

PROPERTY RIGHTS AND SUSTAINABLE DEVELOPMENT IN INDIA

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Recently, India has witnessed unprecedented economic growth due in large part to an influx of foreign investment capital. But this growth has come with related setbacks. With India's transition from an agricultural to an industrial economy, many farmlands have been acquired without proper planning or rehabilitation for people displaced by the land acquisition. The present discussion addresses these issues, which have been ignored by the State in its process of drafting and implementing land acquisition related policies and legislation. While this framework is developed in the context of recent land acquisition in India, it is relevant to and engages with broader debates surrounding development, environmental regulations, and the paternalism of the Indian polity.

This article analyzes the role of the Indian government in relation to the right to property. Pursuant to an amendment to the Indian Constitution, an individual's right to property is not a fundamental right, allowing the state considerable leeway to act in this sphere. However, recent land acquisitions in India for various developmental projects have established an inherent correlation between land acquisition and concepts such as sustainable development and environmental impact assessment (EIA). These ideas provide a counterbalance to state power in the land acquisition process, undermining the myth of an unfettered state able to acquire land unchecked by the Constitution. This article also analyzes the significance of key phrases such as "public purpose" and how they function as justification for the exercise of eminent domain.

I. RELEVANT STATUTORY LAW

India's economy is one of the fastest growing in the world. At the end of the second quarter of 2006-07, India had a GDP of \$ 2.989 trillion¹ and a growth rate of 9.4%.² This rapid economic growth is reflected in social indicators such as a rise in literacy levels and decline in mortality rates.³ India has also improved its rank by one HDI value in the United

¹ CIA World Fact Book, *available at*

<https://www.cia.gov/library/publications/the-world-factbook/geos/in.html> (last visited May 12, 2009).

² GDP Growth Soars to 9.4 p.c. in 2006-07, *available at*

<http://www.hindu.com/2007/06/01/stories/2007060104891500.htm> (last visited May 12, 2009).

³ United Nation Development Programme, India Human Development Goals, *available at*

http://www.undp.org.in/index.php?option=com_content&task=view&id=175&Itemid=253 (last visited May 12, 2009).

Nations' Development Programme Report for 2006.⁴ However, there have also been many human rights and environmental violations which have been blamed on the government's failure to play a proper and unbiased role in development projects.⁵ In light of the effects of rapid economic development on Indian land use, this article focuses on the environmental, social, economic and legal impact of real estate and infrastructural projects in India from the perspective of the displacement of farmers and indigenous people.⁶

II. BACKGROUND

The right to property, once guaranteed as fundamental by the Indian Constitution under Article 19(1)(f), was abrogated as a consequence of *Keshavanda Bharati v. State of Kerala*.⁷ However, a legal right to property still exists. The State cannot legislate in a manner that would infringe upon an individual's right to livelihood, which is guaranteed as a fundamental right under Article 21.⁸ Acquisition of property and land by the government, however, are generally justified by broader economic goals. This article considers the extent to which the Indian government has been able to successfully strike a balance between environmental and industrial concerns.⁹ The right to property consists of

⁴ United Nation Development Programme, Human Development Report 2006 (2006), available at <http://hdr.undp.org/en/media/HDR06-complete.pdf> (last visited May 12, 2009).

⁵ Arundhati Roy, *The Greater Common Good*, Friends of River Narmada, Apr. 1999, available at <http://www.narmada.org/gcg/gcg.html> (last visited May 12, 2009). In this essay, Roy urges that renewed attention be paid to the suffering of an indigenous population caught in the middle of a development scheme designed to kill them, sanctioned by a government "consummate in its methods of pulverizing those who inconvenience its intentions."

⁶ Citizens' Research Collective, SEZs and Land Acquisition: Factsheet for an Unconstitutional Economic Policy, available at http://www.sacw.net/Nation/sezland_eng.pdf (last visited May 12, 2009). According to this article, an estimated 40 million people of which nearly 40% are Adivasis (tribals) and 25% Dalits (people belonging to schedule caste) have lost their land since 1950 on account of displacement due to large development projects and at least 75% of them still await rehabilitation.

⁷ *Kesavananda Bharati v. State of Kerala*, A.I.R. 1973 S.C. 1461. INDIA CONST. art 21: amended by the Constitution (Forty Fourth Amendment) Act, 1978 removed the "right to property" as a fundamental right and turned it into a legal right.

⁸ *Delhi Transport Corpn. v. D.T.C Mazdoor Congress*, A.I.R. 1991 S.C. 101. The right to livelihood is included in right to life because no person can live without means of living, that is, the means of livelihood.

⁹ See Alhaji B.M. Marong, *From Rio to Johannesburg: Reflections on the Role of International Legal Norms in Sustainable Development*, 16 GEO. INT'L ENVTL. L. REV. 21 (2003-04).

three basic elements: to acquire, to own and possess, and to dispose of property.¹⁰

The Land Acquisition Act was enacted in 1894 with, *inter alia*, the aim of promoting the acquisition of property at a fair and reasonable price for public purposes, such as the construction of roads and canals.¹¹ The acquisition of land by private for-profit companies in locations such as Singur, West Bengal has created significant controversy regarding what qualifies as a "public purpose."¹² Another critical provision of the Act relates to the resettlement and rehabilitation of people affected by developmental projects, discussed below in the context of the Sardar Sarovar Project.

The Indian government, critics charge, has encouraged industrial development in a sporadic and callous manner, resulting in unquantifiable environmental damage and loss of livelihood.¹³ Many applicable government policies, though beneficial in the short-term, have considerable long-term disadvantages.¹⁴ The Supreme Court's interpretation of Article 21 has given rise to an environmental jurisprudence in India, while also strengthening human rights jurisprudence.¹⁵ An analysis of several judgments of various Indian High Courts and the Supreme Court suggests that in acquiring private land for developmental purposes the government should strictly adhere to procedures which envisage appropriate rehabilitation programs and compensation packages for the affected population. Such a property rights regime would better allow the government to balance societal and individual interests. To achieve such a balanced land acquisition policy,

¹⁰ See K. Subba Rao, Property Rights under the Constitution, (1969) 2 SCC (Jour) 1, available at <http://www.ebc-india.com/lawyer/articles/69v2a1.htm> (last visited May 12, 2009). A contextual analysis has been provided by Justice K. Subba Rao of these three elements of Property Rights in the Indian scenario.

