the market value of the land in addition to which solatium etc are to be paid. At this point the determination of market value of land is a very significant issue. The judiciary on this issue is not silent on this point.

In *Narmada Bachao Andolan v. Union of India*,³⁰ it was observed that rehabilitation is not only about providing just food, cloth, or shelter. It is also about extending support to rebuild livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is thus a logical corollary of Article 21. The oustees should be in a better position to lead a decent life and earn livelihood in the rehabilitation locations.

Further, in *N.D. Jayal and Another v. Union of India*,³¹ the court held that the right to development encompasses in its definition the guarantee of fundamental human rights. Thus, the courts have recognised the rights of the oustees to be resettled and right to rehabilitation has been read into Article 21. Very recently, in a significant ruling, a division bench constituting Justices Mr. Altamas Kabir and Mr. Cyrese Joseph the Hon'ble Supreme Court in some land owners of Narwana in Haryana's Jind district observed that, a right under Section 5 (A) of the land Acquisition Act is not merely statutory but also has the flavour of the Fundamental Rights under Articles 14 and 19 of the Constitution. Again, noting the urgency clause in Section 17 of the Act, under which the concerned land owners can be denied the opportunity to file objections to the proposed acquisition, can be pressed into service only in exceptional circumstances, the apex court directed the land acquisition collector-cum-district revenue officer of Jind, to consider the objections to be filed by the land owners and dispose of the same within a month and then the government would be at liberty to take the appropriate consequential steps after the disposal of the objections [32].

• Determination of Market Value of Land Subjected to Acquisition

To determine what is just and fair compensation the basic component is the fair market value of land subjected to be acquired. In determining the fair market value ("FMV") the courts routinely decide whether compensation owed by the benefit conferred. According to Bell and Parchimovsky's proposal, takings, fall into three categories: physical, regulatory, and derivative [33]. Whether a giving is compensable or not is determined by a four factor test, balancing the "reversibility of the act, identifiability of the recipient, proximity of the act to a taking, and refusability of the benefit [34]. As to the valuation Bogey, Bell and Parchomovsky advocate "relative wealth" as a baseline instead of "absolute wealth [35]." In terms of relative wealth, the landowner deprived of the giving becomes poorer than his neighbors [36]. The landowners in most of cases get only one time compensation. It is nothing but merely robbing of the landowners or peasants to satisfy the will of the corporate bodies. The acquisition laws must necessarily ensure that the private owner is suitably compensated. The just compensation clause in the Fifth Amendment to the Federal Constitution of the USA says, that such laws should also ensure that the powers of acquisition can be exercised only when the pain and suffering of

a person being deprived of his property is overwhelmingly outweighed by the public good sought to be achieved by the acquisition. Such laws should also ensure that no private owner of property is deprived of his life or livelihood in the process of acquisition if the land in question forms his only source of economic sustenance. As long as farmers have their sickle, they will be peaceful. But if their sickle is snatched from their hands, it will be replaced by a gun. After Jenkins C.J. in *Babujan v. Secretary of State and the Chairman, Gaya Municipality* [37] 'for the purpose of ascertaining the market value of land the court must proceed upon the assumption that it is the particular piece of land in question that has to be valued including all interests in it. In *Bombay Improvement Trust v. Jolbhai* [38], Batchelor J. commented, "reading the act as a whole I can come to no other conclusion than that it contemplates the award of compensation in this way; first, you ascertain the market value of the land on the footing that all separate interests combine to sale and then you apportion or distribute that sum among the various persons found to be interested." In *Atma Singh (died) through LRs. & Ors v. State of Haryana & Anr* [39] the expression 'market value' was a subject-matter of consideration in this case. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arm's length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz., a price outcome of hypothetical sale expressed in terms of probabilities. For ascertaining the market value of the land, the potentiality [40] of the acquired land should also be taken into consideration. In *C.E.S.C. Ltd. v. Sandhya Rani Barik & Ors* [41]. The court held that while determining the amount of compensation, one should attempt to find out the just and reasonable compensation without attempting any mathematical precision in that regard. For the purpose of assessing compensation, the efforts should be to find out the

