

LAND ACQUISITION COMPENSATION IN INDIA: A THUMB RULE

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ABSTRACT²

Land acquisition is one of the most critical and confronted issues in the discourses upon economic development and growth, peasant economy and legal jurisprudence. It involves a multitude of divergent and contradictory interests. Right from the determination and articulation of public interest and its physical incidence a whole range of crucial issues is at heart like determination of compensation at ex poste historical basis, non-consideration of time element in valuation thereof, the actual use of threat and armed forces against the losers to disorganize and dispossess them, exclusion of losers from the prospective windfall gains, lack of rehabilitation, resettlement and post-acquisition monitoring and inefficacy of judicial recourse etc.

The entire law of land acquisition, including the acts of 1894 and 2013, is less sympathetic to the land losers and displaced people treating them as subjects and putting them at receiving ends. Instead of a well-articulated philosophy of compensatory justice it is based upon rules of thumb and expediency. The article, while discussing the actual practice of land acquisition in India, aims at providing a theoretical perspective of the same.

KEY WORDS

Land Acquisition, Compensatory Justice, Ex-poste Valuation, Time lag, Threat, Embedded Autonomy, Democratic and Institutional Deficit.

ABBREVIATIONS

LA: Land Acquisition;

LAPs: Land Acquisition Affected Persons;

LAD: Land Acquisition and Displacement;

PAPs: Project Affected Persons.

LADAPs: Land Acquisition and Displacement Affected Persons.

¹ *Dr. M. Israr Khan is closely associated as an activist and as a researcher-observer with farmers' resistance against the unfairness and injustice involved in the practice and process of land acquisition. This article is based upon the observations learnt in various land acquisition instances.*

² *This article is written in the specific context of both the behavioral practice of land acquisition in India and the obsession of the India's ruling establishments with acquisitions and displacement. The author is obliged to provide clarifications in this regard and takes responsibility for inconsistencies and irregularities, if any.*

Land acquisition is a term which essentially refers to appropriation of land entitlement and transfer of land use or ownership rights from one set of valid and true possessors to another. It may occur by means of acquisition of transferrable rights on voluntary or involuntary basis via expropriation, dispossession or displacement of the erstwhile occupying and affected population. In the language of commerce and business acquisition refers to proprietary accumulation of equity and ownership rights in enterprises. The term may also include acquisition of land for business activities by the companies and corporations in a liberal market economy exposed to global dimensions.

However, in its behavioral context land acquisition is a specific technical term having precise legal meanings, force of law and powers of the state. In this rather narrow sense land acquisition refers to the 'eminent domain' of the state to acquire private property in land for a public purpose or in public interest¹ (LAA, 1984:4; LACRRA, 2013: 2-3) and the dimension of peoples' displacement and uprooting is underlying in the term as land means all sorts of land whether residential, occupational or other. Eminent domain is based upon two legal prepositions: "*salus populi est suprema lex* (regard for the public welfare is the highest law) and *necessitas publica major est quam privata* (public necessity is greater than private necessity)" (Tenth Report of The Law Commission of India, 1958: 1). The doctrine of *eminent domain*, however, suffers from some serious limitations:

- a. It brings in a democratic deficit;
- b. It juxtaposes public interest against public interest e.g. interest of several thousand [uprooted] families vis-à-vis project defined public interest; and
- c. Acquisition on behalf of private and PPP projects obliterates the notion of public interest.

The present policy of public private partnership (PPP), though vehemently justified by many, is self-contradictory when viewed from the principled position of public policy. A retreating state ceding not only its economic but also a part of sovereign territory to the market has no logic to acquire peasant and folk lands for provision of joint supply of an exclusive and divisible (private) good. No matter whatever are the economic prospects? It is, among other reasons as well, simply for the presence of private ownership and profit earning on the acquired lands. What is the need for the state to provide *flag-protection* to the private business corporations in acquiring the land of subsistence farmers and forest dwellers? The very idea of utilitarianism, too, suggests largest common good for largest numbers. It does not only make case for survival of the fittest. Rather the existence and survival security of the weakest ones also matters in equal, if not more, proportions.

Economic efficiency implies a strong case in favor of universal reforms of land ownership and tenancy; not the opposite as pushed heavily by the present political establishments.

In a neo-liberal economic environment 'rate' of growth seems to assume primary importance and private self-interest represented by accumulation of exchange value (called profit) and productive and natural resources becomes positivist agenda of the state. Such a scenario opens up additional avenues for the *rent seeking behavior* of those in position to actualize the same. The more so happens

in a ‘*rent seeking society*’ and a ‘*factional State*’ of Krueger’s description (1993: 66) currently visible in India. Land acquisition for many ‘public purposes’ simply becomes a source of plunder by the structures of what is called a ‘predatory state’ by Evans (1995). Recall the case of Asian Games held in New Delhi wherein large tracts of environmentally crucial land along Yamuna river banks were converted and appropriated by ‘the powers that would be’ for high rise buildings and apartments. Adarsh Society scam of Mumbai is another glaring instance of state-predation orchestrated by the officials, executives and legislative persona, among themselves. Land acquisition for SEZs, townships and other infrastructure projects also does not represent pure public interest. Rather the component of rent-seeking or what is called ‘directly unproductive profit-seeking (DUP)ⁱⁱ’ in economic jargon, is always there as an embedded facilitator.

