

Emphasizing and Re-amending Failures in Plan Implementation

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Abstract- In India, the federal system of governance allows both the central and the state governments to make laws independently. However these laws, particularly the planning laws, could not achieve the desired results. This paper is a scholastic attempt to understand the reasons for the failure of the planning laws envisaged for the overall development of an urban area. It also explores suitable instruments through which these failures could be minimized. For this purpose, a study of the Land Acquisition Act in Greater Noida was taken. The findings reveal that lack of coordination and transparency between the concerned authorities and the people have led to poor implementation showing the existing gaps between laws and reality. Further, it identifies the conventional top- bottom planning approaches as the possible reason. Finally through the case study, it discusses the scope of advocacy planning through bottom-up approach, consultation and participation, transparency and strict regulation as possible measures of minimizing these failures.

keywords: bottom-up approach, coordination, decentralization, federalism, transparency.

I. INTRODUCTION

Federalism is an institutional mechanism to accommodate two sets of polities - one at the regional level and the other at the national level. The civil war in America [1861 – 65] gave rise to a debate. The debate led to the conclusion that “the Union and the states cannot keep on snatching the rights of each other and there must be a clear distinction between their functions, powers and its limitations.” The Union of Soviet Socialist Republics was one of the world’s two superpowers, but after 1989 it simply broke up into several independent countries. One of the major reasons for its break up was the excessive centralization and concentration of power, and the domination of Russia over other regions with independent languages and cultures of their own.

In India a federal system of governance exists, although it has a unitary bias. This suggests that the center at times has power to dominate over states. When India got Independence in 1947, a team was formed to draft constitution of India and studied the constitution of other nations to extract the best from each of them. Upon

thorough debate, a consensus was built that India would adopt a federal structure but the residual powers will remain with the union. Article I of the Constitution describes India as a ‘Union of States’, which implies two things: firstly, it is not the result of an agreement among the States and secondly, the States have no freedom to separate from the Union.

The article 249 of the part 11 of the Indian constitution gives power to the union parliament to legislate laws even in the matters of the state list if it is in the national interest. This article gives union an opportunity to snatch the autonomy of states. Although this form of governance is in the best interest of country, it has sometimes led to the delay in the implementation process.

II. DECENTRALISATION OF POWER

The federal governance allows decentralization more conveniently. Prior to 1991 the two levels of governance had existed: the center and the state. Both the governments have been given powers to legislate (make laws/enacting laws) on subjects assigned to them. There is a clear demarcation of legislative powers between the Centre and the State as given in the Article 246 of the Constitution of India, also known as Division of Sovereignty (Table 1).

TABLE 1: DEMARCATION OF LEGISLATIVE POWERS IN INDIAN CONSTITUTION

List I (97 matters)	Union List Article 246 (1)	Parliament has exclusive powers to make laws.
List II (66 matters)	State List Article 246 (3)	State legislature has exclusive powers to make laws.
List III (47 matters)	Concurrent List Article 246 (2)	Both parliament and state legislatures have powers to make laws.

After 73rd and 74th Constitution Amendment Act, 1992, decentralization came into being in which provisions were made to empower the local governments in rural and in

urban areas. However this decentralization was not carried out adequately wherein although greater responsibilities were given to the local governments (Article 243W, Constitution of India) but measures of generating fiscal resources were not outlined (Article 243X, Constitution of India). Thus, the 74th Amendment has not clarified a critical area of fiscal federalism, i.e., the matching of resources and responsibilities. The taxes, duties, charges and fees to be levied by the Municipalities, those to be assigned to them and the grants-in-aid to be provided to them had been left to the discretion of the State Governments. This has allowed the fiscal mismatches to continue in the absence of adequate decentralization of resources corresponding to the decentralization of expenditures envisaged in the Constitution (74th Amendment) Act, 1992. This form of inadequate decentralization (characterized by greater autonomy of upper levels of government and having a unitary bias) has resulted in local governments to still falter to perform well.

Another foible associated with improper implementation is scuffle between the center and state, which at times hinder the process if the existence of different political parties center and state, often marked by malpractices. The ramifications of which are borne out at local levels.

