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Development and Participation Under the New Land Acquisition Legislation: A Paradigm Shift or A Safety Valve

by
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Development, people and property constitute three vertices of the golden triangle exerting mutually divergent pulls on the land acquisition law in India. The colonial legislation¹ that continued unchallenged for approximately three decades even after independence gradually came under severe pressure for the developmental approach it gave effect to as well as displacement, destruction and consequent impoverishment it caused not only of people subjected to it but many more that it completely ignored resulting in the enactment of "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act" (hereinafter referred to as RFCTLARR Act). The Act may be hailed as ushering a new era in the chequered history of land acquisition in India. This is apparent from the preamble of the statute which inter alia seeks to ensure humane, participative, informed and transparent process of land acquisition; provide fair and just compensation, rehabilitation and resettlement of affected families and seeks to ensure that the cumulative outcome of compulsory acquisition should be that the affected persons become partners in development. The potential of the legislation to ensure participatory land acquisition in which people (specifically affected families) become partners in development and thus secure "improvement in the social and economic status"² of affected families may be viewed as constituting a paradigm shift in terms of moving away from the axiom "no *vikas* without *vinash*."³ It is therefore necessary to analyse the provisions of the legislation which are envisaged as performing this laudable task in order to assess whether and if so the degree to which the legislation secures participation and the shift from "no *vikas* without *vinash*" to "*sabka saath sabka vikas*" without any *vinash*. The evaluation of



Page: 43

the aforesaid would then indicate whether the legislation marks a paradigm shift or just offers a safety valve to maintain the *status quo*.

For this purpose the paper delves into the notion of development prevalent in India since independence, its impact on people and the notion embodied in the new legislation to determine whether the new legislation constitutes a paradigm shift. Secondly, it evaluates the nature and extent of participation of people envisaged in the legislation and its potential in moving towards more humane and participatory development in India.

DOMINANT APPROACH TO DEVELOPMENT IN INDIA

Like the most post-colonial societies India too, after independence, embarked on the coveted path to development. The fundamental feature of the notion of development adopted in India after independence and which has been pursued unabated for the past more than seventy years, despite gradual inclusion of other concerns⁴ into the peripheries of this dominant feature, has been the primacy of economic growth. Focus on economic growth as the development strategy is however not specific to India but constitutes part of the global discourse on development

especially after the Second World-War and was adopted as the future agenda by a large number of post-colonial nations.⁵ The reasons for the choice of this particular approach to development adopted by most post-colonial states can be traced back to the works of Arthur Lewis and W.W. Rostow and peculiar political configuration of the world after the Second World-War. Lewis described economic development in terms of the relationship between two sectors in a country viz., capitalist and traditional over time.⁶ Traditional sector, according to Lewis, is a system of subsistence agriculture that does not generate investible profits but acts only to sustain its current condition whereas the capitalist sector through reinvestment of profits is dynamic one which moves the social system forward.⁷ The expansion of the capitalist sector depends on drawing of labour from the subsistence sector which is seen as contributing towards long-run growth.⁸ Finally when the entire surplus labour of the traditional sector gets absorbed into the capitalist one,



Page: 44

the latter will dominate the economy and will be self sustaining.⁹ Similarly W.W. Rostow focuses on the transition of a traditional society into industrialized developed country¹⁰ moving through the stages like traditional society, preconditions for take-off, the take off, the drive to maturity and finally the age of high mass consumption.

The dominant approach to development based on the paradigm of transition from traditional economy dependent on subsistence agriculture to industrialised economy necessitated economic growth through industrialization, infrastructure creation and increased use of science and technology. This approach that has prevailed for the last seventy years is amply reflected in the plan documents. The following statement by Pt. Jawaharlal Nehru, the pioneer of the process of development in India epitomises the entire approach¹¹:

We are trying to catch up, as far as we can with the industrial revolution that occurred long ago in the western countries.

