Shashi Ratnaker Singh, Department of Geography, University of Cambridge
*Not for Citation: Draft for Discussion Only*

**Political Economy of Land Acquisition and Resource Development in India**

**Abstract:**

The land acquisition and mining policy has come under review by all quarters and so far has violated the democratic fabric of the constitution of India. The expropriation of land and assets under the umbrella of eminent domain and in name of 'public purpose' for the sake of "right of way" has been questioned by the civil societies and it is neither a market based transaction, nor a natural part of the market economy. Developments at the state level and the growing interest in resource projects by national and multinational corporations are giving rise to demand for more compensation from the local community and revenue sharing by resource bearing states. The role of resource development in regional development is a subject of debate between dependency theorists and comparative advantage theorists. There is an extensive literature on resource curse and the poor socio-economic status of mineral rich districts in India, which support this argument. In context to this paper, analysing the way federalism plays out in natural resource sector is very critical at this juncture of the evolution of the Indian political system, given its commitment to a more decentralized system of governance. The issue of compensation is complex and it is critical to understand how 'just' compensation is experienced and perceived by different stakeholders. The need to examine these becomes important given the increased demands from resource bearing states for a more 'fair' distribution of resource rents and from local people for greater recognition of their rights and enhanced compensation with regard to land acquisition for resource development projects.

**Section I**
**Land Acquisition: A Contested Domain**

Land is a non-expandable factor of production. This very finiteness tends to cause competition for this scarce resource between various economic activities. In capitalist societies, the industrial and service sectors, dominated by the bourgeoisie and supported by the state's right of eminent domain, adopt land usurpation and acquisition by hyper commercialisation and commodification of land. The land acquisition process in India has come under close scrutiny within the overall context of economic growth and transformation from an agrarian economy to an industrial economy. Land acquisition with regard to resource based project becomes more complex as these resources are geographically located and projects becomes region specific.

The traditional argument as posited by the Lewis Model states that economic growth requires structural change in the economy whereby surplus labour in traditional agricultural sector with low or zero marginal product, migrate to the modern industrial sector with high rising marginal product. This promotes industrialization. The Lewis model necessitates structural change and thus explains the emergence of a dual economy. Land becomes a pre-requisite for industrialization. It implies that land has to change character from its present use to industrial use. The debate about industrialization and land acquisition is thus about how political, social and economic forces are acting in concert to transform the economy. At a more basic level, this problem occurs because the emerging industrial sector usually does not have the level of employment intensity as the existing agricultural activity. Moreover, affected people are not immediately employable as the only marketable commodity they possess in the absence of skills valued by the market, is their labour. This alienates the peasantry from their traditional means of livelihood and more often than not results in social turmoil and unrest.

Many developing countries, including India, have been undergoing this process of transformation over recent decades raising several questions about the true nature of the welfare state and its role in protecting the right to property. In India, the role of the state seems to have got reversed; after independence, through land reform, the government attempted to create a socialistic pattern of society through redistribution of land, which is now being reversed through increased acquisition of land from small and medium owners for industrialisation. Sixty years of 'planned'

development in India have also entailed large scale forced evictions of vulnerable populations, without countervailing policies to assist them to rebuild their lives. Most of the negative aspects of displacement, such as undervaluation of compensation and its payment in cash, lack of information, failure to prepare in advance a comprehensive plan for rehabilitation, failure to restore lost assets or livelihoods, traumatic and delayed relocation, problems at relocation sites, multiple displacement and neglect of the special vulnerabilities of the most disadvantaged groups result from the existing law and the policies. This raises a crucial question: Is India moving on a path which segregates society and enclaves economic spaces in a way that essentially excludes the majority from development?

The vast literature generated over recent decades on land acquisition, mining, resettlement and rehabilitation issues in the country has largely focused on recording the detrimental social, cultural and economic consequences of development projects on the lives of local project affected families. Development analysts, civil society and media have pointed to the inadequacy of the current normative and legal policy framework, in particular of the pivotal notion of eminent domain underpinning the Land Acquisition Act (of 1894). This literature has been useful in identifying systemic problems underpinning resettlement and rehabilitation in India (in addition to eminent domain, analysis from political economists that points to intractable power relations that nullify efforts to sustainably assist project affected families).

Every year dams, mining, highways, ports, urban improvements, pipelines and petrochemical plants and other such industrial development projects globally displace about 10 million people. (Cernea: 2000a). In India alone involuntary resettlement is estimated to have affected about 50 million people in the last five decades (Roy: 1999). Three-fourths of those displaced in India over five decades still face an uncertain future (Cernea: 2000a). The resettlement process has frequently been taken to be complete once compensation was paid to the affected people and they were relocated to a new resettlement site. Traditionally, little thought went into addressing the factors that limit the benefits available to project affected families, making a series of rehabilitation action plans unsustainable in the long run.

People displaced by development projects confront a variety of impoverishment risks that include landlessness, joblessness, homelessness, marginalisation, increased morbidity, food insecurity, loss of access to common property, and social disarticulation. (Cernea: 2000 and 1995) If resettlement is not to leave people worse off than before, it must be addressed as a process of sustainable development (Scudder: 2005, 1997; and Cernea: 2000). Still persisting colonial laws govern the regime of displacement and rehabilitation. The decisive discursive category is here that of Oustee of today who, of course were the rightful owners of property of yesterday. And a series of cumulative consequences of displacement are now compensated under the Land Acquisition Act, 1894 through a consolidation of temporalities of many future deprivations. (Baxi: 1989). Displacement is a pertinent effect of development and rehabilitation is a pertinent effect of displacement‖.

The meaning given to compensation has been dominated by its equation with the market value, or the notional value of the land in the market. This treats the displaced person as a willing seller. Compensation is seen as the means for reducing the injustice inherent in acquisition. The limited understanding of compensation has eroded its moral base. The notion of total compensation being unknown to the law, ―it is ill equipped to internalise the immoderation which acquisition may entail‖ (Ramanathan: 1995). The land acquisition process also tends to be individual centric and compensation is not sensitive to the displacement of communities. The trauma involved in displacement, the fragmentation of communities, the breakdown of support structures, the deprivation of displaced populations, the increased susceptibility to exploitation where protected populations are dislocated, are usually neglected by the law of compensation. The only significant reparation for displaced persons guaranteed by law is the payment of monetary compensation for compulsorily acquired individual assets, mainly land or houses. However, the manner in which the law is framed and interpreted ensures that the displaced land-owner or house-owner is always the loser.

Shashi Ratnaker Singh, Department of Geography, University of Cambridge
*Not for Citation: Draft for Discussion Only*

**Land Grab and Land Acquisition: International Experiences**

Over the past few years, large-scale acquisitions of agricultural land in Africa, Asia and Latin America have made headlines in media reports and there is growing body of literature on "land grab" across the world. The contemporary global land grab has recently become a key development issue and there is growing concern that people's connection to their land is being undermined. The term 'land grab' generally refers to large-scale cross-border land transactions that are carried out by transnational corporations or initiated by foreign governments. They concern the lease (often for 30–99 years), concession or outright purchase of large areas of land in other countries for various purposes (GRAIN 2008). However, there is another view which suggests that this is a new phase of capitalist expansion led by "private capital" which is also driving local governments to dispossess and displace peasants from their agricultural land to facilitate the entry of private capital. For instance, the Special Economic Zones in India have become the centre of protests across India, with farmers resisting the state's forcibly transfer of their land to private sector.

The global land grab is to a large extent the result of the liberalisation of land markets, which became a major policy goal in the course of the 1990s and has contributed to the commoditisation of land and other natural resources (Brenner and Theodore 2007). Along with the spread of the neoliberal model, and with the support of donors, many governments in Asia, Latin America and Africa started to give more priority to creating dynamic, free and transparent land markets (Deininger 2003). In a globalising world, local development is increasingly played out in a matrix of links that enable connections to be made between people and places on a world scale. The intensification of worldwide social relations links distant localities such that local happenings are shaped by events that occur many miles away and vice versa (Giddens 1990, 64, also Harvey 1989).Around the world, there have been strong reactions from states, corporations, and civil society groups. Some see land grabs as a major threat to the lives and livelihoods of the rural poor, and so oppose such commercial land deals. Others see economic opportunity for the rural poor, although they are wary of corruption and negative consequences, and so call for improving land market governance. Of course, between these two positions there is a range of intermediate views offered by other groups ( Borras 2010).