It was the intervention of higher judiciary which noticed, condemned and reversed the process of high-speed, high-intensity and high-extent spree of land acquisition in and around NOIDA. It was observed these cases that the land acquired was preemptively assigned to unjust purposes and abnormal profiteering by the government’s developmental agencies well before the initiation and finalization of acquisition process, or, to be indecent, the eminent power was exploited for personal plans of a syndicate. It was the question of compensatory peanuts that brought the land-losers to the courts for their enlightened intervention and compelled Justice S. U. Khan (2011: 245) to compare land acquisitions with a ‘fallen ox’ everybody becoming a butcher over that.

Economic enterprises must flourish. These are vital. These are vitally required. But ‘rent-see’ economic outcomes are from being efficient and being fit in the doctrine of harmony of self-interests turning into social-interest, as viewed by Adam Smith in 1776.

In the recent years numerous big projects are undergoing for expansion of highway infrastructure across the country. But the projects are gravely besieged not only by extreme inadequacy of compensatory justice and forcible land acquisition. These are quite bequeathed by rent-seeking and other improprieties. The National Highway Authority of India (NHAI) and their public private partnership (PPP) project concessionaires are reported to appropriate tool-charges and levies even before project completion. Large scale graft and fund diversions are involved in these projectsⁱⁱⁱ. Other ‘inconsistencies’ like longer than warranted fixation of total tolling period, non-transparency in bidding process, no standard norms in selection of projects for expansion, poor monitoring, undue benefit to private concessionaires, unwarranted widening of some projects etc. are indicated by the Comptroller and Auditor General of India (CAG) in its recent report on “Implementation of Public Private Partnership Projects in NHAI” (Dipak Dash, 2014: 8).

Number of people affected by development caused displacement ran into crores till 1990s. Most of them still remain devoid of rehabilitation entitlements. Now the neoliberal spree of land acquisitions might affect even more people in the same, or perhaps more, debilitating manner. Eminent domain of displacement equilaterally serves public interest. However it is not equally balanced by the public-interest foregone in not rehabilitating the displaced ones. The sheer number of

the people and grievousness of their agony makes a case for re-examination of India's economic policy against Krueger's 'predatory state' busy with "deliberately disorganizing civil society" (Krueger, 1995: 248). With an incidence of social and economic exclusion, at such large scales as the number of expropriated people runs into equivalents of many nations' total populations, the process of 'development' ceases to have any value for being a social project.

In terms of legal jurisprudence compulsory expropriation of land owners against their will is set balanced by equivalent compensatory payment. Hence, there are three basic components of any land acquisition incidence:

- i. Existence of public purpose;
- ii. Expropriation of private interest in land to establish public interest therein; and
- iii. Compensatory reimbursement of loss of economic value of land and other property erected thereupon.

When read from the acts and statutes and watched from a distance the law and the practice of land acquisition and displacement (LAD) do not seem to be as contradictory, dichotomous, debilitating, devastating and unjust, as when seen closely from within the ongoing process and observed minutely from an insider but impartial social and economic perspective. All the inherent features of India's bureaucratic machinery like unaccountability, insensitiveness and rent-seeking etc. are perceptibly visible in land acquisition as well. Constitutional immunity of the executive, authority of eminent domain and weaknesses of land-losers make a combination for unconstrained application of 'competent' authorities' discretion to execute a land acquisition event according to their design right from the articulation of public interest and urgency, through the expropriation of land owners, to the determination and payment of compensation.

Theoretically the process of LAD goes textbook style as a simple exchange problem read as a benign state or government taking land of some proprietors at an equivalent monetary value paid as compensation to them and putting it for a genuine and urgent public cause. The reality however is not so simple and so naïve.

To begin with the definition and articulation of public interest, selection of spatial location and people to be affected, formulation and execution of the plan, expropriation of land-owners and determination as well as payment of compensation are all done by the state's machinery without any choice or voice of affected populations. Hence there is an inbuilt tendency of violation of the principle of natural justice as far as the government machinery being a part of public interest does not remain disinterested and goes on accumulating an institutional prejudice against the land-losers at every successive stage. It becomes explicitly manifest particularly at the time of compensatory valuation and payment thereof and at the time when affected land-owners and dependents are physically expropriated from the said lands.

COMPENSATORY JUSTICE

The behavioral phenomena of land acquisition in India exclusively rests upon legal and jurisprudential grounds originating from legislative enactments as they are passed by the parliament out of existing contingencies. As far as peoples' displacement is concerned we do not have a separate law for it and consequential uprooting of people is implicit in the very concept of land acquisition itself. That is why most of the incidents of land acquisition fail to satisfy any criterion of compensatory justice as provided by the economic theory. Utilitarian distributive justice would imply a more egalitarian ownership and tenancy pattern of land holdings hence selective discrimination against a few does not satisfy inadequacy of outcome equivalence for land acquisition and displacement affected (LADAPs). Democratic orientation is also not followed by the acquisition authorities in the sense that the gainers fail to compensate the losers to the extent of willful consent; the volition-deficit being overcome by the force and threat of force of the state. Land acquisition also fails to give heed to Gandhian *din-hin*- the humblest and poorest as they are usually the first victims of any land acquisition event. We are not much argumentative about Arrow's impossibility of public choice (Arrow, 1950), here. But it is matter of worry that like the rejection of Mahatma Gandhi's guidance all other humanitarian principles are also frustrated by the acquisition machinery.