Nehru also once remarked that "there can be no planning if such planning does not include big industries."¹² The first five-year plan while recognizing that development planning is an "all embracing process which cannot be compartmentalized, the accent of endeavour under present conditions in India has to be on economic development."¹³ It also recognized that the high rate of capital formation has been a common feature of almost all the developed countries during the period of expansion and further held that "the under developed countries which make a late start have to aim at comparable development within a briefer period."¹⁴ In the successive plans one finds the goal of economic growth reiterated.¹⁵

The ideology of development aiming at economic growth through industrialization and infrastructure development whether spearheaded by the public sector or the private in the pre and post liberalization period respectively, necessitated control over land for the same and involved consequent displacement of people living in those areas. Destruction of lifestyles, habitat,



Page: 45

displacement, impoverishment, disarticulation, breaking down of social and economic networks etc has been imposed on masses of India ever since independence. The four integrated steel plants set up in Durgapur, Rourkela, Bhilai and Bokaro alone displaced

over 1,25,000 people.¹⁶ 21.6 million were displaced on account of dams and canals; 2.1 million on account of mining and another 2.4 million were displaced for setting up industries.¹⁷ UN working group on human rights in India in a report released in 2012 estimated that 60-65 million people got displaced in India on account of development projects since independence,¹⁸ which means approximately 1 million people being displaced every year. Draft of Government's national policy on rehabilitation admits that almost 75% of those displaced since 1951 still await rehabilitation.¹⁹ An expert group constituted by the Planning Commission has also noted thus:²⁰

the development paradigm pursued since independence has aggravated the prevailing discontent among the marginalised sections of the society ... the development paradigm as conceived by policy makers has always imposed on these communities ... causing irreparable damage to these sections. The benefits of this paradigm have been disproportionately cornered by the dominant sections at the expense of the poor, who have borne most of the costs. Development which is insensitive to the needs of these communities has inevitably caused displacement and reduced them to a sub-human existence In the case of tribes in particular it has ended up in destroying their social organisation, cultural identity and resource base... which cumulatively makes them vulnerable to exploitation...

Gradually, the issue of displacement which had remained unarticulated for decades made its way into the political arena either through government notifications, legislations at the state level around mid 1970s²¹ and eventually



Page: 46

the people's despair manifesting itself in mass movements and protests, which assumed enormous proportions both in terms of their spread and intensity in the current millennium.²² In the process the Land Acquisition Act, 1894 which was mostly invoked to acquire land came under severe pressure not only on account of the magnitude of displacement²³ but also the deficiencies in law to adequately address the issues arising out of displacement.

The dominant ideology of development guided by growth based on large scale industrialization, infrastructure creation and urbanisation holds a promise for a good future only for a few as it itself thrives on the destruction of ways of life of all those at whose cost industrialization occurs. Development (*vikas*) and destruction (*vinash*) thus appear as *Siamese twins* within the dominant ideology of development. It may be in tune with the utilitarian ideal of greatest good for the greatest number rather than entailing greatest good for all. In the context of development some scholars consider displacement as a consequence of struggle for control of natural resources, entailing a transition of these resources from "being the life support system of the community and from an informal economy to individual and corporate ownership of the formal capitalist economy."²⁴ Further compensation, rehabilitation and resettlement through which the destructive effects of displacement are sought to be addressed under the RFCTLARR Act lack the potential to even completely undo the effect of displacement, the possession of potential of such redress to forge a partnership between development and the displaced remains a far-fetched thought.

RFCTLARR ACT: THE VISION OF DEVELOPMENT

"Industrialisation", "development of infrastructural facilities" and "urbanisation"²⁵ stand as pre-legitimated grounds for which land may be acquired under the RFCTLARR Act. Development as a move from subsistence agriculture to industrialised developed capitalist economy as put forth by

Rostow provides the theoretical basis for such an approach. In the modern context it legitimises transfer of land from agriculture to industry without any general prohibition. The only restriction that is imposed is with regard to irrigated multi-cropped land save as a demonstrable last resort under exceptional circumstances.²⁶ Even such a limited restriction with regard to acquisition of irrigated multi-cropped land has been subjected to amendment under the two ordinances issued with respect to the RFCTLARR Act.²⁷

