

A POLICY BRIEF

THE LAND QUESTION

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THE LAND QUESTION

- “Land question”, or the right to land for the common people has always remained a core issue of conflict in the society. In India, from colonial days to the present era, the land question had always remained as the root cause of the further precarity, marginalisation and deprivation of the people living in the lower strata of the society, especially tribal populations and backward castes people.
 - The problem persists to this day as instead of initiating an informed dialogue between the stakeholders to resolve the crisis, the State, in colonial days and even after that, has assumed the role of the sole arbitrator in the case of land acquisition.
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COLONIAL PERIOD : A HISTORICAL OVERVIEW

- Earlier, in the colonial period, the Britishers created an intermediary class, i.e., the Zamindars and land was given to them to collect revenues from the cultivators and deposit a major share of that revenue to the British administration after keeping a small share (1/11th) to themselves. The cultivators did not have any right of ownership to the land they were tilling.

- **During the freedom movement in India**, the Congress had made a pledge to abolish the Zamindari system, and accordingly, after independence, the Constituent Assembly deliberated on this issue way back in 1947-49, and later on drafted the required acts for abolition of Zamindari system. But the process of Abolition of the Zamindari system began even before the enactment of the Indian Constitution. In 1949, Uttar Pradesh, Madhya Pradesh, Bihar, Assam and Bombay introduced Zamindari Abolition Bills in their respective states, and West Bengal followed much later.
- While deliberating on the draft bill for abolition of Zamindari system in India in the Constituent Assembly on 2 May, 1949, Sardar Vallabhbhai Patel had moved to insert 'just' to qualify the 'compensation' to be given to the land/property holders for the acquirement of that by the government for public purposes or common good. In the next 70 years the connotation and interpretation of "just compensation" and "public purposes" remained a major bone of contention between the landowners/farmers and the State. In other words, even after the abolition of the Zamindari system, the issue of land remained unresolved.
- It has to be kept in mind that the demand for the better share produced by the sharecroppers (Bargadars) and protection from eviction from the land they had been working on, has a long history of peasants' movements. Tebhaga movement (1946-49), wherein the peasants demanded two-third of the produce as their share, was the high watermark of those

movements. Consequently, various laws that were enacted at different times in the early days after independence tried to address some of the issues with mixed results. Starting with Abolition of Zamindari system, Bargadar Act of 1950, West Bengal Estates Acquisition Act, 1955 and some other acts were enacted. Later, the Bargadar Act was incorporated in the West Bengal Land Reform Act, 1955.

- Despite all these legislative moves, the State could not go for proper land reform as the landowners resisted that by hiding their land beyond the ceiling under various names. **As a result of that the state faced a series of peasant movements and finally, in the late 1960s and early 1970s, the state witnessed Naxalbari uprising (starting in Naxalbari, a part of rural North Bengal,** it rapidly spread over a larger part of India) that posited the land question at the centre of the national political arena. Yet, it has to be mentioned that the Congress led state government had vested around 10.25 lakh acres of land by April, 1976 and of which 8.56 lakh acres were acquired and 6.27 lakh acres were redistributed among 8.47 lakh families.

THE ERA OF THE LEFT IN WEST BENGAL

The Left Front came to power in 1977 and took up the issue of land reform with great zeal.

1. **First, they amended the Land Reform Act and put a stop to the eviction of Bargadars from their lands by the owners by recording their names with the land records.**

With successive amendments of the said act, they brought non-cultivable, but surplus land of the owners under the ambit of the act. Thus, ponds, fruit orchards etc. also were brought under the ambit of the Land Reform Act. But, still the issue of the land distribution was faced with several problems.

2. From the very onset in the first decade after independence, the land reform process was faced with a serious problem, as the available land, even if the vesting and acquiring of that by the government was done to the hilt, was found to be inadequate to meet the requirement of redistribution among the landless. During the three-year long debate in West Bengal State Assembly in 1954-56, the dilemma of the then state government became evident. According to the chief minister Dr. B C Roy and his colleagues in the cabinet, the total amount of land to be vested under the Land Reform Act would not be enough to distribute among the landless cultivators in the state. The problem was put by the then Congress government was that even if the entire landless cultivators' community were to be made beneficiaries of the land distribution programme, then the land thus given to them would be in such small portions that it would not make any economically viable unit. On the other hand, the government was averse to the idea of forming any Collective Farm following the failed experimentations

done in Soviet Russia. But the opposition bench, led by Jyoti Basu, was bent upon the idea of giving land to the tillers, because the entire left peasant movement was built upon that pledge of land to the tillers. This position taken by the Left parties came to fruition when they came to power in 1977 and took up the programme of land reform seriously. As a result of that, land thus vested and acquired were parcelled in small sizes (4-5 cottas, i.e. $1/4^{\text{th}}$ of a bigha, or, $1/12^{\text{th}}$ of an acre} and redistributed to the landless people.