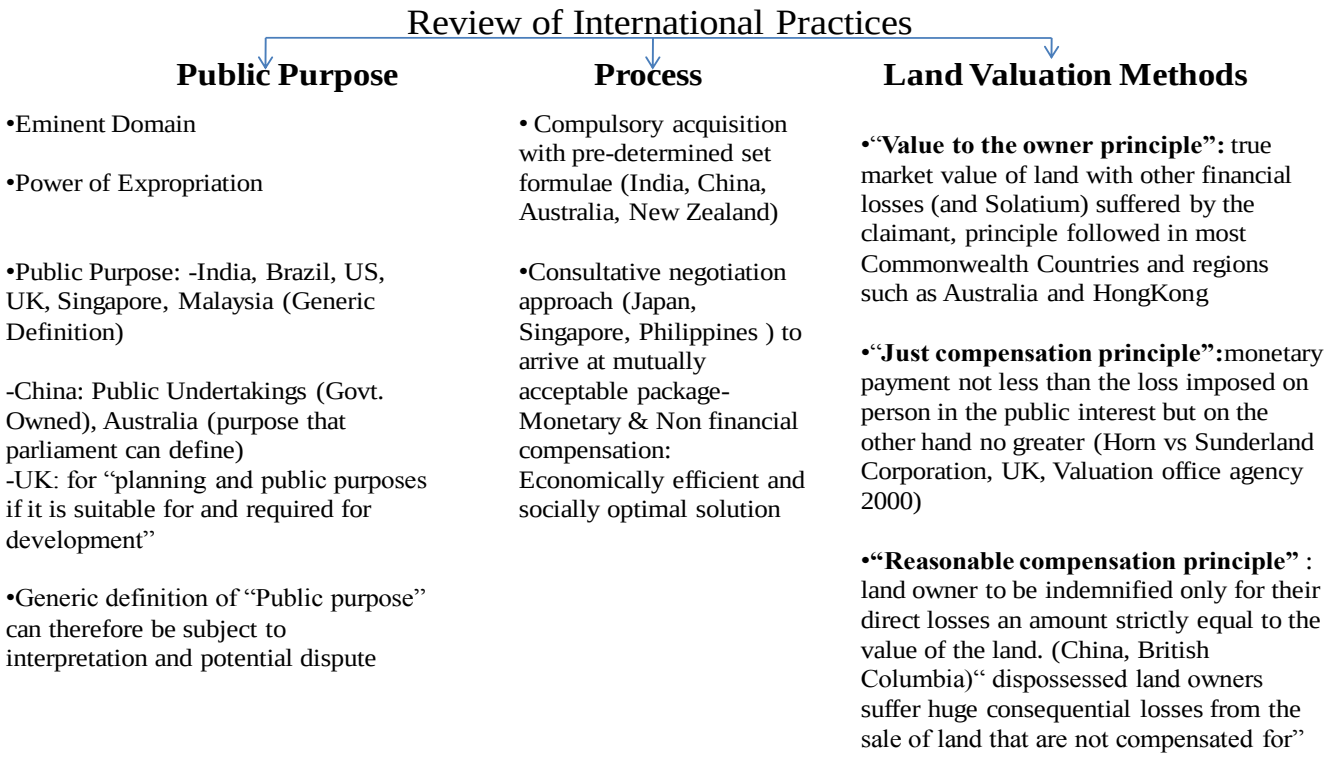
The review of literature on international practices regarding land valuations can be summarized in three broad principles: Value to the owner principle, just compensation principle and reasonable compensation principle. All these principles have their own merits and de-merits.

The value to the owner principle takes into account socio-economic considerations related to the acquisition of land, and aims at compensating land owners for the land value as well as tangible and intangible benefits that are attributed to the land through monetary as well as non monetary means (Denyer-Green, 1994). The just compensation principle aims at providing the land owner with economic parity, primarily through monetary means such that the land owner is at an economically comparable position post land acquisition (Chan, 2003). The reasonable compensation principle envisions the land acquisition process to be a financial transaction where the value of the land alone will be disbursed in the form of monetary compensation without considering any intangible value associated with the land (Valuation Office Agency, 2000).

In general there are four methods that are used across the world to value land and to arrive at appropriate compensation. These are 1. Evaluating the market value of land 2. Evaluating the net value of income from the land 3. Determining original land use value as set by the State 4. Arriving at land values through negotiations (Mahalingam & Vyas, 2011)

Shashi Ratnaker Singh, Department of Geography, University of Cambridge
*Not for Citation: Draft for Discussion Only*

See Figure 1: International Experiences: Land Acquisition




**Existing provisions and practices of determining land price**

The provisions of the Land Acquisition Act of 1894 relating to the definition of compensation, the method of fixation of compensation and its disbursement are replete with loopholes that cause many difficulties for displaced land holding households. In this context, neither the existing Land Acquisition Act, 1894 nor the LARR Act 2013 prescribe any appropriate methodology for the determination of rate at which land should be acquired. The Land Acquisition Act, 1894 uses different terms to denote the sense of ' quid pro quo'. In section 11 (i), it uses the words ' value of land'; in section 11(iii) , phrase 'compensation' used; section 15 of the act changes to phrase ' amount of compensation'; section 23 switches to term ' market value of the land'. And, nowhere in the Act, have any of these terms been adequately defined. Consequently, they have been used interchangeably at the level of field assessment causing great damage to the rights of the land owners.

In the absence of any clear value for rate of land, different adhoc practices, predominantly two, have gained ground. First, rates used in registered sale deeds in neighbouring areas (project notified region) are averaged over three years. Second, the stamp duty rate, known as the collector rate, is taken as market value of the land. The first is more prevalent than the second. However, most land transactions in India are grossly undervalued to evade registration fees. Therefore, the oustee receives a rate which is typically much below the market rate, and the solatium of 30 per cent (or even 100 per cent or multiplying circle rate with 2 or 4 times as is being proposed in a new LARR Act 2013 by the Government of India) does not bridge the gap between the market and the registered prices. These practices seem to have grown primarily out of convenience rather than adoption of any scientific approach. This lack of predictability in the process of determining land value has added to the intrinsically contentious nature of land acquisitions, and contributed to the social unrest that inevitably accompanies such proceedings.

Shashi Ratnaker Singh, Department of Geography, University of Cambridge


**Significant Judicial Pronouncements on Determination of Land Price**

One natural consequence of this lack of clarity in the Land Act is that it has led affected people to frequently turn to the courts for guidance in interpreting the different provisions. The courts in turn have issued a variety of judgments in an attempt to guide administrators on what factors need to be taken into account in determining the value of the land to be acquired. The most salient guidance with respect to the valuation of land can be summarized as follows:

1. The opinion of experts can be taken into account in determining the market value of land ( AIR 1959, SC 429),

2. The Collector should not neglect the non-agricultural potential of the land in question (*Bhojraj vs Collector of Durg*, 1979 JLJ 24),

3. In *A. Gopalakrishan vs Special Deputy Collector*, AIR, 1980 SC 1870), The Supreme Court of India has suggested that the following factors be taken into consideration in determining the compensation amount in an acquisition process:
    - Nature and location of land to be acquired
    - Present use of land to be acquired
    - Nature of use of nearby lands and their effect on the land under consideration
    - Capacity of the land being acquired.

4. Market value should be equal to the price at which a willing seller would give it to a willing buyer ( 1964 JLJ 231: 1964 MP Law Journal 299),

5. Market value of similar land in the past should be taken into consideration (1961 MP law journal 1219),

6. If the agricultural land to be acquired falls within urban body limits, an enhanced compensation amount should be paid (*Deep Chand vs State of UP*, AIR1980 SC 633),

7. Market value paid for small pieces of land cannot become the basis of land rates (1970 JLJ 466),

8. The assessment of land revenue can be a good indicator of market value of the land (*Chatarbhuj vs Collector Raigad*, AIR 1964),

9. Under some conditions, the prevailing rent or rate of tenancy can be taken into consideration for determination of land rate (*Ramnarain vs State*, AIR1963 MP 35)

These judicial pronouncements by different courts and at different periods of time do expound certain principles but do not create a template for determination of market value of the land. It is the responsibility of the legislators to learn from these experiences and with the help of subject experts they develop a sound and practical approach, acceptable to all stakeholders rather than such populist approach of multiplying land rate by 2 or 4 times. The objective should be to address the issue of restoration of livelihoods and for the farming community the only way to restore their livelihood is to restore their agricultural land, so emphasis must be given on replacement value of the lost assets.

**Rationale for Compensation**

The rationality of compensation in context to land acquisition and resource development can be conceptualised under following heads (See Figure 2): Economic, Spatial, Legal, Social/Ethical and Political. However, it is extremely complex to quantify community resources and livelihood with regard to expropriation and perhaps it will be inappropriate to even attempt to do so. But, unfortunately the legal provisions and the powers of eminent domain only leaves with the option of expropriation which is subject to debate whether it is 'just' or 'unjust'.