Embedded in the legitimacy and justness of the dominant notion of development the Act aims at making the process of acquisition of land "humane, participative, informed and transparent."²⁸ However, what cannot be lost sight of is the notion of eminent domain on which the legislation is based. The valid exercise of the power of eminent domain has following elements:

- Power of the state to use, alienate or destroy property without owner's consent
- The property must be taken for public utility/purpose
- Payment of compensation

Owner's consent is irrelevant as far as the exercise of the power of eminent domain is concerned. Being mutually contradictory, compulsion and participation emerge as strange bedfellows in the legislation. The question therefore is the extent to which one may expect participation to blossom in the womb of compulsion. Dominance of compulsion and acceptance that development (*vikas*) cannot occur without displacement (*vinash*) is writ large in the Act since it does not impose a prohibition on multiple displacements. The appropriate government is only required to avoid it as far as possible. The legislation seeks to mitigate the effect of multiple displacements through payment of compensation that is double of that provided in the legislation.²⁹


Secondly, the legislation could still have democratised the process of compulsory land acquisition had it allowed for determination of public purpose itself by people. However, following the tone set in the long title of the Act, section 2 of the legislation, though offering an inclusive rather than exhaustive definition of 'public purpose' explicitly includes acquisition for

"infrastructure, projects like agro processing, industrial corridors, mining activities, national investment and manufacturing zones, tourism and housing. Section 2(1)(c) recognises "project for project affected families" as public purpose thus perpetuating the cycle of displacement for settlement. All these activities stand specifically legislatively recognised as constituting public purpose and thus having priority over any other conceptualisation of development. Therefore development is economic growth through industrialisation and infrastructure creation rather than for instance a move away from commercialisation, competition into spiritual unity of mankind, the pleasure in conservation and growth of lifestyles, traditions etc. Moreover such recognition of what constitutes public purpose is not new as it already stood legally recognised through the law laid down by the Supreme Court.

Acquisition of land by the state of Andhra Pradesh to make Hyderabad a "Business-cum-Leisure Tourism Infrastructure Centre for the State" involving development of

infrastructure facilitating "socio-economic progress of the State by generating revenues bringing foreign exchange, generating employment opportunities and securing economic benefits to the State and the public at large" has been held to be public purpose.³⁰ The court also recognized that "simply because a Company has been chosen for fulfilment of such public purpose does not mean that the larger public interest has been sacrificed, ignored or disregarded."³¹ Similarly acquisition of land for setting up information technology park was held to constitute public purpose in *S.S. Darshan v. State of Karnataka*³² In *Jage Ram v. State of Haryana*³³ the court clearly remarked that "there is no denying the fact that starting of a new industry is in public interest." In *Pratibha Nema v. State of M.P.*³⁴ the acquisition of land for establishment of "diamond park" was upheld as serving the public purpose of "industrial growth of the state." Further the court also observed that "Public purpose does not cease to be so merely because the acquisition facilitates the setting up of industry by a private enterprise and benefits it to that extent."

Moreover with an unrestricted power of the state to finally determine public purpose and its insusceptibility to judicial review or even in case the latter happens the sacrosanctity that the dominant ideology of development has come to enjoy in the perception of all the organs of the state as well as the middle and the upper classes of society who benefit greatly out of the same, the conflicting interest of those displaced on account of the operationalisation of this approach stands not only ideologically but also legally determined as subservient. The same is well reflected in the observation of

 Page: 49

the Supreme Court in *K.T. Plantation (P) Ltd. v. State of Karnataka*³⁵ which is as follows:

Acquisition of property for a public purpose may meet with a lot of contingencies, like deprivation of livelihood, leading to violation of Article 21, but that per se is not a ground to strike down a statute of its provisions.

In other words since the dominant ideology of development stands legally sanctified the realisation of the conflicting interests of the displaced get circumscribed to the extent it is possible to protect the same without questioning the former. The same is reflected in the state's initiatives in the form of the Rehabilitation and Resettlement Policy 2007 as well as the RFCTLARR Act.