A very important principle of welfare economics is what is called Pareto optimality after Vilfredo Pareto (1848-1923). "According to this criterion any change that makes at least one individual better-off and no one worse-off is an improvement in social welfare. Conversely, a change that makes no one better-off and at least one worse-off is a decrease in social welfare" (Koutsoyiannis, 1985: 526). The resentment and post-acquisition decrease in socio-economic status of LADAPs is an indication that the outcome of land acquisition is largely welfare decreasing at least for the affected ones. It can somehow be avoided by the observance of what is called the Kaldor-Hicks 'compensation criterion'. To bring the idea at home a passage from Koutsoyiannis (1985: 529) is produced here:

Assume that a change in the economy is being considered, which will benefit some ('gainers') and hurt others ('losers'). One can ask the 'gainers' how much money they would be prepared to pay in order to have the change, and the 'losers' how much money they would be prepared to pay in order to prevent the change. If the amount of money of the 'gainers' is greater than the amount of the 'losers', the change constitutes an improvement in social welfare, because the 'gainers' *could* compensate the losers and still have some 'net gain'. Thus, the Kaldor-Hicks 'compensation criterion' states that a change constitutes an improvement in social welfare if those who benefit from it could compensate those who are hurt, and still be left with some 'net gain'.

Despite the limitations of monetary and inter-personal comparison this is a very simple and pertinent principle to act upon because if the society can pay the land-losers to the extent of their volitional consent and still keeps much then a land acquisition incident can be held to be welfare

augmenting. However, if the society does not pay at least as much as to keep the losers at an unchanged level of utility as happens in India then the change is a derogatory one. Therefore, to have the minimum possible iota of a democratic and just ideology India's land acquisition process has to qualify, the sub-optimal if not optimal, test of Kaldor-Hicks compensatory justice and make the gainers (i.e. the state or the corporate epitomes of private interest and other economic agents) to bribe the losers to the extent of willful consent, arrived at in the absence of any demoralizing and incapacitating force or threat of force. That is why the compensatory mechanism as applicable to land acquisition cases (more particularly when the land losers are subsistence dependents) must have two necessary and sufficient components:

- a. The absolute equivalence parameter, and
- b. The adequacy parameter.

Whereas the parameter of 'absolute equivalence' of compensatory payment in lieu of acquired lands necessitates the equivalence of exchange and use value loss including time dimension with the prospective exchange and use value gain of the compensation entitlement as and when actually received by the land losers. And the 'adequacy' parameter necessitates that equivalence be meaningful. Suppose the compensation is fixed and paid at Rs. m per unit of land, l but m cannot, or does not, for any reasons, yield an exchange of l , an equally qualified l , in market place then m fails to be an adequate compensation for l . The deficiencies may be ascribed, among others, to two major variables:

- i. The element of force and threat and other intervening variables as inadequacy inducing factors; and
- ii. The adverse consequences of land acquisition.

However in actual practice a minimalist attitude seems to set in the 'competent' jurisdiction with respect to the determination of compensation. Naturally the value so arrived by the public servants does not appeal to the losers. A democratic resistance necessarily ensues. But instead of dialogue oriented solution the state relies on its 'eminent' powers and forcibly takes possession of the concerned lands by application of necessary physical force of armed constabulary going to the extreme extent of bloodshed! In such a scenario when the state opts to actualize its objectives through 'armed domain' instead of 'democratic domain' welfare of the land-losers becomes a tragedy and an irretrievable loss. The narration can be summed up in one phrase hypothesized as: '*Serious inadequacy, among others, of compensatory equivalence is made up for by institutional threat and actualization of threat*'.

This article is focused upon a theoretical description of this widely observed and generalized phenomena. The scope of the article is strictly kept delimited to compensatory dimension of land acquisition. It will be discussed under the following two main subtitles:

- i. The methodology adopted for compensatory valuation;
- ii. Intervening variables; and

- iii. Institutional deficits like threat application etc.

METHODOLOGY OF COMPENSATION

Pecuniary entitlement is the only mechanism of compensatory justice practiced in India. The land acquired by the state constitutes a loss to the land-losers and the loss is considered compensated for in monetary terms. It is not difficult to deduce that compensatory mechanism works either on none or on the following underlying assumptions:

- i. That money is a perfect substitute for land and the losers are as good with money as with land.
- ii. That the valuation prescribed by law is adequately equivalent of the loss of the LAPs;
- iii. That the LAPs are a single category in terms of all existential and intermittent variables;
- iv. That the LAPs are rational enough to assign the compensation cash into different purposes so as they derive at least the same utility from money as from the land lost; and
- v. That the post-acquisition welfare level of the LAPs increases or remains at least at the pre-acquisition level.

These assumptions, among others, constitute the substance of compensatory justice. It is however very simple to see that neither of the assumptions is realistic, reliable and valid in its content and context. If we are made to believe in benign character of the impugned pecuniary compensation then we will have to believe in the derivative argument that land is equal or identical to money and vice-versa. In all certainty such is not the case. Land is much more than the monetary valuation and exchange value. It is a productive asset, a capital stock, a socio-economic security instrument, a way of life and a subsistence, all with varying degrees of interpersonal relevance. Money can be an approximation only of exchange value component of land but that beyond doubt is driven out by the powers of the eminent domain the moment it is proclaimed. Compensatory concept as prevalent does not cover the productivity, capital-ity, social and economic security and subsistence utility dimensions of incumbently acquired lands.