¹¹ K.C. Jain, Land Acquisition Act, 1894 Revisited, (1998) 7 SCC (Jour) 9, available at <http://www.ebc-india.com/lawyer/articles/9807a2.htm> (last visited May 12, 2009).

¹² See ACHR Weekly Review, *Atrocities at Singur, India: A Matter of Rights of the Dispossessed* for an analysis of the issue of acquisition of land under the Land Acquisition Act, 1894 by Tata Motors in Singur, available at <http://www.achrweb.org/Review/2006/144-06.htm> (last visited May 12, 2009).

¹³ See generally KAPILDA DEB, DEVELOPMENT AND DISPARITIES: EXPERIENCE FROM SOUTH INDIA (2001).

¹⁴ *Id.*

¹⁵ Subhash Kumar v. State of Bihar, (1991) 1 S.C.C. 598, 604. The Supreme Court observed that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. See Rural Litigation and Entitlement Kendra v. State of U.P., A.I.R. 1985 S.C. 652 (the Indian Supreme Court based its five comprehensive interim orders on the judicial understanding that environmental rights were to be implied into the scope of Article 21).

the government must attend to the basic principles of environmental law – sustainable development and the theory of intergenerational equity – which provide that the natural environment of the planet is held in common by past, present, and future generations.¹⁶

A. *The Concept of Sustainable Development in India*

The term “sustainable development,” coined in the early 1970s at the Tokyo Declaration on Environment and Development, first gained currency at the Stockholm Declaration of 1972.¹⁷ The Brundtland Report of 1987 defines it as “development that meets the needs of the present without compromising the ability of the future generation to meet their own needs.”¹⁸ The Indian judiciary in its interpretations and decisions has articulated principles to further the doctrine of Sustainable Development in the Indian context.¹⁹ In particular, the Indian Supreme Court has identified and incorporated principles such as sustainable development, intergenerational equity, use and conservation of natural resources, environmental protection, the Precautionary Principle, and the Polluter-Pays Principle as part of municipal law.²⁰

The socio-ecological and socio-economic processes of sustainable development work to fulfill human needs while maintaining the quality of the natural environment.²¹ Justice Sabharwal has described sustainable development in broad terms as “the process of overall development of the society, the momentum of which can be sustained till eternity,” commenting that, “In order to ensure this, those engaged in the task of development would naturally guard against such exploitation of resources as leads to their permanent destruction.”²² For instance, India’s high rate of economic growth creates substantial energy demands.²³ Thermal power stations have been supplemented by hydroelectric projects, which have, unfortunately, raised issues relating to deforestation, loss of bio-

¹⁶ ALAN BOYLE & DAVID FREESTONE, INTERNATIONAL LAW AND SUSTAINABLE DEVELOPMENT: PAST ACHIEVEMENTS AND FUTURE CHALLENGES 15-18 (1999).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ State of Himachal Pradesh v. Ganesh Wood Products, A.I.R. 1996 S.C. 149.

²⁰ Vellore Citizens’ Welfare Forum v. Union of India, A.I.R. 1996 S.C. 2715.

²¹ See PRETTY J, BALL ET AL., SAGE HANDBOOK ON ENVIRONMENT AND SOCIETY (2007).

²² See Justice Y. K. Sabharwal, address at the International Conference on Law and Sustainable Development in India’s Energy Economy: Role Of Judiciary In Striking The Right Balance: Evolving Paradigms of Jurisprudence, available at http://www.supremecourtindia.nic.in/new_links/CIH.pdf (last visited May 12, 2009).

²³ All India Mineral Resources, available at <http://ibm.nic.in/reserves.html> (last visited May 12, 2009).

diversity, desertification, soil leaching, and flash floods.²⁴ It is vital to analyze the concrete feasibility of the sustainable development doctrine in a developing country like India where projects like dams and SEZs play a central role and industrial development often fosters disruption. In this context, the government's practice of designating various areas as SEZs without adhering to basic environmental and socio-economic concerns has been heavily criticized.²⁵

B. SEZs: The Indian Perspective

Eminent domain, the State's inherent power to take an individual's private property without the owner's consent, has considerable impact on social and environmental concerns. The property may be taken for government use or be given to third parties who will devote it to public use.²⁶ Some countries require that the government body offer to purchase the property before resorting to eminent domain.²⁷ In India, the Land Acquisition Act is the relevant statutory law with respect to the right of eminent domain. The Indian Constitution allows each state to legislate on matters of land acquisition for a public purpose²⁸ and regional state statutes specify the particular procedures for land acquisition in the concerned state. But, regional land acquisition laws have been strongly criticized by social activists and environmentalists as archaic.²⁹

The Indian government has taken a multi-pronged approach to promoting foreign investment in India³⁰ and pushed ahead with second-generation reforms, including several policy shifts, to achieve this

²⁴ India's Greatest Planned Environmental Disaster: The Narmada Valley Dam Projects, available at <http://www.umich.edu/~snre492/Jones/narmada.html> (last visited May 12, 2009).

²⁵ These areas are there within the preview of Environmental Impact Assessment but there are lots of fallacies associated with the whole procedure which will be analyzed in the later part of the discussion.

²⁶ See T.M. COOLEY, A TREATISE ON CONSTITUTIONAL LIMITATIONS 531 (2005). "Public Use" implies a possession, occupation and enjoyment of the land by the public or public agency.

²⁷ See <http://www.tmbc.gov.uk/cgi-bin/buildpage.pl?mysql=1019> (last visited May 12, 2009).

²⁸ As per the Constitution of India, acquisition or requisitioning of property, except for the purposes of the Union is subject to the provisions of entry 36 of List II of the Seventh Schedule.

²⁹ Antara Das, *Amend Land Acquisition Act: Patkar*, The Hindu Businessline, Oct. 28, 2006, available at <http://www.thehindubusinessline.com/2006/10/28/stories/2006102804911100.htm> (last visited May 12, 2009).