price fixed for the similar land in the vicinity. The difference in the land acquired and the land sold might take on various aspects. One plot of land might be larger, another small, one plot of land might have a large frontage and another might have none. There might be differences in land development and location. There might be special features which have to be taken note of and reasonably considered in the matter of assessing compensation. In *Lucknow Development Authority vs. Krishna Gopal Lahoti and Ors* [42] the court held that the amount of compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser. The wish of a particular purchaser, though not his compulsion may always be taken into consideration for what it is worth. The element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made: (i) when sale is within a reasonable time of the date of notification under Section 4(1); (ii) it should be a bona fide transaction; (iii) it should be of the land acquired or of the land adjacent to the land acquired; and (iv) it should possess similar advantages. It is only when these factors are present; it can merit a consideration as a comparable case. Later on in *State of Haryana v. Gurbax Singh (Dead) By Lrs. & Anr. etc* [43] the subject matter of the case was the quantum of compensation payable for the lands acquired from Villages Ratgal, Sunderpur and Palwal. The Division Bench marginally increased the compensation from Rs.99,668/- per acre to Rs.1,25,000/- per acre. The Division Bench justified this increase by observing that there was continuous rise in the prices of land; that though the two transactions were in respect of the small pieces of lands. At this, the Court held that there is nothing wrong in this and, therefore, the appeals filed by the Government of Haryana against the marginal increase are dismissed. Again, in *Madishetti Bala Ramul (D) By LRs Vs. The Land Acquisition Officer* [44], two notifications were issued separately. Here on the issue of determination of the value of the land acquired the Court held that as the second notification was issued, the first notification did not survive. Valuation of the market rate for the acquired land, thus, was required to be determined on the basis of the notification dated 23.12.1991. The earlier notification dated 16.03.1979 lost its force. The Supreme Court in *Sagunthala (Dead) through Lrs. v. Special Tehsildar (L.A.)* [45], ruled that the purpose for which the land is acquired will be one of the most important factors in determining its market value as well as award of compensation. Finally in *Bondu Ramaswamy v. Bangalore Development Authority* [46],

the Supreme Court observed, as most of the agriculturists/ small holders who lose their land, do not have the expertise or the capacity for a negotiated settlement, the state should act as a benevolent trustee and safeguard their interests. Hence a comprehensive mechanism needs to be devised to reduce the pains to be suffered by the displaced people.

SEZ ACT, 2005

The SEZ is packaged under larger neoliberal economic framework. The main objectives of the SEZ Act are: (a) *generation of additional economic activity*; (b) *promotion of exports of goods and services*; (c) *promotion of investment from domestic and foreign sources*; (d) *creation of employment opportunities*; (e) *development of infrastructure facilities*. Under the Act, a Single Window SEZ approval mechanism has been provided through a 19 member inter-ministerial SEZ Board of Approval (BoA). The applications duly recommended by the respective State Governments/UT Administration are considered by this BoA periodically. All decisions of the Board of approvals are with consensus. The SEZ Rules provide for different minimum land requirement for different class of SEZs. Every SEZ is divided into a processing area where alone the SEZ units would come up and the non-processing area where the supporting infrastructure is to be created.

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

The Act of 2013 features the issues as under-

- The Act requires the consent of the affected people's consent to carry on the process of acquisition for public private partnership projects, where the ownership of the land continues to vest with the Government, for public purpose with the prior consent of at least seventy per cent of those affected families; and (b) for private companies for public purpose with the prior consent of at least eighty percent of those affected families [47].
- The Act of 2013 prohibits the acquisition of fertile agriculture land beyond 5% per district.
- The Act of 2013 requires conducting of a Social Impact Assessment Study under Section 4(4) and the Framing of Rehabilitation and Resettlement Scheme under Section 16 after Evaluation of the Social Impact Assessment under Section 7 of the Act.

- The 2013 Act has laid down a comprehensive policy regarding the determination of market value of the land to be acquired [48] and compensation amount [49].
- The Draft Rehabilitation and Resettlement Scheme under Section 16(2) require to be made known locally by wide publicity in the affected area and discussed in the concerned Gram Sabhas or Municipalities and public hearing is required to be conducted where more than 25% of the land belonging to that Gram Sabhas or Municipalities.
- Additional compensation for multiple displacements is payable under Section 39 [50].
- An additional compensation of seventy-five per cent of the total compensation as determined under section 27 shall be paid by the Collector in respect of land and property for acquisition in case of urgency [51].
- Setting up of National and State Monitoring Committee [52]; and Setting up of Land acquisition, rehabilitation and resettlement authority [53].
- Whenever the appropriate Government withdraws from any such acquisition, the collector shall determine the amount of compensation due for the damage suffered by the owner [54].
- The present legislation has defined the concept of the Land Bank as a governmental entity that focuses on the conversion of Government owned vacant, abandoned, unutilised acquired lands and tax-delinquent properties into productive use [55].
- Under the present legal framework [56], When any land acquired remains unutilised for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.
- Differential value of land to be shared for non-utilization of land for five years or more [57].
- The appropriate Government may use the provision for lease under Section 104 [58].

