

LAND GOVERNANCE, LAND GRABBING AND ENVIRONMENT: AN INTER DISCIPLINARY STUDY OF LAW AND ECONOMICS WITH SPECIAL EMPHASIS ON PRE AND POST COVID IMPACT IN INDIA

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Abstract

The present paper titled “Land Governance, Land Grabbing and Environment: An Inter disciplinary study of Law and Economics with Special emphasize on Pre and Post Covid Impact in India” is a novel study. There are both positive as well as negative impacts not only economy but also on environment in the pre and post Covid. There are different law are introduces relating to the Environment law. During the Covid 19 there were increasing the use of plastics in food supply in addition medical waste generation was increased globally, which was a threat to public health and the environment. “Law and economics” also known as the economic analysis of law, differs from other forms of legal analysis in two main ways. First, the theoretical analysis focuses on efficiency & second is legal situation is said to be efficient if a right is given to the party who would be willing to pay the most for it.

Keywords: land, environment, impact, economy

INTRODUCTION

“What we are witnessing is a situation in which pressures on land and water are increasing at an unprecedented speed. Each year, up to 30 million hectares of farmland are lost.”

-Oliver De Schutter, Special Rapporteur on the Right to Food

Corona Virus pandemic has affected the Indian economy very adversely. The level of GDP may further fall, more so when India is not immune to the global recession. In fact, it is believed that India is more vulnerable, since its economy has already been ailing and in a deep-seated slowdown for several quarters, much before the COVID-19 outbreak became known. Indian government has setting up an Economic Task Force to devise policy measures to tackle the economic challenges arising from COVID 19, as also on the stability of Indian economy.

Economics and Law: Nature of Interdisciplinary Study

Economics is defined as the social science that deals with the production, distribution, and consumption of goods and services. The study of economics is extensive and varied. The nature and scope of economics depend upon the interaction of economic agents and how economies work. economics is treated as a social science because of the following features: It involves a systematic collection of facts and figures. Like in science, it is based on the formulation of theories and laws. It deals with the cause and effect relationship.

On the other hand, the term “Law” denotes different kinds of rules and Principles. Law is an instrument which regulates human conduct/behaviour. Law means Justice, Morality, Reason, Order, and Righteous from the view point of the society. Law means Statutes, Acts, Rules, Regulations, Orders, and Ordinances from point of view of legislature. Law means Rules of court, Decrees, Judgment, Orders of courts, and Injunctions from the point of view of Judges. Therefore, Law is a broader term which includes Acts, Statutes, Rules, Regulations, Orders, Ordinances, Justice, Morality, Reason, Righteous, Rules of court, Decrees, Judgment, Orders of courts, Injunctions, Tort, Jurisprudence, Legal theory etc.

“Law and economics” also known as the economic analysis of law, differs from other forms of legal analysis in two main ways. First, the theoretical analysis focuses on efficiency. In simple terms, a legal situation is said to be efficient if a right is given to the party who would be willing to pay the most for it. There are two distinct theories of legal efficiency, and law and economics scholars support arguments based on both. The positive theory of legal efficiency states that the common law (judge-made law, the main body of law in England and its former colonies, including the United States) is efficient, while the normative theory is that the law *should* be efficient. It is important that the two theories remain separate. Most economists accept both.

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EFFECT OF PLASTIC AND MEDICAL WASTE DURING THE COVID 19

The new COVID-19 pandemic has prompted an expanded interest for single-utilize plastic, increasing strain on this generally wild issue. This work shows that in excess of 8,000,000 tons of pandemic-related plastic waste have been created all around the world, with in excess of 25,000 tons entering the worldwide sea. The greater part of the plastic is from medical waste created by clinics that predominates the commitment from individual insurance hardware and web based shopping bundle material. This represents a dependable issue for the sea climate and is for the most part aggregated on sea shores and beach front dregs. We call for better clinical waste administration in pandemic focal points, particularly in emerging nations.