³⁰ Manual of Foreign Direct Investment in India (2003), available at http://dipp.nic.in/manual/manual_0403.pdf (last visited May 12, 2009).

objective.³¹ One major reform was the introduction of SEZs through the Special Economic Zone Act, 2005 which qualifies specific geographical regions with economic laws and lenient investment incentives in comparison to other parts of the country.³² For instance, the Special Economic Zone Act, 2005 includes lucrative provisions such as 100% tax exemptions on export profits for the first five years.³³ These areas are used to set up factories, information technology parks, office spaces, warehouses, residential apartments, and malls.³⁴ They are expected to offer high quality infrastructure facilities and support services, along with permitting the duty-free import of capital goods and raw materials. Though, from an economic perspective, SEZs create employment opportunities for the local population,³⁵ they have also led in many states to massive displacement of population from agricultural regions.³⁶ Failure to resettle and adequately rehabilitate has a negative impact on displaced persons, especially the tribal population of the region.³⁷ Insofar as SEZs are concerned, certain strict guidelines should be laid down, such as ascertaining the type and amount of agricultural land that may be acquired at any given point in time and the amount of compensation due to the displaced population.

³¹ *Id.*

³² Special Economic Zone Act (2005), available at <http://www.indoresez.nic.in/doc/SEZ%20Act,%202005.pdf> (last visited May 12, 2009).

³³ *Id.*

³⁴ See generally RAJKUMAR S. ADUKIA, MANUAL ON SEZ, FT & WZ, IFSC: DEVELOPERS AND ENTREPRENEURS (2006).

³⁵ Background note Special Economic Zones in India, available at <http://sezindia.nic.in/HTMLS/about.htm> (last visited May 12, 2009).

³⁶ The Nandigram SEZ controversy, started when the West Bengal government decided that the Salim Group of Indonesia would set up a chemical hub under the SEZ policy at Nandigram, a rural area in the district of Purba Medinipur. The SEZ project planned at Nandigram in West Bengal foundered when angry villagers from the several villages demonstrated a protest rally at the District Collector's office demanding that their land should not be acquired for the SEZ project.

³⁷ The Hindu, *Opposition to POSCO Mounts*, available at <http://www.hindu.com/2007/12/01/stories/2007120153170300.htm> (last visited May 12, 2009). On June 22, 2005, the government of Orissa signed a Memorandum of Understanding with the Korean Pohang Steel Company to set up a steel plant at Paradeep in Jagatsinghpur District. The investment of \$12 billion represents the largest ever foreign direct investment in India. The project will allegedly displace around 4,000 indigenous/tribal families.

III. THE LAND ACQUISITION ACT & THE ROLE OF THE DRAFT NATIONAL DISPLACEMENT POLICY OF 2006

We turn here to the key statute in this area, the Land Acquisition Act. Land acquisition laws have been strongly criticized by social activists and environmentalists as granting authorities too much discretion.³⁸ Given the frequent negative effects, namely, the failure to resettle and adequately rehabilitate displaced persons, especially the tribal population of the region,³⁹ insofar as SEZs are concerned, certain strict guidelines should be laid down, such as fixing the percentage of agricultural land that may be acquired at any given point in time and providing for the due compensation of displaced persons.

A. *Acquisition Procedures under the Land Acquisition Act*

Land acquisition has inspired great controversy in India. The phrase conjures up stymied infrastructure plans, months of political wrangling over SEZs, damaging flashpoints like Nandigram, and, at best, interminable public discussion, legislative action, and court proceedings that rarely yield outcomes that satisfy everybody.⁴⁰ The Land Acquisition Act was created to balance the tension between private property rights and public purposes over time, as infrastructure needs grow and the economy evolves.⁴¹ As mentioned above, certain procedural fallacies exist in acquiring land under the Act, which bear more detailed analysis.

³⁸ Very often it is contested in law, whether the purpose which land is intended to be acquired is a 'public purpose' also technique of valuation of real property, which facilitate the assessment of compensation to be paid for the lands and buildings are not well developed. It is often alleged that assessment of the compensation to be paid and betterment to be collected are often hampered, as records of sales and purchases of lands and buildings and 'registers of title' are not kept accurate and up to date. See Antara Das, *supra* note 29.

³⁹ The Hindu, *supra* note 37.

⁴⁰ The Nandigram SEZ controversy, *supra* note 36.

⁴¹ "The origins of the land acquisition act can be traced to 1824, when the British colonial power felt the need to codify in law what was earlier undisguised forcible seizure of land. The Bengal Regulation I of 1824 was based on the principle of 'eminent domain' - the power of the state to take any private property for public use - and enabled land to be acquired for roads, canals and other public works. This was extended to cover land acquisition for the railways in 1850. Separate laws that had evolved in the territories around Calcutta, Bombay and Madras were consolidated into a single law applicable to all the territories of British India by 1857. This law evolved over a period of time under British rule and took the consolidated form of the 'Land Acquisition Act 1894' which has remained almost unchanged to this day." Kannan Kasturi, *SEZs: A history of injustice and abuse*, India Together, Oct. 1, 2007, available at <http://www.indiatogether.org/2007/oct/eco-sezhist.htm> (last visited May 12, 2009).

Section 4 of the Land Acquisition Act poses a questionable procedural rule. Section 4(1) is designed to enable interested persons to object to an acquisition under Section 5A,⁴² as well as to enable them to seek immediate remedy from a court against acquisition of their land on any of the judicially recognized grounds.⁴³ Section 4(1) contemplates preliminary notification for a proposed acquisition, but does not require service of a copy upon the person concerned. Instead, it requires only the publication of the preliminary notification for acquiring land in the Official Gazette, in two daily newspapers circulating in that locality (one in the regional language), and at convenient places in the locality, where the collector must publish the substance of the notification.⁴⁴

Section (3) of the Act is also problematic. Section 3(f) attempts to define "public purpose," but its loose language creates an opportunity for developers to cloak their projects with a public purpose and take advantage of the many benefits afforded by law to acquisitions that are deemed related to the public good.⁴⁵ For example, a set of requirements for acquisitions with a private purpose under Section 40 need not be followed in an acquisition for a public purpose.⁴⁶ As was and still is often

⁴² "Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, [within thirty days from the date of the publication of the notification], object to the acquisition of the land or of any land in the locality, as the case may be." The Land Acquisition Act, No. 1 of 1894; India Code (1993), § 5A, available at <http://dolr.nic.in/Acts&Rules/LandAcquisitionAct1894.htm> (last visited May 12, 2009).