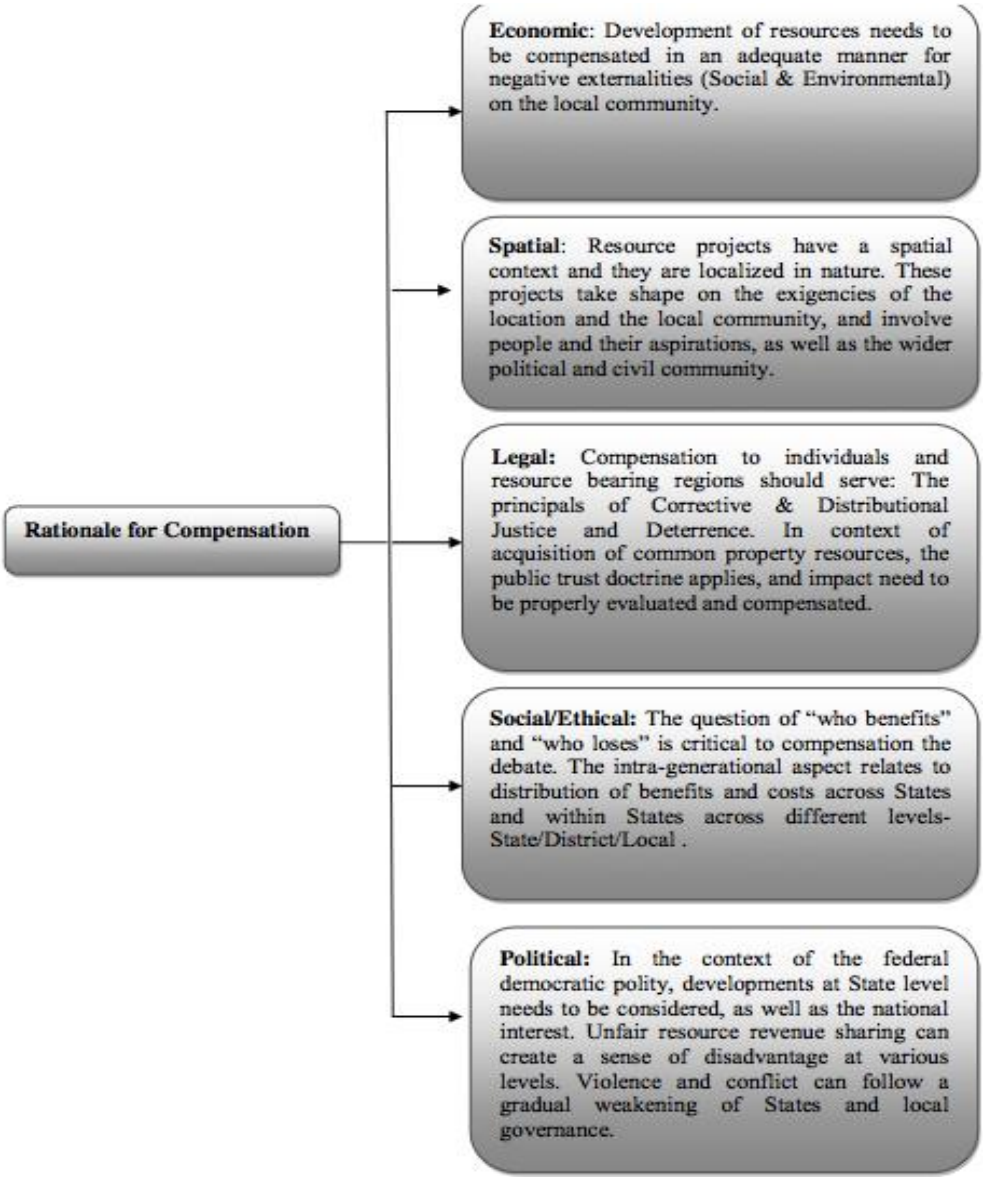



Figure 2: Rationale for Compensation: Land Acquisition and Resource Development

Shashi Ratnaker Singh, Department of Geography, University of Cambridge


**Section II**
**Resource Federalism: 'Who' gets 'What' 'Where' and How?**

The role of resource development in regional development is a subject of debate between dependency theorists, who argue that resource development obstruct a balanced development process, and comparative advantage theorists, who argue that resources can expedite development. The literature suggests that the natural resources have the potential to provide a significant comparative advantage relative to other economic sectors by virtue of generating resource rent, which is surplus above normal returns to other factor of production. However, there are considerable risks in resource led growth, including the propensity to dissipate rent, increase community instability and several other externalities (social & environmental). The natural resources are geographically unevenly located (spatially) and the resource development projects have larger national and public interests. But there are layers of 'public' who gets affected in positive and negative manner by resource development projects: gains from their development accrue to large common market though the process also affects local lives/ livelihood and environment.

In context to this study, analysing the way federalism plays out in natural resource sector is very critical at this juncture of the evolution of the Indian political system, given its commitment to a more decentralized system of governance. In no sector is such an engagement more urgent than in the context of natural resource development, given the sharing of administrative and fiscal powers, along with growing responsibilities at the local government level. A federal government has been defined as an association of states which has been formed for certain common purpose, but in the member states retain a large measure of their original independence1. The constitution of India stipulates a ―union of states‖ but the drafting committee of the constitution made it clear that though India was to be a federation, the federation was not the result of the agreement of states to join in the federation and therefore, no state has a right to secede from it. A central issue, both from the point of the working federalism and in terms of the impacts that the resources development can have on local people, is the monitoring, regulation and enforcement of laws and rules in place. Both centre and state collect revenue through different taxes and levies imposed on minerals development under different legislations. In the given precarious fiscal situation of the mineral bearing States2, there is a question with regard to the powers exercised by the Centre vide the MMDR Act on fixation of royalty rates for a resource that is in principle owned by the States. There is also a discontent with the manner by which revisions are done by the Centre in terms of their periodicity. The necessity to arrive at a fair royalty is critical for the state and should not be dealt as a commercial activity only, but should also consider the ecological and social aspects of mining. The term 'regional' used in the paper refer to the governments at the state and local level. The central government collects revenue in the form of excise duty, forest conservation charges, and corporate taxes and so on. Apart from these taxes, some states like West Bengal impose a cess (primary education) on minerals. Box 1 summarises some of the main payments in case of resource development (minerals) and these payments are charged across different levels of government at different stages of mining cycle.

| Box 1: Key Payments |
| --- |
| Royalty and Dead Rent |
| Compensatory A forestation and NPV (forest land) |
| Fees |
| Land Acquisition, R&R Payments |
| Income taxes |
| Local taxes |
| Environmental Fees |
| Water cess |
| General sales tax |
| Local taxes |
| Labour welfare cess |
| Cess on coal bearing lands |

With the opening of the economy and entry of private capital, there has been growing interest in resource projects by national and multinational corporations in the mineral bearing states. The lack of clarity about the nature, basis and rational of compensation and a recognition that the issues relating to fair compensation to the individuals and resource bearing regions are very important in the context of the federal democratic polity of the country, are the main motivations for this study. The complexities for resource development policy and consequently for compensation issues arises from the roles that resources perform and values attached to them. Understanding the issue of compensation for resource development requires a multifunctional view of resources and a multi- dimensional perspective- spatial, economic, legal, social and political. Such a perspective enables an understanding of the impacts that these projects have on the community and the region, and the need to be attentive to them if resource development is to truly be in the national interest.

**Fiscal Decentralization**

Fiscal Decentralization involves 'the devolution of taxing and spending powers to regional government' while revenue sharing refers to the mechanism through which revenue collected by different governments (Centre & State) is distributed across various levels of the government. Both of these aspects are crucial concepts in inter governmental fiscal relations. Fiscal transfers in India tend to be independent of the financial contribution by a region for development of its natural resources activities and the revenue so generated is generally used for large social and infrastructure needs. There are different arguments in this regard as the central government has a larger development responsibility as natural resources are unevenly located and all the states are not blessed with natural resources. However, the mineral bearing states argue that the local community and the regions bear huge social and environmental costs of resource development, so their needs must be treated as immediate priority. There is huge dissatisfaction among the local community in these states as they feel that they are not the immediate beneficiaries of such projects.

Shashi Ratnaker Singh, Department of Geography, University of Cambridge
*Not for Citation: Draft for Discussion Only*

A key fiscal issue in the context of resource development is the timeliness of resource flows: the flow of fund s from resource development and the actual time of need in producers areas do not match. State and local government require large amounts of funds in the initial stages of resource development to address the needs of the local affected people, but resource rent flow gradually increases only with production as these projects have long gestation period. Funds are also needed at the time a mine is closed to take care of its environmental and social impacts. However, to attract private capital and to create 'investment climate' the initial phases are often declared 'tax free'. Figure 3 captures this fiscal challenge.

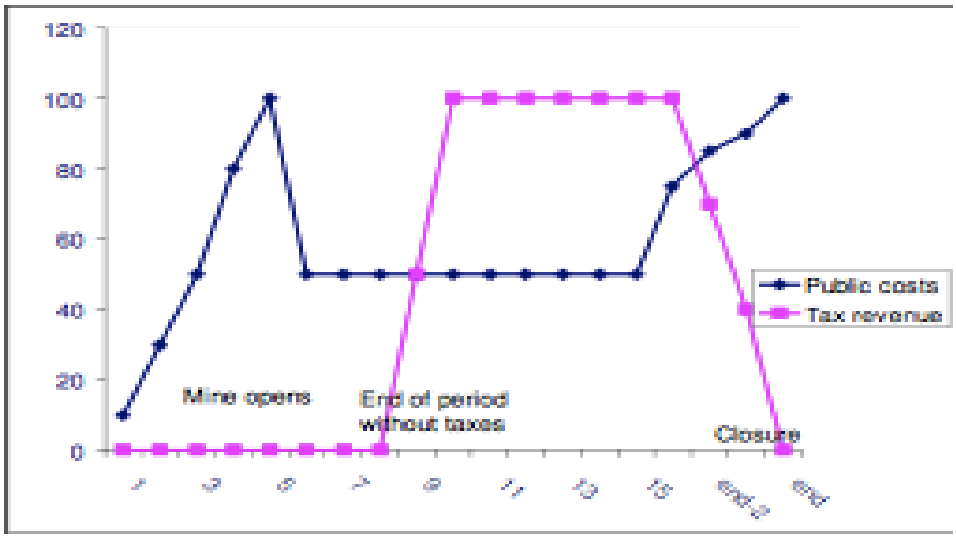



**Figure 3: Fiscal challenges at different stages of mining cycle**

Source: Olle Östensson, Presentation at the RIIA workshop on Sustainable Relationships: Financing and Monitoring Responsibilities.

**Resource Curse and Compensation Debate**

There is an extensive literature on the ―Resource Curse‖ which suggests that regions or economies rich in natural resources are poor in developmental outcomes. Wheeler (1984) found that within Sub- Saharan Africa, countries that were rich in minerals grew more slowly than those that were not rich in minerals during the 1970's. Sachs and Warner (1995) examined the experiences of a large and diverse set of natural resource economies between 1970 and 1989 and found that natural resource abundance was negatively correlated with economic growth. Other scholars have presented evidence to suggest that the economic problems of resource abundant countries have gone beyond poor levels of economic growth. Leite and Weidmann (1999) found that natural resource abundance tends to worsen corruption. Finally, Ross (2003a) found that oil wealth and non-fuel mineral wealth are associated with bad outcomes for the poor in terms of poverty and human development levels.

It is now well recognised across the world that wealth generated by the mining sector comes at a substantial development cost. This has also been exhaustively documented in India. In fact, the major mining districts of India are among its poorest and most polluted (Bhushan, 2008). Considering the negative externalities of the mining sector, new policies and practices are being explored and implemented across the world to ensure that mineral wealth can be converted into sustainable development benefits for local communities. Many mineral rich countries have enacted legislation in which provisions of benefit sharing with the local communities are explicitly stipulated.

The mining and quarrying sector constituted about 2.26% of GDP in India during 2010-11. Coal occupies an important

position amongst minerals, as about 60% of India‘s energy needs are met through coal. In states like Chhatisgarh and Jharkhand, the contribution of minerals in the SDP is higher than 10% and next only to agriculture and manufacturing. Further, income from royalty from minerals is a significant contributor to revenues in states like Chhatisgarh, Jharkhand, Orissa and Madhya Pradesh. Royalty was the single most important contributor to non-tax revenue in some of these states. Examining the contribution of various minerals to the royalty revenue in these states, it is seen that coal accounts for 65-90% of the royalty revenue in Chhatisgarh, Jharkhand, Orissa and Madhya Pradesh. Other important minerals in terms of their contribution to royalty in these states are limestone, iron ore, bauxite and chromite (Source: IBM).