Sustainability and Displacement

For an overall development, there needs to have a balance between the giver and taker of property, so

that neither the industry, nor the agriculture suffer. Development means an act of improving by expanding or enlarging. It is a continuous process by which value is added to the existing level of economic condition of a country. The right to development cannot be treated as a mere right to economic betterment nor can it be limited to simple construction activities. The right to development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights. The right to development includes the whole spectrum of civil, cultural,

economic, political and social process, for the improvement of peoples' well-being and realization of their full potential. It is an integral part of human rights. Today, the development indicates the sustainable development. The idea of sustainable development has been applied to both global and local issues. The sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs. It implies the handing down to successive generations not only man-made wealth but also natural wealth in adequate amounts to ensure continuing

Developmental Impacts of SEZ In India				
Types of Impacts	Economic	Social	Regional	
Growth	Export based; short term growth.	Mainly for highly skilled and literate workers	Uneven geographical development; skewed regional growth.	
Trade	Rising exports accompanied by rising imports (capital intensive).	Dominance of domestic investors (big corporate capitalists in India)	Trading activity mainly concentrated within DTA; growth of trade poles; cities and urban areas.	
Economic activities	Driven by tax incentives; low level of industrial manufacturing; high services sector activities (e.g. IT & software).	Pockets of good infrastructural facilities; planned city enclaves.	Industrial clusters formation in already advanced regions (cities and states in southern India); uneven urban development.	
Governance issues	States lobbying for central government funds.	Corporate governance versus representative governance.	Multi-lateral governance system. (Overlapping jurisdiction of SEZs governance. governance with other levels of governance at village, municipal, city or state government).	
Land acquisition	Sale of public assets (land) to private capitalists; loss of agricultural land.	Compensation for land owners only; richer farmer main beneficiaries	Largely done in areas of flat topography; easy transportation routes; near rural-urban fringe of big cities (Metropolitan cities of India).	
Employment generation	Low employment generation capability.	Low level of skill transfers to workers; casualization of labour; unorganised employment;	Migration towards urban areas; mainly in urban areas; increase in rural unemployment.	
Poverty reduction	Contributes marginally and temporarily (immediate monetary compensation for land).	Landless workers worst	Number of poor increase in both rural and urban poverty	
Income inequity	Rise in income inequality	Consolidation of wealth both among the rural and urban elites	Rural-urban and rich-poor conflict.	
Displacement of population	Occupational displacement evident and leads to physical displacement.	Resettlement and rehabilitation policy not in place.	High in densely populated states; Northern and Eastern states with high level of agriculturally dependent population.	

improvements in quality of life [59]. Therefore it is necessary to formulate a comprehensive rehabilitation and resettlement policy for displacement to sustain the development and not at the cost of the oustees.

State's Role Of Benevolent Trustee: In *Bondu Ramaswamy v. Bangalore Development Authority* [60], the Supreme Court observed, as most of the agriculturists/ small holders who lose their land, do not have the expertise or the capacity for a negotiated settlement, the state should act as a benevolent trustee and safeguard their interests. Under the Act of 2013, the draft Rehabilitation and Resettlement Scheme under Section 16(2) require to be made known locally by wide publicity in the affected area and discussed in the concerned Gram Sabhas or Municipalities and public hearing is required to be conducted where more than 25% of the land belonging to that Gram Sabhas or Municipalities. Under the Act of 2013, though a comprehensive policy has laid down regarding the determination of market value of the land to be acquired⁶¹ and compensation amount⁶², the appropriate government should monitor the price at which the affected people have negotiated as except for the purposes under section 2(1), the respective entities requiring land requires to purchase directly from the owners of land.