⁴³ Judicially recognized grounds are mala fide action, complete lack of any material for acquiring the land, non-application of mind, unsuitability or excessiveness of the land, etc. See *Om Prakash v. State of Uttar Pradesh*, A.I.R. 1998 S.C. 2504; *State of Haryana v. Raghubir Dayal*, A.I.R. 1995 S.C. 46; *State of Punjab v. Gurdial Singh*, A.I.R. 1980 S.C. 319; *Narayan Govind Gavate v. State of Maharashtra*, A.I.R. 1977 S.C. 183.

⁴⁴ In consideration of the reality, the Standing Committee on Urban and Rural Development of Parliament (10th Lok Sabha) has recommended that "the affected person must also get a copy of the notification by registered post." Arun K. Barthakur, *Compliance with Section 4(1) of the Land Acquisition Act: Mohan Singh And Raghubir Dayal Need Reconsideration*, The Practical Lawyer, Aug. 2003, at 77, available at <http://www.ebc-india.com/lawyer/articles/2003v8a9.htm>.

⁴⁵ Section 3(f) states that "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." In many instances land has been acquired by the government under this clause for private companies, even though section 3(f)(viii) states that these provisions are not applicable for acquisition of land for private companies. (The Land Acquisition Act, No. 1 of 1894; India Code (1993), § 3).

⁴⁶ Under Section 40 of the Land Acquisition Act, "consent for acquiring land for private purposes shall not be given unless the [appropriate Government] be satisfied. [either on the report of the Collector under section 5A, sub-section (2), or] by an enquiry held as hereinafter provided:

done, even after the amendment of the Act, one may purport to contribute to the acquisition costs and compensation partially with public revenue and thus import a “public purpose” to an acquisition. Such an acquisition would be “validly and legally” done under the provisions of Part II of the Act, when the acquisition may actually be for a private purpose and should have been effected under Part VII.⁴⁷ As a result, land may eventually be acquired by private companies as a special economic zone under Section 3f(3) for development purposes.⁴⁸

B. The Compensation Mechanism under the Land Acquisition Act and the Role of Draft National Displacement Policy of 2006

The procedures dealing with compensation under the Land Acquisition Act have also been controversial. Under Section 11, the amount of compensation is determined subjectively by the collector.⁴⁹ However, when the final amount is decided by a court, the court takes into consideration: the market value of the land at the time of publication of the notification, damage sustained by the original land owner including the loss of any standing crops or trees that may be on the land at the time of taking possession and possible lost earnings, and any reasonable expenses and incidental charges the original owner incurs in changing his residence or business consequent to the land acquisition.⁵⁰ The effective

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or

[(aa) that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or]

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.” *Id.*, § 40.

⁴⁷ The distinction between public purpose acquisitions and private purpose acquisitions remains vague despite judicial interpretation of relevant provisions. *See generally* Devinder Singh v. State of Punjab, (2008) 1 S.C.C. 728; Pratibha Nema v. State of Madhya Pradesh, A.I.R. 2003 S.C. 3140.

⁴⁸ According to Section 3(f)(vii), land is acquired for a “public purpose” if the acquisition is sponsored by the government or with the prior approval of the appropriate government. (The Land Acquisition Act, No. 1 of 1894; India Code (1993), § 3). This provision is often misused because government authorities can acquire land and resell it to private companies.

⁴⁹ The collector shall compensate at the rate which in “his opinion should be allowed for the land.” *Id.* § 11.

⁵⁰ These particular factors are to be taken into consideration while determining compensation: “first, the market-value of the land at the date of the publication of the notification for acquiring land; secondly, the damage sustained by the person interested, by reason of the

date for calculating compensation for the land acquired is based on the publication date of the preliminary notification.

Before analyzing the mechanism for calculating compensation it is essential to examine related statutory provisions. First, is Section 11A of the Act, which requires the collector to declare an award within 2 years from the publication of the preliminary notification, without which the acquisition proceedings lapse.⁵¹ Second, is Section 17 of the Act. Under Section 17(1), whenever the appropriate government organ directs the collector to acquire land in cases of urgency, though no award has been made, the collector may, from fifteen days after the publication of the preliminary notification, take possession of the land.⁵² Such land thereupon vests absolutely in the government, free from all encumbrances. Other subsections of Section 17 are designed to ensure justice to people whose land is acquired under the Section 17(1) urgency clause. Section 17(3) requires the collector to compensate the interested persons for the standing crops and trees, if any, on such land and for any other damage caused by sudden dispossession at the time of taking possession.⁵³ Section 17(3-A) requires the collector to tender eighty per cent of the compensation payment for such land as estimated by him to the persons entitled thereto before taking possession of any land under sub-section (1) or (2).⁵⁴ The legislature thus made the taking of

taking of any standing crops trees which may be on the land at the time of the Collector's taking possession thereof; thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of serving such land from his other land; fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings; fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land." *Id.* § 23.

⁵¹ *Id.* § 11A.

⁵² *Id.* § 17(1).

⁵³ "In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in Section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provision herein contained." *Id.* § 17(3).

⁵⁴ "Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3),—

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto; and

possession a consequential proceeding to prior compliance with sub-sections (3) and (3-A).