The top 50 mining districts, in terms of value of mineral production are in 13 states. Jharkhand has nine of these districts, Odhisa, Madhya Pradesh and Chhattisgarh six districts each, five of these are in Andhra Pradesh and four districts in Maharashtra. The top 50 districts in India based on value of mineral production, together account for more than 85 percent of the value of mineral production in the country (CSE, 2011). Another significant fact about these districts is that most of these mineral rich areas are affected by Naxalism‘and declared as extremist affected regions by the Government of India. The appropriation and exploitation of natural resources have frequently been mentioned as a cause of civil wars. Several studies both from economic (Collier and Hoeffler, 1998, 2004; De Soysa, 2000) and political science (Kaldor, 1999; Klare, 2001) perspective suggest that natural resource abundance is an important determinant of the occurrence of internal armed conflict. However, Ross (2004) warns that the empirical linkage between natural resources and civil war is fragile, and proposes that the resource-conflict relationship should be differentiated with respect to both the type of natural resources and the kind of civil conflict.

In the context of resource development, land emerges as an important and highly volatile issue at many points during the life cycle of a project. Corporations need to secure access to land and community consent, and communities need to be assured that land rights are properly recognized, that free and informed consent is obtained, and appropriate compensation policy is in place where land is lost or affected. Past experience demonstrate that people in project areas, contribute to a project through the land that they give up, and that the project would not possible without access to this land. And yet payments made to the project affected people are only for damage created or for loss incurred, they do not necessarily create a benefit. Communities or individuals beneficiaries in project and the loss of opportunity for the affected people in benefiting from enhanced land values as a result of resource development are not recognized. Even when land rights of local people are clear, these resources tend to be valued more cheaply in a deal, as negotiations depend on the distribution of information, power and influence and these are typically asymmetrical. Women are specially affected when productive assets, such as arable land are lost to mining because of their greater dependence on agriculture, as men migrate to mining or other non-farm jobs. Compensation payments by project authorities for this land are one time payments, which tend to go to the males of the household and which are often used for immediate consumption needs rather than investment purposes.

Land is a particularly contentious issue with regard to resource development in areas of tribal populations. The Constitution of India provides specific protection to tribal rights over their customary resources, particularly in Schedule V and Schedule VI areas. The existing literature and past experience reflect that resource policy has either ignored or not engaged centrally with project affected people especially in tribal area and the creation of institutions for equitable distribution and sharing of project benefits. The negative externalities associated with resource development suggest that compensation demands by resource bearing states (See Appendix 1 for demand from the mineral rich states), cannot be seen as just an Union-states issue, but also involving the sub-state, local level, wherein various groups have interests in resource development or their non development.

Shashi Ratnaker Singh, Department of Geography, University of Cambridge
*Not for Citation: Draft for Discussion Only*

**Resources: Development and Externalities**

Resource development has associated social, resource, cultural and environmental costs. Mineral development, for example, has the potential to be both beneficial and detrimental to poverty reduction. At a macro level, research suggests that a state's dependence on the export of non fuel minerals tends to hurt the welfare of the poor (Ross, 2003). At a micro level, while new income and mine supported social services can help reduce poverty, land alienation and deterioration, loss of access to common property and services, loss of traditional livelihoods, crowding out of agriculture, increased morbidity and mortality from environmental health impacts, human rights infringements and displacement are potential source of distress and poverty (McMohan G (ed.) (1998); Cernea, (2000); IIED-WBCSD, 2002; MERN working paper series)

At the pre-mining stage, there could be displacement of people, clearing of forests, removal of vegetation and several other impacts due to acquisition of land. Apart from the mining activity itself, these impacts are caused by the large scale in migration of construction workers and the transport of heavy mining equipment for construction, trial shipment of mine products and bulk samples. The existing infrastructure including roads is often not upgraded to cope with the heavy load. Vehicular emissions and dust contribute to air pollution even before active mining begins. The environmental impacts of mining during the operational phase are likely to be greater than those in the pre-mining phase. These range from the impact on land, ground water quality and levels, air and water pollution and solid waste generation. Cropland productivity loss is the outcome associated with the degradation of soil, either due to silting or due to desiccation. This leads to creeping expropriation and a marginalisation of farming communities.

The post mining phase has long term implications for the ecology of the area. Negligence in planning of long term water management, safety and stability of mining voids, and final rehabilitation can render the mining area uninhabitable. Abandoned and closed mines are often associated with ongoing ground and surface water contamination, which may continue for a long period. The magnitude and significance of impact on the environment due to mining varies from mineral to mineral, the type of mining (e.g. underground vs open cast) and also on the potential of the surrounding environment to absorb the negative effects of mining, geographical disposition of mineral deposits and the size of mining operations.

Tribal and poor peasant women are specially affected through environmental degradation that accompanies development given their dependency on common grazing lands, fuel and fodder from forests or crop land for their subsistence needs (Agarwal,1994). Loss of forests, common property resources and crop lands affect their lives and livelihoods in very material ways, often causing a movement into poverty. There is evidence of how their access to water is affected by development activity, for example mining, either through the pollution of surface water, which they may depend on for their daily needs, or increased depletion of ground water in regions of open cast mining. All these externalities add considerably to their hardships, prolonging their already long days and travel time, reducing the quality of their nutrition, affecting their health and lowering their income from common property resources (Agarwal 1992, Pg 337-339).

Resource development projects use these common resources and disrupt the ecosystem through operations very often without paying for them. This may reduce the cost to the developer, but it poses a cost to the local community as they have to bear these costs either because they lose economically (e.g. farmers and other forest dependent communities) or through adverse health and reduced well being. The developer in this case just transfers these costs to the local community. Moreover, not all of the ecosystem disruption costs can be monetized, and be amenable to compensation payments. As Turner (1999) points out an ecosystem has a social value that may not be the same as the aggregate total private economic value of its components.

Shashi Ratnaker Singh, Department of Geography, University of Cambridge
*Not for Citation: Draft for Discussion Only*

**Legal and Federal Context of Land Acquisition and Resource Development**

The right to seek compensation emanates from either principles such as Justice, polluter pays, resettlement and rehabilitation policies; or right over the resource itself, either of absolute ownership, control or usage. Compensation payments need to be supported by legislation or be based on general principles of law such as torts or those developed by judiciary as in the case of compensatory afforestation. Beside their treatment in the constitution and the laws, the nature of the resource also has an important role in determining any liability that arises for use or depletion of the resource and associated environmental and socio-economic externalities

Payment to resource bearing regions and to people in the region needs to address four primary issues, viz, compensation, corrective (and distributional) justice and deterrence. The goal of achieving corrective justice is to redress a wrong; that of distributional justice is to ensure that proceeds are used to make the Project Affected Families (PAF) better off than before the project and to improve the lives of the least well-off; and that of achieving deterrence is to regulate future behaviour. The exercise of the rights to own, control, use, levy a charge on a resource are all dependent on another right of the government that is to legislate on these matters. In India, the proprietary title to the minerals vests in the federating states. However, this ownership is subject to the legislation governing regulation and control of mining enacted by the Indian parliament. With respect to minor minerals, the situation is different as States can make their own rules and regulations.

Although the Union may be empowered by the constitution to take mines and minerals development under its control, the MMDR Act does not sufficiently recognise the ownership rights of the States. Despite States being the owner, important matters such as royalty fixation and revision are under the Union‘s control. This control is in place in order to ensure that mineral resources are used in the national interest. While this is reflected in the fact that regulation and control over the major minerals needs to be vested in the Centre, the control over decisions that relate to revenue augmentation for the States should be undertaken by an independent body.

A central issue both from the point of the working of federalism and in terms of the impacts that resource development can have on local people is the monitoring, regulation and enforcement of laws and rules. It is evident that India has a clear framework for regulating the powers and responsibilities in the case of resource development and to address environmental (and some social) implications of resource development. Yet, poor environmental and social outcomes suggest that there is inadequate oversight by regulatory bodies at various levels of government, and poor enforcement of the laws. Evidence of this is unfair payment arrangements for land bought for resource development from the local people and complaints of human rights infringements (Noronha, 2005).

**Multifunctional View of Resources**

The complexities for resource development policy, and consequently for compensation issues arises from the roles that resources perform, the values attached to them. Resources need to be seen not just as natural resources, but also as having cultural aspects; not just having material (use) values, but also non-use values. Use values refer to both actual (direct and indirect) use and option value, where direct refers to benefits derived from goods and services obtained, while indirect are those derived from ecosystem functioning, necessary for production and for living. Option value refers to the potential of using a resource or acquiring information about it. But resources can also have cultural value or an existence value, a ―value within a larger economy of signification which crucially shapes their modes of appropriation‖ (Baviskar 2003, p 5052). They sometimes are also seen as ―resources for collective representations that exceed the concern with immediate material use‖ (ibid). The nature of demands made by various stakeholder groups reflects the different meanings and values that are attached to the resources. So resources have multiple values and meanings in context of 'space' and 'place', and their development thus has different meanings and implications for

different groups- industry, government and community. In this context, whose interest should get priority and how, become key to the compensation debate.

'Space' and 'place' are key geographical concepts, which have different connotations. Literature suggests that scholars studying the relationship between people and physical landscape have used a variety of terms and different ontological and epistemological perspectives to describe this phenomenon. For instance, Low and Altman (1992) used the term ―place attachment‖ to refer to the phenomena of human–place bonding. While they stressed that ―affection, emotion and feeling are central to the concept‖ (p. 4), they also indicated that these emotional elements ―are often accompanied by cognition (thought, knowledge and belief) and practice (action and behaviour)‖ (pp. 4–5). Researchers working within a naturalistic paradigm have stressed the subjective nature of the sense of place construct. For example, Tuan (1977) distinguished between space and place by suggesting, ―What begins as undifferentiated space becomes place as we get to know it better and endow it with value‖ (p. 6). In describing his interpretation of sense of place, Steele (1981) also referred to people‘s subjective perceptions of their environments and their more or less conscious feelings about those environments.

