
CURRENT LEGAL ISSUES RELATING TO LAND IN INDIA

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ABSTRACT

The research investigates the developing legal framework for land rights in India by analyzing relationships between governmental policies together with tribal communities and tribal rights and environmental concerns and social and political aspects. The study demonstrates that land disputes function as indicators of larger conflicts which arise from caste and class and religious tensions between Muzaffarnagar and Dangawas. This research examines the legal framework regarding tribal displacement through an analysis of the Forest Rights Act (FRA) 2006 and PESA by showing how states fail to implement these laws correctly while their bureaucrats misconstrue their meaning. Both environmental protection regulations demonstrate inadequate community participation and insufficient transparency through their Environment Impact Assessment procedure. The analysis includes discussions about key judicial decisions starting with Nandini Sundar followed by Lafarge and Orissa Mining Corporation to demonstrate how courts protected rights. The examination includes assessment of land acquisition reforms including the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in addition to the limitations deriving from subsequent ordinances. The document emphasizes that India must establish an inclusive rights-based land governance approach which is both accountable to the nation.

There has never been scarcity relating to land related issues in India. The striking point is that government policies are very instrumental in nature in today's world. These policies reflect the political and economic goals of development without paying heed to other issue like tribal rights, environment and other social issues. This can be illustrated by the land dispute which turned into caste violence in Dangawas village¹, naxalite incidents in Chattisgarh, religious/cultural rights of Adivasi community etc. In Muzzfarnagar case north India faced communal riot and sectarian violence which led to many deaths, rape, gang rapes and displacement. There is no clear data about exact number of deaths, rape victims. This violence occurred due to the patriarchal and religious notion of Muslims and Jats about protecting women and their honour. Women autonomy was used as battleground for this violence. Many FIRs and contempt petitions were filed. SC in Mohd haroon case² ordered state government to continue with investigation and arrest the accused. In the meanwhile people who were displaced due to this violence were not allowed to go back to home. State administration had put curfew in that area, no mechanism for rehabilitation, people were not provided with adequate compensation also.³ Class and caste hierarchy was also seen in this communal riot.

In Nandini Sundar case⁴ when Naxal people were referred as terrorist one can derive that the conflict is not simply related to land acquisition. There are many social and political differences which play out in the background. Here SC criticized state government due to its creation of Salwajudum. They were created to take care of law and order situation in the Naxalite area. Nandini Sundar filed a writ petition because there was grave fundamental rights (Art 14, Art 21) violation by Salwajudum. Court stated that appointment of SPOs was unconstitutional and Salwajudum was abandoned.

Chattisgarh is known for violating FRA, 2006 and PESA because most of the Adivasi community lives there. Adivasi are not being targeted because of the idea of indigeneity and they don't have such political unity.⁵ It has been notified in many reports that they are being marginalised from state system (education, job, electoral) which make them vulnerable. This vulnerability is one of the main reasons that their land is always being acquired because

¹ TK Rajalakshmi, "Murder for land," Frontline, June 26, 2015

² Mohd. Haroon & Ors. vs. Union of India & Anr., Judgment dated 26.03.2014 in WP (Criminal) No.155 of 2013

³ http://outofprintmagazine.co.in/archive/march-2015-issue/nehadixit_the-muzaffarnagar-riots.html

⁴ Nandini Sundar & Ors. vs. State of Chattisgarh, Judgment dated July 5, 2011 in WP(C) No.250 of 2007

⁵ Supriya Sharma, "Adivasi Predicament in Chhattisgarh," Econ. & Pol. Weekly, July 14, 2012

industrialisation effects will be same for non-advansi and Advansi both.