Though the RFCTLARR Act prioritises certain public purpose it seeks to mitigate the impact of the process of achieving the same through people's participation in the process of acquisition to which the author now turns.

PARTICIPATION UNDER THE RFCTLARR ACT

Apart from the nature and ideological basis of the kind of development being pursued, concerns have also been raised with respect to the process of development. The process of development decision making is condemned as non-participatory³⁶ which regards "Indian citizens merely as objects of development decisions and programmes."³⁷ Popular articulations of concerns about development decisions and the process of decision making are either regarded as politically partisan or as anti-development or even as anti-poor.³⁸ Therefore Prof. Baxi opines that "development now appears as a new theology in which democratic articulation emerges as a "sin" against the people."³⁹ In keeping with the spirit of the Constitution he proposes democratization of development decision making by at least involving mandatory public hearings on the desirability, feasibility, economic and ecological

impact of development projects and also provide for participation of people in decisions regarding sites, size, safety, rehabilitation etc.⁴⁰

At the international level the idea of participation has its own discursive history. Though participation never evolved as a competing thought in the development discourse, however, in 1980s it emerged as a significant element in development paradigm.⁴¹ Robert Chambers questioned the development practice which due to overemphasis on questionnaire surveys and statistical analysis missed the realities of rural areas and were seldom able to reach the most deprived, powerless, isolated and vulnerable people generally found at the end of the line.⁴² He therefore stressed the need to put last the first by sitting, asking, listening and learning from the poor.⁴³ Infact much before 1980s Mahatma Gandhi, in his conceptualisation of the idea of development as *sarvodaya* emphasised the need to begin with the last and the lowliest.⁴⁴ It is clear that in the development discourse participation emerged as a challenge to the top down nature of decision making in the task of development and intended to make it bottom up. In 1986 the United Nations Declaration on Right to Development marks a major shift in transforming the notion of participation as the procedural aspect of development to recognising participation as integral to the idea of development itself by defining the right to development as an inalienable right to "participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms are fully realised."⁴⁵ Participation cannot merely be viewed as an aspect of process involving being a party to the on-going, predetermined, existing move towards development but rather must be seen as an end in itself "where a community or group set up a process to control its own development."⁴⁶ Mohammed Anisur Rehman holds that "participation is a process whose course cannot be determined from outside — it is generated by the continuing praxis of the people, by a rhythm of collective action and reflection."⁴⁷

Participation of people in the process of land acquisition is hailed as one of the major highlights of the RFCTLARR Act. The Act provides for social

impact assessment (hereinafter referred to as SIA) to be carried out by the appropriate government when it intends to acquire land for public purpose.⁴⁸ Undoubtedly the recognition of the need to conduct social impact assessment and its operationalisation adopting variety of techniques⁴⁹ will provide the government with copious data⁵⁰ to better mitigate the impact on affected families provided it is carried with the spirit that it imbibes and is matched by the adequate attention being paid to the same while planning resettlement. However, the particular issue that this paper is concerned with in the context of SIA is the participation of people in the process of development. Further it also needs mention that the potential of SIA mat be enormous but the political will to operationalise the same seems little. This is borne out by the fact that within two years of enactment of the legislation two ordinances were promulgated with each one excluding the applicability of SIA over a wide range of public interests⁵¹ i.e.

- Projects vital to national security or defence of India
- Rural infrastructure including electrification
- Affordable housing and housing for the poor people

- Industrial corridors
- Infrastructure projects including projects under public private partnership

As part of SIA the government is obligated to “consult” concerned panchayat, municipality or municipal corporation at village or ward level and to ensure adequate representation to the representatives of panchayat, gram sabha, municipality and municipal corporation in SIA study. SIA is limited to impact of the proposed acquisition and it maximally extends to the correspondence between the proposed acquisition and the public purpose but does not extend to consideration of the public purpose itself. Impact