This multi-functionality of resources creates three key policy issues: One, of balancing the interests of the wider constituency with that of the more vulnerable, regional groups that often have insufficient information and voice for representation; Two, of seeking to understand and include the interests of different stakeholder groups, and particularly of the marginalised, and three, of addressing the aspirations to modernity of adivasi groups while providing them with the option of remaining or being able to return to traditional ways of living, given that people have multiple affiliations that are intrinsic to people‘s lives and that create contradictions between what they want at different points of times.

Questions of ―who benefits‖ and ―who loses‖, ―whose interests are being furthered‖ who is being marginalized‖ are key to understanding current disaffections in a number of States, which are involved in resource development, infrastructure projects and development of Special Economic Zone (SEZ), and require serious engagement at all levels.

**Compensation for Whom and for What?**

In order to be entitled to any compensation, it is important that the individual, group or the State has some right over the subject matter on which such compensation is sought. Broadly, any property regime can be divided into four heads, viz., State, Individual, Common and open access. All of these recognise different kinds of rights. In a federal polity, it is interesting to observe who actually 'owns' the resources and who 'controls' it. For the purpose of natural resources (including land and minerals), the rights can be categorized into three broad categories- ownership, control and actual use.

**Ownership:** Ownership is a bundle of rights allowing one to use, manage and enjoy a property, including the right to convey it to another. With the commencement of the constitution of India, all the property and assets, which earlier were vested in His Majesty for the purposes of the Government of the Dominion of India and the Government of each Governor's province, became vested in the Union and the State respectively. The ownership was transferred to the Union and the State Governments along with all the existing rights, liabilities and obligations. A prominent feature that emanated from this ownership was the constitutional power of the Executive in holding and disposal of the property. To summarize, ownership denotes a wide range of rights over a property including that of possession, alienation, use etc. However, other rights such as those of usage and control cannot be ignored at the same time.

**Control:** Although control is an important feature of ownership, it is distinct and separable from ownership. Ownership can exist regardless of actual and constructive control over the property. Similarly, control can be exercised over a property or resource, irrespective of any ownership there in. For instance even though flowing water cannot be owned by any one individual or body, control can be exercised on it by the way of regulation, allocation etc. As discussed above, in case of public trust doctrine, the property is not owned by the government but controlled and managed as a trustee.

**Usage:** Besides ownership and control, another important right exercisable on any property is the usage right. Right to use is also part and parcel of ownership. However, having a right to use does not entail ownership as a qualification. For instance land tenure rights are concerned with lease and use rights as well. Right to usage can be acquired consequent to a custom, an agreement or a statute. There are easements in the form of right to passage etc., which are enjoyed upon a property. It is a right of way giving individuals other than the owner permission to use a property for a specific purpose. In India there are three distinct rights of easement. First, there are private rights in the strict sense of the term vested in particular individuals or the owner of particular tenements and such rights commonly have their origin in grants and prescriptions. Secondly, there are rights belonging to certain classes of person or certain portions of public. Such rights commonly have their origin in customs. Thirdly, there are public rights for the benefit of all6. Usage rights can be recognised by the statute in two ways, positive and negative. In the former, a law confers a right whereas a natural right is recognised by a law in the latter.

Besides understanding the kinds of rights capable of being exercised on a property or resource in general, it is important to understand the two principles used nationally and internationally to define state rights and duties. As discussed earlier, the doctrines of eminent domain and public trust are almost opposite in their basic nature but both play a crucial role in determining the government's right over resources.

**Mineral Bearing States**

In India, the geographical distribution of minerals (mainly coal) and metallic mineral reserves is highly uneven. Coal and metallic mineral reserves are spread across central and eastern India along the states of Madhya Pradesh, Chhattisgarh, Jharkhand and Orissa, as well as some areas of Maharashtra (bordering Chhattisgarh and Madhya Pradesh) and Andhra Pradesh (bordering Chhattisgarh and Orissa). Coal is also found in Assam and Meghalaya, while lignite occurs along the Eastern Ghats in Tamil Nadu.

India's iron ore deposits are in Orissa, Chhattisgarh, Jharkhand, Karnataka and Goa. The deposits of copper, lead and zinc are mainly in Rajasthan, while the reserves of bauxite are concentrated in the states of Orissa, Chhattisgarh and Andhra Pradesh. Unlike coal and metallic minerals, non-metallic minerals show an even geographical spread across India. For instance, limestone deposits are spread from Himachal Pradesh in the north to Andhra Pradesh in the south and from Gujarat in the west to Meghalaya in the east (Bhushan, 2006).

With respect to concentration of mineral deposits, Jharkhand, Orissa and Madhya Pradesh and Chhattisgarh emerge as the top mineral-bearing states *(See Table:* Mineral Rich States*)*. About 70 per cent of India's coal, 80 per cent of its hematite iron ore (high-grade ore), 60 per cent of bauxite, 40 per cent of manganese and almost all its chromite are found in these three states (Source: GSI, CSE) with strong overlap of resources with forests and indigenous populations. It is now well recognised across the world that wealth generated by the mining sector comes at a substantial development cost, along with environmental damages and economic exclusion of the marginalised. This has also been exhaustively documented in India. In fact, the major mining districts of India are among its poorest and most polluted. Considering the negative externalities of the mining sector, new policies and practices are being explored and implemented across the world to ensure that mineral wealth can be converted into sustainable

development benefits for local communities. In fact, the famous 1997 Supreme Court judgment on this matter (also referred to as the Samata Judgement) directed that in Schedule V areas, where the state government is undertaking mining, at least 20 per cent of net profits would be set aside as a permanent fund for development needs. This will be in addition to reforestation and maintenance of ecology.

The top 50 mining districts, in terms of resource revenue generation and value of mineral production, are in 13 states. Jharkhand has nine of these districts, Odisha, Madhya Pradesh and Chhattisgarh six districts each, five of these are in Andhra Pradesh and four districts in Maharashtra. Now, let us consider the top 50 districts in India based on value of mineral production, these together account for more than 85 per cent of the value of mineral production in the country (CSE, 2011) (See *Table: Mineral Rich States and MMDR Bill Provision).* As per CSE's estimation, these 50 districts, which account for about half of the total mine lease area in the country, have about 2.5 million people directly affected by mining.

Shashi Ratnaker Singh, Department of Geography, University of Cambridge


**MMDR Bill**

The government's proposal to replace the MMDR Act with the MMDR Bill 2011, to include a specific provision for sharing 26 per cent of the net profits with local communities is an important step ahead in building an inclusive growth model. This proposal is also in line with the best practices being followed in the world. The principles are not new and many mineral rich countries have been following it for years without impacting the genuine profitability of mining companies. The fund will be deposited annually to the DMF, an amount equal to 26 per cent of profit after tax or a sum equivalent to the royalty paid during the year, whichever is higher. The DMF will then distribute monetary benefits directly or indirectly to affected people. However, there are many ambiguities with regard to identification of beneficiaries, who will administer the fund, utilization of the funds etc

**Table 1 Mineral Rich States and MMDR Bill Provision**

| State | District | Value of minerals (crore): 2010-11 | Population 2011 ( lakh) | Mine lease area (as of March 31.2008) in hectare # | Population affected* | Profit sharing MMDR Bill | Profit sharing per Population affected* | Profit Sharing for every household of the district(Rs/annum) *** | Literacy rate (%) | SC+ST population (%) | Area under forest (%of Total area) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Madhya Pradesh | Chhindwara | 1776 | 20.9 | 5359 | 18970 | 187 | 98694 | 4478 | 63.0 | 46.3 | 38.4 |
| | Shahdol | 1729 | 10.6 | 3291 | 11322 | 182 | 161002 | 8558 | 58.5 | 51.8 | 27.4 |
| | Blalgahat | 600 | 17.0 | 2282 | 8396 | 63 | 75306 | 1858 | 68.8 | 29.5 | 54.1 |
| | Betul | 395 | 15.8 | 1203 | 3777 | 42 | 110215 | 1321 | 60.9 | 50.0 | 35.6 |
| | Umaria | 294 | 6.4 | 464 | 1466 | 31 | 211538 | 2409 | 56.9 | 50.9 | 49.9 |
| | Sidhi | 3392 | 11.3 | 9563 | 44375 | 358 | 80567 | 15868 | 55.0 | 41.9 | 39.0 |
| | Overall | 8187 | 82.0 | 22162 | 88306 | 863 | 97716 | 5260 | 61.6 | 44.0 | 40.5 |
| Chattisgarh | Korba | 9121 | 12.1 | 13907 | 46966 | 961 | 204691 | 39839 | 63.0 | 51.5 | 50.8 |
| | Dantewada | 3961 | 5.3 | 2742 | 3230 | 417 | 1292417 | 39175 | 36.5 | 81.9 | 64.4 |
| | Surguja | 1081 | 23.6 | 6198 | 17893 | 114 | 63705 | 2414 | 51.5 | 59.4 | 45.6 |
| | Koriya | 778 | 6.6 | 1100 | 2425 | 82 | 338098 | 6221 | 61.3 | 52.6 | 62.3 |
| | Raigarh | 494 | 14.9 | 991 | 4533 | 52 | 114879 | 1743 | 64.3 | 49.6 | 36.2 |
| | Durg | 366 | 33.4 | 3860 | 30234 | 39 | 12762 | 577 | 69.7 | 25.2 | 9.0 |
| | Overall | 15801 | 96.0 | 28798 | 105282 | 1665 | 158190 | 8677 | 61.1 | 45.7 | 44.3 |
| Jharkhand | Dhanbad | 3760 | 26.8 | 6362 | 163387 | 396 | 24256 | 7386 | 65.3 | 24.4 | 6.8 |
| | Hazaribagh | 1895 | 17.3 | 15075 | 120601 | 200 | 16563 | 5760 | 59.4 | 26.8 | 34.2 |
| | Singhbhum | 1195 | 15.0 | 16596 | 69371 | 126 | 18157 | 4194 | 49.5 | 58.2 | 38.7 |
| | Chatra | 1083 | 10.4 | 10321 | 56766 | 114 | 20109 | 5476 | 50.9 | 35.8 | 47.8 |
| | Godda | 1041 | 13.1 | 3909 | 48628 | 110 | 22563 | 4183 | 47.4 | 32.2 | 18.8 |
| | Bokaro | 953 | 20.6 | 7032 | 100698 | 100 | 9977 | 2436 | 63.4 | 25.6 | 29 |
| | Ranchi | 541 | 29.1 | 5828 | 64108 | 57 | 8895 | 979 | 66.9 | 47 | 24.7 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Palamau | 250 | 19.4 | 1576 | 12009 | 26 | 21956 | 681 | 54.8 | 44.4 | 40.7 |
| | Deogarh | 202 | 14.9 | 518 | 6238 | 21 | 34139 | 714 | 54.7 | 24.8 | 6.8 |
| | Overall | 10921 | 166.7 | 67218 | 641806 | 1151 | 17934 | 3452 | 58.8 | 35.5 | 31.2 |
| Odisha | Keonjhar | 7370 | 18.0 | 28724 | 124661 | 777 | 62310 | 21544 | 59.3 | 56.1 | 38.9 |
| | Angul | 3049 | 12.7 | 13700 | 54526 | 321 | 58938 | 12635 | 69.9 | 28.9 | 41.9 |
| | Sudergarh | 2705 | 20.8 | 14604 | 62504 | 285 | 45614 | 6851 | 65.3 | 58.8 | 41.8 |
| | Jharsuguda | 1324 | 5.8 | 6491 | 35570 | 140 | 39233 | 12041 | 70.0 | 48.4 | 14.4 |
| | Jajpur | 1149 | 18.3 | 4195 | 52862 | 121 | 22915 | 3316 | 71.3 | 30.8 | 8.8 |
| | Koraput | 191 | 13.8 | 6565 | 20483 | 20 | 9841 | 732 | 42.1 | 62.7 | 19.1 |
| | Overall | 15788 | 89.4 | 74279 | 350607 | 1664 | 47463 | 9309 | 62.7 | 48.2 | 31.9 |