However, even though the language used in Section 17, “a Collector shall,” makes it mandatory for the collector to compensate before or at the time of taking possession, in practice it is rarely followed. Moreover, the two year limitation period under Section 11A is not applicable to acquisitions in cases of urgency by the government.⁵⁵ Hence, no checks exist on this power. In a recent case, Judge Bharucha stated that, “eighty per cent of the estimated compensation was not paid to the appellants although Section 17(3-A) required that it should have been paid before possession of the said land was taken *but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the first respondent.*”⁵⁶ This judgment came under severe criticism from the Bar and jurists, but nonetheless illustrates the operation of loopholes in the Act.⁵⁷

The most controversial aspect of the Land Acquisition Act with respect to compensation mechanisms is the lack of a definition for the term “compensation.” Nevertheless, certain criteria are fixed by Section 23 of the Act, such as market value, standing crops during possession, and any damage sustained during possession.⁵⁸ In addition to the market value of the land, landowners are entitled to a thirty per cent premium due to the compulsory nature of the acquisition.⁵⁹ This position was further supported by the Law Commission, which considered a payment of market value insufficient to reinstate the landowner to the prior position.⁶⁰ The requirement of the thirty percent premium is, accordingly, intended to compensate for the amount needed for the landowner’s rehabilitation and to take care of otherwise unaccounted damages.⁶¹

(b) pay it to them unless prevented by some one or more of the contingencies mentioned in Section 31 sub-section (2), and where the Collector is so prevented, the provisions of Section 31 sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.” *Id.* § 17(3A).

⁵⁵ *Id.* § 11A.

⁵⁶ Satendra Prasad Jain v. State of Uttar Pradesh, A.I.R. 1993 S.C. 2517.

⁵⁷ See, e.g., Arun K. Barthakur, *Land Acquisition Under the Urgency Provisions — Need for Clarity in Law*, The Practical Lawyer, Apr. 2002, at 37, available at <http://www.ebc-india.com/lawyer/articles/2002v4a4.htm> (last visited May 12, 2009).

⁵⁸ Cooley, *supra* note 26.

⁵⁹ *Id.*

⁶⁰ K.C. Jain, *Interest on Solatium: a Judicial Controversy*, The Practical Lawyer, Mar. 1997, at 11, available at <http://www.ebc-india.com/lawyer/articles/97v3a2.htm> (last visited May 12, 2009).

⁶¹ *Id.*

In Section 23 of the Land Acquisition Act, a significant difference exists between rehabilitation and compensation.⁶² Mere monetary compensation does not amount to rehabilitation; other factors must be taken into account.⁶³ For example, if the West Bengal government disburses various amounts of money to Singur landholders on account of compensation, but land has been taken from many before they received the payment from the government.⁶⁴ The question then arises as to the status of those who have not received compensation from the government. Opponents of the acquisition claimed that under the West Bengal Land Reform Act of 1955, the real cultivators, i.e., Bargadars, had definite rights and interests in the agricultural land and crops cultivated by them.⁶⁵ However, the recorded land owners – who do not actually work on the land – received the government compensation, leaving the struggling cultivators unpaid.⁶⁶

In February 2004, to deal with this situation, the government of India promulgated the "National Policy on Resettlement and Rehabilitation for Project Affected Families." Two years later, the government of India issued the Draft National Rehabilitation Policy 2006 (Draft Policy). The preamble of the Draft Policy recognizes "traumatic, psychological and socio-cultural consequences on the displaced populations which call for affirmative state action for protecting their rights," the need for "active participation of affected persons," "Environmental Impact Assessment (EIA)," Social Impact

⁶² *Id.*

⁶³ Cooley, *supra* note 26.

⁶⁴ Singur is a small town in Hooghly district in the Indian state of West Bengal. Tata Motors have constructed their car factory at Singur. The Tata Motors site was the most fertile one in the whole of the Singur, and the Singur block, in turn, is among the most fertile in West Bengal. It marked the beginning of the public outrage and the debacle between Industrialization and agriculture. The intelligentsia, economists, politicians and sociologists came forward to find solutions. Their overwhelming opinions supported by facts, statistics, expert opinions, and past experiences at home and abroad conclusively point to the fact that the government has erred. See generally Amitadyuti Kumar, *Headline Singur*, Countercurrents.org, Dec. 30, 2006, <http://www.countercurrents.org/ind-kumar301206.htm>; *State files Singur affidavit*, The Times of India, June 8, 2007, available at <http://timesofindia.indiatimes.com/articleshow/2107690.cms> (last visited May 12, 2009).

⁶⁵ *Appeal from MASUM (Human Rights Organisation) on Police Violence*, Feb 4, 2007, Sanhati (2007), available at

http://sanhati.com/wp-content/uploads/2007/03/leaflet_masum.pdf (last visited May 12, 2009).

⁶⁶ *Id.*

Assessment (SIA)," "the desirability and justifiability of each project," and a "Tribal Development Plan."⁶⁷

The call for "active participation of affected persons" in the process of resettlement and rehabilitation is not reflected in the process of development of the project because the affected persons do not have the right to be consulted before their land is finalized as the project site. The Draft Policy also calls for preparation of SIA and EIA reports for all projects involving physical displacement of 400 or more families en masse in plain areas, or 200 or more families in tribal or hilly areas as defined in Schedule V and Schedule VI of the Constitution of India.⁶⁸ However, there is no provision for including the affected persons or their representatives while conducting the EIA or SIA. The Draft Policy provides for the constitution of a "multi-disciplinary expert group" to examine the EIA and SIA reports.⁶⁹ Members of the expert group are nominated by central and state governments.⁷⁰ There is no accountability, independence or transparency in the process of examination of the EIA and SIA reports. There is also no provision for consultation with the affected families during the final preparation of the EIA and SIA reports prior to their submission to the expert group for examination.⁷¹

Contrary to its principal objective, "to minimize displacement," the Draft Policy allows further displacement in the process of resettling

⁶⁷ A year later, the National Rehabilitation and Resettlement Policy of 2007 was promulgated. This paper is primarily focused on the 2006 Draft Policy as most of the 2007 Policy remains the same as the 2006 Draft policy. See generally *India's failed National Rehabilitation and Resettlement Policy, 2007*, Asian Centre for Human Rights Weekly Review, Dec. 19, 2007, available at <http://www.achrweb.org/Review/2007/198-07.html> (last visited May 12, 2009).

⁶⁸ Areas specified in schedule V and VI of the Indian Constitution are considered underdeveloped and are given special privileges. INDIA CONST. sch. V and VI.