The COVID-19 pandemic has prompted an expanded interest for single-use plastics that escalates strain on a generally wild worldwide plastic waste issue. While it is suspected to be huge, the size and destiny of this pandemic-related botched plastic waste are obscure

From the above observation we find hospital waste represents the bulk of the global discharge (73%), and most of the global discharge is from Asia (72%), which calls for better management of medical waste in developing countries. ⁴

ROLE OF ECONOMICS IN ANALYZING THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

The environmental sciences have documented large and worrisome changes in earth systems, from climate change and loss of biodiversity, to changes in hydrological and nutrient cycles and depletion of natural resources. These global environmental changes have potentially large negative consequences for future human well-being, and raise questions about whether global civilization is on a sustainable path or is “consuming too much” by depleting vital natural capital. The increased scale of economic activity and the consequent increasing impacts on a finite Earth arises from both major demographic changes including population growth, shifts in age structure, urbanization, and spatial redistributions through migration and rising per capita income and shifts in consumption patterns, such as increases in meat consumption with rising income.

At the same time, many people are consuming too little. In 2015, ~10% of the world’s population (736 million) lived in extreme poverty with incomes of less than \$1.90 per day. In 2017, 821 million people were malnourished, an increase in the number reported malnourished compared with 2016. There is an urgent need for further economic development to lift people out of poverty. In addition, rising inequality resulting in increasing polarization of society is itself a threat to achieving sustainable development. Eliminating poverty (goal 1) and hunger (goal 2), achieving gender equality (goal 6), and reducing inequality (goal 10) feature prominently in the United Nation’s Sustainable Development Goals. A recent special issue in PNAS on natural capital framed the challenge of sustainable development as one of developing “economic, social, and governance systems capable of ending poverty and achieving sustainable levels of population and consumption while securing the life-support systems underpinning current and future human well-being”.

The discipline of economics arguably should play a central role in meeting the sustainable development challenge. The core question at the heart of sustainable development is how to allocate the finite resources of the planet to meet “the needs of the present, without compromising the ability of future generations to meet their own needs”. A central focus of economics is how to allocate scarce resources to meet desired goals; indeed, a standard definition of economics is the study of allocation under scarcity. More specifically, economics studies the production, distribution, and consumption of goods and services, which are both a key driver of development (increasing standards of living through providing food, housing, and other basic human requirements) and a main cause of current changes in earth systems. Economics, combined with earth system sciences, is crucial for understanding both positive and negative impacts of alternatives and the trade-offs involved. Economics, combined with other social and behavioural sciences, is crucial for understanding how it might be possible to shift human behaviour toward achieving sustainable development. Economics has well-developed fields in development economics, ecological economics, environmental economics, and natural resource economics, with large bodies of research relevant to the sustainable development challenge. The application of economic principles and empirical findings should be a central component in the quest to meet the aspirations of humanity for a good life given the finite resources of the earth.

ECONOMIC ANALYSIS OF ENVIRONMENT AND LAW:

The complex interactions between environmental law in its many manifestations and international economic law, particularly trade and investment, are a major area of environmental governance. Whether it is the search for synergies between the pursuit of economic prosperity through trade and investment and environmental

⁴ <https://www.pnas.org/content/118/47/e2111530118>(retrived date 09.02.2022)

protection or the management of the potential conflicts among these different pursuits, the role of law and legal design is extremely important in practice. The move from a polluting and resource inefficient economic system to a green economy, characterised by its low environmental footprint, cannot be effected without major regulatory change (either regulation or deregulation), which, in turn, is having an adverse impact on the industries and utilities heavily involved in the brown economy. Understanding how international and domestic laws can govern such a transition is a key area of research.

LAND GOVERNANCE, LAND GRABBING AND ENVIRONMENT:

The imbalance and inequality between the power and size of the national and international capital has widened the gap. The phenomenon has generated a topic widely debated in all its components: philosophical, sociological, economic, legal, moral and political, due to its disruptive effects on local cultures, on the social and demographic evolution of communities, by displacement and destruction of long-standing local economies, all of which may jeopardize the state, social and national identity of a country.

The agricultural economists have not been able to provide a definition of wide and satisfactory recognition. The evolution of the concept highlights not only the massive transformations of the inland agricultural sector under the globalization pressure, but also it shows the dynamical approach of theoretical argue regarding the land grabbing tendencies and necessity as is presented in studies as Hartvigsen (2014) or ECV (2013).

