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Come on, liberals: Let's change India!

Property rights and land acquisition

Sanjeev Sabhlok

This month I'd like to begin by exploring the concern a reader has raised about the urban governance model I had suggested in my November article. Noting that 'elected representatives are equally corrupt and non-accountable' and that 'persons of integrity stand little chance of getting elected', the reader thinks that the model I proposed won't work, at least not before other things happen first, such as speedy trials of corrupt people.

It is true that a large number of interconnected reforms are needed in India. But to avoid getting lost in this complexity, I suggest that we look at each area in isolation and determine the best policy for that area. We want policy compatible with freedom; policy that will deliver accountability while being mindful of human nature. This set of best policies can then become a blueprint of reforms that we can aim to, together, deliver to India through political organisation.

The local governance model I proposed last month works without corruption in many parts of the world. Therefore I can't see any major reason why it won't work in India. Let us insist on local governments where council CEOs can be hired and fired by elected representatives. Separately, let us explore policies to expedite court trials of the corrupt. I will review the policies of justice in a separate article.

Origin of property

The defence of our property is critical to our continuing freedom. Freedom and justice are of one piece, and, as David Hume noted, '[t]he origin of justice explains that of property'. In each of our transactions we leave a memory of relevant accountabilities and attributions. Attribution, namely, who it is that owns a particular consequence, determines the ownership of property during and after a transaction. Some transactions leave a physical residue we call goods; others, being a service or intellectual property leave behind the memory of an experience or thought.

Socialist aversion to property

Socialists differ sharply from liberals in their conception of property. The socialists' main aim is to achieve economic equality by robbing Peter to pay Paul. They aim to do this by abolishing private property and vesting it in the state. But even if they succeed in abolishing private property for an instant, new private property and inequality springs to life like a Houdini springing out of his cage. A pen, paint brush, or a good voice can generate untold wealth and upturn utopian socialist goals.

India's initial Constitution was largely liberal and allowed for substantial property rights, but socialist Nehru soon enacted land ceiling legislation to confiscate lands above a certain size, and sheltered these illiberal laws under the Ninth Schedule of the Constitution. Later, through the 25th Constitutional amendment of 1971, Indira Gandhi removed the Constitutional requirement to compensate people for their land compulsorily acquired by government. An unspecified 'amount' was now deemed sufficient in lieu. State theft was thus fully institutionalised.

The biggest blow to property rights was administered by the Janata Party, a rag-tag bunch of socialist factions, some of which have later formed the BJP. The Janata Party abolished the right to property through the 44th Constitutional amendment of 1978. In the past, Article 19(1)(f) had guaranteed Indians the right to acquire, hold and dispose of property. This was repealed. We therefore have no Constitutional property rights today. Property is merely a legal right revokable by simple majority in Parliament.

The utopian system of socialism always attracts the most evil people. Even as they have publicly pursued populist socialist policies to undermine property rights, our socialist politicians have exported unimaginable public wealth from India into their Swiss bank accounts. This fraud has been facilitated by not maintaining accurate and transparent land records. The free West, on the other hand, has developed technologies to strongly protect people's titles in land, which has facilitated new investment and economic success.

Compulsory land acquisition and land re-zoning

The main reason we form a nation through a social contract is to maximise our security and freedom. National security is, in many ways, a precursor of freedom. Where national security so requires, we agree to exchange our property rights in a *particular* piece of land with comparable land elsewhere. So, for example, if I own land on top of a hill but the army needs to build a fort on it, then I agree to hand over my land in lieu of just compensation. Similar arguments apply to major roads such as the Golden Quadrilateral which can expedite troop movement in India during a crisis, or to roads in border areas.

But what about compulsory acquisition of land for ordinary economic infrastructure: things like small roads, local dams or sewers, or land for schools and universities? And what if a local government rezones our land from residential to non-residential, potentially reducing its value? Are such actions of elected governments compatible with our freedom? Yes – they are, provided a genuine public interest is met and just compensation paid.

Validation of the public interest can be done through local governments through public consultation including small referendums, in addition to the necessary declarations of public interest from the state or central governments. Compensation can then be determined by an expert panel headed by a retired High Court judge to ensure that not only taxpayers get good value out of this acquisition but the property rights of those whose land is being acquired or re-zoned are protected. The panel should, in the first instance, aim to acquire land only through voluntary consent.

Our current methods to determine compensation ('amount'), being primarily based on figures from registered sales, are flawed since sale prices are under-reported in India to save stamp duty. In addition to this basic information, innovative ideas including those from experimental economics should be used to assess values. Economic modelling and experimental markets can assist in arriving at the optimal value proposition for everyone. In principle, if a net present value of Rs. 10 is created from the infrastructure, then up to Rs. 5 should be available for sharing with those whose land is being acquired, either as a one-off payment or a long-term annuity.

What about compulsory acquisition of land for purely private purposes – say, when Tatas want to build a factory in Singur? That is clearly out of bounds: coercive acquisition of land to benefit the shareholders of Tatas or for any other purely private purpose is repugnant to a free society. Game playing may well occur between Tatas and its competitors in consequence, potentially preventing the quick private acquisition of land, but that cannot be used as an excuse to use the state's coercive powers. Markets must find their own solutions to competition.

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The above discussion has barely scratched the surface of property rights and policies to protect these rights. But I do hope that such discussions will sufficiently motivate you to consider joining the Freedom Team to deliver such policies to India (see <http://freedomteam.in>). The point to remember is that the policies of freedom won't get adopted and implemented in India without a major political battle to be fought by the liberals. Let us 'Arise, awake, and stop not till the goal is reached' (Vivekananda).

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