Page: 52

assessment is worded as inclusive and not as an exhaustive provision.⁵² Various components of SIA specifically included in section 4 are aimed at ensuring bare minimum acquisition,⁵³ ensuring consideration of acquiring alternative land⁵⁴ and ascertainment of number of affected families (especially on livelihood),⁵⁵ affect on private, public, common property,⁵⁶ infrastructure (including public utilities),⁵⁷ assessing the cost of addressing the impact and checking it against the benefits of the project.⁵⁸ Social impact assessment is to be conducted by holding “a public hearing” at the affected area to “ascertain the views of the affected families.”⁵⁹ Once the SIA report is prepared it is evaluated by an independent multidisciplinary expert group which considers the SIA report on two grounds viz., whether the project serves public purpose and whether social costs and adverse social impacts outweigh the potential benefits.⁶⁰ However considering the aforesaid even if the expert group recommends abandonment of project the appropriate government may still proceed with the acquisition for reasons to be recorded in writing.⁶¹

The nature and process of SIA enshrined in the Act raise certain concerns with regard to the participation it secures for affected people. Firstly, participation of people to be affected is elicited only as a procedural response to external impetus of appropriate government's intention to acquire land⁶² which immediately positions the government as *developer* but not the participants as *developees*.⁶³ People being subjected to compulsory acquisition of land and compulsory displacement are not the subjects of development but constitute the ones that are likely to be burdened with collateral damage of development decision making by the government. Participatory development as discussed above envisages identity of decision maker/subject of development and participant. Those displaced on account of decisions to acquire land cannot by any stretch of imagination be said to be in control of their own development as envisaged in a truly participatory development. Participation in this form thus appears to be a procedural mechanism in the journey towards an exogenously determined end where the opinion of the displaced is sought to be elicited to be able to mitigate



Page: 53

their burdens to the extent possible. Secondly, the process of SIA is set in hierarchy with SIA report prepared by “qualified social impact assessment partners and practitioners” consisting of individuals and institutions⁶⁴ to be evaluated by the expert group with the subsisting overriding power with the appropriate government to go ahead with the acquisition despite recommendation of abandonment of the project by

the expert group. The legislation does not lay down the specific grounds on which the appropriate government may override the recommendation of the expert group and thus sustains and augments the sovereign power of eminent domain of the state as against sovereign power of people⁶⁵ in independent India. Additionally, this kind of subordinated participation legislatively re-establishes participation as what Prof. Baxi refers to as "an embattled virtue."⁶⁶ Thirdly, participation remains constricted by the legislative recognition of utilitarian analysis as the only touchstone to determine Recognition of the costs and burdens (which may or may not be assigned different weights) and their comparison brings with it the problem of non-commensurability among the aspects being compared. This leads to convenient articulation of every burden in economic terms irrespective of the fundamentally separate niches that social mores, social organisation, and social intercourse and economy occupy. Fourthly, the very recognition of an impact as burden remains dependent on social construction whereby many burdens stand normalised and thus may constitute an impact but not necessarily burden. Dominantly constructed popular notions of urban life essentially being better than rural, money economy with free competition being better than any other economic system, modern medicine and modern education as certainly having edge over the traditional methods guarantee disempowerment through de-recognition of the "other" or the subaltern.

Apart from SIA certain degree of involvement of people in the process of preparation of rehabilitation and resettlement (hereinafter referred to as R&R) plan is reflected in the legislation. Since the degree of participation is so miniscule that was also not stated by the government of being the distinguishing feature of the legislation. Like SIA participation of affected families in R&R is also a top down process wherein the administrator for R&R