A GLOBAL RUSH ON FARMLAND

While Latin America and South East Asia have traditionally been the primary targets for foreign investment in agriculture, the World Bank's initial report on the subject found that in recent years more than 70 percent of these deals took place in Sub-Saharan Africa, with Ethiopia, Mozambique, North and South Sudan, Madagascar and the DRC being the principal countries. Land grabbing is an issue of crucial concern for economic, social and cultural rights.

An essential characteristic is the direct or indirect involvement of investing governments. By acquiring arable land for up to 99 years, states may directly outsource their food production, or execute projects via state-owned enterprises. Furthermore they often provide subsidies for food or biofuel production. About 50 percent of land grabs are conducted with state involvement.

FOREIGN INVESTORS AIM FOR FOOD AND ENERGY

While governmental investments often focus on food production, private corporations - mostly based in Western countries - mainly produce crops for biofuels. Stock market brokers and investment funds have emerged as new actors in the agricultural sector acquiring farmland for speculation purposes. New York-based investment fund Jarch Capital is now said to own 1.2 million hectares of land in South Sudan, reportedly bought from rebel leaders.

The major investors in the region are the Gulf States. They generally favor other members of the Organization of the Islamic Conference, such as North and South Sudan. South Korea and China have also played a significant role.

LOSS OF ACCESS TO LAND AND RESOURCES

In the vast majority of cases these investments are characterized by a lack of transparency and scant participation of local populations. They are not illegal under investment law, however, and they are often nested in bilateral cooperation agreements.

Those benefiting from such investments are often local elites and corrupt governments. When up to 100 percent of crops are used for export in order to fulfill the food security targets of foreign countries, benefits for local populations are limited. Traditional forms of agriculture are lost, while large-scale industrial farming causes environmental degradation and water scarcity. Most importantly, people are driven off their lands and lose access to resources. Those affected generally have no voice to demand justice.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS AS A TOOL TO DEMAND JUSTICE

It stands in clear contradiction of economic, social and cultural rights. Access to land and resources has been defined as a core element of the right to food, housing, self-determination and participation in cultural life. The right to food calls for a fair distribution of food supplies while the right to housing aims at outlawing arbitrary forced evictions.

General Comment 12 of the CESCR stresses in Paragraph 6 that: "The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times

to adequate food or means for its procurement." The General Comment also establishes that food availability involves "possibilities either for feeding oneself directly from productive land or other natural resources." General Comment 4 on the right to adequate housing notes that the right to housing cannot be interpreted narrowly, but rather should be seen as "the right to live somewhere in security, peace and dignity", and that "forced evictions are considered as prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law."

Furthermore, in its General Comments the Committee has repeatedly stressed the importance of participation of local populations in decision-making processes. Furthermore, the African system of human rights emphasizes the rights to natural resources, development and a healthy environment.

As mentioned above the direct or indirect involvement of investing governments is an essential characteristic of land grabs. Therefore, human rights obligations cannot be restricted to host governments. Those states acquiring land abroad must also live up to extraterritorial obligations to respect, protect and fulfil human rights towards those affected by their actions. The UN Charter establishes the duty to cooperate internationally in order to establish an enabling environment for the fulfilment of human rights. There is no space for land grabs in such an "enabling environment". Economic, social and cultural rights can serve as a tool to prevent it.

PRE AND POST COVID IMPACT ON LAND GOVERNANCE, LAND GRABBING AND ENVIRONMENT IN INDIA

Before the evasion of Covid-19 in India, issue of the land governance, land grabbing and environment was managed by the state with less hindrance and the position was under control with respect to economic position.

Due to covid-19, there was nation wide lockdown and transfer, immigration of people from various places. With respect to land grabbing, the position became worse. Goons were out of control. Gujarat government also enacted special law relating to prohibition of law grabbing in 2020. It increased issues like wildlife hunting, illegal deforestation, and fishing activities.

Additionally, sudden shutdown of ecotourism activities in tourist destinations, and in the forest areas have increased the unemployment rate, as ecotourism is considered as the major source of an economic mainstream. We must understand that Covid -19 is a reminder to indicate the relations between human beings and the environment. So, to prevent future outbreaks, we must address the threats to ecosystems and wildlife, including habitat loss, illegal trade, pollution, and climate change.

