

Turn clock back

The right to private property must once again be made a fundamental right, says
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The land acquisition question is a property rights question and not a question of industrial versus agrarian development. It is not a question of displacement and rehabilitation either, as politicians say.

To understand the issue, we first need a primer on property rights. Property rights have been given a pre-eminent position by modern thinkers, at par with the right to life, liberty, free speech, etc. In contrast, Left philosophy is founded on disregard for private property rights - it believes all property should be owned by society as a whole. The state owns and can take over any private property.

When the British were 'civilising' India, with a Western-style rule of law, private property rights were given pre-eminence. The Government of India Act, 1935, the predecessor of the Indian Constitution had stringent provisions to protect property rights. Contrary to popular misconceptions, the Land Acquisition Act of 1894 was also enacted to provide protection to private property, putting limitations on the government's power of acquisition. This power is called 'eminent domain' in legal jargon, which means the government can acquire properties for public purposes, like building a road, but only after paying full compensation - making sure that

after compensation is paid, the person receiving it remains as well off if not better. The idea behind this power is that private interests should not stall public works.

The root of the problem is that well-meaning socialist thinking became dominant in Indian politics from pre-independence days, which undermined private property rights. The main architect of socialist thinking was Pandit Nehru. But there was an equally enlightened counterpoint advocated by men like Sardar Patel, Rajendra Prasad and C. Rajagopalachari. The fissures became evident in the early 1930s, when one side led by Nehru was for state power to acquire any property it wanted, especially that of the *zamindars*, and the other for full protection of private property right. Gandhi was against the state's right to expropriate.

The Constituent Assembly debated the issue of private property rights. Though there was a socialist undercurrent, the founding fathers found it prudent to protect private property rights by making it a fundamental right. The fundamental right to property created problems for land reforms programmes. When landowners petitioned against expropriation, the courts rightly came to their rescue. Nehru tried to force land reforms through by constitutional amendment.

Then came Indira Gandhi, greatly influenced by her father's Fabian socialism on one side and some communists. This led to competition between political parties against private property rights. Indira Gandhi went on the rampage against private property rights, nationalising many sectors. This was challenged in courts, and the courts tried to come to the rescue of private property rights. But Indira Gandhi started settling scores with the judges going against her by superseding them, promoting junior judges toeing her line.

The Land Acquisition Act was amended after independence to constantly widen the scope of eminent domain, to include any purpose, which now can even be making a holiday resort or golf course.

When the Janata Party came to power, it removed property rights from the chapter on fundamental rights through the 44th amendment. In effect, it meant that now the state could take away land for whatever purpose it wanted. The legal recourse was completely circumscribed. Some Janata leaders had expressed doubts about the attack on property rights, fearing it could affect rights of smallholders.

Congress Prime Minister PV Narasimha Rao initiated reforms, to free the economy from socialistic controls. These policies started paying some dividends, with India

becoming competitive in global markets. These policies were furthered by the subsequent BJP government, which went further ahead, privatising the public sector. Earlier there was competition between major political parties to be pro-poor and pro-farmer, now there is a competition to be pro-industry and pro-investment, which is not bad thing.

But a problem has cropped up. The attack on private property rights is hounding us now. First, land reform seems to have petered out, because it is widely believed that small landholding is not economically viable. Second, the state still has omnipotent powers to acquire land. The difference now is that the government is acquiring land to give to industrialists.

It must be remembered though that it is not that during the time of Nehru and Indira Gandhi, the poor were not robbed. Vast tracts of lands were cleared, mainly of *adhivasis*, to build steel plants, dams and the like, without adequate compensation.

It is well documented that the state can and does abuse private rights of citizens, making it necessary to limit its power by guaranteeing certain rights.

So now we are in a situation where the private property rights of some citizens (mostly smallholders) are being abused by the state. The poor citizen has no recourse to law, it can only fight battles on the street first and then perhaps vote governments out. The problem is there is no guarantee that a new government won't do the same.

The most bizarre aspect is that the ultra-left (Naxals/Maoist and the likes) have emerged as credible defenders of private property rights of smallholders against state expropriation. When Prime Minister Manmohan Singh calls Maoists the single biggest threat to the Indian state, he would do well not to give them this vacuum to fill, by restoring private property rights as a fundamental right, beyond the reach of the government, except under eminent domain and with full compensation.

(The writer is a freelance contributor)