The legal and conventional faith system assumes that the amount of compensation as postulated by law statutes and fixed by 'competent' authorities is both adequately determined and promptly paid to the losers without any non-negligible delays and lapses, so that monetary equivalence to land remains established and intact. Instead, the whole construct becomes untenable when it is juxtaposed to and compared with practical and behavioral realities. Inadequacy of compensatory equivalence is inbuilt in the methodology of compensatory valuation which rests upon the following references:

- i. Historical valuation based upon stamp duty assessment, sale-deed quotations or presumptive judgment; and

- ii. Rule of thumb make-up additions of the sort of *ex-gratia* for democratic deficit and certain interest component in lieu of inordinate and unexplained delays.

RELEVANT ARTICLES FROM THE LAW OF LAND ACQUISITION

Relevant articles from land acquisition acts of 2013 and 1894 are produced herein to arrive at our hypotheses of historical and minimalist valuation mentioned herein. The Act of 2013 states that

“(26) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:-

(a) the market value, if any specified in the Indian Stamp Act, 1899 for the registration of sale deeds or agreements to sell as the case may be in the area where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher;

Provided that the date for determination of market value shall be the date on which the notification has been issued under section 1.

Explanation 1.-The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.-For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.-While determining the market value under this section and the average sale price referred to in Explanation I or Explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4.-While determining the market value under this section and the average sale price referred to in Explanation I or Explanation 2 any ‘price paid’ which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

27. The Collector having determined the market value of the land to be acquired shall calculate the total amount of compensation to be paid to the land owner (whose land has been acquired) by including all assets attached to the land” (TRFCTLARRA, 2013: 5-6).

While the act of 1894 had the following valuation propositions with the same reliance on historical prices and rule of thumb mark-ups:

“15. Matters to be considered and neglected. - In determining the amount of compensation, the collector shall be guided by the provisions contained in section 23 and 24 (LAA, 1984: 7).

23. Matters to be considered on determining compensation:

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-
first, the market-value of the land at the date of the publication of the [notification under section 4, sub-section (1)];

[(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation. - In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.]

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of [thirty per centum] on such market value, in consideration of the compulsory nature of the acquisition.

24. Matters to be neglected in determining compensation. - But the Court shall not take into consideration -

firstly, the degree of urgency which has led to the acquisition;
secondly, any disinclination of the person interested to part with the land acquired;

...;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

seventhly, any outlay or improvements on, or disposal of the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the [notification under section 4, sub-section (1);

... ” (Ibid: 8-9).

It has to be kept in mind that the act of 2013 has merely detailed the procedure already adopted by 1894 act. As far as phrase ‘consented’ value is concerned it has no value for the land-losers because it is not binding upon the project authorities and ‘competent’ jurisdiction to agree to a

value favorable to the losers, for the simple reason that 'competent' authority has all the powers to determine and declare an award of the compensatory value in lieu of the 'acquired' lands.

INTERVENING VARIABLES

Standing or notwithstanding the legal provisions mentioned above, the amount of compensation per unit of land, the method of determination and disbursement, time lags, informational asymmetry etc. are various intervening variables that enter into the process and aggravate land losers' hardships. Land acquisition is never like a consented sale and purchase between two parties at mutual terms and conditions. It is more like an outstretched dispute between the state and its poor citizens, each with opposite sets of information and expectation. Apart from the law of land acquisition the approach of the government in power and the behavior of bureaucracy responsible to execute the process become crucial. A very serious deficiency is the lapse of time, at serial stages, which not only makes the process lengthier but also raises its cost and dissatisfaction levels as well. There might be many lags at decision making level. But when the decision has been made and notification for the same been published further delays are both unnecessary and unallowable.

It has been observed that the time lags between notification for land acquisition and determination of compensation may run in many years and decades. The actual payment thereof to the land losers takes further time. In the meanwhile everything does not remain the same. The assumption of *ceteris paribus* becomes seriously compromised on account of many intervening variables. First of all we see that in a transitional economy like India economic environment changes at a very high pace. Things do not remain the same after a short while. If there comes a notification for land acquisition say on day x_t , year y_t (x_t, y_t) it is a disaster come a while for the land losers, because the land under acquisition is deemed to vest in the state [read the project authority], free from all encumbrances, from that day, we named x_t, y_t . The tenure holders by a stroke of pen become dispossessed of that very land which they earlier treated as their life source. Further holding or use of that land by the losers is legally untenable; it is trespass. If you continue this trespass there is the power of armed constabulary, under fully sanctioned authority of law and courts of law, to remove trespassers, physically^{iv}.

HISTORICAL VALUATION

Land acquisition is, for all practical purposes, deemed to be completed, as we have said, on day x_t , year y_t , where t represents the legal reference to time-point of incidence. Now we come to the issue of determination of the compensation amount or valuation of the payable price of acquired land surface. In technical parlance the losers are entitled to an amount of compensation which is equivalent of the value of their land on day x_t , year y_t . Moreover only those losers can claim compensation who have recorded enforceable entitlement over the land^v.