SEZ and Development

According to one of the Senior Advisor, Planning Commission, Government of India, interview with NDTV, 2007. Large scale industrialisation as development model 'Fragmentation of land holding has made farming unviable, so government should rather consolidate the land and use it for industrialisation'. This has caused the massive land acquisition for SEZs (210,000 hectares). By 2007 massive resistance against land acquisition for SEZs. And it became a national issue. Now, let's have an analysis on the impact of SEZ in the socio-economic affairs of the nation-

Conclusion and Suggestions

If the government or development authorities act as facilitators for industrial or business houses, mining companies and developers or colonizers, to acquire large extent of land ignoring the legitimate rights of land- owners, it leads to resistance, resentment and hostility towards acquisition process [1]. To determine what is just and fair compensation the basic component is the fair market value of land

subjected to be acquired. In determining the fair market value ("FMV") the courts routinely decide whether compensation owed by the benefit conferred. According to Bell and Parchimovsky's proposal, takings, fall into three categories: *physical, regulatory, and derivative* [2]. Whether a giving is compensable or not is determined by a four factor test, balancing the "reversibility of the act, identifiability of the recipient, proximity of the act to a taking, and refusability of the benefit" [3]. As to the valuation Bogey, Bell and Parchimovsky advocate "relative wealth" as a baseline instead of "absolute wealth" [4]. In terms of relative wealth, the landowner deprived of the giving becomes poorer than his neighbours [5].

References

1. Which include even intimacies of personal identity such that, as Anthony Giddens strikingly puts it, "the image of Nelson Mandela maybe is more familiar to us than the face of our next door neighbour." Anthony Giddens, Lecture 1: Globalization, in BBC REITH LECTURES (1999), at http://www.lse.ac.uk/Giddens/reith_99/week1/week1.htm (last visited Oct. 31, 2002).
2. ANTHONY GIDDENS, *THE CONSEQUENCES OF MODERNITY* 64 (1990).
3. Samuel Rutherford, *Lex, rex: the law and the prince*, at pg. 237
4. Aristotle, *Politics* 3.16
5. Available at <http://www.brandeis.edu/programs/southasianstudies/pdfs/rule%20of%20law%20full%20text.pdf>
6. Available at <http://www.brandeis.edu/programs/southasianstudies/pdfs/rule%20of%20law%20full%20text.pdf>
7. Available at <http://worldjusticeproject.org/what-rule-law>, visited on 14th December, 2015 at 1. 54 PM.
8. <http://www.idlo.int/what-we-do/rule-law>
9. http://www.unrol.org/article.aspx?article_id=3
10. United Nations General Assembly Resolutions A/RES/61/39, A/RES/62/70, A/RES/63/128.
11. Resolution of the Council of the International Bar Association of October 8, 2009, on the Commentary on Rule of Law Resolution (2005)
12. [(2007) 2 SCC 1]
13. Section 3.9, The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997.
14. Section 3.12; Section 3.13 & Section 3.16 The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997.

