

THE DEMAND-SIDE OF THE RULE OF LAW: INDIA'S EXPERIENCE WITH EMINENT DOMAIN LAW REFORM

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This paper places the issue of land acquisition within a rule of law framework and analyses the national level reform of India's Land Acquisition Act, 1894. While orthodox approaches to legal reform have placed a strong emphasis on state-centric 'supply-side' factors, more recently it is the constituencies within society that call for and enforce limitations to the exercise of state power that have been highlighted in the context of rule of law reform strategies. The rule of law seeks to restrain government action through law. In the context of its relevance to economic development, it is seen as a protection of private property against arbitrary expropriation by the state. Eminent domain, on the other hand, is the state's legal power to take possession of an individual's property for the purposes of undertaking state-led development projects. Both of these legal precepts, the rule of law as well as eminent domain, are in their own right seen as enablers of a nation's economic development. However, in the context of the ongoing global land rush, it is argued that they can be at odds with one another. This paper illustrates how an attempt at eminent domain action came in conflict with rule of law principles in the specific case of the compulsory acquisition of agricultural land in rural West Bengal in India. A broad-based social movement against this land acquisition sparked the passage of a new land acquisition law in 2013. Specifically, it is argued that this legal reform resulted from a

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legal empowerment process involving both, rights-based legislation and the activism of non-state agents. Illustrating this case of demand for the new land acquisition law, its substantive provisions, and subsequent legal and political developments in relation to the 2013 Act, this paper concludes with critical reflections on the potential of legal empowerment and demand-side strategies to contribute to long-term and sustainable legal reform in pursuit of the ‘rule of law’ ideal.

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I. INTRODUCTION

A. The Rule of Law and Eminent Domain

The rule of law has been viewed as an essential underpinning of, as well as a means to, economic development. An ever-evolving concept that has been defined in various ways, both narrowly and broadly, it has wide-ranging implications for issues ranging from foreign investment and the ease of doing business, to security and public order.¹ At its core, the rule of law is the restraint on government action by law.² In the context of its role in promoting economic development, it has often been cast in terms of the protection of private property *against* arbitrary expropriation by the state. The concept of eminent domain on the other hand, provides an interesting juxtaposition— it is the power of the state to take an individual’s private property as *recognized* by the law. Eminent domain is justified as a necessary evil, to facilitate the state

¹ James A Goldston, ‘New Rules for the Rule of Law’ in David Marshall (ed), *The International Rule of Law Movement: A Crisis of Legitimacy and the Way Forward* (Harvard University Press 2014) 1, 3-5.

² David Marshall, ‘Introduction’ in David Marshall (ed), *The International Rule of Law Movement: A Crisis of Legitimacy and the Way Forward* (Harvard University Press 2014) xiii, xxi; Brian Tamanaha, ‘A Concise Guide to the Rule of Law’ (2007) St John’s Legal Studies Research Paper No 07-0082, 3 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1012051> accessed 10 December 2020.

undertaking activities for “the greater national good”.³ In principle, these large-scale land transactions are widely accepted as a means to stimulate economic growth and create jobs.⁴

Due to the very nature of eminent domain as state power with legal constraints, it is necessary to view it in the broader perspective of state commitment to the rule of law. Property rights and safeguards against the abuse of eminent domain powers are considered to be stronger in legal systems that emphasize civil rights. While the concept of ‘due process’ is often connected with issues of criminal justice, many countries invoke *procedural justice* in reference to eminent domain – most notably, the due process clause of the American Constitution that speaks of life, liberty, and property.⁵ The ongoing global rush for land and natural resources poses an important challenge to the international rule of law movement, wherein much foreign aid and technical assistance is being directed towards the strengthening of justice systems of developing nations.⁶ There is a great risk of injustice, given that three billion people across the world live without secure legal rights to their lands and pastures. Indeed, the most large-scale expropriation of land takes place in countries that provide the weakest protection to property rights. In such a situation, eminent domain and the rule of law – both, facets of the modern nation state that are seen as vital enablers of economic growth – can be in serious conflict with one another. This raises the difficult choice between the short-term gains of easily acquired land for developmental projects, and the long-term vision of maintaining public confidence in the state’s commitment to protecting private property and consequently, state commitment to the rule of law.⁷

In the case of eminent domain in India in particular, it has often been pointed out that the incessant manner in which land has been acquired in complete derogation of the right to property, has been increasingly counterproductive, rather than complementary, to economic growth and development.⁸ It has served state interests through the use of force, often resulting in

³ Jairam Ramesh and Muhammad Ali Khan, *Legislating for Justice: The Making of the 2013 Land Acquisition Law* (1st edn, OUP 2015) 1-4.

⁴ Vivek Maru, ‘Legal Empowerment and the Land Rush: Three Struggles’ in David Marshall (ed), *The International Rule of Law Movement: A Crisis of Legitimacy and the Way Forward* (Harvard University Press 2014) 193, 194.

⁵ Ramesh and Khan (n 3) 2.

⁶ See Marshall (n 2) xiii; Maru (n 4) 193.

⁷ Maru (n 4) 193-194. In the Indian context specifically, see Namita Wahi and others, ‘Land Acquisition in India: A Review of Supreme Court Cases From 1950 to 2016’ (Centre for Policy Research 2017) 9 <<https://www.cprindia.org/research/reports/land-acquisition-india-review-supreme-court-cases-1950-2016>> accessed 8 December 2020, for findings on power imbalances between the state and land losers in the land acquisition process, highlighting non-compliance with the rule of law under the the Land Acquisition Act, 1894 as a contributing factor to this issue.