IMPACTS OF COVID-19 IN THE ECONOMY REGARDING TO THE POLICY OF THE LAND GOVERNANCE:

The world today faces many complex challenges including the adaptation and mitigation of climate change; rapid urbanization; increased demand for natural resources; growing food, water and energy insecurity; increased natural disasters; and resolution of violent conflict. Many of these challenges have a clear land dimension: access to land; insecurity of tenure; unsustainable land use; and weak institutions for land administration, dispute and conflict resolution, etc. Responding to these challenges is particularly difficult when the governance of land is weak. This paper addresses land governance primarily in developing and transitional countries but it may also be relevant to people in developed countries who are seeking to improve land governance. It also serves as a background paper for discussions in relation to the preparation of voluntary guidelines on the responsible governance of the tenure of land and other natural resources.

Land is the single greatest resource in most countries. People require land and related resources such as forests and water for the production of food and to sustain basic livelihoods. Land provides a place for housing and cities, and is a basic factor of economic production as well as a basis for social, cultural and religious values and practices. Access to land and other natural resources and the associated security of tenure have significant implications for development. The land rights of the poor and vulnerable are increasingly affected by climate change, violent conflicts and natural disasters, population growth and urbanization, and demands for new energy sources such as bio-fuels.

This paper shows that while some progress has been made in improving secure access to land and other natural resources for the rural and urban poor, a number of longstanding challenges remain. Although ancestral rights to land and other natural resources are a cornerstone of the livelihoods of indigenous people, the legal recognition and safeguarding of such rights has been uneven. Despite women being the principle farmers or producers in many parts of the world, significant gender inequities continue to exist with regard to use of and control over land and other natural resources. Reliable statistics on land ownership are difficult to obtain but there is a broad consensus that the vast majority of women in the world do not have formally registered land rights.

Globally, many rights to land and other property are not legally recognized and documented. Even when land is included in a land registration system, the records of who holds rights to that land are often out of date.

Conventional technical approaches to land will not be adequate to address these challenges. Part of the reason is that existing land administration systems are, in many cases, not able to cope with current challenges, let alone those of the future. The other part of the reason is that many of the problems are both massive in scale and very complex. They are highly resistant to resolution: land reform and urban upgrading, for example, have been implemented in numerous countries in different ways, yet rural landlessness persists and informal settlements are expanding. The paper argues that the quality of land governance is an important determinant of the number and scale of tenure-related problems; the quality of land governance, moreover, will also affect the outcome of reforms designed to address these same problems. Towards improved land governance⁵

ENVIRONMENT AND LAND GOVERNANCE

Land governance involves a procedure, policies, processes and institutions by which land, property and other natural resources are managed. This includes decisions on access to land, land rights, land use, and land development. All countries have evolved a policy on how to deal with the management of land in their society. They have to deal with the four functions of land tenure, land value, land use and land development in some way or another. In every society, sound land governance is the key toward the achievement of sustainable development. It is a process and institution by which land, property and natural resources are managed.

CONCLUSION

Until recently awareness rising on the subject was largely left to non-governmental organizations and human rights activists. Only in 2009 did the World Bank take up the subject, arguing for principles of responsible investment. Along the same lines, the FAO has drafted voluntary guidelines for investors in agriculture. For many, these ethical guidelines do not provide an adequate solution to the problem, and many civil society organizations and social movements demanding justice have called for land grabbing to be outlawed.

The Kuala Lumpur Guidelines for a Human Rights Approach to Economic Policy in Agriculture, developed by ESCR-NET, have also been designed as a tool for guiding agricultural policy in accordance with human rights principles and standards. Meanwhile, The Basic Principles and Guidelines on Development-Based Evictions and Displacement, drawn up by the Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living, address the human rights implications of coerced or involuntary evictions and displacement. The latter framework also offers guidance on the human rights obligations of duty-bearers in the face of potential violations caused by land grabbing.

The recent large-scale acquisition of land is a global phenomenon with deep implications for the realization of economic, social and cultural rights for some of the world's most vulnerable populations. As former UN Secretary General Kofi Annan stated in 2010 in no uncertain terms, "we have seen a scramble for Africa before. I don't think we want to see a second scramble of that kind."

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⁵ <https://www.fao.org/3/ak999e/ak999e.pdf> (retrieved dated 11/02/2022)