15. Section 3;10 The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997.
16. Section 4(24), The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997.
17. Section 4(27), The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997.
18. Clause 7.4. 1 The Rehabilitation and Resettlement Policy, 2007.
19. Clause 7.13.1 The Rehabilitation and Resettlement Policy, 2007.
20. The award of compensation under the Act of 1894 is given by the Collector on the acquisition of land considering the followings-
- ♦ The market value of the land on the date of notification u/ sec.4 of the Act.
 - ♦ Damages sustained in process of taking possession
 - ♦ Bonafide loss etc.
- But damages likely to be caused after the publication of declaration u/sec.6 or in consequence of the use to which it would be put or any outlay or improvements on, or disposal of the land acquired, made without the sanction of the collector after the date of publication of notification u/sec.4 shall not be taken into consideration. After the award is made by the collector any person may refuse to accept the award and apply to the Collector, who is bound to refer the dispute for determination of the Court of Land Acquisition and any award made by the Land Acquisition Judge amounts to a decree and against which an appeal lies to the High Court. If there is laying any difficulty in paying the compensation, the Collector can deposit the amount in Court. The claimant can accept the amounts in protest. If the money is lying in the Court, the Court can invest it in proper securities for the benefit of the claimants.
21. Section 4, The Land Acquisition Act, 1894.
22. Land is defined as as '*massuages; lands, tenements, heriditaments, of any tenure*'²³. The term *Massuage* is substantially equivalent to a house. Tenement is a large idea used to pass not only lands and other inheritances, but also offices, rents. Heriditament is the largest of all kinds, be it corporeal or incorporeal, real, personal or mixed. The word 'land' is used in the same sense as 'immovable property'.²⁴ 'Immovable property' has been defined as not to include 'standing timber, growing crops and grasses'²⁵. Land is said to include things attached to earth the Act of 1894²⁶. However, the Act doesn't contemplate the acquisition of things attached to land without the land itself. It is only the land including the rights which arise out of it and not merely some subsidiary right which is capable of acquisition under the Act. The taking of property which merely injures a franchisee but doesn't interfere with the exercise of it; and it doesn't entitle the owner of the franchisee to compensation for damage to the franchise. Under the West Bengal Land Reforms Act, 1955 under section 2(7) land means land of every description and includes tank, tank- fishery, homestead, or land used for the purpose of livestock, breeding, poultry farming, dairy or land comprised in tea garden, mill, factory, workshop, orchard, hat, bazaar, ferries, tolls or land having any other sairati interests and other land together with all interests, and benefits arising out of land and things attached to the earth or permanently fastened to anything attached to earth; under the definition, the term homestead shall have the same meaning as in the West Bengal Estate Acquisition Act, 1953.
23. According to clause (e) of Section 3 of the Act, the expression 'company' means-
- (i) A company as defined in Section 3 of the Companies Act, 1956, other than a Government company referred to in clause (cc) of Section 3 of the Land Acquisition Act;
 - (ii) A society registered under the Societies Registration Act, 1869 or under any corresponding law for the time being in force in any state, other than a society referred to in clause (cc) of the Act;
 - (iii) A co- operative society within the meaning of any law relating to co- operative societies for the time being in force in any state, other than a co- operative society referred to in clause (cc) of the Act.
24. AIR 1963 SC 1295.
25. *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.
26. *Francis Coralie v. Union of India*, AIR 1981 SC 746.
27. 1992 Supp (3) SCC 93.
28. (1996)2 SCC 549.
29. *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180; (1985) 3 SCC 545.
30. (1996)1 SCC 731.
31. (1993) 3 SCC 258.
32. AIR 2000 SC 3751.
33. (2004) 9 SCC 362.
34. *Babu Ram & Anr. Vs. State of Haryana & Anr.* CIVIL APPEAL NO. 6864 OF 2009
35. Abraham Bell & Gideon Parchomovsky, *Givings*, 111 YALE L.J. 547, 611-12 (2001), at pg. 553.
36. Id. at 551.
37. Id. at 557.
38. Larissa N. Schwartz, *Subordinate or Fundamental Rights in Property? Special Benefits and Givings Recapture in Determining Just Compensation* available at https://www.planning.org/divisions/plannin_gandlaw/writingcompetition/pdf/schwartz.pdf, visited on 7th September, 2014 at 9.22 PM

39. 4 CLJ 256.
 40. (1903)23 Bom 483: 11 Bom LR 674
 41. 2008(2) SCC568.
 42. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like, water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration. *Atma Singh (died) through LRs. & Ors Vs. State of Haryana & Anr*, 2008(2) SCC568.
 43. 2008 AIR 2873.
 44. 2008 AIR 399.
 45. 2008(11) SCC65.
 46. 2007(9)SCC650.
 47. AIR 2010 SC 984
 48. (2010) 7 SCC 129, Para 32.
 49. Section 2(2) (b), the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
 50. Section 26, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
 51. Section 28, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
 52. Section 39, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
 53. Section 40, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
 54. Section 48, 50, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
 55. Section 51, 53, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
 56. Section 93, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
 57. Land bank is a governmental entity that focuses on the conversion of Government owned vacant, abandoned, unutilised acquired lands and tax-delinquent properties into productive use. Explanation, Section 101, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
 58. Section 101, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
 59. Section 102, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
 60. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
 61. Brundtland Commission Report, 1986.
 62. (2010) 7 SCC 129, Para 32.
 63. Section 26, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
 64. Section 28, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
 65. *Bondu Ramaswamy v. Bangalore Development Authority*, (2010) 7 SCC 129, Para 32.
 66. Abraham Bell & Gideon Parchomovsky, Givings, 111 YALE L.J. 547, 611-12 (2001), at pg. 553.
 67. Id. at 551.
 68. Id. at 557.
 69. Larissa N. Schwartz, Subordinate or Fundamental Rights in Property? Special Benefits and Givings Recapture in Determining Just Compensation available at <https://www.planning.org/divisions/planninglaw/writingcompetition/pdf/schwartz.pdf>, visited on 7th September, 2014 at 9.22 PM.
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