In many cases newspaper reports have recounted that plans drafted in infrastructure are riddled with corruption and thus support the elite section of the country at the cost of the national interest. Stories have been reported from states such as Haryana, Uttar Pradesh and Odisha where a fertile land has been shown barren and suitable for acquisition by various industries. As an evidence state government of Haryana had had assured the farmers residing in Gurgaon that factories would be setup on their land and their family members would get a job. The state thus acquired land from farmers and later sold it to the concerned developer at throw away prices to build a stream of real estate. As a result of this, the farmers didn't get the job that was promised and the built flats were affordable only by the elite. The matter is currently sub-judice in the apex court. Similarly the golden quadrilateral project was started in 1999, to provide an impetus to smoother movement of products and people within India thereby boosting the infrastructure and economy of the nation. Later, it was found that contracts were awarded without any tender/bid resulting in a loss of Rs. 1321 crores to the ex-chequer. The contract was given to real estate developer which further sub-contracted the project to other small players who perpetually had no experience. Due to lack of transparency the quality has suffered so much that NH 7 is due for repairing even before the completion of the project, and as a result implementation still suffers on ground. The projects usually don't get completed in the specified time and so they often exceed the projected estimate, causing a setback to the key benefit. The Comptroller and Auditor General of India (CAG) tabled its report in the Union Parliament on the 17th August, 2012 that unmasked the Public Private Partnership (PPP) model completely. According to report, 1.63 Lakh Crore (approx. \$29.4 billion) was lost by the people of India due to a deal entered between the Airports Authority of India and Delhi

International Airport Limited for the lease of land. It must be noted, that the land acquired for the same purpose was actually agricultural land and a heavy development fees was levied on the passengers. So, in brief from both sides the national interest was compromised to uphold the growth of GMR.

The above facts reveal that sometimes it is the center that lacks direction and sometimes it is the state that pays no ear to the directions laid out. This has been marked elsewhere implicitly at various local levels as well. Often lack of transparency, complex procedure, a top down approach due to the unitary bias leads to such consequences, which is often reflected in planning processes which requires a great deal of interventions at legislative levels. In this regard a case study on Noida is taken which aims to look at the problem with greater magnitude. Planning as a tool for the development of an urban area cannot be understood in isolation. It is severely affected by legislative and administrative process. Impact of which is borne out by a larger society. Land Acquisition Act hold special significance in planning process.

Land Acquisition Act is a powerful procedure through which the government acquires the land from individuals for public purpose and other development work meant for larger society of public i.e. its people. Transparency between the authorities and people becomes an important aspect.

Land Acquisition Act

Land Acquisition Act of 1894 was created with the purpose of facilitating the government's acquisition of privately held land for public purposes. The word "public purpose", is defined in the Act. The word "government" refers to the central government if the purpose for acquisition is for the union and for all other purposes it refers to the state government. It is not necessary that all the acquisition has to be initiated by the government alone. Local authorities, societies registered under the Societies Registered Act, and co-operative societies established under the Co-operative Societies Act can also acquire the land for developmental activities through the government. The Indian Constitution does not recognize property right as a fundamental right. In the year 1977, the 44th amendment eliminated the right to acquire, hold and dispose of property as a fundamental right. However, in another part of the Constitution, Article 300 (A) was inserted to affirm that no person shall be deprived of his property save by authority of law. The result is that the right to property as a fundamental right is now substituted as a statutory right. The amendment expanded the power of the state to appropriate property for social welfare purposes. Article 31, clauses (1) and (2) provided for the doctrine of eminent domain and under clause (2) a person must be deemed to be deprived of hi/her property if he/she was substantially dispossessed or his/her right to use and enjoy the property was seriously impaired by the impugned law. According to this interpretation, the two clauses of Article 31 dealt only with acquisition of property in the sense explained by the court, and that under Article

31 (1) the state could not make a law depriving a person of his/her property without complying with the provisions of Article 31(2).

SOURCE: Land Acquisition & Human Right Approach: A Case study by Prof YuvrajDilipPatil, Symbiosis Law School, Pune.