Land acquisition is comparable only to a forced expropriation. What the underlying canons therefore be there for the methodology for valuation of an asset transaction under threat. How the value be arrived for such an asset? What it shall actually be? Value can take many forms like opportunity value, economic value, substitution of assets value, stamp value, past, present or future value or any other derivation arrived at. Advocates of socio-economic justice have their jargon as if not known to and not preferred by any of the growth-actualizing states. So the official logic of 'competent' authorities of dictates one principle and one rule that is the rule of thumb. Go some years back from the time of notification or from the time when the task of valuation process starts itself (say $x_t, y_t \rightarrow y_{t-3t}$ or $x_t, y_t \rightarrow y_{t-10t}$). Forget the situational context in between then and there. Find the mean value of a few historical sale-prices out of the registered documents related to the area.

This ex post facto sample statistic $s_{x_t}, s_{y_{-3t}}$, call it mean value of historical transitions, is treated for all practical purposes of current valuation, day x_c , year y_c , as the only valid and reliable population parameter y_c in terms of compensatory value. The mean transaction value some years ago ($y_t \rightarrow y_{t-3t}$) is treated equivalent of actual land value on the day of notification (x_t, y_t) and the same is paid to the land losers if claimed. Only the Raisina Hills' Logic is competent enough to arrive at following practical identity of a many years prior to notification historical value with a value of land at the time of notification and with the current value when valuation process starts long after the date of notification and that too in a dynamic economy:

$$y_{t-3t} = y_t = y_c.$$

How come here such a static calculated three years back on *ex post facto* basis is made equal to present population parameter y_c despite intervening accelerated dynamism. But then economics was also called a dismal science^{vi}. Perhaps for this fallacy of identity of non-identities!

As a matter of fact $y_t \neq y_{t-3t} \neq y_c$. In any dynamic and inflationary economy:

$$y_{t-3t} < y_t < y_c; \{y_c = y_{t+3t}, 5t \dots \text{or nt}\}.$$

DELAYED PAYMENT

In the above example, an assumption was made that compensation is valued on day x_c , year y_c and it is paid at day x_c , year y_c . None of the conditions is true. Valuation is ex post facto, day of valuation is posterior and payment is made far posterior, as well. The time lag is an important intervention between reference time of valuation and valuation itself on the one hand and between valuation and payment. It may run into series of years and decades. In case of delayed payment we call it payment actually made on day x_p , year y_p . Now we have a full series of identities assumed as such by the authorities of the state and the law

$$y_{t-3t} = y_t = y_c = y_p.$$

It means there is no change in the situational context or no intervening variables could enter through the time sequence. This is really absurd. In a dynamic as well as land shortage economy, where land value changes very frequently and drastically upward, the valuation of compensation at historical basis and payment thereof after a considerable delay translates into serious loss of real value

of money received as compensation. Even assuming the amount of compensable otherwise acceptable the posterior delays make it trivial. Its real purchasing power is reduced drastically; in terms of land price at the time of actual payment it is virtually nothing. In fact land value, L_V at the time of payment is higher in multiples of that at the assumed time of valuation reference.

$$Y_{t-3t} < Y_t < Y_c < Y_p.$$

Land prices in our conveniently assumed years move unidirectional, e.g. land value, L_V 2014 > L_V 2012 > L_V 2004 > L_V 2001. In practical terms the process of compensatory valuation becomes a function of conventional wisdom U_{CW} of 'competent' authorities, independent of time (\overline{Time}), and other dynamic interventions \overline{U}_{DI} :

$$V_L = f(\overline{Time} + \overline{U}_{DI} + U_{CW})$$

For abrogation of intervening value enhancements the compensatory rule of thumb is added by one more rule of thumb i.e. multiply it by a certain rate of interest say nine percent per annum for some ordained duration. Our submission is how to equate this nine percent per annum premium with actual rise in the price of land in a dynamic and transitional economy like India. Actual premium on land over time cannot be equated and compensated by the thumb rule of nine percent. The contingent time gaps and compensatory valuation need be made compatible. Delays cause price escalation. Delays also affect preferences with respect to land valuation and money transaction. Hence, there a strong case for factorization of time element into any scheme of compensatory justice and valuation in land acquisition instances. As a matter of fact land value rises with time and therefore valuation of acquired land L_V logically be made, as is its actual price, a function of time:

$$V_L = f(\text{time} + U)$$

INSTITUTIONAL DEFICITS

Land acquisition is not an autonomous event. Nor is it a natural phenomenon. Rather it is a consciously designed and a deliberately created paradigm of change in land ownership and use which is necessarily bound to produce classes of gainers and losers. For the fact that land acquisition is made permanent and irreversible it forecloses future prospects of the losers on a very long say intergenerational dimensions. Willful exchange, sale, lease, mortgage etc. are different from land acquisition in the sense that the former ones arise out of needs and plans of the actor and provide a very large vista of alternate opportunities, while the latter compels the actors either to make 'distress decisions' or none or to opt for nothing of the sort of productive investment plans at the cost of prospective perils. Perhaps the most inconvenient repercussion of the land acquisition incidence is the fact that it mostly affects the poor ones who draw their subsistence upon the land and it affects them most seriously to the extent of virtual crippling of their social and economic life.

Institutional consciousness is what shapes the contours of a policy-set. It includes the structural form, pattern, history and objectives of the institutions as well as their internal interests. Mostly or usually institutions are taken in good faith. That they have *bona-fide* presence is widely

held perception. However as a matter of fact institutions are neither created out of vacuum nor do they behave in isolation. They are the products of the context and its underlying reality comprising of circumstances, compulsions, objectives, interests and key actors' long term perspective. They have particular predilections and a wisdom of their own to act upon. They are also the slaves of the contextual and conditional past wherein they took birth. The description goes ditto with the institution of land acquisition and displacement in India, more particularly the India of post-reformist neo-liberal economic regime.