However, the much-lauded land reform initiatives taken up by the Left Front government gave rise to two serious problems:

1} Because of Barga recording and making it mandatory to make the first offer to the Bargadar (sharecropper) by the owner in the case of selling the land, a large volume of land was taken out of market, and that no longer	2} Since the absentee landlords started investing less and less in their land, thus leaving the Bargadars to arrange for the cost of the seeds, fertilisers, irrigated water (hiring pumps etc.) the small and poor peasants, who were made the beneficiaries
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remained as marketable commodity. In other words, the price of land became suppressed as opposed to the market principles. That created a problem for the absentee landlords and they started losing interest in cultivation, thus, making less investment in land.

of this land reform movement, gradually found themselves in a situation where they started depending heavily on rural moneylenders to meet the input-costs for cultivation. As a result of that they could not sell their produce in the market, and were compelled to go for distress sale of their produce to the moneylenders. After studying the issue in West Bengal, Barbara Harriss-White in her Rural Commercial Capital concludes that despite the pro-poor and progressive measures initiated by the Left Front government, the poor

	<p>peasants in the state remained poor because they never had any direct access to the market to sell off their produces. The middlemen/intermediaries controlled them.</p>
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It goes without saying that the establishment of the right to land for the poor landless peasants could take them a long way to make them empowered economically.

- **However, land has also a socio-cultural value attached to it. It gives the owner a sense of security as well as identity.** The way the poor landowners try to cling to their land even against all adversity shows that. Following is a case in point that the author had witnessed way back in 1973-74.
- **On a December day, 1973, at DVC's Panchet township, the Divisional Engineer's office was seized by hundreds of Santhals.** With green flags in hand, the Santhals came to the spot and silently sat in front of the office for the day. They did not raise any slogans, did not stop any employees or other people from coming out and going into the office. After keeping a day-long vigil, they left the place silently. Same thing

was witnessed by this author in 1974 too. It was made known that they had mobilised themselves under the leadership of A K Ray's Marxist Coordination Committee, an organisation that used to fight for the rights of the tribals in Dhanbad area of Bihar (now in Jharkhand). Upon enquiring into the reasons for this demonstration it was made known that these Santhals are the people who were displaced from their villages when 8 of their villages were submerged during the construction of DVC's Panchet reservoir. For some time, every year they used to come to the DVC Panchet office to remind the authorities that the government did not keep its word of giving them proper rehabilitation. The DVC's Panchet Hydel Project was inaugurated by the then Prime Minister Pandit Nehru in 1958. Yet, after 15 years of acquisition of their villages, the Santhals continued to agitate peacefully and pointed to dispossession of their land and consequent deprivation.

This case is not unique. According to Walter Fernandes, more than 5,00,000 acres of land were acquired by the government for Water Resource projects in West Bengal alone till 1990. The total number of people displaced by these projects (Dams & Canals), from 1947 to 2000, is estimated to be around 338216, of which SC are 180382 and ST are 150318. It is argued by Walter Fernandes that while the official estimate of total land acquired for Water Resource Projects in the state was around 865,475 acres, the reality is probably around 1200,000 acres, because very little

information is available about the CPR land (common property resources).

- The all-India picture is equally dismal and distressing. An Expert Group formed by the Planning Commission studied the Development related issues in Central India where the Extremist Movement was causing a great deal of problems.
 - **The Report, published in 2008, in absence of government studies, cited a study by Walter Fernandes and accepted the fact that around 60 million people have been displaced owing to all sorts development projects (Dams, Railways, Mines, Steel Plants, other Plants, Roads etc.) from 1947 to 2004. Of them, 40% are tribals (Adivasis) and 20% Dalits. It is only to be noted that while the tribal population of India stands at 8.6% or 10.4 crore (2011 census), the number of tribal people displaced by the development projects are obviously highly disproportionate to their number.**
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It must be kept in mind that in the colonial period, the land was always seen in terms of revenue it yields to the rulers. But at the same time, they used land to build required infrastructure (like ports, railways, roadways etc.). In the post-colonial period, the government went for rapid industrialisation in the country and started using huge tracts of land for that purpose. Also, the industry was given land at zero cost to build their factories/plants/godowns/townships etc. Obviously, to meet the rising demand for that, the land was taken away from the rural

people. **The tribals, Dalits and SC became the worst sufferers** (as Fernandes points out). Thus, it was not surprising that the Naxalites continued to spread their influence in the tribal belt of central India and the State is resorting to a security centric approach to counter that threat.