Source: Annual reports of mining corporations, Census 2011, CSE & Field work 2012

The concentration of minerals in these districts clearly reflects the uneven distribution of natural resources and also reflects how much significant wealth these backward districts are generating for the country. The socio-economic status of the community in these districts raise a critical question: 'why rich land has poor people'? As almost in all of these districts more than 50 percent of the population lives below the poverty line. All of these states are extremist affected regions as declared by the Government of India and has strong *naxals* presence. Undoubtedly, the *naxals* have strong affiliations with the local community, which justify their presence and existence. The state needs to understand that why people depart from the state? And if there is dissent, there are significant reasons. The provisions of profit sharing as proposed in the MMDR bill will significantly address many of the socio-economic and governance issues of these states.

Shashi Ratnaker Singh, Department of Geography, University of Cambridge
*Not for Citation: Draft for Discussion Only*

**Case Study: Singrauli**

The Singrauli region spreads across the states of Madhya Pradesh (Sidhi and Singrauli districts) and Uttar Pradesh (Sonebhadra district)and has been for a long time promoted as India's energy capital. It continues to be considered as South Asia's biggest industrial area[1]. Literature suggests that ever since 1840, when coal was discovered in Singrauli, the area's development has revolved around exploiting this mineral resource[2] . Singrauli region hosts some of the oldest thermal power stations and operational coal mines in India, set up by the NTPC and NCL. It has a long story of displacement and deprivation, of neglect and underdevelopment. Loss of livelihood and displacement has become a recurring feature for the people of Singrauli due to dams, power and mining projects over the last five decades. Over the past decade the Government of Madhya Pradesh has received a large number of proposals by private companies to establish resource based industries in Singrauli. Infact, it is the single district which has more than one lakh crore private investment[3] in the region. Communities are again in the process of being displaced with private players setting up 5 mining and 5 super thermal power projects in the area.

Singrauli contributes for more than 13 percent of the total thermal power generation in the country, providing electricity to some of the major states: Maharashtra, Punjab, Haryana, Himachal Pradesh, Uttaranchal, Gujarat, J&K, Delhi, Goa, Daman & Diu, Dadar Nagar Haveli and Madhya Pradesh (Source: singrauli.nic.in, ntpc.co.in). It is expected that by 2017, Singrauli will generate 35000MW of electrical power to the grid alone. Singrauli, has a major contribution in revenue generation to the state as well as central government in the form of royalty, cess and taxes. However, half of the population in this region is still living below the poverty line. Inaugurating the Rihand Dam which was to herald all this 'development' in 1964, Nehru promised the Singrauli would become the 'Switzerland of India'. While inaugurating the district Singrauli in the year 2008, the Chief Minister of the State Shivraj Singh Chauhan said that "he wants to develop Singrauli into another Singapore". The political leaders have been portraying different illusionary picture to the local populace. In 2008, the geographical boundaries of Singrauli were redrawn and a geographical space of around 5500 sq.km (out of which 2200sq.km is demarcated for coal mining) was carved out of Sidhi district to provide a status of an independent district. It clearly reflects that the reason behind developing a separate administrative unit of Singrauli was to facilitate the entry of private capital into this region.

---

1 Http://en.wikipedia.org/wiki/Singrauli

2 Http://www.blacksmithinstitute.org/projects/display/147

3 www.singrauli.nic.in

**Table 2 Operational Mining Projects and Revenue Generation in Singrauli between 2008-2013**

| Name of Project | Mine Lease Area (Ha) | Total land acquired Private/Govt/ Forest (Ha) | Project Affected Family (Nos) | Employment (Permanent Positions) (Nos) | Coal Production (MT) | Value of Mineral/Sale Value (Rs Million) | Annual Profit/Net Profit (Rs Million) | Net Fund to District Welfare Fund(Rs Million)* | DWF/Land Area(Rs Million/Ha)** | DWF/Households (Rs Million/Family)*** |
|---|---|---|---|---|---|---|---|---|---|---|
| Amlohri | 2383 | 2383 | 226 | 1471.8 | 30.87 | 30853.4 | 7104.7 | 1847.2 | 0.8 | 8.2 |
| Dudhichua | 1752 | 1752 | 353 | 2368 | 61.04 | 75261.0 | 29261.7 | 7608.0 | 4.3 | 21.6 |
| Jayant | 2480 | 2480 | 668 | 2534.8 | 68.69 | 72435.5 | 38276.5 | 9951.9 | 4.0 | 14.9 |
| Jhingurda | 1200 | 1200 | 57 | 921.4 | 9.83 | 9065.5 | 451.3 | 117.3 | 0.1 | 2.1 |
| Khadia(up) | 1640 | 1640 | 494 | 1428.2 | 20.82 | 24463.3 | 7644.2 | 1987.5 | 1.2 | 4.0 |
| Nigahi | 3036.4 | 2650.4 | 1178 | 2468 | 60.44 | 70748.9 | 26825.5 | 6974.6 | 2.6 | 5.9 |
| Block-B | 1339 | 1339 | 482 | 325.4 | 18.98 | 30973.4 | 22086.0 | 5742.4 | 4.3 | 11.9 |
| Total | 13830 | 13444 | 3458 | 11518 | 271 | 313801 | 131650 | 34229 | 17 | 69 |

**Source:FieldWork2013,NCL/RevenueDeptSingrauli**

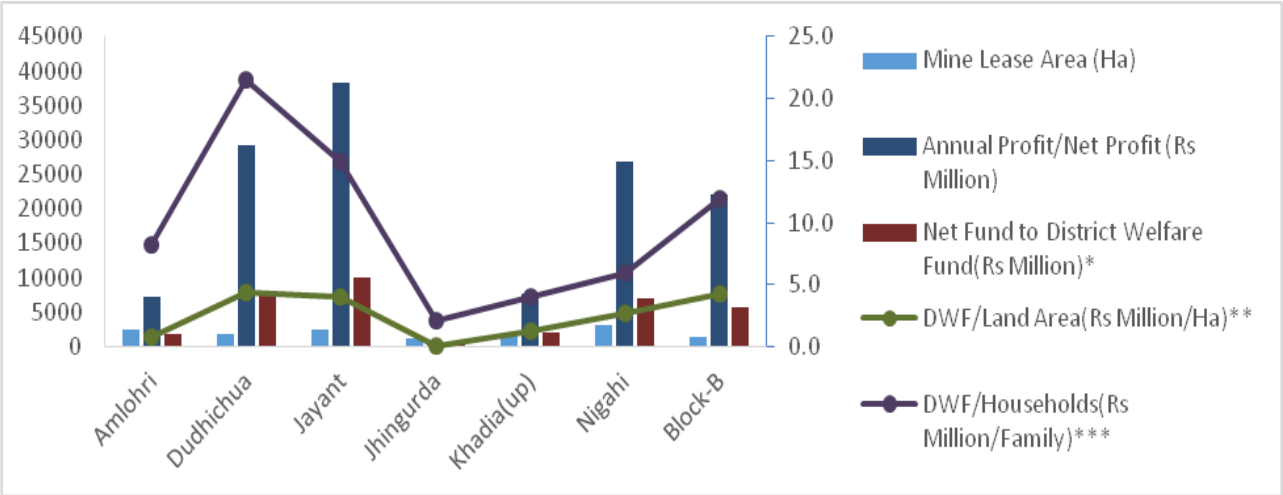



Figure: Revenue generation and profit sharing for mining projects in Singrauli

The table 2 reflects that between 2008 & 2013 (after formation of the district) the operational coal mining projects have generated 131650 million rupees as net profit. Considering the proposed provisions of MMDR bill, 34229 million rupees (26 percent of net profit) would have come to District Mineral Fund in the last 5 years as profit sharing mechanism. The Singrauli region is still inhabited by some of the primitive tribes of the nation such as Baigas and Gonds along with other tribal groups. Undoubtedly, the region needs special focus in terms of resource allocation and localised development.