⁶⁹ See *Draft National Development, Displacement and Rehabilitation Policy, 2006* (2006), available at www.dolr.nic.in/NRP2006-draft.pdf (last visited May 12, 2009).

⁷⁰ Clause 4.1 of the Draft Policy states that states that "the appropriate Government shall ensure that a Social Impact Assessment (SIA) study is carried out in the proposed affected areas in such manner as may be prescribed." *Id.*

⁷¹ According to the Environmental Impact Assessment Notification-2006, the public agency or authority nominated under the Act reports to the regulatory authority concerned that owing to the local situation, it is not possible to conduct the public hearing in a manner which will enable the views of the concerned local persons to be freely expressed, it shall report the facts in detail to the concerned regulatory authority, which may, after due consideration of the report and other reliable information that it may have, decide that the public consultation in the case need not include the public hearing. See The Ministry of Environment and Forests, *The Environmental Impact Assessment Notification-2006*, Sept. 14, 2006, available at <http://envfor.nic.in/legis/eia/so1533.pdf> (last visited May 12, 2009) [hereinafter EIA Notification].

the project affected families.⁷² Clause 6.11(b) of the Draft Policy states, "If sufficient Government land is not available, then land may be purchased or acquired under the Land Acquisition Act, 1894 for the purposes of resettlement and rehabilitation scheme/plan."⁷³ This implies that the State has the power to evict anyone from his or her land in order to resettle the project affected persons. The Draft Policy also states that the State can use its urgency powers under the Land Acquisition Act to evict such people. However, the Draft Policy is silent on the rehabilitation of these displaced persons. Rather than solving the problem, this threatens to create an endless cycle of displacement.

Regarding compensation, Clause 7.7 of the Draft Policy provides that in case of the allotment of wasteland and degraded land in lieu of acquired land, each affected family will receive a one-time financial assistance payment of 10,000 Rupees per hectare for land development, in effect a maximum of 20,000 Rupees in compensation for an affected family.⁷⁴ Similarly, in the case of allotment of agricultural land, a one-time financial assistance of a mere 5,000 Rupees per affected family is provided. Under these limited compensation provisions, as well as the Land Acquisition Act of 1894, the government has been acquiring lands and selling these appropriated lands to make profits.⁷⁵

There is little guarantee for future employment for the affected families under the Draft Policy. According to Clause 7.11, employment will be provided by the requiring body only to those affected families who have lost their employment due to the project. Such employment is also "subject to availability of vacancies and suitability of the affected person for the employment."⁷⁶ Clause 7.12.1 states that the affected families who have not been granted employment or agricultural land are entitled to a rehabilitation grant equivalent to 750 days minimum agricultural wages.⁷⁷ According to Clause 7.15, the affected families in acquisitions for projects relating to railway lines, highways, transmission

⁷² This can result in further displacement of non-project affected persons. See Draft National Development, Displacement and Rehabilitation Policy, 2006, *supra* note 69.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ In India, instead of acquiring land for developmental projects, the government tends to do so for the benefit of the real estate sector. See generally R. Vaidyanathan, *Land for SEZs – Government as Real-estate Broker*, The Hindu Business Line, Sept. 7, 2006, available at <http://www.thehindubusinessline.com/2006/09/07/stories/2006090702151000.htm> (last visited May 12, 2009).

⁷⁶ P. ARUNACHALAM, SPECIAL ECONOMIC ZONES IN INDIA: PRINCIPLES, PROBLEMS AND PROSPECTS 178-185 (2008).

⁷⁷ See Draft National Development, Displacement and Rehabilitation Policy, 2006, *supra* note 69.

lines, and laying pipelines will not be entitled to any resettlement or rehabilitation package.⁷⁸ Families without employment will be offered just 10,000 Rupees.

IV. THE ROLE OF ENVIRONMENTAL IMPACT ASSESSMENT & SOCIAL IMPACT ASSESSMENT IN DEVELOPMENT PROJECTS

A. *Environmental Impact Assessment (EIA)*

An Environmental Impact Assessment (EIA) can be defined as an effort to anticipate, measure, and weigh the socio-economic and bio-physical changes that may result from a proposed project.⁷⁹ It assists decision-makers in preparing an environmental cost-benefit analysis of a proposed project. In this framework, where the benefits sufficiently exceed the costs, a project is considered environmentally justified.⁸⁰ In 1994, the Environmental Protection Act of 1986 made EIAs mandatory with the following four objectives: (1) prediction of the environmental impact of projects; (2) finding ways to reduce adverse impacts; (3) shaping projects to suit local environment; and (4) presentation of predictions and options to decision-makers.⁸¹

Until 1994, EIA clearance was an administrative requirement for large government and public sector projects.⁸² The Ministry of Environment and Forests mandates a public hearing with further review by a committee of experts in certain cases.⁸³ According to Schedule II of the Ministry of Environment and Forests notification, an EIA report is expected to cover at least the following matters:

A description of the proposed activities;

A description of the base environmental and climatic conditions and potential affected environment, including specific information necessary to identify and assess the environmental effect of the proposed activities

An analysis of the land use and land use change, waste generation, water consumption (and the existing balance), power

⁷⁸ *Id.*

⁷⁹ SHYAM DIVAN, ARMIN ROSENCRAZ, MARTHA L. NOBLE, ENVIRONMENTAL LAW AND POLICY IN INDIA: CASES, MATERIALS, AND STATUTES 344 (1991).

⁸⁰ *Id.* at 417.

⁸¹ The Environment Protection Act, No. 29 of 1986; India Code (1993).

⁸² See Divan, *supra* note 79, at 419- 421.

⁸³ See Divan, *supra* note 79, at 418.

consumption along with the social and health impacts (in terms of number of people displayed etc)

A description of the practical activities as appropriate

An assessment of the likely or potential environmental impacts of the proposed activity (like air pollution, noise generation) and the alternatives, including the direct or indirect, cumulative, short-term, and long-term effects;

A risk assessment report and disaster management plan to mitigate adverse environmental impacts of proposed activity and assessment of those measures;

An indication of the likely area to be affected by the proposed activity or its alternatives;

A detailed environmental feasibility report of all the information provided.