Here an attempt would be made to examine the land issue as it stands now. Immediately after the initiation of the neo-liberalisation in the '90s, the corporate-government nexus went for a huge land grab movement in the name of forming Special Economic Zones (SEZ).

The farmers started resisting that and violent conflicts took place in Nandigram, Singur, and Bhangar and Katwa (all in West Bengal), Kalinga Nagar and POSCO (both in Orissa), Khammam (Andhra Pradesh), Vidarbha (Maharashtra), Dadri (Uttar Pradesh) and many other places in the country. The farmers' protest forced the political establishment to come up with a new legislation that substituted the archaic land acquisition act (1894).



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- ★ **The new act is called Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.** Popularly known as the R & R Act, the new law was expected to work as a practical solution to the ongoing agitation among the farmers. There are also reports that a number of cases of land-disputes are locked in various courts, and some fresh agitations are being reported from U.P., Punjab and elsewhere. For example, in July, 2024, Sangrur

(Punjab) farmers are up in arms against a plan to set up a cement plant there and raise an environmental issue. In U.P., in Prayag Raj district a protracted resistance by the landowners demanding higher compensation took place in 2016 when a mega power plant started operating there. Last year in Maharashtra's Ratnagiri, state police had to resort to force the people out of the site for a proposed oil refinery. All these indicate one thing: the new R & R Act could not be the panacea for the land (acquisition) issue.

- ★ Clearly, a different approach would be needed. For that, some of the experiments that have begun in some states should be examined. Take the case of Andhra's proposed new state capital Amaravati. **Here, 33,000 acres of land are to be acquired.** The government realised that it would be difficult to buy off the entire land mass at the ongoing market price. So, they devised the land pooling system, whereby people were asked to donate their land at a relatively low price. But to compensate them, the government offered them a portion of the land after developing that for commercial use.
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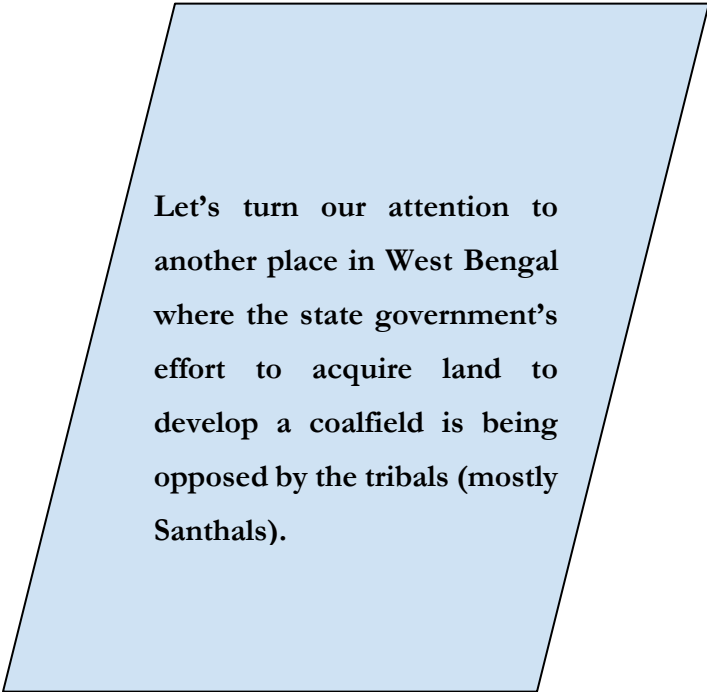
The Andhra Pradesh Capital Region Development Authority (CRDA)—Amaravati’s urban planning agency recognised that the scheme’s success would depend on whether it was inclusive and fair to those being asked to give up their land.

A draft of the scheme was made widely available to the public, with 30 days given for public feedback and objections. Government officials visited various villages to consult residents on the design, size and location of their returnable plots. Landowners could see for themselves the plot subdivision plans for their villages and address their queries to the officials directly. Apparently, the CRDA took the landowners’ feedback seriously, incorporating their suggestions into the revised scheme.

As a result of that, out of the 24 villages approached to give up their land, 22 agreed within four months of the scheme’s announcement. Following this, the returnable land plots were allocated through electronic lotteries for fairness. These lotteries were held at the villages, with landowners receiving confirmation of their plot allocation via mobile message. Their plot allotment letters were also printed and handed out to them immediately, with softcopies made available online.