⁸ Casey Downing, ‘Eminent Domain in 21st Century India: What New Delhi Can Learn from New London’ (2013) 46 NYUJ Intl L & Politics 207.

violence.⁹ Within the Indian Government, no less than the former Prime Minister Manmohan Singh has acknowledged that the injustice of the manner in which land has been taken from farmers since Independence has given rise to the Maoist-led guerrilla campaign against the state – a grave internal security concern.¹⁰ This law and order consequence of the capricious application of eminent domain law points to the necessity of viewing the issue of land acquisition as a rule of law concern.

B. Old and New Approaches: Legal Empowerment for the Rule of Law

At this stage, it is critical to clarify the specific definition of the ‘rule of law’ that is put forth in this paper. The rule of law has many competing descriptions invoking different, and often interrelated legal principles that are frequently confused with one another. Newer thinking in the field has emphasized the need to define the rule of law based on its *end goals*, such as a government bound by law, equality before the law, predictable justice, and respect for human rights. This is the perspective taken in this paper, as opposed to earlier views that highlighted the institutional characteristics of the law, such as well-written statutes, trained judges and personnel, and the provision of legal counsel, that are merely the *means* to achieve the end goals stated above. The ends-based framework for understanding rule of law reform that is taken up in this paper thus acknowledges that such goals are in fact *societal* goals, whereas the formalistic institutional (and rather apolitical) approach does not account for these socio-cultural aspects of the reform process.¹¹

Old technocratic approaches to the rule of law – ‘rule of law orthodoxy’, as it has come to be designated in recent literature – thus tended to ignore the power dynamics underlying legal reform processes.¹² However, the rule of law has increasingly been recognized as an expression of collective power within societies, becoming sensitive to the fact that problems ranging from judicial corruption to election fraud are ‘rooted in inequalities of power’.¹³ The recent changing positions of global organizations such as the United Nations and the World Bank towards legal reform indicate a shift from a “thin” conception

⁹ Ramesh and Khan (n 3) 128.

¹⁰ Sanjoy Chakravorty, *The Price of Land: Acquisition, Conflict, Consequence* (1st edn, OUP 2013) xiii.

¹¹ Rachel Kleinfeld, ‘Competing Definitions of the Rule of Law’ in Thomas Carothers (ed), *Promoting the Rule of Law Abroad: In Search of Knowledge* (1st edn, Carnegie Endowment for International Peace 2006) 31-74.

¹² *ibid* 36-52. See also Frank Upham, ‘Mythmaking in the Rule of Law Orthodoxy’ in Thomas Carothers (ed), *Promoting the Rule of Law Abroad: In Search of Knowledge* (1st edn, Carnegie Endowment for International Peace 2006) 75.

¹³ Goldston (n 1) 11.

of the rule of law focused on institutional reform and capacity building, to a “thick” conception that is rooted in human rights.¹⁴

Amongst such “thick” conceptions of the rule of law, the *legal empowerment* approach in particular is being increasingly considered as an alternate strategy to traditional approaches by international aid agencies that had focused on efforts on the part of the state, i.e. ‘supply-side’ efforts for legal reform.¹⁵ Legal empowerment is understood as the use of law and legal services by ordinary citizens, particularly the poor and the marginalized, to enforce laws for their benefit, thus emphasizing the perspective taken in this paper, on the ‘demand-side’ of legal reform. It is rooted in the community, but encompasses a broader reach to influence laws and institutions on a national scale as well.¹⁶ By enabling citizens to understand and use the law in their interactions with administrative, legal, or judicial institutions, it goes to the root of power imbalances that make legal aid necessary to begin with.¹⁷ Indeed, recent empirical work studying the relationship between state institutions and economic development has suggested that it is not institutions that are the problem for development per se, but the “self-interested constituencies” underlying such institutions that prevent meaningful change and perpetuate underdevelopment. Essentially, “self-interested constituencies” or in simpler terms, interest groups, are successfully able to resist reforms that shift the initial conditions of endowments in society of both physical as well as human capital. It is proposed that “rather than focusing on the absence of institutions (for development), development policy should focus on the absence of the *constituencies that demand them*” (emphasis mine).¹⁸

Returning then to the case of India, the extensive use of eminent domain powers in the absence of procedural justice has, over time, weakened people’s faith in the rule of law and has led to widespread disaffection. This paper illustrates the case of the recent reform of the Indian Land Acquisition Act, 1894, to demonstrate the positive role that legal empowerment can play in the law reform process – specifically through its enabling role in the creation of *constituencies that demand* the reform of legal and political institutions.¹⁹ A broad-based social movement and associated community mobilization against

¹⁴ Maru (n 4) 206; Goldston (n 1) 8.

¹⁵ Dan Banik, ‘Rights, Legal Empowerment and Poverty: An Overview of the Issues’ in Dan Banik (ed), *Rights and Legal Empowerment in Eradicating Poverty* (Ashgate Publishing Limited 2008) 11, 13.

¹⁶ Stephen Golub, ‘The Legal Empowerment Alternative’ in Thomas Carothers (ed), *Promoting the Rule of Law Abroad: In Search of Knowledge* (1st edn, Carnegie Endowment for International Peace 2006) 161-163.

¹⁷ Maru (n 4) 203-204.

¹⁸ Raghuram G Rajan and Luigi Zingales, ‘The Persistence of Underdevelopment: Institutions, Human Capital or Constituencies’ (2006) CRSP Working Paper No 613, 41 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=927949> accessed 8 December 2020.