is required to prepare R&R scheme,⁶⁷ publicise it and discuss it in Gram Sabhas,⁶⁸ hold a public hearing⁶⁹ and submit the draft scheme for R&R along with a specific report on the claims and objections raised in the public hearing to the collector.⁷⁰ The process envisaged in the Act thus offers an opportunity to the people inhabiting the villages or municipal areas affected by acquisition of land to voice their concerns regarding R&R. However in the absence of specific elaborate rules with regard to R&R having been framed by the government as in case of provisions relating to SIA and consent, the degree to which they are mandatorily considered, reflected upon before incorporating or dismissing them remains uncertain. Thus participation may procedurally be adhered to but its effectiveness in determining the course and character of R&R and thus ensuring people's control or at least their major say in their post displacement condition perpetuates their subordination secured since the initiation of the process of acquisition. The operationalisation of R&R in its true spirit requires raising awareness among people. Absence of any specific provision in the legislation with regard to wide publicity of the legislation, more specifically schedules laying down the entitlements of affected families weakens the potential of participation. The power of any person to challenge the award with respect to *inter alia* R&R rights is only an adversarial mechanism provided generally in law which suffers from the limitations with respect to its potential to secure entitlements of those already at the margins without the real capacity and means to initiate and sustain the challenge while grappling with the need to make both ends meet simultaneously. Obligation on the government to proactively disseminate information about the entitlements under the legislation would have gone a long way in making participation in R&R process more meaningful and effective.

Participatory securing of rights of individuals and communities through processes like public hearing and discussions finally stands compromised because of the absence of participation being envisaged as a two way process listening, engaging and deciding collectively. Provisions relating to participation in the process of R&R are just being limited to giving an opportunity to the affected people to voice their concerns without there being an obligation on the part of the government to engage in a dialogue and then decide collectively and rolling back the participatory initiative to adversarial participation in the proceedings before the Land Acquisition Rehabilitation and Resettlement Authority²¹.



Page: 55

CONCLUSION

With the dominant notion of development based on economic growth through industrialisation and infrastructure creation politically as well as legally informing the constitution of public purpose in India the partnership in development envisaged in RFCTLARR Act remains subservient to the former. The development carried on through this process has caused havoc to those displaced for the purposes of development. The legitimacy of acquisition of land derived from the persistence of this ideology of development stands legally sanctified through RFCTLARR Act. The participation envisaged under the Act in the form of SIA does not extend to the determination of public purpose but is limited to assessment of destruction to be caused by the project, cost of addressing the same and comparison of these costs with the benefits flowing out of the project. Like SIA the participation in R&R remains top downwards and does not legislatively or under the rules provide specific mechanism or essentialise dialogue, engagement and collective decision making. RFCTLARR Act, no doubt provides for rehabilitation and resettlement of those displaced on account of compulsory acquisition of land and offers much higher compensation but these are offered in order to seek the co-optation of the displaced in the process of development as reflected in collection of extensive data during SIA and lack of reflection of many constituents of the data in R&R entitlements. Participation envisaged in RFCTLARR Act is rooted in exogenous impetus lacking requirement of any reflection of the needs, desires and concerns of the participants, surviving in oxymoronic 'hierarchy of participant decision making', guided by utilitarian approach of cost benefit analysis based on comparison of incommensurable variables denying any control of the participants in determining not only the means but the ends as well. The approach to development embedded in the RFCTLARR Act remains the same as that has been prevalent in India ever since independence and the idea of participation when added within the pre-determined approach to development only constitutes a safety valve rather than ushering a paradigm shift.

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¹ The Land Acquisition Act, 1894.

² Preamble to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

³ Upendra Baxi, HUMAN RIGHTS IN A POSTHUMAN WORLD, 86 (2007).

⁴ For instance the concern for limited effectiveness of trickle down approach and the need for a sharper focus on redistribution for raising the share of poor sections in national income and consumption came into focus only in the 6th five-year plan. For details see the sixth five-year plan document, available at <http://planningcommission.nic.in/plans/planrel/fiveyr/index7.html>.

⁵ Anjan Chakrabarti, Anup Dhar, *DISLOCATION AND RESETTLEMENT IN DEVELOPMENT: FROM THIRD WORLD TO THE WORLD OF THE THIRD* 36 (Routledge, 2010).

⁶ P.W. Preston, *DEVELOPMENT THEORY: AN INTRODUCTION* 165 (Blackwell, 1996).