III. CASE STUDY: LAND ACQUISITION IN GREATER NOIDA

In past few years, New Delhi and its environs have been rapidly developing and changing. Noida, and Greater Noida which is located on the eastern side of Yamuna River, is also experiencing rapid development as a commuter town of Indian capital, as can be seen by many industrial complexes being built one after another. These cities of late have experienced lot of chaos.

Land acquisition in Greater Noida has been characterized with severe criticisms. Both from farmers' perspective and property buyers, it has had negative ramifications. Through this experience one realizes how a fall in government procedures negatively affects many stakeholders, such as farmers, builders and property investors, simultaneously! In this acquisition, where on one hand farmers whose lands seized were compensated, on the other hand property rates and real estate market were severely hit bringing a jolt to Uttar Pradesh Government.

Development Authority of Greater Noida has drafted a Master Plan for Greater Noida 2021 covering a total area of 21,570 hectares. The land use has been specified in this draft plan.

Since land use of village Shahberi in Greater Noida was shown 'industrial', the farmers, were unilaterally evicted from their land. As they were not given an opportunity to file objections, they waged a campaign against the acquisition. Of course the judgment was celebrated by them (on July 6, 2011) in which the Supreme Court set aside land acquisition (156.3 hectares) carried out in 2009 at Shahberi, Uttar Pradesh government and Greater Noida Industrial Development Authority. According to the judgment, land was returned to the original owners (most of them are farmers).

However, about 6,500 people, who had booked flats to be built in the district, were disappointed by the loss of their long-awaited dreams. Further, residents of other villages in Greater Noida, where land acquisitions were conducted concurrently with Shahberi Village, also filed similar suits. This situation raised developers' and builders' fears of bankruptcy and of failure to reimburse deposits to those who booked flats and houses in this area. While reports heat up on how financial institutions, who provide companies with funds for construction and buyers with housing mortgages, would address this issue, there were concerns over what judgment the High Court and the Supreme Court would deliver next.

I. Identified causes behind such situation

The land acquisitions were originally carried out by the Uttar Pradesh government as a part of the Greater Noida's Industrial Development Plan, pursuant to the emergency clause (Article 17) stipulated in the 1894 Land Acquisition Act, whereby procedures for residents' objections (Article 5A) are dispensed with. The grounds for the judgment of the Supreme Court were: (1) such urgency was not likely to be present, and (2) Greater Noida Industrial Development Authority changed the purpose of land use from 'industrial use' to 'residential use' without the prior approval of the State.

In the entire Greater Noida area including Shahberi Village, land totaling 2,000 hectares (mostly farmland) was acquired by the UP government in 2009. A total of 16 villages were affected by acquisitions. The land was acquired at 850 rupees per square meter from farmers. Greater Noida Industrial Development Authority then resold the land at 10,000 to 12,000 rupees to private developers for the planned construction of residential buildings (250,000 flats) in the area.

The Supreme Court criticized Greater Noida Industrial Development Authority, stating: 'In the name of public interest, the Greater Noida Authority was serving private interest'. In response to developers who asserted that they did not know the land had been resold without prior clearance of the change of land use and that consideration must be given to the interests of those who have already purchased flats, the Supreme Court dismissed them, stating 'You were behind the curtain when Greater Noida government transferred the land for residential purposes without approval'. With regard to payments made by those who purchased flats to be constructed in Shahberi Village, the Supreme Court ordered developers and builders to reimburse the amounts plus interest. At the same time, the Supreme Court stated that the buyers did not suffer as much as those who lost their land to acquisitions executed through illegal procedures.

On July 6, 2011, when the judgment of the Supreme Court was delivered, only about 3 percent of purchase agreements (6,500 of 250,000 units) or about 8 percent of the land area (150 of 2,000 hectares) were affected. Companies who sold flats at first showed an inclination to respond to the issue with reimbursement or provision of alternative flats. However, following this case, former landowners in other villages, including Patwari, Rauja-Yakubpur, Bistrakh, Haibatpur, Changhola, Devla, and Iteda, where land acquisitions were carried out concurrently with Shahberi Village, filed a total of 220 writ petitions to the Allahabad High Court, seeking to quash the land acquisitions. As a result, the situation became more serious.