¹⁹ *ibid.*

the compulsory acquisition of agricultural land in Singur, a town in rural West Bengal, culminated in the passage of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the Land Acquisition Act, 2013' or '2013 Act'). This paper analyses this legal reform process, highlighting the significance of the legal empowerment of rural landholders in challenging archaic land acquisition procedures that have long been taken for granted in India. Two factors in particular, the better information of prices in the agricultural land market, and an increased awareness of legal rights facilitated by the involvement of civil society and other non-state actors, contributed to the rising 'demand' for reform.²⁰ The overall approach taken in this paper is based on the notion that legal reform is fundamentally a *political* process, intrinsically linked to a country's social and cultural attitudes.²¹

Section II describes the movement for reform of the archaic Land Acquisition Act, 1894 and the eventual enactment of the 2013 Act. Section III then provides a political economy analysis of the increasing demand for a new eminent domain law, demonstrating how better knowledge of legal rights and higher awareness of the price of agricultural land triggered the movement for change, culminating in the passage of the new law. Section IV considers the contribution of the *legal empowerment* of landholders in overcoming the power asymmetries that lay at the root of the turbulence in Singur, and eventually enabled meaningful and inclusive reform of the Land Acquisition Act, 1894. It also analyses the events subsequent to the passing of the 2013 Act to illustrate the limits of legal empowerment and demand-side strategies for governance. Section V concludes with a critical reflection on the potential of legal empowerment and demand-side strategies to contribute to long-term and sustainable legal reform in pursuit of the 'rule of law' ideal.

II. THE EVENTS IN SINGUR AND THE MAKING OF A NEW LAW

A. The Movement for Change

The acquisition of agricultural land has long been a contentious issue, sparking significant people's movements across the country. The press and public discourse have consistently referred to the issue as the 'biggest problem' in India's development path. The first major movement that captured public attention was that of the Narmada Valley Dam Project in Maharashtra, in the 1990s. Whereas, more recent movements include those in Nandigram and Singur in West Bengal, the Yamuna Expressway in Uttar Pradesh, and the Maha-Mumbai

²⁰ Chakravorty, *The Price of Land: Acquisition, Conflict, Consequence* (n 10).

²¹ Marshall (n 2) viii.

Special Economic Zone in Maharashtra, these conflicts represent just a small fraction of the many injustices committed under the Land Acquisition Act, 1894.²² The fact remains that agitation against the postcolonial developmental state, as well as its associated infrastructure projects that have dispossessed various groups of their land – *Adivasis* (a collective term used for the many indigenous people of India), *Dalits* (members of the lowest social group in the Hindu caste system), peasants, fishers, forest-dwellers, and others within the unorganized sector – has had a long history in India.²³ These social movements, specifically *subaltern* social movements, have brought to the fore the experiences of marginalized groups within the increasingly neoliberal Indian economy, and have framed the broader social and political discourse on the *dislocation* of such groups in the course of what is widely accepted to be a ‘modernization’ process.²⁴

Coming to the case at hand, Singur is an agricultural region in the Hooghly district of West Bengal. After initial success in the state, particularly with regard to reforms geared towards rural populations, agricultural stagnation in West Bengal prompted the ruling Communist Party of India (Marxist) (‘CPI(M)’) to look towards re-igniting the industrial sector.²⁵ In May 2006, the West Bengal state government, led by the Left Front coalition, announced that Tata Motors would build a factory for the Nano, its new low-cost car model, in Singur.²⁶ Significantly, the Left Front government had campaigned on a promise of increasing industrialization, and the Tata Nano project with the promise of creating 10,000 jobs and attracting investments of ten billion rupees was symbolic of the new industrial ventures that the state was set to promote.²⁷ However, the acquisition of 997.11 acres of land by the state government in 2006 for lease to the company was not well-received and estimates of those affected by the acquisition, both in terms of loss of land and livelihood, ranged from 2,000 to 15,000 individuals. Additionally, the entire area to be acquired was farmland, two-thirds of which was high yield multi-crop soil.²⁸

²² Ramesh and Khan (n 3) 7-8; Chakravorty, *The Price of Land: Acquisition, Conflict, Consequence* (n 10) xiii-5.

²³ Kenneth Bo Nielsen and Alf Gunvald Nilsen, ‘Law Struggles and Hegemonic Processes in Neoliberal India: Gramscian Reflections on Land Acquisition Legislation’ (2015) 12(2) *Globalizations* 203, 204.

²⁴ Dip Kapoor, ‘Subaltern Social Movement (SSM) Post-Mortems of Development in India: Locating Trans-Local Activism and Radicalism’ (2011) *Journal of Asian and African Studies* 1.

²⁵ Suchismita Das, ‘Pragmatic Negotiations and the Farmers of Singur’ (2017) 4(5) *South Asian Journal of Multidisciplinary Studies* 302.

²⁶ Chakravorty, *The Price of Land: Acquisition, Conflict, Consequence* (n 10) 50.

²⁷ Kenneth Bo Nielsen, ‘Contesting India’s Development? Industrialisation, Land Acquisition and Protest in West Bengal’ (2010) 37 *Forum for Development Studies* 145, 154.

²⁸ Kenneth Bo Nielsen, ‘Not on Our Land! Peasants Against Forced Land Acquisition in India’s West Bengal’ in Dan Banik (ed), *Rights and Legal Empowerment in Eradicating Poverty* (Ashgate Publishing Limited 2008) 229.