For the sake of saying compensation has been made a condition for exercise of eminent domain. But its payment to the land-losers has never been a condition or at least a corollary of physical expropriation of losers from their economic territory. Practically public interest is deemed to be attained and served at the moment the affected population is expropriated from the concerned land. It results into a fatal tragedy of justice insofar as once the possession is taken over the lands the land-loser population ceases to exist in the memory of public interest articulators. That is the reason that more than three-fourth population of development caused displacement affected persons is frustratingly waiting for rehabilitation entitlements (Sainath, 1996: 71) from the acquisition hungry Republic of India.

It has been widely observed that the behavior of competent authorities is firstly motivated by a denial of justice to the land-losers and secondly to the observance of minimalist entitlements as if a favor of state providence. If we are allowed to factor in the ulterior motives and rent seeking behavioral truth into the narration of compensatory justice then it becomes an internal contradiction resulting into the tragedy of poor ones. In between there are information asymmetry and moral hazards. Land losers do not know precisely what is going to be there on their land, how it will be used and what will be its future consequences for them. They know only one thing what the state pretends to know not. That is the destiny looking large like a storm in the night of lost moon. That is the certainty that they have been subjected to margins of existence and bankruptcy. Then there is something which the state knows and the losers do not. How the land acquired is going to be dispensed with. The use or misuse of such land or a part of it for any activity and purpose other than the notified one constitutes the big moral hazard on the part of the state and its project authorities including of course the PPP associates. Apart from compensation this is also a big flaw and a great reason for that damned nonsense called project affected person's (PAPs') distrust and anxiety.

The state, despite all of its sermons and best bureaucratic sincerity, fails to convince the loser subjects of its pious ambitions which are supposed to be in the very interest of the uprooted ones [incidentally they are called the "beneficiaries" (see proviso to article 24 (2) of RFCTLARR Act, 2013: 15)] as if the butcher is killing an animal for that animal's sake! As if, if a bird is hit it is for its goodness! As if, if an ant is crushed it is for its survivable! What art is this rubbish inverse logic which is compelling the naïve citizens not to believe their country? The nation proposes but the folk

disposes. The state pretends to propose but the PAPs fail to take the lessons fabricated in the laboratory of global sovereign called post Washington Consensus market.

THREAT

It is nothing but the stick of actual incident and impact of threat that works as a magic trick to actualize the eminent domain. Obviously the losers confront the threat as far as possible. At a certain point of time the threat is actualized by the state to take possession of concerned lands by application of armed forces against the poor peasants or tribal folks. It is the power of bullet, not the power of the isometric balance of justice, which decides the outcome. The losers either surrender and acquiesce or face bloodshed taking tolls on their lives and their fortunes and survival entitlements. Yamuna Expressway^{vii} and Bareilly Bypass^{viii} are two examples out of innumerable such instances. It makes the compensatory valuation and acceptance thereof a function of, among other things, threat

$$V_L = f(\text{threat} + U)$$

Relationship between threat of extinction, incrimination, deprivation, detention and jail terms and frustrating lawsuits on the one hand and the possibilities of land-losers' acceptance of compensation and expropriation on the other becomes positive and influential. It translates into acceptance of compensation at inadequate terms becoming directly proportional to the threat embodied in 'eminent domain' of the ruthless sovereignty. The more the threat the less the value; and also the more the autonomy of the state for application of force to realize the threat in physical terms the less is compensation amount arrived at by the 'competent' authority. Isn't it that the degree of inadequacy of compensation is proportional to the 'embedded autonomy' (Krueger, 1993)^{ix} of the state to apply physical force against the losers?

The propositions that the state of India is not averse to application of force and incriminating fabrications against the land-losers and that this component is increasing getting embedded into land acquisition and displacement narration gets gigantic support from the construct of judicial 'immunity' extended to the official machinery related with land acquisition in relation to any crime committed in this regard. Article 87 of act of 2013 as amended by presidential ordinance dated 31 December 2014 reads as:

"8. In the principal Act for section 87, the following section shall be substituted—namely:

*87. Where an offence under this Act has been committed by any person who is or was employed in the Central Government or the State Government as the case may be, at the time of commission of such alleged offence, *no court shall take cognizance of such offence except with the previous sanction of the appropriate Government* in the manner provided in section 197 of the Code of Criminal Procedure." (RFCTLARRA: 3).

And for all practical purposes and embedded characterization that *previous sanction* of the appropriate government shall never come to put the willfully erring official to the scrutiny, mere

scrutiny, of judicial process! Such an open ended authority to the executive and its unaccountable bureaucracy needs be put juxtaposed to the voice-less expropriation of the losers for the cause of 'development' of

The constitutional provision of the *rule of law* and *judicial intervention* can be cited as counterpropositions to the presence of threat as observed herein. Threat of state by definition cannot be any phenomena in a liberal and popular democracy as India. There is a whole series of political reasoning against the theory of threat. First, the state is assumed benevolent. It cannot inflict pain and injustice on its citizens. Two, it is a popular democracy abiding to constitutional propriety. People have the countervailing power of electoral rejection. Three, there is a leviathan architecture for judicial intervention and delivery of justice right from lower courts of first resort, to high courts of original and appellate jurisdiction, and to the supreme court of last resort [not of last infallible judgment]. The state cannot defy the judiciary provided that the sufferer [read herein the expropriated, dispossessed, incapacitated, impoverished and frightened victim of the Indian armed constabulary] succeeds in getting the appropriate decree in her favor.