Though it must be mentioned that (as noted sociologist and legal researcher Kalpana Kannabiren has pointed out) the landowners who came forward to readily handover their land to the government were mostly the absentee landlords. Some disputes still remain. Thus, while some people have resisted and did not join this land pooling approach, their land is being acquired by following the guideline of R& R Act.

- ❖ Gujarat has started this land pooling system with some success. But one must concede that both these states (Andhra Pradesh and Gujarat) are sparsely populated, compared to the states like West Bengal and Kerala. In other words, unlike in Bengal and Kerala, these states have surplus land to deal with for development purposes.
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Let's turn our attention to another place in West Bengal where the state government's effort to acquire land to develop a coalfield is being opposed by the tribals (mostly Santhals).

- **Deocha Pacami is located in Birbhum district**, where, according to government estimates, the largest deposit of coal in India and some good amounts of basalt have been found.
- **The area, i.e. 3400 acres**, which is proposed to come under the newly formed **Bengal Birbhum Coalfield company**, **comprises 12 villages with a total population of 21,000**. They are mostly SC and ST. The local people have been agitating that no ‘Consent’ was sought from the Gram Sabha (as per the Forest Right Act, 2006) before going for the land acquisition process.
- **The Mamata Banerjee government, which had come to power riding on the Singur-Nandigram Land Movements, are now in a fix**. The government says that it is still opposed to any idea of forced acquisition of land. Yet, the state administration, with the help of police and ruling party’s cadres, is doing everything to coerce the local people there to surrender their land.
- Also, the State, while acquiring land for new railway lines or roadways, does not follow the new land acquisition act, and unilaterally goes for the acquisition, resorting to its power as eminent domain.

We must keep in mind the diverse nature of the land holding pattern in various states, and accept that no single model would do for the entire nation.

Another Instance-

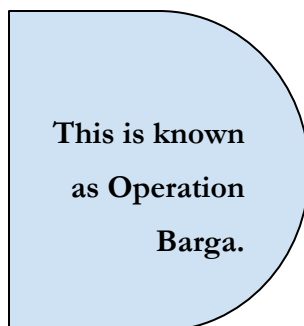
The case of Magarpatta. Located 7 KM from Pune railway station, it is the first project in which farmers pooled their land and created a small township, rather than selling their land to real estate developers. The name of the township came from the clan's name. The township was built after forming a company where all the farmers, who donated their land, are the stakeholders. **This township has a commercial area, residential area, hospital, schools, shopping mall etc. and 30% of the land has been left out for greenery.** I am not saying that this is the ideal model. Perhaps it could be an alternative model for the poor and hapless landowners for protecting their land and livelihood from the all-embracing grab of the developers.

The land is a unique property. With the population growing rapidly, the scarcity of land is growing too. The struggles over land, or over control of its products, is basically at the root of most of the political struggles. In modern day India, sometimes it surfaces in the form of Extremist movement (as in Central India), and on other occasions it takes the shape of Farmers' Movement (as in West Bengal, Punjab-Haryana, West U.P area). Also, in the first decade of 21st century, the country saw a wide range of protest movements against the Corporate-Government nexus to go for a Land Grab Movement in the name of forming SEZ.

The selling and buying of farmland is dependent on a number of factors:

- The kind of price the seller is expected to get.
 - The kind of price the buyer thinks should be appropriate and so on and so forth.
 - Other factors like cultural issues too are there. Land is considered as a symbol of social status and security.
 - Factors like **political intervention** might also come in.
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For instance, **In 1978, the Left Front government In West Bengal had initiated a process of recording the sharecroppers' names with the land they were contracted to till by the landowners.** This was done with a view to protect the sharecroppers from arbitrary eviction from the land by the owners.



**This is known
as Operation
Barga.**

The system entailed, at the time of selling, the land owner would have to make the first offer to the registered sharecropper. If he agrees (obviously at a very low price) to buy the land, then the landowner would have no choice left but to conclude the deal with him.

Thus, eventually, the much-lauded Operation Barga had taken most of the agricultural land in Bengal out of the land market.

Thus, it gets clear to us why the absentee landowners were the first to handover their land to the West Bengal government voluntarily when it tried to set up an auto plant at Singur.

The resistance came mostly from the peasants and the farm labourers who are solely dependent on income from the land. We must remember that the average agricultural land holding in West Bengal is merely 0.77 hectares, compared to Tamil Nadu (0.83 hectares), Gujrat (1.49 Hectares) and Andhra Pradesh (1.06 hectares) respectively. The national average is 1.08 hectares.