In accordance with the Land Acquisition Act, 1894, farmers were offered financial compensation, reportedly Rs. 8,40,000 per acre for mono-crop land and Rs. 12,00,000 per acre for multi-crop land. While some landowners accepted the compensation amount, a significant number of them did not.²⁹ Resistance built up amongst the unwilling sellers and the *Singur Krishi Jomi Raksha Committee* ('SKJRC – Committee to Save the Farmland of Singur') was formed in late 2006.³⁰ Their methods of protest ranged from petitions, protest letters, and memoranda to the district administration, to fasts, highway blockages, and the use of violence. Various actors played a part in the build-up of this movement, notably the opposition party in the state, as well as civil society organizations with varying orientations, at the local, regional, national, and international levels, that were able to bring significant media attention to this issue.³¹ Specifically, under the leadership of Mamata Banerjee of the Trinamool Congress ('TMC') – the opposition party of the state at the time – the specific demand of returning 400 acres of land that belonged to those who were unwilling to sell, took hold.³²

Petitions challenging the land acquisition were filed before the Calcutta High Court on the ground that acquisition on behalf of a private company did not fulfil the 'public purpose'³³ element of the exercise of eminent domain powers, under the existing land acquisition law. However, the nature of the Act of 1894 was such that there were no grounds on which farmers could challenge the taking of their land *per se*, but could only fight for enhanced compensation, and the Court ruled against them. This was followed by an appeal to the Supreme Court of India and the election of the TMC, which took up office in 2011, promising to return the acquired land to the unwilling farmers in Singur.³⁴ In this vein, the first Act passed by the state legislature under the TMC government was the Singur Land Rehabilitation and Development Act, 2011 to fulfil this election promise.³⁵ The Act was subsequently challenged in the Calcutta High Court, and it was held to be unconstitutional. This was later

²⁹ Kenneth Bo Nielsen, 'Farmers' Use of the Courts in an Anti-Land Acquisition Movement in India's West Bengal' (2009) 41 *The Journal of Legal Pluralism and Unofficial Law* 121, 122.

³⁰ Chakravorty, *The Price of Land: Acquisition, Conflict, Consequence* (n 10) 51.

³¹ Nielsen, 'Not on Our Land! Peasants Against Forced Land Acquisition in India's West Bengal' (n 28) 130; Chakravorty, *The Price of Land: Acquisition, Conflict, Consequence* (n 10) 36-51.

³² Ritanjan Das, 'The Politics of Land, Consent, and Negotiation: Revisiting the Development-Displacement Narratives From Singur in West Bengal' (2016) 13 *South Asia Multidisciplinary Academic Journal* 1, 5.

³³ Section 3 of the Land Acquisition Act, 1894 defined 'public purpose' as including (amongst others) provision or planned development of village sites; provision of land for town or rural planning; the provision of land for planned development of land from public funds in pursuance of a scheme or policy of the Government; and the provision of land for a corporation owned or controlled by the State.

³⁴ Nielsen, 'Not on Our Land! Peasants Against Forced Land Acquisition in India's West Bengal' (n 28) 135-140.

³⁵ Buddhadeb Ghosh, 'What Made the "Unwilling Farmers" Unwilling? A Note on Singur' (2012) 47(32) *Economic and Political Weekly* 13, 14.

reserved by a judgment of the Supreme Court of India, setting aside the entire Singur land acquisition on the basis that the acquisition was not indeed carried out for a ‘public purpose’.³⁶ Simultaneously, the issue of eminent domain law reform gained momentum at the national level with the introduction of the Land Acquisition, Rehabilitation and Resettlement Bill in the Parliament in 2011. The passage of this Bill culminated in the replacement of the old Act of 1894 with the Land Acquisition Act, 2013.³⁷

The events in Singur and Nandigram are already being judged as crucial junctures, not just in the history of West Bengal, but also in the history of modern India.³⁸ Whereas this particular instance of land acquisition has indeed been greatly influenced by earlier peasant and *Adivasi* agitations, its significance is striking. The fact that these events unfolded in West Bengal, where the CPI(M) had led a coalition for seven consecutive terms from 1977, only to be unseated in 2011, following the protests in Singur, highlights its tremendous political significance. Having enjoyed great popularity for its pro-poor policies, the CPI(M)’s abrupt ousting directly in relation to its actions in Singur, raises certain critical issues – particularly in so far as resistance to land acquisition has traditionally been framed in terms of the ‘proletariat’ as against ‘industry’.³⁹

In fact, Indian scholarship on land conflict is increasingly recognizing that there are two distinct narratives in relation to land and its ownership – one that is shaped broadly by the community struggle of marginalized groups and their *resistance* to land acquisition, and another that is shaped by the view of land as a commodity.⁴⁰ The controversy in Singur was a significant event in that it was a popular movement towards using democratic and participatory approaches in the larger developmental process of the country.⁴¹ It stands out against the protests and agitation on land acquisition issues that preceded it, in that the farmers in Singur expressed a desire to embrace free market principles in

³⁶ *Kedar Nath Yadav v State of West Bengal* (2017) 11 SCC 601 (Supreme Court of India). For a discussion of this judgment on the issue of public purpose specifically, see V Krishna Ananth, ‘Singur Case and the Idea of Justice’ (2016) 51(38) Economic and Political Weekly 14.

³⁷ Ramesh and Khan (n 3) 11.

³⁸ Chakravorty, *The Price of Land: Acquisition, Conflict, Consequence* (n 10) 6.

³⁹ Das, ‘The Politics of Land, Consent, and Negotiation: Revisiting the Development-Displacement Narratives From Singur in West Bengal’ (n 32) 2. See also Das, ‘Pragmatic Negotiations and the Farmers of Singur’ (n 25) 310.

⁴⁰ Namita Wahi, ‘Understanding Land Conflict in India and Suggestions for Reform’ (Centre for Policy Research 2019) 140 – 141 <https://www.cprindia.org/sites/default/files/Regulation%20and%20Resorces_all%20pages.pdf> accessed 12 December 2020. See also Manjusha Nair, ‘Land as a Transactional Asset: Moral Economy and Market Logic in Contested Land Acquisition in India’ (2019) 51(6) Development and Change 1511, on the aspect of the dominant framing of such protests being in relation to peasant or farmer resistance to land acquisition.