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ W.W. Rostow, "The Stages of Economic Growth" in Mitchell A. Seligson, John T. Passe-Smith, *DEVELOPMENT AND UNDERDEVELOPMENT* 173 (Viva Books, New Delhi, 2010).

¹¹ Jawaharlal Nehru, *Jawaharlal Nehru Speeches*, 93 (Publications Division, New Delhi, 1954).

¹² *Ibid.*

¹³ The First five-Year plan document, available at <http://planningcommission.nic.in/plans/planrel/fiveyr/index7.html>.

¹⁴ *Ibid.*

¹⁵ Generally see the plan documents available at <http://planningcommission.nic.in/plans/planrel/fiveyr/index7.html>.

¹⁶ S. Parasuraman, *The Development Dilemma: Displacement in India*, 54 (Macmillan Press 1999).

¹⁷ P. Sainath, *Everybody Loves A Good Drought: Stories from India's Poorest Districts*, 71 (1996).

¹⁸ Displacement and Rehabilitation of People due to Developmental Projects, Reference Note, No. 30/RN/Ref/December/2013, Lok Sabha Secretariat, Parliamentary Library and Reference, Research, Documentation and Information Service.

¹⁹ *Ibid.*

²⁰ "Development Challenges in Extremist Affected Areas," Report of an Expert Group of Planning Commission, Government of India, 2008, cited in *Nandini Sundar v. State of Chhattisgarh*, (2011) 7 SCC 547 : AIR 2011 SC 2839, para 6.

²¹ Usha Ramanathan, A Word on Eminent Domain in *DISPLACED BY DEVELOPMENT: CONFRONTING MARGINALISATION AND GENDER INJUSTICE*, 215-219 (Lyla Mehta ed., 2009).

²² Some such protests were those in Nandigram, Singur, Jagatsinghpur, Kashipur, struggle against Bauxite mining in Niyamgiri Hills (Orissa) by Vedanta, Struggle against Polavaram Dam on Godavari river, Struggle against AnRak project in Andhra Pradesh, Haribad project in Madhya Pradesh, land acquisition for coal companies in Jharkhand et al.

²³ A conservative estimate puts the figure at 143 lakhs. For details see Walter Fernandes, J.C. Das, Sam Rao, *Displacement and Rehabilitation: An Estimate of Extent and Prospects* in *DEVELOPMENT, DISPLACEMENT AND REHABILITATION: ISSUES FOR A NATIONAL DEBATE* 79 (Walter Fernandes, Enakshi Ganguly Thukral, 1989).

²⁴ Walter Fernandes, J.C. Das, Sam Rao, *Displacement and Rehabilitation: An Estimate of Extent and Prospects* in *DEVELOPMENT, DISPLACEMENT AND REHABILITATION: ISSUES FOR A NATIONAL DEBATE* 63 (Walter Fernandes, Enakshi Ganguly Thukral eds., 1989).

²⁵ The Preamble to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

²⁶ *Id.*, section 10.

²⁷ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014, section 5 and The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015, section 5.

²⁸ *Ibid.*

²⁹ *Id.*, section 39.

³⁰ *Sooraram Pratap Reddy v. Collector*, (2008) 9 SCC 552, 605.

³¹ *Ibid.*

³² (1996) 7 SCC 302 : AIR 1996 SC 671.

³³ (1971) 1 SCC 671.

³⁴ (2003) 10 SCC 626.

³⁵ (2011) 9 SCC 1, 57.

³⁶ Upendra Baxi, Notes on Constitutional Aspects of Rehabilitation and Displacement in DEVELOPMENT, DISPLACEMENT AND REHABILITATION: ISSUES FOR A NATIONAL DEBATE 164-170 (Walter Fernandes, Enakshi Ganguly Thukral eds., 1989); Vasudha Dhagamwar, *Rehabilitation: Policy and Institutional Changes Required in DEVELOPMENT, DISPLACEMENT AND REHABILITATION: ISSUES FOR A NATIONAL DEBATE*, 171-184 (Walter Fernandes, Enakshi Ganguly Thukral eds., 1989).