While the right to land of the poor and downtrodden in rural India has become tenuous over the last 70 years, the union government has come forward with a slew of laws to strengthen that.

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- These are The Panchayats (Extended to Scheduled Areas Act 1996, known as PESA).
 - The Forest Right Act 2006 and the
 - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (known as R&R Act 2013). But it seems that the issue could not be resolved by these laws alone, in other words, they are inadequate. Thus, it is not surprising that the farmers in Punjab, Haryana and

Western U.P. have been agitating demanding an MSP for their products and mandatory buying by the government from the Mandis.

In nutshell, it can be seen that already some alternative models are being tried in various parts of the country in regard to the use of farm land for commercial, industrial and urbanisation purposes. There could be other models too. But, the success of any model is necessarily based upon one fact: the landowners must also be made stakeholders to the developmental projects. But that is yet to put into practise on principle.

While the State and the corporate world are aggressively approaching the issue of land as their right to acquire for the sake of ‘development’ (e.g. industrialisation, urbanisation, infrastructure etc.) the poor people remain at the receiving end and their options become limited. The State’s declared purpose of acquisition is for public good, and for that it acts as eminent domain. However, it comes under scrutiny by several viewpoints.

In this context, it would be interesting to read an earlier judgment by a two-judge bench of the Supreme Court that delivered an important ruling in the case of Kolkata Municipal Corporation vs. Bimal K Shah and others, wherein it held that merely providing compensation does not justify compulsory acquisition by the state, unless procedural safeguards are followed.

Also, it cautioned that right to property cannot be limited to the twin conditions of a) the acquisition being for a public purpose and; b) payment of compensation. It must give way to more meaningful renditions.

Another Instance

A recent judgment from the Supreme Court might be of some significance.

In an 8:1 majority ruling, a nine-judge Constitution Bench of the Supreme Court on November 5, 2024 held that not all private property can be deemed “material resource of the community” under Article 39(b) of the Constitution for acquisition and redistribution by the government.

After fighting a protracted battle in various lower courts, the Property Owners Association and others had filed a Special Leave Petition before the Supreme Court against the State of Maharashtra.

The Maharashtra government was trying to acquire several urban old and dilapidated properties by invoking Maharashtra

Housing and Area Development Act 1976 and citing the cause as public good. Interestingly, many other parties were involved in that case including the state of West Bengal. **Their case was related to the constitutionality of West Bengal Land Reform Act 1955 and the subsequent amendments made to the Act in 1981 and 1986.**

- Akin to the declaration in the MHADA Act, the West Bengal Land Reforms Act 1955 also contains a declaration that it has been enacted to give effect to the policy of the State towards securing principle specified in clauses b) and c) of Article 39 of the Constitution.
 - The Chief Justice of India (CJI) D.Y. Chandrachud authored the lead majority opinion for himself, and Justice Hrishikesh Roy, J.B. Pardiwala, Manoj Misra, Rajesh Bindal, Satish Chandra Sharma and Augustine George Masih. Justice B.V. Nagarathna partially concurred with it while Justice Sudhanshu Dhulia dissented.
 - The bench considered several issues before them related to the definition of material resources of the community, public good and redistribution etc. and finally came to the above conclusion.
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The bench had also observed that:

Article 37, 38 and 39 of the Constitution of India, which are part of the Directive Principles of State Policy, have to be interpreted by bearing in mind the changing economic policies

of the State and not in a rigid watertight compartment. The flexibility of interpretation is having regard to the dynamic changes in the Indian socio-economic policies meant for the welfare and progress of the people of India.

An interpretation of the aforesaid articles or for that matter any other provision of the Constitution must be viewed in the historical backdrop of the period in which the interpretation was made by this Court during the course of adjudication.

Conclusion

- A few questions can be raised here. Before delivering the judgment, the 9-member Bench had reviewed several other earlier verdicts given by various Benches of this Court. A Case like Keshavananda Bharati vs. Union of India is one of them. And, the Bench in its judgement critiqued some of them. How would they like to justify that? Also, the interpretation varies. Thus, the interpretations of definition of public good, common material wealth, private property etc. keep changing.
- The entire history of evolution of Laws points to that. The older Land Acquisition Act of 1894 had come under severe criticism because there was a paradigm shift in the thinking of the society and the State. So,

one may hope that in near future the State would be forced to enact more pro-people land laws to enable them to have a better livelihood and security.

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