⁴¹ Nielsen, ‘Contesting India’s Development? Industrialisation, Land Acquisition and Protest in West Bengal’ (n 27) 166.

negotiating the price of their land, rather than have it set by the government.⁴² In this sense, the events in Singur mark a turning point in the debate on land acquisition, not only bringing into focus the issue of *consent* for acquisition of land, but also broadening it to issues such as the fairness of the price offered.⁴³ Both sides of the debate that has ensued about the Singur land acquisition case – amongst those in industry, as well as those concerned with farmers’ rights – have argued in the name of development and justice, giving widely different meanings to each of these terms.⁴⁴ This signals not just the complexity of the eminent domain and rule of law issue, but also more broadly illustrates the complexity of the movement towards a healthier conception of the rule of law that is representative of a *shared* conception of both, development *and* justice.

B. The Land Acquisition Act, 2013

The Land Acquisition Act, 2013 reflects *five* legal concepts or ideas that can be traced to the demands that surfaced in the preceding era of protests – fairer compensation, consensual acquisition, rehabilitation and resettlement facilities for the displaced, curtailment of discretionary powers of administrative officials, and an appellate mechanism dedicated solely to addressing land acquisition related complaints. In essence, the new legislation marks a shift away from the policy of tolerating displacement and destitution as a necessary short-term consequence of land acquisition undertaken for the sake of economic development in the long-term. The 2013 Act may fairly be termed as taking a largely centrist position on the political spectrum, criticized by social activists for not going far enough, and by industry for making land acquisition too difficult. Nonetheless, it has widely been acknowledged as a tremendous step forward from the Act of 1894 in ensuring fairness in the land acquisition process.⁴⁵

Significantly, by mandating the conduct of social impact assessments *before* any acquisition, the Act shifts the onus on the state to justify the social cost of displacement that will be caused in each case of land acquisition. By providing for two public hearings where objections may be raised and for consultations with village councils, particularly in tribal areas, there is an attempt to mitigate the sense of marginalization that has traditionally marred state interaction

⁴² Kenneth Bo Nielsen, ‘Four Narratives of a Social Movement in West Bengal’ (2009) 32 South Asia: Journal of South Asian Studies 448, 458.

⁴³ In this regard, *see* Nair (n 40). Based on field research in two villages in Western Uttar Pradesh, Nair argues that ‘rather than reclaiming land from commodification, the farmers were using the land as a market instrument, a transactional asset, in negotiating for a better deal within a dominant market-driven template’.

⁴⁴ Nielsen, ‘Not on Our Land! Peasants Against Forced Land Acquisition in India’s West Bengal’ (n 28) 217.

⁴⁵ Ramesh and Khan (n 3) viii-14; Chakravorty, *The Price of Land: Acquisition, Conflict, Consequence* (n 10) 174.

with these groups.⁴⁶ Unfair compensation, in particular, lies at the heart of the land acquisition process. The Act notes that official records of ‘market value’ (a mandate of each state government rather than the Central Government) are grossly under quoted and provides for compensation to be paid at four times the recorded rate in rural areas. This quick fix approach has largely been criticized as both, unfair and populist. At the same time, to address the forcible nature of land takings, the new Act requires the consent of 70% of the families affected by the process when land is taken for public-private partnership projects, and 80% in the case of solely private initiatives. Here too, the Act has been criticized for not imposing any conditions of consent in the instance of state-owned projects.⁴⁷

Despite these criticisms, on the whole, the Act has been hailed as largely successful in ensuring the right to rehabilitation and resettlement of those displaced. In addition to providing for the right to rehabilitation in cases of state exercise of eminent domain powers, the Act, recognizing the unequal bargaining power between small farmers and private industry, has extended benefits of rehabilitation and resettlement facilities to instances of private land purchase. It also mandates that the state may only take possession of land *after* providing for compensation and resettlement, further safeguarding landowners against arbitrary state power.⁴⁸ It is in this manner that the 2013 Act, despite its flaws, has addressed many of the grievances that had come to light in the preceding period of protests and social movements.⁴⁹

III. THE BUILD-UP OF ‘DEMAND’ FOR REFORM

A. Rights-Based Legislation: Towards Legal Empowerment

India’s long-standing democratic institutions, while admirable and relatively robust for a developing nation, make for a *formal* but not an *effective* democracy in a number of ways.⁵⁰ The Central Government however, from 2004 to 2014, adopted a clear agenda of enacting rights-based legislation, specifically meant to empower historically marginalized communities. These range from legislation ensuring the right to forest produce and natural resources aimed specifically at tribal communities, to more broad-based legislation for the right to information, right to education, and national rural employment guarantees.⁵¹

⁴⁶ Ramesh and Khan (n 3) 17-39.

⁴⁷ Ramesh and Khan (n 3) 28-48; Chakravorty, *The Price of Land: Acquisition, Conflict, Consequence* (n 10) 184-189.

⁴⁸ Ramesh and Khan (n 3) 43-111.

⁴⁹ A Presidential Ordinance passed later in December 2014 significantly diluted the provisions of the Land Acquisition Act, 2013. This development is discussed in section IV below.

⁵⁰ Patrick Heller, ‘Degrees of Democracy: Some Comparative Lessons from India’ (2000) 52 *World Politics* 484.

⁵¹ Ramesh and Khan (n 3) 91.