All these propositions are, no doubt, true in precept. However, when it comes to practice none of the above succeeds to maintain, or regain, its textbook sanctity. Professional absolutism is neither their abode nor their dwelling. Indian state is never away from expediency and arbitrariness, especially when there is a conflict of interest between haves and have-nots. The *soft state* of Gunnar Myrdal's description is *soft* only on the strong and powerful ones; where the softness is in the interest of the ruling Plutarch. It is too *hard* on the poor and weaker; and too *selective* and *choosy* also. Lower people, whatever be their numbers, have never been able to decide the electoral outcome. It is always the vestiges of the *erstwhile rulers* or the new-age *political entrepreneurs* who very adeptly manage the pawns to keep the battlefield in their grip. Policies do not make much of the difference; these are un-understandable by the naïve subsistence driven voters including the land expropriated ones. They are the believers of fate and destiny as are all men of poor subsistence, anywhere and everywhere. [See how many tribal temples have been flushed away and inundated in large dams and modern temples of India!]

Ideally the judiciary should command the highest degree of respect and regard out of its juristic efficiency and isometric impartiality of its balance of justice as well as prompt availability, timely delivery of judicial services and judgment implementation certainty at affordable to all legal costs. Unfortunately Indian judiciary commands whatever respect it commands out of fear psychosis of the common men. Judiciary is more a part of law and order establishment with police and enforcement machinery than being an efficient instrument of *justice suo moto* for the needy ones. As far as poor land losers are concerned they as a rule cannot get judicial refuge to be immune from more than proportionate use of force and forcible dispossession from their means of subsistence and places of residence. Justice cannot look into their eyes. They find justice standing on its back when they wish to approach.

Land acquisition for most of the LAPs, especially the poor ones, comes as social-psychological and economic strain. It brings in capacity diminution. It unleashes forces of disarticulation. It generates chain of causation leading to impoverishment. It invites decisional breakdown for those confronted by survival constraints. Land loss becomes both “a deficit” and “a context” (Mullainathan & Shafir, 2013) likening to poverty and it brings a heavy burden of “cognitive taxation” on the LAPs if we use that term, in lieu of incumbent poverty and capital base depreciation of land-losers, borrowed from World development Report (2015:32;33). To the extent land acquisition brings in poverty-identical scenarios it also generates a mental frame through which the poor land-losers see themselves and their future. It dulls their capacity to look forward and imagine a better life. Poor LAPs cannot be expected to behave in a manner as prescribed by standard economic rationality and act deliberately to strengthen their production capacity base and skills, more particularly in the absence of physical and psychological rehabilitation.

INCUMBENT POVERTY

Consideration of LAPs on the basis of primary value of land to the land-owners makes it apparent that land acquisition is not only land acquisition. It can be so only to the extent of land being an economic asset in addition to bare means of subsistence. When land is the only means to supply the survival and the survival is ascertained only in bare terms because of the nature and environment of the land holding then land acquisition for practically all academic and intellectual purposes can validly be held to imply, nay, actualize acquisition of subsistence and to that extent land acquisition be held as subsistence acquisition. The theory of pecuniary compensation more or less works for economic land holdings and non-subsistence land possessions. It breaks down in the cases of ‘subsistence acquisition’ and ‘subsistence displacement’. Compensation money fails to be or to provide any substitute to subsistence until and unless supplemented or substantiated by alternate means of subsistence comprised of asset, exchange and socio-economic security components. As an observed scenario the whole process unleashes the forces that cause:

- i. A deadweight debilitating permanent loss to subsistence land-losers;
- ii. An instant consumption opportunity via compensation to subsistence land-losers; and
- iii. Thereby a permanent meltdown of productive resource base of poor and subsistence-land-losers.

Micheal Cernea (1999) also holds that land acquisition results into de-capitalization, disarticulation, pauperization etc. There are many sources of such an incumbent resource base dilution and poverty of LAPs and these are all embedded in the process itself. Some of these arrive in the form of dynamic interventions occurring in between the points of legal expropriation of land and actual receipt of compensation cash. These are critical enough to be taken as non-negligible. In the meantime income stream for LAPs from productive activities on concerned land ceases to accrue. The value of money, yet to be received, goes on diminishing due to inflationary and other factors. The whole

period remains besieged by uncertainty and vulnerability. The behavior of the state or its acquisition authorities always remains an unpredictable variable. Hence the land-losers cannot plan and form decisions due to lack of certainty regarding their actualization capacity. LAPs' decisional ambiguity remains dependent and moves in tandem with the embedded uncertainty in executive behavior. This phenomenon leads to 'distress decisions' as and when the compensation amount reaches the land-losers.

If we apply a simple test, termed as 'reverse equivalence' (which means that if officially provided compensation is adequately equivalent of the value of the land lost, then in turn the same money be adequate enough to bring in or command in reverse exchange an equal area of equally characterized land) to the jurisprudential version of adequate compensatory equivalence the degree of 'inadequacy' becomes apparent. If reverse-exchange-equivalence is not established, due, either to lack of compensatory exchange equivalence in the first instance, or to intervening dynamism, or to both then land acquisition to the extent of that deficiency is a deadweight loss imposed upon but not compensated for by the eminent domain which is found to work very well for land acquisition and displacement but not so for compensation and rehabilitation!