³⁷ Upendra Baxi, Notes on Constitutional Aspects of Rehabilitation and Displacement in DEVELOPMENT, DISPLACEMENT AND REHABILITATION: ISSUES FOR A NATIONAL DEBATE 164 (Walter Fernandes, Enakshi Ganguly Thukral eds., 1989).

³⁸ *Id.*, p. 165.

³⁹ *Id.*, p. 166.

⁴⁰ *Id.*, p. 167.

⁴¹ B. Kuhn, *Participatory Development in Rural India*, 20 (1998).

⁴² R. Chambers, *Rural Development: Putting the Last First*, 198-199 (1983).

⁴³ *Id.*, at pp. 201, 202.

⁴⁴ Op. Cit., J. Narayan, *Gandhiji's Concept of Sarvodaya*, in FACETS OF MAHATMA GANDHI: *Economic and Social Principles*, vol. 3, pp. 74-78 at p. 75 (S. Mukherjee, S. Ramaswamy eds., 1996).

⁴⁵ The Declaration on the Right to Development, 1986, Article 1.

⁴⁶ N. Nelson, S. Wright, "*Participation and Power*," in POWER AND PARTICIPATORY DEVELOPMENT: THEORY AND PRACTICE, pp. 1-81 at p. 1 (N. Nelson and S. Wright eds., 1997).

⁴⁷ Md. A. Rahman, "*Theory and Practice of Participatory Action Research*, WEP 10/WP. 29, ILO, Geneva, cited in B. Stan, PEOPLE FIRST — A GUIDE TO SELF RELIANT PARTICIPATORY RURAL DEVELOPMENT, 55-57 (Zed Books, London, 1993).

⁴⁸ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 4.

⁴⁹ Public hearing, focussed group discussions, participatory rural appraisal techniques, informant interviews are some of the methods specifically recognised under section 5 of the Act and rule 7 of the rules notified under the Act.

⁵⁰ Includes not only data relating to loss of land, livelihood, income, resources, but also about prevalent economic activities, living environment including perceptions, aesthetic qualities, aspirations, settlement patterns, beliefs, values, cultural life, stress of dislocation, family cohesion, violence against women, illicit activities, health conditions etc. Refer to form-II appended to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2014.

⁵¹ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014, section 5 and The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015, section 5.

⁵² The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 4.

⁵³ *Id.*, section 4(4)(d).

⁵⁴ *Id.*, section 4(4)(e).

⁵⁵ *Id.*, section 4(4)(b).

⁵⁶ *Id.*, section 4(4)(c).

⁵⁷ *Id.*, section 4(5).

⁵⁸ *Id.*, section 4(4)(f).

⁵⁹ *Id.*, section 5.

⁶⁰ *Id.*, section 7.

⁶¹ *Ibid.*

⁶² *Id.*, section 4(1).

⁶³ Generally see Upendra Baxi, HUMAN RIGHTS IN A POSTHUMAN WORLD, 81 (2007).

⁶⁴ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2014, rule 4. The creation of this separate cadre of social impact assessors raises issues with respect to the power relation that emerges between the affected people, the assessors and the state or requiring body and the degree of independence assessors are able to maintain against pressures from different quarters and how through them the realities of impact get constructed.

⁶⁵ Usha Ramanathan questions the constitutionality of the power of eminent domain as vesting in the state after promulgation of the Constitution which recognises people of India as sovereign. For details see Usha Ramanathan, A Word on Eminent Domain, in DISPLACED BY DEVELOPMENT: CONFRONTING MARGINALISATION AND GENDER INJUSTICE, 138 (Lyla Mehta ed., 2009).

⁶⁶ Upendra Baxi, *Human Rights in a Posthuman World*, 90 (OUP, 2007).

⁶⁷ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 16(2).

⁶⁸ *Id.*, section 16(4).

⁶⁹ *Id.*, section 16(5).

⁷⁰ *Id.*, section 16(6).

⁷¹ *Id.*, section 64.

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