**Benefit Sharing: International Experiences**

Approach towards compensation and resource revenue distribution and management vary among nations, regions and resources. In the context of this study, the key questions that guided this review are to what extent other countries have systems of payment in place to address the various resource development issues and how have they engaged with the issue of compensation to resource bearing regions. Many mineral rich countries have enacted legislations in which provision of benefit sharing with the local communities is explicitly stipulated. Many of these legislations are built around a comprehensive framework in which compensation, benefit sharing and community development plans are integrated and the roles of local communities, governments and mining companies are clearly delineated. In some of the resource rich countries like Canada and Australia, there are specific provisions in the legal framework to recognise the indigenous land claims and share a part of the profit from resource development activity in that particular region.

Canada

Impact Benefit Agreement (IBA) is legally-binding private contracts which are voluntarily initiated by resource developers. They are used by aboriginals to influence decision making in their lands and address concerns about mining impact on their environment, land, and their traditional way of life.

There are two types of agreements: One is legislative and the other is commercial. Legislative agreements are the ones that are entered into by particular aboriginals and federal government of Canada. Commercial ones take place between mining companies and the aboriginals. IBAs are negotiable and are categorised as socio-economic agreements. These can

include direct or indirect payments. Direct payments encompass profit sharing arrangements like cash or compensation funds. Indirect benefits may include employment, business opportunities and finance or equity provisions. As far as financial provisions are concerned, sometimes a fixed annual payment and subsequent payments based on value of minerals is made while sometimes royalty sharing is also considered. Agreements also make sure that business opportunities go to the affected sections by encouraging joint ventures between aboriginals and non-aboriginals. These agreements are thought to benefit those communities more who have some form of authority over traditional lands.

Australia

In Australia, revenue sharing mechanisms depend on the applicable act. Under the Land Rights Act, the mining royalties are given to the ABR by the state government. It establishes the ABR which has the responsibility to receive and disburse royalties to the aboriginal stakeholders. The funds are received in the form of 'mining royalty equivalents' (MREs) which is the sum of royalties paid to the central and the territory governments by mining companies for activity on aboriginal land. Under the Native Title Act, revenue sharing occurs through agreements between aboriginals and mining companies. Agreements are a central feature of the relationship between aboriginals and mining companies. Individual agreements are defined depending on goals pursued by particular indigenous groups.

There are six different types of financial sharing models:

Model 1 is a onetime upfront payment. Model 2 is a fixed annual payment. In this model, a particular amount is to be paid for some years and a different amount for the remaining years. It is advantageous because predictable amount each year will be paid to the community and it doesn‘t face all or nothing situation as in case of upfront payments. Model 3 is royalty based on output thus payments are linked to unit royalty. It is advantageous because as amount of production increases so does the finance for people. The pitfall is that as production falls the money also reduces and even if the prices of minerals are high the advantage cannot be shared with the community. Model 4 is royalty based on value of mineral output‘thus royalty rates are based on production and prices. Model 5 is profit after tax‘. Model 6 is equity participation‘. The shares are obtained at substantial concession or for free for the indigenous groups. For the company it is beneficial to have an equity share of aboriginals as it increases their stake in making the project a success. In this case indigenous equity participation is more of cooperation rather than negotiation. Combination of different financial models is applied at different stages of project cycle. Like a combination of upfront, annual payment and unit royalties.

**Challenges before the State**

The profit or benefit sharing provision in principle is well accepted across the world. The provisions in the MMDR bill will definitely improve the lives of the local affected community in particular and the mineral rich regions in general. This would also counter the argument behind resource curse that regions rich in mineral resources should not be deprived of development benefits. However, the experiences of the resource rich economies suggest that there are layers of complexities in implementing the profit sharing mechanism at project and regional level. As mining projects adversely affects large area including privately owned and common property resources, identification of directly and indirectly project affected people would be a major challenge. The role of *Gram Panchayat* would be critical in identification of affected families. The review of international experiences suggests that the list of directly mining affected families should be rational and selective. The list should not be broadened to an extent that profit sharing becomes meaningless and the money gets diverted for generic development activities of the district. The families losing land and primary source of livelihood should be given the first priority to be entitled for direct payment and emphasis must be on restoration of livelihood. Some part of the profit sharing fund can be utilised for common facilities for instance health care, education, rural infrastructure etc which can benefit the other indirectly affected families in the mining region.

Shashi Ratnaker Singh, Department of Geography, University of Cambridge


**Conclusion:**

Land is an important and unique factor of production due to its immobility, geostrategic value and so on. How much it actually constitutes of the total project investment and the amount of compensation from a rehabilitation point of view—these are crucial questions and initiatives taken by UPA government under the leadership of Jairam Ramesh- Minister Rural Development in amending the Land Acquisition Act is highly appreciable but considering its special characteristics as factor of production I wish to go beyond this "linear, technocratic, economistic (laws of production—both Marxist and Neo-Liberals) and also reductionist view to a more expansive 'political view". Anyone who is slightly familiar with the history of land struggles in the colonial India would stand for a more political view of land. Second, considering the relationships between land and the state; one cannot overlook the question of "sovereign rights of state" over land especially regarding so-called public land. In a federal democratic polity, it is crucial to understand the regional interest and need to be attentive to local concerns if resource development projects are to truly be in national interest. It is important to internalise that there are layers of 'public' in the bracket of "Public Purpose": One who loses his/her land and livelihood because of such projects and the other who is an actual beneficiary residing thousand kilometres away. There is need for a "just" development approach which can stabilise this "geographical fulcrum of unevenness"

Land has been and will continue to be a central fault line in near future—more than the "clash of civilization"; clashes of land have the potential to radically alter the existing fault lines in politics and also development policies. Let us not forget that almost all Maoist violence is sourced and concentrated in the land especially forest land –mining land where compensation has become a dirty word and rehabilitation as slur! And the approach of providing "development packages" from Centre to the mining districts at times when there are conflicts or crisis is highly absurd, why such spaces are kept deprived in very first place. I return to compensation: no amount of compensation is enough when a robust and inalienable right to livelihood is not inbuilt in the quantified models of compensation. Some would prefer 'monetary compensation' based on 'informed consent" whereas many would still prefer to transvaluing the compensation in terms of "who they are, where they are coming from and what they will be in future"—the classical communitarian questions are not amenable to easy resolution. This shows why democracies are often vulnerable to pressures from land struggles whereas authoritarian political systems often offer swift answers. I strongly believe that the classical political economy question of "land" still remains unresolved; perhaps modernity's future rests on the resolution of this question, though the proponents of neo-age economy would not like to believe that land still matters!

**Annexure I : Critical Evaluation of LARR Act 2013**

The forceful acquisition of land and the consequent displacement of people were among the principal causes of tension amongst, and agitation by, people not only in India, but also in many other countries, including China. In India, it is estimated that approximately 50 million people have been displaced in the last sixty years by development and commercial projects and activities (Fernandes 2007), and that nearly 40 percent of these were tribals. Popular movements against forced displacement and callous rehabilitation are growing, forcing the government to rethink its indifference. The resultant increase in transactional cost for project authorities and corporations, in terms of conflicts resulting in delays, sometimes court cases and injunctions, and consequent cost over-runs, is making them see that a just and humane LARR policy proposed by the Govt. of India, is effectively implemented, is beneficial to all in the medium to long term.

This section will attempt to critically evaluate some of the specific sections of LARR Act 2013 and propose desired recommendations on the basis of author's field experiences:

1. Section 3(c)(iv) defines an affected family as one "whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land;". However, as many of these activities are in government[4] owned land and water bodies, which are not acquired but just resumed, the clause should read "...such livelihood is affected due to acquisition or resumption of land;"

2. Though the requirement for obtaining consent of eighty per cent of the project affected people (provision for subsection vii of section 3(z) (a) for acquisition for certain types of purpose is a very progressive approach, however there are some concerns:Sub-section iv of section 3(z) (a) exempts land being acquired for "the provision of land for planned development" from the requirement of obtaining consent of eighty per cent of the PAPs. The term "planned development" is too vague and all encompassing, and even the acquisition of land for companies and builders could be justified in the name of 'planned development', exempting them from the 80 per cent consent clause. This provision should therefore be deleted from among the exemptions.

3. Section 26 and 30 of the Act, read with schedule I, suggests that the compensation amount determined by the collector would be the final amount and the land owners will not be entitled to demand more. However, if the community is to be empowered to effectively negotiate with the requiring agency that is seeking the consent of eighty per cent of the PAPs, the compensation determined by the collector, and the R&R benefits given in the schedule, should only be the basic minimum, with the freedom to demand and receive a higher package as a result of negotiations.

4. The prescribed rates of compensation (2 and 4 times the circle rate in urban/rural areas respectively) is proposed due to the realisation of the fact that as per the provisions of the earlier legislation i.e, L.A. Act 1894 the land was grossly undervalued because of lack of any scientific methodology for the determination of land price. However, the results of public consultation meetings[5] suggests that it is unreasonable for the land owners getting differential amounts under same

---

4 Posco case in the State of Orissa is a perfect example in this regard, as hundreds of families where practicing prawn culture and betel vines cultivation on the government land, now in such cases the land is already in the possession of revenue department. In such cases special survey needs to be conducted before section 4 notification to keep a record of such families who lose their livelihood because of such acquisitions or resumption of land.

5 Public consultation meetings were conducted in Hazaribagh, district of Jharkhand to gather the perception of project affected families on the proposed recommendations on determination of compensation package in the LARR Act, and the respondents reflected their apprehensions on differential land pricing under similar project may result into conflicts, as acquisition is done under

project where acquisition is done for public purpose and the utility of the land remains same for the project.