The Government recently announced that all states have to comply with the provisions of FRA, 2006. The main concern here is that the implantation has to be done within 2 months. This indicates that the government failed to understand the intensity of process and labour involved in documentation of community claims.⁶ Gram sabha has to prepare the document of individual and community claims then it is verified with evidence. Late if any higher authority rejects these claim they have to give justifiable reasons. Another problem is that forest bureaucracy has misinterpreted the FRA because it looks at it as a tool to regularise encroachment. Forest Rights Act, 2006 was drafted for the benefit of schedule tribes and forest dwellers. Many state governments are trying to dilute FRA provisions which hamper the rights of forest dwellers.⁷ Maharashtra Government recently drafted Village Forest rules which can't be allowed because FRA is central legislation and state govt can't draft rules which are contravening. FRA states that every village will be given Community Forest Resource if it has forest area but new rules contravenes this provision and allows forest department to take back minor forest produce.⁸ Moreover Environmental Ministry recently issued notification that proposal which sought prior approval under forest conservation act; don't have to submit documentary evidence under FRA, 2006.⁹ All these new rules give the power to forest department instead of gram sabha. In many cases where gram sabha resolution is needed, forgery happens.

Implementation is inhibited because individual claims are more entertained than community claims. It is narrow interpretation of FRA which was drafted to undo the historical injustices of people. The potential of recognizing CFR can be seen through revenue village boundaries which include forest land too.¹⁰ The actual recognition of CFR is very low and to remove this government will have to become strict with forest bureaucracy.

Another legal issue relating to land is Environment because it is closely connected to industrialisation. Environment interest and land interest clash because both are embedded in constitution of India under the heading of fundamental rights. The entire environmental

⁶ <http://www.thehindu.com/opinion/op-ed/lets-not-miss-the-wood/article7358626.ece>

⁷ Ibid.

⁸ <http://www.thehindu.com/sci-tech/energy-and-environment/ngo-accuses-maharashtra-govt-of-diluting-forest-rights-act/article6408273.ece>

⁹ <http://www.thehindu.com/news/national/activists-express-concern-over-forest-rights-act-dilutions/article6570088.ece?ref=relatedNews>

¹⁰ Ibid.

jurisprudence started after the political situation of emergency in India. Many legislations were enacted, judicial decision, locus standi rule, PIL were the main constituents of environmental jurisprudence in India. EIA was also very important for getting environmental clearance and funding for any industrial project.

Environment Impact Assessment Notification 2006 has many fallouts which are directly relating to land acquisition issues in India. Consultations on the notification itself were held by only the representatives of Central govt. agency and industry.¹¹ It shows bias towards industrial projects because they have not included state govt, Local community etc. The other problem comes in through the power of granting clearance to projects. State environment impact assessment authority will be granting clearance under category 'B' projects and there is no checks system to monitor their actions.¹² There are not adequate provisions about monitoring and compliance, categorisation under B1 and B2 happens only on the basis of information provided by applicant, some exemptions from public consultation are the main provision which questions the transparency of this assessment.¹³ In *Deepak Kumar* case¹⁴ court ordered guidelines that environmental clearance will be needed for the mining area less than 5 hectares because sometimes mines are fragmented to avoid the system of environmental clearance. The provisions of public hearing and public consultation have become farce because applicant can cancel this requirement if local conditions are not conducive. *Lafarge* judgement¹⁵ is important for two reasons: firstly, validity of the process to get environmental clearance (ex post facto clearance) and secondly, guidelines for future projects. The court in this case placed great emphasis on the assumption of consciousness of rights in local people. Court used this to judge the validity of environmental clearance and this is prima facie wrong because agreement between people can't validate any process of law. Guidelines talked about national environmental regulator for effective and transparent appraisal under EIA. This was reiterated in *Godvarman* case¹⁶ again and now it will be important to see the effectiveness of new system which will be independent from MOEF and EAC. A recent observation by NGT states that present EAC is not working properly.¹⁷ In such situation an independent regulator mechanism

¹¹ <http://www.lawyersclubindia.com/articles/Environment-Impact-Assessment-of-Development-Projects-An-Analysis-of-the-existing-law-with-special-reference-to-Tribal-Areas-in-India-6114.asp#.VnKUDdJ97IU> accessed on 16-02-2025.

¹² Ibid.

¹³ Ibid.

¹⁴ *Deepak Kumar v State of Haryana*, SLP (C) NO. 19628-19629 OF 2009

¹⁵ *Lafarge Umiam Mining (P) Ltd. v. Union of India*, (2011) 7 SCC 338

¹⁶ *T N Godavarman v. Union of India*, 2014 (1) SCALE 161.