The incident of LAD pushes the affected people in a single direction towards a way of life and towards a way of finding means of survival of life in the fashion of 'Ricardian curse'. There will also be a herd syndrome. If compensation money comes to the affected area and people, it as and when it comes elicits nearly same response from the people situated alike. There comes a rush after land but land is not to be there for all. If it chases other capital and subsistence forms these are also gone beyond their reach. So the money finds other ways and it is only a matter of speculation how long it takes to the land-losers to vanish away themselves in the wilderness of irretrievable abandonment.

Cannot we really have better options and better outcome scenarios?

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ENDNOTES

ⁱ *The definition of public purpose virtually leaves nothing out of the ambit of eminent domain. See for example that article 2 of the act of 2013 defines it in the following manner:*

"3.(za) "public purpose" means the activities specified under sub-section (1) of section 2;" (pp. 3)

And section 2 is produced below:

"2. (1) The provisions of this Act relating to land acquisition compensation, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, and shall include the following purposes, namely:-

(a) for strategic purposes relating to naval, military air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defense of India or State police, safety of the people; or

(b) for infrastructure projects, which includes the following, namely:-

(i) all activities or items listed in the notification of the Government of India in the Department of Economic Affairs (infrastructure Section) number I3/6/2009-INF, dated the 27th March,2012, excluding private hospitals, private educational institutions and private hotels;

(ii) projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute;

(iii) project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy;

(iv) project for water harvesting and water conservation structures, sanitation;

(v) project for Government administered, Government aided educational and research schemes or institutions;

(vi) project for sports, health care, tourism, transportation or space program;

(vii) any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament;

(c) project for project affected families; (emphasis added)

(d) project for housing for such income groups, as may be specified from time to time by the appropriate Government;

(e) project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas.

(f) project for residential purposes to the poor or landless or low persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.

(2) The provisions of this Act relating to land acquisition, consent, compensation, rehabilitation and resettlement, shall also apply, when the appropriate Government acquires land for the following purposes, namely:-

(d) for public private partnership projects, where the ownership of the land continues to vest with the Government, for public purpose as defined in sub-section (1);
..." (TRFCTLARRA, 2013: 2-3)

While LAA, 1984 gave the following broad definition of public purpose:

"3. (f) the expression "public purpose" includes-

(i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a state, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government or with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office, but does not include acquisition of land for companies;" (LAA, 1894: 4)

ⁱⁱ " Rent-seeking is often subsumed under the more general category of 'directly unproductive profit-seeking' (DUP) activities, such as lobbying, smuggling, bribery, monopoly, or any other activity which generates profits, but produces no goods and services directly" (Cypher & Deitz, 2009: 235). In terms social morality it is immoral and unjustified act of plunder and loot. In legal terms it is due to the failure of rule of law.

ⁱⁱⁱ Report of The Institutional Integrity Unit, World Bank, Dated 1st March 2012.

^{iv} *The term physical removal must be understood in the spirit of standard practices of armed forces. Thousands of people have been physically eliminated by the democratic India in order to remove the original owners, forcibly turned into trespassers, from the notified lands. Development cannot wait! If you come in the way you might, probably, be crushed. Singur, Yamuna Express Way, Thumba Nuclear Plant etc. are the recent examples. No need to go back to past extinction stories, India is on the way to write many more; not with the ink which is damn costlier to be shed on the enemies of progress; rather with the damn cheap blood of the poor peasant and tribal folklore. Sorry, it is not intended to hurt the feeble sentiments!*

^v *If you are living in a forest or on a mountain, an Andaman Tribe for example, for generation after generation even before the formation of the nation-state, but your presence is not recorded in official worksheets then you stand to lose any and every claim whatsoever.*

^{vi} *Recall what Carlyle has said that the economist were the biggest quacks of the time and economics was a dismal and doomed science.*

^{vii} *Major issues related to inadequate and delayed compensation, apprehensions of large scale expropriations in future, perceived absence of economic alternatives and consequential fear of bankruptcy.*

^{viii} NH24 Bareilly Bypass is an example of motivated forfeiture of peasants' lawful rights, for a PPP project. Notified u/s 4 of Land Acquisition Act, 1894 in 2004 by the UP Government, the land was transferred to NHAI on 16 October 2010. On 18 October 2010 this project was awarded to IL&FS, the commercial Concessionaire of NHAI. Actual work started only in 2012. Award of compensation was delayed by a decade and then made, at a petty sum less than one tenth of the then value, just three months before the implementation of the Land Acquisition, Rehabilitation and Resettlement Act, 2013. Farmers' demands included state impartiality; conservation of CPRs, natural topography and religious structures; mutual determination of compensation; provision of alternate opportunities, and sharing in toll-proceeds. Without meeting any of their demands IL&FS, however, forcibly dispossessed them on 21 October 2013, ruining matured crops. As for compensation land-losers have had waited for a decade and are still waiting. [See also India Today (Hindi) 21-27 November 2013].

^{ix} The term was used by Anne Krueger (1993) in 'Political Economy of Policy Reformulation in Developing Countries' to explain the inherent character of the state vis-à-vis its policy formulation and execution.

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