In 1997, the Ministry of Environment and Forests introduced further changes to the requirements.⁸⁴ In addition to the mandatory public hearing provided for in 1994, a separate notification prescribed procedures for EIA clearance of certain types of thermal power plants with the relevant state government.⁸⁵ Moreover, during the same year, Parliament established by statute the National Environment Appellate Authority, to be headed by a retired judge of the Supreme Court of India or a Chief Justice of a high court and comprised of other experts with technical knowledge on ecological matters.⁸⁶ They are empowered to hear appeals filed by those aggrieved by orders granting environmental clearance in an area where industrial activity is restricted under section 3(1) and Section 3(2)(v) of the Environmental Protection Act.⁸⁷ The jurisdiction of the Authority was further extended to cases that require scientific and technical investigations by the Apex court's decision in *A.P. Pollution Control Board v Prof. M.V. Nayadu*.⁸⁸ In 2006, the Ministry of Environment and Forests designed new guidelines for EIA

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Under section 3(1)(1) of the Environmental Protection Act, the central government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environment pollution. According to §3(2)(v) of the same act, restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. (The Environment Protection Act, No. 29 of 1986; India Code (1993), § 3).

⁸⁸ See *A.P. Pollution Control Bd. v Prof. M. V. Nayudu*, A.I.R. 1999 S.C. 812. (holding that the High Courts and the Supreme Court may refer cases requiring scientific and technical investigations to the Authority).

notification.⁸⁹ Although the new guidelines tend to yield amicable solutions, environmental groups alleged that the new norms unduly benefited the construction sector.⁹⁰ Environmental groups further alleged that environmental groups, Panchayats, and other stakeholders had not been consulted before the new norms were drafted and that only industry representatives were taken into confidence.⁹¹ Moreover, public hearings and public consultations have other limitations because the affected people are generally not adequately acquainted with the pros and cons of a given project so as to effectively express their views on it.⁹² Although there are provisions regarding public hearing, the hearing remains under the sole discretion of the public agency nominated to conduct it.⁹³

The 2006 EIA notification guidelines divided the process of granting environmental clearance into four stages: (1) screening, (2) scoping, (3) public consultation, and (4) appraisal. Various problems associated with the process have arisen. For example, in the screening process, the main goal is to differentiate between projects within category B, which are to be cleared by the State Environmental Impact Assessment Agency.⁹⁴ The decision as to whether a project in this category needs an EIA to be conducted (B1) or not (B2) is to be made on the basis of the information provided by the applicant, who is also the project proponent, and does not call for an objective investigation done by the Agency.

Further, the EIA notification is based on a clearance-giving mechanism with no assurance of compliance. Unlike the 1994 notification, which mentions an independent monitoring agency, the 2006 notification does not require the existence of any such agency. The 2006 notification only requires a semi-annual compliance report. Another concept prevalent before mid-1995 was the "conditional clearance

⁸⁹ EIA Notification, *supra* note 71.

⁹⁰ Construction projects need not go through the stages of screening or scoping because they are exempted from the EIA requirement. They are also not required to have a public consultation. They only need to be cleared by the State Environmental Impact Assessment Agency on the basis of the application form. See *Centre Notifies New Environment Norms*, The Hindu, Sept. 15, 2006, available at <http://www.hinduonnet.com/2006/09/15/stories/2006091514660100.htm> (last visited May 12, 2009).

⁹¹ Panchayats are self governing institution at rural level in India. *Id.*

⁹² The 2006 EIA notification requires that a draft EIA report instead of a final EIA be available to the locally affected persons at the time of the public hearing. In addition, project proponents have sought EIA clearance on incomplete and misleading data. Under these practices, the locally affected persons often only have access to inadequate information. EIA Notification, *supra* note 71.

⁹³ *Id.*

⁹⁴ *Id.*

granted to river valley and hydro power projects.”⁹⁵ The conditions frequently pertained to compensatory forestation, rehabilitation of displaced persons, and the treatment of the catchments and command areas to preserve bio-diversity. Reviewing the record of implementation, it appears that such conditions existed in theory only.⁹⁶

Unfortunately, both the procedural and legislative aspects of EIA have significant problems.⁹⁷ With those problems in mind, we make certain suggestions below for steps that environmentalists and legislators might take to reduce the traditional conflict between development and environment. The key instrument for reaching an amicable solution between environment and development is the concept of Social Impact Assessment, which has been incorporated by the 2006 EIA notification guidelines, Draft National Displacement Policy, 2006, and the National Rehabilitation and Resettlement Policy, 2007.

B. *Social Impact Assessment*

An undeniable link exists between EIA and SIA. Impacts on the social environment resemble bio-physical impacts in many ways. An SIA can be defined as the process of analyzing, monitoring, and managing the intended and unintended social consequences, both positive and negative, of planned interventions and any social changes brought about by those interventions.⁹⁸ Its primary purpose is to bring about sustainable development co-existing with an equitable, biophysical environment. Rehabilitation, discussed above, represents a crucial aspect of SIA.

The concept of SIA came into relevance only after great public outcry over the Narmada issue. SIA's integration into the Indian environmental framework in India remains at a nascent stage. Therefore, it would be unwise to analyze it in relation to EIA without assessing its realities on the ground. A comparative analysis of similar land acquisition scenarios in other Asian countries would further enrich the present discussion.

⁹⁵ See Divan, *supra* note 79, at 420.

⁹⁶ *Id.*

⁹⁷ See Centre Notifies New Environment Norms, *supra* note 90; see generally Divan, *supra* note 79, at 418.

⁹⁸ International Association for Impact Assessment, *International Principles for Social Impact Assessment*, May 2003, available at <http://www.iaia.org/publicdocuments/special-publications/SP2.pdf> (last visited May 12, 2009).