Taken together, this era of rights-based legislation enabled the gradual process of *legal empowerment* of traditionally marginalized communities in India in the years since 2004. In 2013, when the new Land Acquisition Act was finally passed, there was widespread acknowledgement that the use of the colonial-era eminent domain law had come at a high social cost. The Standing Committee of Parliament in its examination of the proposition for a new law observed that “the opening of floodgates to acquisition of land by the state for companies.... had unleashed rural and tribal backlash...which has caused the current decision of the Government to replace the 1894 Act with an altogether new Act.”⁵²

The era of conflicts and protests had been a result of both, the nature and manner of application of the old Land Acquisition Act, and it was widely agreed that the passing of the new Act would help address the issues raised by the many protests preceding the reform. The various land acquisition protests not only served as catalysts for the new law, but also brought about a great deal of recognition of past injustices perpetuated by the state’s exercise of its eminent domain powers. The new law has thus proceeded on an acknowledgment of the disparity of power between the acquirer and small landowners, and has aimed at empowering those affected to negotiate their rights against the state. It specifically recognized Scheduled Castes and Tribes as having suffered due to their lack of political influence.⁵³ Thus, the position of the state in creating an overall favourable political environment for the passage of the Act was an important factor. Despite this however, the new law has been criticized by many as paternalistic in some respects and as ‘a political solution to a problem of political economy’.⁵⁴

B. Tipping the Balance: Legal Awareness and Market Prices

The concerns of the landowners affected by the acquisition in Singur have centred around two primary issues – *first*, the lack of democratic process including that of a participatory approach to development,⁵⁵ and *second*, the sense of financial insecurity brought about by the acquisition, coupled with a strong perception of unfairness that the compensation offered to them was inadequate.⁵⁶ It must be noted here that the resistance on the part of farmers has not primarily been to the capitalist model of development, as it has often

⁵² *ibid* 7.

⁵³ *ibid*.

⁵⁴ Chakravorty, *The Price of Land: Acquisition, Conflict, Consequence* (n 10) 174.

⁵⁵ Nielsen, ‘Contesting India’s Development? Industrialisation, Land Acquisition and Protest in West Bengal’ (n 27) 166.

⁵⁶ Maitreesh Ghatak and others, ‘Land Acquisition and Compensation in Singur: What Really Happened?’ (2013) *Competitive Advantage in the Global Economy (CAGE) Online Working Paper Series*, 41, 42 <<https://ideas.repec.org/p/cge/wacage/121.html>> accessed 8 December 2020.

been made out to be.⁵⁷ Indeed, several ethnographic accounts of the agriculturists of Singur who were at the forefront of the protests have highlighted this fact. Rather than viewing those involved in the protests as a uniform group of ‘farmers’ resisting ‘industry’, nuanced accounts of the perspectives of the landholders of Singur show that many of them were in fact in favour of industrialization, readily parting with their mono-crop land, but for practical reasons refusing to give up their more fertile multi-crop land. Some were sceptical of industrial employment and transitioning to new forms of work and life. Yet others who readily gave up the land took a view of their land as a commodity from which they might make a profit, rather than as a form of livelihood, but took issue with the price offered to them for the land.⁵⁸

The fundamental reason however for the turn of events exemplified by Singur, in contrast to the days when the state could take land with impunity, was the fact that the potential losers of land were better *informed*, and thus better prepared to stand up to the state. A sweeping change in the Indian information system enabled by technology, had revolutionized mass media and subsequently supported the growth of the internet and social media.⁵⁹ In this sense then, it was the erstwhile information asymmetries that had allowed an unjust colonial-era land acquisition regime to persist, and it is this factor that sets the protests in Singur apart from those that preceded it.⁶⁰ The landowners of Singur had more information about *both*, the price of their land as well as their right to refuse to sell it.⁶¹ Indeed, the evolving land market in post-liberalization India is increasingly signified by the shift in rhetoric among farmer’s movements from ‘land to the tiller’ to a focus on ‘remunerative prices’.⁶²

Until recently, asymmetries of power and information in the agricultural land market in India had reinforced one another and played an important role in maintaining the status quo. The determination of price by the state and want of information among the land losers had been ‘normalized’ over the years. However, the pressing demand for land, a commodity in extremely short supply in India, has led to ‘information agents’ in the form of both, civil society and political parties, playing an active and important role in building awareness among the rural population about the worth of their property and their legal rights.⁶³ Together with technology-based informational media, it was these actors from both civil society and politics that acted as conduits of critical

⁵⁷ Nielsen, ‘Contesting India’s Development? Industrialisation, Land Acquisition and Protest in West Bengal’ (n 27) 166.

⁵⁸ Das, ‘Pragmatic Negotiations and the Farmers of Singur’ (n 25) 310.

⁵⁹ Sanjoy Chakravorty, ‘Land Acquisition in India: The Political Economy of Changing the Law’ in Sanjoy Chakravorty and Amitendu Palit (eds), *Seeking Middle Ground: Land, Markets and Public Policy* (OUP 2019) 15.

⁶⁰ *ibid.*

⁶¹ Chakravorty, *The Price of Land: Acquisition, Conflict, Consequence* (n 10) xvii.

⁶² Nielsen, ‘Four Narratives of a Social Movement in West Bengal’ (n 42) 448, 452.