Under such turbulent circumstances, the Allahabad High Court set aside on July 19, 2011, the land acquisition (589 hectares) at Patwari Village. This judgment affected about 20,000 flat buyers and 4,250 people who had bought plots of 120 to 240 square meters (winners of lotteries held in 2009 and 2010 by the Greater Noida Authority).

Considerable amounts of construction work, such as for water supply, sewage and roads, had already begun here.

With regard to GautamBuddhanagar district, the issue of land acquisition had been present for a long time since 1976. To legalize the status of former landowners residing in a form of illegal occupation (encroachment), it is reported that the UP government reached an agreement with a representative of the former landowners on 30th July 2011, to provide each with residential plots within three months and rehabilitation, in exchange for giving up demands to increase compensation. However, the negotiations were underway because some former residents oppose the agreement.

Regarding villages in the Greater Noida, other than the Shahberi area for which the Supreme Court had already given its judgment, on 6th July 2011, the Allahabad High Court issued an instruction to settle the problem through discussions between Greater Noida Industrial Development Authority and a representative of each village by 12th August 2011.

On 6th August 2011, Greater Noida Industrial Development Authority announced that it had reached an agreement with the representative of farmers of Patwari village. However, reportedly, some residents could not accept this agreement, leaving a chaotic situation for future negotiations. Similarly, no solution was close at hand in other villages.

Those who booked flats that were to be constructed are facing an uncertain and stressful situation as to whether or not they can purchase the flats as planned; if not, whether or not they are entitled to be reimbursed the money they paid; and, even if they have the invested amounts reimbursed with interest, they will be obliged to change their life plans significantly. It is thus seen that though the acquisition was carried in the name for industries was actually meant for real estate sector.

This act aptly highlights that though lands had been seized by the Greater Noida Industrial Development Authority in the name of industries, it were redistributed among the builders. When the farmers realized they had been cheated by, they filled the petition. The apex court though gave a judgment in the end supporting their cause; the others who had invested in their property were left in a mere shadow. The act was thus a clear example of how the breach of rules by municipal government had led to passive reactions among different stakeholders, in which majorly farmers was settled of with its queries in the end. But this had created problems for real estate market which ultimately proved disastrous for the very own municipal government, which had brought about this state of affairs (Land Acquisition in Greater Noida). Had there been more transparency and regulation in the functioning of the development authority this problem had not occurred. On closer analysis it is revealed that land acquired was for private developers. This was due to adoption of the Public Private Partnership at local levels since the Urban Local Body (ULB) was in destitute of funds due to improper decentralization, having no scope for its self-revenue generation.

II. Inferences

- **Breach of rules:** Land acquired by the government in the name industrial use but actually sold to private parties.
- **Lack of transparency:** Government misleading the farmers by acquiring their lands and failing to give them required compensation.
- **Lack of regulation in the functioning of the ULB:** Tyrant attitude on the ULB's part for not allowing farmers to raise objections.
- **Destitute of funds:** On part of ULB due to lack of fiscal generation sources, as a result of improper legislation during decentralization.
- **Lack of participation among stakeholders** such as between farmers, ULB, project developers and residents who had book homes. This would have ensured greater transparency.

IV. SOME SUGGESTED MEASURES

Based on learnings from the case study following measures are devised with hope to minimize failures pertaining to plan implementation, which often deals with the land acquisition. These measures are:

Scope for bottom-up approach: As highlighted earlier, decentralization bestowed the local governments with greater responsibilities without providing them measures for their revenue generation. As a result Urban Local Body often became debt ridden and bribed by private developers. Similar thing when happened with Greater Noida Industrial Development Authority, lead it to such a trouble, which otherwise could have been prevented if self-revenue generation mechanism like that of Surat was in place.

Public participation: Participation of people becomes an important aspect. In this case people were merely consulted. Had there been an effective public participation, queries of people would not have remained unheard so long. Bottom-up approach ensures greater and more effective participation of people.

Transparency: Diaphanous functioning of the Urban Local Body should be of prime importance. Voices of all stakeholders alike should be duly heard. In case of Noida, the act of dubbing farmers with false notion of giving lands for industrial purpose was met with a vehement backlash. If there had been more transparency into the matter, with farmers being aware of ongoing process, such a jolt to the ULB would not have happened.