C. *Comparative Analysis of Sustainable Development in India and Other Asian Countries*

The concept of sustainable development faces grave threats in India as well as in other Asian countries, where economic interests in developmental and industrial projects are in conflict with environmental concerns. In India, the Sardar Sarovar Project, the largest dam on the Narmada River, has been the most prominent dam development controversy, relating to the final height of the dam and the allocation of costs etc.⁹⁹ Overall, due to related displacements by the canal system and other allied projects, at least 1 million people were expected to be affected by this project.¹⁰⁰ In order to settle various disputes related to the project, the Government established a tribunal in October, 1969. Upon the review of relevant data on environmental, social, and economic impact, the Tribunal arrived at its final order in August, 1978.¹⁰¹

Other Asian nations, like China, have also witnessed the results of inadequate safety measures and lack of proper planning along with economic and industrial development, in such projects as the Three Gorges Dam.¹⁰² Critics have long warned that the dam, the world's largest hydro-electric project, could cause huge environmental damage and the displacement of about 400,000 people,¹⁰³ a scenario similar to the Sardar Sarovar Project. Although displacement caused by the Three Gorges Dam has been a prime concern in China, other instances, like the Great Chinese Land Grab, is "hurtling on" its way without any major hindrance, "flouting official diktats, benefiting the rich and robbing poor farmers of cropland in a vast nation that has relatively little arable land."¹⁰⁴ A similar

⁹⁹ Komala Ramchandra, *Sardar Sarovar: An Experience Retained*, 19 HARV. HUM. RTS. J. 275 (2006) available at <http://www.law.harvard.edu/students/orgs/hrj/iss19/ramachandra.shtml> (last visited May 12, 2009).

¹⁰⁰ *Id.*

¹⁰¹ Narmada Bachao Andolan v. Union of India, A.I.R. 2000 S.C. 3751.

¹⁰² The Three Gorges Dam is a hydroelectric river dam on the Yangtze River in Hubei, China. The total electric generating capacity of the dam will reach 22,500 megawatts, at which point it will be the largest hydro-electric power station in the world by capacity. See generally China Three Gorges Project, <http://www.ctgpc.com>.

¹⁰³ "Environmental damages caused by the dam included landslides caused by erosion on the steep hills around the dam, conflicts over land shortages, deteriorating quality of drinking water and pollution seeping from submerged industrial sites. As attempts to relocate peasants to the cities had drastic consequences too because many of them are turned into homeless labourers, as many people were not provided the land they were promised, or compensation they were promised." *Millions Forced Out by China Dam*, BBC News, Oct. 12, 2007, available at <http://news.bbc.co.uk/2/hi/asia-pacific/7042660.stm> (last visited May 12, 2009).

¹⁰⁴ Yunfan Xia, *The Great Chinese Land Grab is on*, Asia Times, July 17, 2004, available at <http://www.atimes.com/atimes/China/FG17Ad03.html> (last visited May 12, 2009).

situation has been observed in southern Guangdong province where allegedly illegal land grabs in nearby villages led to great huge rural unrest.¹⁰⁵ Such manifestly unfair and unjust practices attract thousands of protests every year, and villagers whose land has been unfairly acquired often direct their anger at corrupt local officials and real estate developers.¹⁰⁶

V. CONCLUSION

Similar occurrences exist outside India, many in Asian countries like Vietnam and Cambodia.¹⁰⁷ As Vietnam opens its economy to the outside world, it is witnessing a phenomenon familiar to China – misappropriation of land by powerful officials and the large-scale eviction of peasants and poor people from their land in the name of development.¹⁰⁸ Compensation reeking of corruption surrounding land transfers has become a critical issue in Vietnam.¹⁰⁹ The situation in Cambodia is even worse, as the country, a victim of repeated civil wars, experiences frequent land grabs carried out with the involvement of high-ranking government officials and army generals.¹¹⁰ Land grabbing in Cambodia has increased precipitously since 2004 and is widespread throughout the country.¹¹¹ Where there had been 148 complaints of land grabbing recorded by a human rights group in 2003, the same group received 356 such complaints in 2004.¹¹² The use of force and intimidation in these illegal evictions is common. When this fails to deter victims, complicit government officials have pressed criminal charges on

¹⁰⁵ *China Village Fury at 'Land Grab'*, BBC News, Nov. 10, 2006, available at http://news.bbc.co.uk/1/npda/ukfs_news/hi/newsid_6135000/6135156.stm (last visited May 12, 2009).

¹⁰⁶ *Id.*

¹⁰⁷ See The Asian Human Rights Commission (AHRC), *Cambodia: Effective Measures Must be Taken to Stop Massive Land Grabbing*, Mar. 8, 2006, available at <http://www.ahrchk.net/statements/mainfile.php/2006statements/446> (last visited May 12, 2009).

¹⁰⁸ See Thi Lam, *Peasant Unrest Threatens Communist Rule in Vietnam*, Oct. 10, 1997, <http://www.pacificnews.org/jinn/stories/3.21/971010-vietnam.html> (last visited May 12, 2009).

¹⁰⁹ See Tran Dinh Thanh Lam, *The Great Vietnam Land Grab*, Asia Times Online, Aug. 10, 2006, available at http://www.atimes.com/atimes/Southeast_Asia/HH10Ae01.html (last visited May 12, 2009).

¹¹⁰ See The Asian Human Rights Commission (AHRC), *Cambodia: Rule of Law is More Effective in Eradicating Land Grabbing*, Apr. 16, 2007, available at <http://www.ahrchk.net/statements/mainfile.php/2007statements/999/> (last visited May 12, 2009).

¹¹¹ The Asian Human Rights Commission (AHRC), *supra* note 107.

¹¹² *Id.*

them or jailed them.¹¹³ On March 3, 2007, Cambodian Prime Minister Hun Sen promised to use full power to eradicate the land grabbing that had long plagued the country.¹¹⁴ But, while the government has taken steps to mitigate this problem, much remains to be done.¹¹⁵

Achieving economic independence may once have been the objective of land acquisition in these countries. However, what is most needed now is a pact between environmental and developmental interests for the sake of the future. Considered alongside developments in other Asian countries, India's land acquisition problems are not limited to the boundaries of Nandigram or Singur in West Bengal. They are common among developing Asian nations and require focused discussion to work towards a solution. While both the government and opposition parties in West Bengal deserve blame for their failure to reach an amicable solution, scholars also played a role, and can not afford continued failure to frame and drive constructive discussion of India's long term environmental policy.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