⁶³ Chakravorty, *The Price of Land: Acquisition, Conflict, Consequence* (n 10) xx-xxv.

information – amongst the affected community members, between the affected community and the general citizenry more broadly, and ultimately to the state institutions.⁶⁴

These information flows are not however restricted merely to land prices. Empirical studies have shown that amongst those unwilling to have their land acquired, only a minority of them had substantial landholdings and their livelihoods tied to it, suggesting that there was something *beyond* the land pricing that was behind the resistance to the acquisition process.⁶⁵ It is here that legal empowerment becomes a part of the narrative. The information flows went beyond the issue of prices; improving information exchange was also what ultimately facilitated the landowners' assertion of their collective legal right to refuse acquisition and negotiate better prices.⁶⁶ Development economists, who have lauded the government's industrialization agenda, have also emphasized concerns regarding the transparency of land acquisition processes and information about the ultimate costs and benefits of the acquisition to land losers overall.⁶⁷ Indeed, ultimately, these changes in the agricultural land market in rural India – a greater transparency of price information as well as an increased emphasis on property rights – are extremely positive developments ultimately signifying “a better functioning market and democracy.”⁶⁸

C. Agents of Change: Civil Society, Political Players, and the Media

The resistance to land acquisition by farmers built up through the coming together of better information on prices and a greater awareness of rights, creating its own ‘feedback loop’ and levelling the field between the acquirer and seller. This was facilitated by a host of non-state actors that played an active role in the movement at Singur – primarily civil society actors and a variety of political parties, catalysed by the media.

The primary role of civil society organizations has been the dissemination and exchange of information and building bridges between farmers, state institutions, and public opinion.⁶⁹ At the national level, their key contribution was undoubtedly in placing the issue of Singur within the wider debate on democracy, notions of citizenship, and rights.⁷⁰ At the community level, civil

⁶⁴ Chakravorty, ‘Land Acquisition in India: The Political Economy of Changing the Law’ (n 59) 15.

⁶⁵ Ghosh (n 35) 16.

⁶⁶ Chakravorty, ‘Land Acquisition in India: The Political Economy of Changing the Law’ (n 59) 15.

⁶⁷ Nielsen, ‘Contesting India’s Development? Industrialisation, Land Acquisition and Protest in West Bengal’ (n 27) 156.

⁶⁸ Chakravorty, *The Price of Land: Acquisition, Conflict, Consequence* (n 10) xxix.

⁶⁹ Chakravorty, *The Price of Land: Acquisition, Conflict, Consequence* (n 10) 9- 41.

⁷⁰ Nielsen, ‘Not on Our Land! Peasants Against Forced Land Acquisition in India’s West Bengal’ (n 28) 233.

society organizations enabled the organization of farmers and their collective assertion of rights, a phenomenon that caught the attention of the mass media.⁷¹ Organizations involved in the process highlighted many facets of the problem, using a civil rights perspective to make the case against the use of force on protestors, looking at the issue of the acquisition of agricultural land through the lens of the right to food, as well as critiquing the consequences of development-induced displacement. This is not to say that the involvement of civil society has always been that of a completely *impartial* facilitator of information flows. Singur was also seen as an opportunity by groups intrinsically opposed to private capital and the larger development agenda that they claim it represents, to build support for their point of view.⁷²

The involvement of political parties has been inconsistent and opportunistic, but nevertheless crucial to the process.⁷³ Mamata Banerjee, leader of the Trinamool Congress Party which was in opposition in the state at the time, was a key actor in supporting the SKJRC.⁷⁴ The TMC provided organizational strength at a scale that would not have been possible for civil society alone, and attracted media attention to the case of Singur that reinforced public opinion and awareness.⁷⁵ While the farmers also approached the courts with their matter, it remained only one of the means to take forward their demands within the larger strategy of political mobilization. Their legal challenge to the land acquisition was bolstered by the election of the TMC and the discussion for reform of the legislation in the Parliament. However, the appeal pending before the Supreme Court of India lost its significance in light of these events, particularly the introduction of the Land Acquisition, Rehabilitation and Resettlement Bill in the Parliament in 2011.⁷⁶ Thus, in this case, it was primarily the civil society, political opposition, and the media that played a role in the legal empowerment process, using a variety of approaches to help farmers better understand both, the law and the market, and ultimately enabling them to ‘demand’ reform of the old land acquisition law.

IV. LEGAL EMPOWERMENT AND DEMAND-SIDE STRATEGIES: TOOLS FOR LAW REFORM

As can be seen in Section III above, a variety of political, economic, and social factors were key to the reform of India’s eminent domain law, introduced

⁷¹ Chakravorty, *The Price of Land: Acquisition, Conflict, Consequence* (n 10) 41.

⁷² Nielsen, ‘Contesting India’s Development? Industrialisation, Land Acquisition and Protest in West Bengal’ (n 27) 160-161.

⁷³ Chakravorty, *The Price of Land: Acquisition, Conflict, Consequence* (n 10) 37.

⁷⁴ Das, ‘Pragmatic Negotiations and the Farmers of Singur’ (n 25) 308.

⁷⁵ Nielsen, ‘Not on Our Land! Peasants Against Forced Land Acquisition in India’s West Bengal’ (n 28) 232.

⁷⁶ *ibid.*

to meet a specific *demand* for a land acquisition mechanism that satisfied the requirements of both, *procedural* and *substantive* justice. Among these were: a legal and institutional environment of rights-based legislations that facilitated the *legal empowerment* of affected communities, a heightened legal and economic awareness amongst those who stood to lose their property by way of land acquisition, as well as the effective involvement of non-state actors acting as agents of information within the community and influencers of opinion at the national level. The view put forward in this section of the paper is that there is a significant synergy between legal empowerment and its role in rule of law reform on the one hand, and demand-side strategies for governance that are rooted in strengthening the voice and capabilities of people, especially the poor and marginalized, to ‘demand’ accountability from the state, on the other hand.⁷⁷

The ‘demand for good governance’ refers to the ‘ability of citizens, communities and civil society organizations to demand greater accountability and responsiveness from public officials and service providers’.⁷⁸ In this sense, legal empowerment strategies are seen as *complementary* to social accountability interventions that stress the use of information channels and participatory mechanisms to call for improved public service.⁷⁹ In particular, the legal empowerment approach to the rule of law emphasizes legal education – both as regards the scope and content of rights, as well as the skills to access and leverage the law – thus providing precisely the tools required to generate a *demand* for improved governance mechanisms.⁸⁰ It is argued here that the transformation of the land acquisition law in India provides a persuasive case for how legal empowerment strategies can serve legal reform in moving towards a “thick” conception of the rule of law, engendering substantive justice.