¹⁷ <http://www.livemint.com/Specials/TmNx0FWcGQpg183gnL45IK/Cleaning-up-the-environment-mess.html>

will not be easy to implement because there will be no monitoring. There are many unanswered questions about the relationship between MOEF and new regulator, accountability because creating new institution is not an easy step.

In *V Sundar* case¹⁸ the question was with regard to jurisdiction of Supreme court and it was held that section 22 of NGT Act, 2010¹⁹ which allows people to directly appeal to SC, will be used in environmental case. This case shows the state's measure towards people who are aggrieved by award or decision of the tribunal.

Another issue is Land acquisition laws and its amendments. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act tried to remedy the problems of earlier land acquisition Act, 1894.²⁰ It restricts the definition of public good- which is the main reason of acquisition and it has been misused widely in India. Urgency clause can now be used only in National security, defence and emergency situation. The definition of "persons interested" includes all those members who are family of victims also. Compensation value is also increased in rural and urban areas. Earlier land acquisition Act was criticised for the procedure of land acquisition. This Act included Social Impact Assessment in the procedure but this provision is open to misuse as many bureaucrats will be there in expert group. There are many conflicting interest in this Act also but now government may have to give more justification before acquiring land. This is also dependent upon the fact how this Act is implemented.²¹

Apart from these social and political issues present government proposed many changes in Land acquisition, rehabilitation and resettlement Act, 2013 through ordinances. This ordinance route shows the temporary measures and attitude towards land reform policies. Moreover the ordinance suggested have more flaws than 2013 Act, for instance: the power to give green signal for any project is not vested with people whose rights are affected, period for unutilized land mentions five year or any other period- it shows that this unspecified period could be anything, consent of stakeholders is disruptive etc.²² Moreover government can acquire multi-cropping agricultural land by using its cynical weapon of strategic importance which talks

¹⁸ V Sundar vs. Union of India & Ors., Judgment dated 30.04.2015 delivered in WP No.13852 of 2015

¹⁹ <http://www.moef.nic.in/downloads/public-information/NGT-fin.pdf>

²⁰ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act

²¹ <http://www.newindianexpress.com/columns/Compromise-over-land-takeover/2013/09/11/article1778031.ece>

²² <http://www.sacw.net/article10481.html>

about national security and pretends to be in accordance with law.²³

Another issue is relating to rehabilitation, compensation policy after these industrial projects. This is one of the main reasons of land acquisition problem because people don't get adequate compensation, rehabilitation etc. In many pre decided cases people still have not got compensation. For eg. POSCO case. NHRC submitted its report²⁴ on Posco plant case in Orissa and observed that labourers working in betel wines did not get, compensation, unemployment allowance and rehabilitation under the policy. Many families were not even identified as displaced families. State government is cutting down trees and acquiring lands without paying any attention to rehabilitation policies of central government and recommendations of statutory authorities.

There is difference between land acquisition in Bhatta Parsaul land acquisition case and any tribal case because for earlier case adequate compensation was important but in case of tribal land people sees any project as destruction of their lives.²⁵ This is the main reason why Forest Right Act and Panchayat (Extension to Scheduled Areas) Act (PESA) were given importance in Orissa Mining Corporation case. In Orissa Mining Corporation case Vedanta signed a pact for Bauxite mining Niyamgiri Hills and they got environmental clearance. SC had put stay on that clearance because there were serious implications on human rights including water, health, livelihood etc. Amnesty International report also stated that govt could not respect International Human rights law in this case. After this report also, MoEF granted clearance on the fact that local community favour the project. Even though there were so many protest but MoEF gave its decision based on state pollution control board. Later in 2013,²⁶ SC gave rights to Gram Sabha to decide upon rights of tribal people and recommend MOEF. It was reported that Vedanta was violating forest and environment laws, thus clearance was rejected by Union Environment Ministry.

These are some of the current issues relating to land in India. All of these issues emerged out of India's economic, political, cultural and religious situation. The land issues are not easy take in India because people associate themselves with land in today's world.

²³ Ibid.

²⁴ http://nhrc.nic.in/Documents/Reports/report_on_posco_project.pdf

²⁵ <http://www.sacw.net/article10481.html>

²⁶ Orissa Mining Corporation vs. MoEF & Ors., Judgment delivered on 18.04.2013 in WP(C) No.180 of 2011