5. Section 27 specifies that compensation will be paid to the land owner, but does not mention the tenant. Therefore, even in states like West Bengal, where tenants have legal rights over land, they would only get R&R benefits and no compensation under the LARR Act. It is recommended that recorded tenants should also be compensated along with land owners, the compensation being divided between the owner and the tenant in the same ratio as the agreed division of produce in the record of tenancy.

6. In general, the institutional structure proposed in the Act to ensure that requests for land acquisition are appropriate, that the package determined is fair, and that the processes followed are timely, participatory, transparent and humane, is very weak. Most of the responsibility is with the state governments who have been notorious, in the past (with a few honourable exceptions), for enthusiastically supporting public and private sector projects in their states, at the cost of social and environmental externalities. Though the Government of India has been given a monitoring role, its record in the past has also not been exemplary. Therefore, it is desirable to provide for an independent statutory institution at the national level, with state and district presence, to clear proposals and monitor their implementation, with powers to reject and stop projects and activities which are not in compliance.

7. As R&R is slow and continuous process which requires short, medium and long term interventions and from the implementation viewpoint, the act is still not clear on the question of who will implement the R&R activities. In the past it has either been the project authorities or the state government. However, it is time that we recognised that the proper implementation of a process of displacement, rehabilitation and resettlement requires a great amount of skill and sensitivity, if the inevitable human trauma has to be minimised. Therefore, it would be desirable to provide for independent professional agencies specialising in R&R activities, perhaps located both in the public and the private sectors, which could be given the responsibility of designing and implementing the R&R process, under the overall supervision of the earlier proposed independent statutory authority.

8. The LARR Act adopts the principle of "market value" for determining compensation rates. It also promises land in lieu of land only in irrigation projects, and otherwise only for members of the ST/SC families. However, there are many other communities whose preferred, and sometimes only sustainable, means of livelihood is land based. Therefore, it is desirable that the proposed legislation adopt the principle of "replacement value" and set up a process by which it could help procure land for land for those of the land owning or land dependent PAFs who opt for this, even where this land has to be procured in the open market.

9. There are various emerging requirements associated with LARR, MMDR11, MoEF clearance conditions, etc that companies are expected to fulfil. There is a possibility of duplication in these requirements apart from the multiplicity of interpretations leading to uncertainty for the companies. It is therefore recommended that all community related requirements and investments by companies get codified into a comprehensive set that would need to be followed by a company.

---

public purpose and the utility of land remains the same. It was estimated that in a proposed coal mining project in the district a land owner in a village with a lower circle rate getting 6lakhs/acre and in the same project the other land owner will be getting 40lakhs/acre according to the provisions of the new act.

References:


- Cernea, M. M. (2000) Risks, Safeguards, and Reconstruction; A Model for Population Displacement and Resettlement. In: Cernea, M. M. and McDowell, C. Eds. Risks and Reconstruction: Experiences of Resettlers and Refugees. Washington DC, The World Bank
- Cernea, M. M. (2005) The Ripple Effect' in Social Policy and its Political Content: A Debate on Social Standards in Public and Private Development Projects. In: Likosky, B. M. ed. Privatising Development: Transnational Law, Infrastructure and Human Rights. Leiden, Martinus Nijhoff
- Cernea, M. (2007) Financing for development: benefit sharing mechanisms in population resettlement. Economic and Political Weekly. March, pp1033-1046
- Baviskar, A. (2003) For a cultural politics of natural resources. Economic and Political Weekly. 38(48), pp.5051-5056
- Baxi, U. (1989) Notes on Constitutional and Legal Aspects of Rehabilitation and Displacement: Development, Displacement and Rehabilitation. Issues for National Debate. New Delhi, Indian Social Institute
- Balakrishnana, R. (2004) Jharkhand Matters: Essays on EthnicityRegionalism and Development. Delhi, konark Publishers
- Bhattacharya, H. (2005) Federalism and regionalism in India: institutional strategies and political accommodation of identity, Heidelberg papers in south asian and comparative politics, working paper no.27
- Bhushan, C. (2008) Rich, Lands, Poor People: Is sustainable mining possible, Centre for Science and Environment, Delhi.
- Billon, L. P. (2001) The political ecology of war: natural resources and armed conflicts. Political Geography. 20, pp.561–584
- Borras, S.M.Jr., P. Michael, and I. Scones, (2010) The Politics of biofuels, land and agrarian change. The Journal of Peasant Studies. 37(4) October, pp.575- 592
- Clark, D. H. (1997) The fiscal transfer system in Canada. In: Ahmad, E. ed. Financing Decetralized Expenditures:An International Comparison of Grants. UK, Edward elgar publishing ltd
- Chan, N. (2003) Land Acquisition Compensation in China – Problems and Answers. International Real Estate Review. 6(1), pp.136-52
- Corbridge, S. (1987) Perversity and ethnoregionalism in tribal India: the politics of the Jharkhand. Political geography quarterly. 6(3) July, pp.225-240
- Collier, P. and Hoeffler, A. (1998) On Economic Causes of Civil War. Oxford Economic Papers. 50, pp.563–573.
- Collier, P. and Hoeffler, A. (2004) Greed and grievance in civil war. Oxford Economic Papers 56, pp.563–595.
- Dana, C. (2003) Singrauli: An Unfulfilled Struggle for Justice. In: Dana, C., Fox, J. Kay, T. eds. Demanding Accountability: Civil Society Claims and the World Bank Inspection Panel. USA, Rowman and Littlefield Publishers Inc.
- Deininger, K. (2003) Land policies for growth and poverty reduction. A World Bank policy research report. Washington, DC and Oxford, Oxford University Press, World Bank.
- De Soysa, I. (2000) The resource curse: are civil wars driven by rapacity or paucity?. In: Berdal, M. and Malone, D. eds. Economic Agendas in Civil Wars. Boulder, CO.
- Fernandes, W. and Thukral, G. E. (1989) Development, Displacement and Rehabilitation – Issues for National Debate. Indian Social Institute, Delhi
- GRAIN, 2008. Barcelona, (2008). Seized: The 2008 land grab for food and financial security, Barcelona
- Gunton, T. (2003) Natural Resources and Regional Development: An Assessment of Dependency and Comparative Advantage Paradigms. Economic Geography 79 (1), pp.67-94
- Mahalingam, A. and Vyas, A. (2011) Comparative Evaluation of Land Acquisition and Compensation Processes

across the World. Economic and Political Weekly. 46(32), Mumbai

- Noronha, L., Srivastava, N., Datt, D. and P. V. Sridharan (2009) Resource Federalism in India: the case of Minerals. Economic & Political Weekly. 8(17) February
- Noronha, L. (2005) Assessing Quality of Life in the Mining Region. Economic and Political Weekly. January, pp.72-78
- Pandey, B. (2000) Impoverishing Effects of Coal Mining Projects: a case study of five villages in Orissa. In: Mathur, H. And Maesden, D. eds. Development Projects and Impoverishment Risk: resettling project affected people. Oxford University Press
- Porwal, V. & Singh, Shashi (2011) Land Acquisition and Determination of Land Price: A critical appraisal of the existing and proposed normative framework as applied in Singrauli District, Madhya Pradesh. In: Talwar, S. And Saumyaji, S. eds. Development Induced Displacement , Rehabilitation and Resettlement in India: Current Issues and Challenges.London, Routledge Publication.
- Ramanathan,S. (1996) Displacement and the Law. Economic and Political Weekly. 31, pp.1486
- Rao, G. and Singh, N. (2005) Political Economy of Federalism in India. Delhi, Oxford University Press.
- Rosser, A. (2006) The Political Economy of the Resource Curse: A Literature Survey. IDS Working Paper 268, England
- Ross, M. (2004) What do we know about natural resources and civil war?. Journal of Peace Research. 41, pp.337–356
- Ross, M. L. (1999) The Political Economy of the Resource Curse. World Politics, 51, pp.297– -322
- Rost, R O. and Collins, G. H. (1984) Land Valuation and Compensation in Australia. Australian Institute of Valuers. pp.667
- Sachs, J.D. and Warner, A.M. (1995) Natural Resource Abundance and Economic Growth, NBER Working Paper vol. 5398 National Bureau of Economic Research, Cambridge
- Sharma, R. N. & Singh, S. (2009) Displacement in Singrauli Region: Entitlements and Rehabilitation. Economic and Political Weekly. 14 (51) December.
- Singh, J. (2006) Separation of powers and the erosion of the right to property‘ in India. Springer[Internet], 17, pp.303–324. Available from:< http://rd.springer.com/article/10.1007/s10602-006-9008-7?state=cookieless> [Accessed 14 October 2010]
- Singh, M. P. (2004) Federal Division of Responsibilities in India. Indian Journal of Federal Studies. 1(9)
- Smith, N. (1984) Uneven Development, New York , Basil Blackwell
- Tuan, Y. F. (1977) Space and place: The perspectives of experience. St. Paul, MN: University of Minnesota Press.
- Turner, R.K. (1999) The Place of Economic Values in Environmental Valuation in Valuing Environmental Preferences. In: Bateman, I. J. and Willis, K. G. eds. Oxford Univeristy Press, pp 17-41
- Upadhya, S. et al (2006) Estimating the Economic Value of Forest Land: the legal perspective. Institute of Economic Growth. Delhi

Laws and Policies

- Australian Expropriation Law.
- Constitution of the United States, Amendment V
- 7 Constitution of the Philippines, Article III.
- Constitution of Brazil, Article 153
- Constitution of Cambodia, Article 44
- Constitution of Japan, Article 49
- Expropriations Law, 1936, Mexico.
- Land Administration Law, 1988, Peoples Republic of China.

- The Singapore Land Acquisition Act, 1996.
- The UK Town and Country Planning Act, 1990

List of Acts:

- Land Acquisition Act
- Mines and Minerals Development and Regulation Act
- Mineral Concession Rules
- Forest Conservation Act
- Environment Protection Act
- Coal Bearing Act
- Panchayat Extension to Scheduled Areas Act
- Commonwealth Australia Act
- French Civil Code (Article 545
- Constitution of the USA (5th Amendment)