Strict regulation: Greater Noida Industrial Development Authority had played a role of tyrant by not allowing the farmers to raise objections. If it had allowed the farmers to raise an objection such a campaign would not have been triggered from farmers' side, which ultimately was met by huge media coverage, bringing down the reputation of the Uttar Pradesh government and Greater Noida Industrial

Development Authority. Strict regulation through transparency would minimize such a scenario.

Besides this Management Information System and Relational Database Management System may help the officers to keep and manage large chunk of records without any risk of inconsistency or redundancy. Laws empowering the Panchayati Raj institutions must be amended so that it can work independently and does not face exploitation by urban government even if it is mentored by the state government. In addition to it, national agencies must work together to bring a fair co-ordination between the union and the states.

V. CONCLUSION

The paper is an endeavor to uncover the truth and encounter the real challenges that are lying before agencies associated with plan implementation. It must be marked as gospel truth that all the challenges nations faces today is serious and plenty but none of them is impossible to battle. Land acquisition in Greater Noida was a clear example of breach of rules by development authority that had led to passively met by the stakeholders. The acquisition ultimately created problems for the other sectors (real estate market and property buyers) such that it proved disastrous for the very own municipal government, which had brought about this act. Had there been a proper bottom-up approach, greater public participation, more transparency and stricter

regulation in the functioning of the development authority, this problem would not have occurred.

The law-makers have to ascertain this fact that this nation eyes them with lot of hope and hence the national interest can't be let down. National agencies must work together to bring a fair co-ordination between the union and the states. Media and judiciary cannot afford to remain a mere watchdog. They must dig deep into unseen reason and fix accountability. The model of sustainable development must not only comprise on environmental concerns and the laws governing it, but on social and economic aspects as well. Information Technology can play a key role in creating a transparent world. Management Information System, Relational Database Management System, can help the officers to keep and manage large chunk of records without any risk of inconsistency or redundancy.

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VIII. REFERENCES

- [1] Basu, D. D. (2013). *Introduction to the Constitution of India*. Kolkata: LexisNexis.
- [2] Chatur, D. (2009). *Indian Constituent Assembly Debates and Federalism*. Bangalore: works.bepress.com.
- [3] Eckaus, R. (1967). *Planning in India*. Columbia: Columbia University Press.
- [4] Fainstein, S. S. (1997). New Directions in Planning Theory. *Planning Theory and Practice*, 7-18.
- [5] Haldea, G. (2003). *Salvage reforms*. New Delhi: Government of India 2009.
- [6] HC quashes land acquisition of three villages of Greater Noida (Oct 21, 2011).
- [7] Jain's, V. (2011, November Friday). *Rethinking federalism in India*. Retrieved from vidyutjain.wordpress: <http://vidyutjain.wordpress.com/2011/11/11/rethinking-federalism-in-india/>
- [8] Justice, M. o. (1985). *The land Acquisition Act, 1894*. New Delhi: Government of India.
- [9] Karat, P. (2004). *Federalism And the Political System in India*. Colombo: Bandaranaike Centre for International Studies.
- [10] Patil, Y. D. (2012). *Land Acquisition & Human Right Approach: A Case Study*. Pune: Symbiosis Law School.
- [11] Rao, M. G., & Singh, N. (2004). *The Political Economy of India's Federal System and its Reform*. New Delhi: JEL.
- [12] Rao, M., & Singh, N. (2004). *The Political Economy of India's Federal System and its Reform*.
- [13] Sato, H. (2011). *Land Acquisition Issues in Noida District: Background to 'Land Wars' in India*. Chiba: Institute of Developing Economies Japan External Trade Organization.
- [14] Sethy, S. (2004). *Rural Poor's Participation in Decentralised Multilevel Planning and Development*. Bangalore: Junior Research Fellow in Development Studies.
- [15] Singh, S., & Misra, S. (2012). *Federalism in India: Time for a Relook?* New Delhi: Observer Research Foundation.
- [16] Vinodia, A., & Singh, Y. (2004). Factors Affecting Performance of Development Plans in India. *ITPI*, 27-32.