In this case of reform of an important legal institution – India’s land acquisition law – the generation of such a demand has resulted from information flows about *legal* rights, coupled with an economic awareness among farmers about the price of their land, in equal measure. It is through the mechanism of these information flows specifically – the disclosure of information on government rules and decisions, the interpretation of legal rules to foster a better understanding of the law amongst the general population, and the widespread

⁷⁷ Ana Palacio, ‘Legal Empowerment of the Poor: An Action Agenda for the World Bank’ (World Bank 2006) 9 <<http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/LegalEmpowermentofthePoor.pdf>> accessed 8 December 2020.

⁷⁸ Sanjay Agarwal and Warren A Van Wicklin III, ‘How, When, and Why to Use Demand-Side Governance Approaches in Projects’ (World Bank 2011) 1 <<http://documents.worldbank.org/curated/en/823571468331836996/How-when-and-why-to-use-demand-side-governance-approaches-in-projects>> accessed 8 December 2020.

⁷⁹ Vivek Maru, ‘Allies Unknown: Social Accountability and Legal Empowerment’ (2010) 12(1) Health and Human Rights in Practice 83.

⁸⁰ Golub (n 16) 165.

diffusion of such rights and law related information⁸¹ – that the reform process was set in motion. The educative role played by information agents such as civil society actors, political parties, and the media, in this process of legal empowerment of the farmers in Singur, was notable. And true to the methods of legal empowerment, this reform process was rooted in the community but scaled up nationally, striking at the heart of the very inequality of power, both in terms of *legal and economic* awareness, that had thus far allowed an unjust model of land acquisition to be perpetuated.

Overall, the working of legal empowerment in this manner at the grassroots level is illustrated in its role in the creation of a *well-informed constituency* in Singur, that was both, aware of its legal rights *and* had the potential to resist what was viewed as an unjust snatching away of their land by the state, escalating their demand for reform to the national level. The legal empowerment of Singur's farmers, in fostering their resistance of the acquisition of their farmland, fundamentally altered the power dynamics underlying the reform process. The new Land Acquisition Act of 2013, on account of the emergence of this constituency of farmers demanding justice in eminent domain law reform, thus countered other pressures, balancing the demands of the farmers with the traditional interests of capital. However, it was almost equally important that these events took place against the backdrop of the Central Government's rights-based approach to law-making and a political environment *conducive* to this reform. In this sense, it must be recognized that there do remain other political, legal, and institutional hurdles that can limit the potential of demand-driven reforms in fulfilling their purpose. In this section, the events subsequent to the passing of the Land Acquisition Act, 2013 are analysed, illustrating some of the challenges faced in the realization of its purpose. These in turn, are broadly indicative of the potential shortcomings of the employment of legal empowerment as a *singular* reform strategy.

A. Balancing Supply and Demand: Politics Matters

While the demand side of governance stresses the role of non-state actors, most often civil society, in ensuring accountability and transparency, the supply side primarily concerns itself with improved state capacity for good governance. However, it cannot be emphasized enough that efforts to strengthen the demand for reform must be accompanied by commensurate efforts on the supply side, taking a 'balanced approach'. Two major factors influence the supply side – institutional capacity to uphold the rule of law and the political will to see this through.⁸² While the institutional capacity of the state has been the major focus of reform efforts until now, international agencies and grassroots

⁸¹ *ibid* 1-2.

⁸² Jennifer M Coston, 'Administrative Avenues to Democratic Governance: The Balance of Supply and Demand' (1998) 18 *Public Administration and Development* 479, 480.

organizations alike have identified the absence of political will as a recurrent obstacle to reform projects.⁸³

In the events subsequent to the passing of the 2013 Act, it is this very challenge of political will that is seen to underlie an unravelling of key aspects of the land acquisition law reform process. Soon after coming to power in the general election of 2014, the newly elected National Democratic Alliance-led government passed an executive Ordinance in December 2014 significantly diluting the provisions of the newly reformed law. It exempted five broad categories of projects from key requirements of the 2013 Act, such as obtaining the consent of affected families and the conduct of social impact assessments.⁸⁴ Following two further instances of re-promulgation of the Ordinance and failed attempts to write the Ordinance into law by way of the passing of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015 ('the LARR Amendment Bill of 2015')⁸⁵ that remains pending before a Joint Parliamentary Committee, individual state governments have been encouraged to move forward with amendments to the 2013 Act to undermine its public purpose.⁸⁶ To date, the states of Tamil Nadu, Gujarat, Maharashtra, Rajasthan, Telangana, and Jharkhand have all introduced various amendments giving effect to the 2014 Ordinance and side-stepping many of the protections provided to landowners under the 2013 Act.⁸⁷

While this is indeed a disappointing development, given the long struggle for justice in the land acquisition process led by the farmers in Singur, it is important to recognise that such developments have not transpired in *all* states, nor has the LARR Amendment Bill of 2015 moved forward in Parliament. This remains a testament to both, the complex, politically charged nature of eminent domain law reform, as well as the power struggle imminent in the continued demand-and-supply battle for what different parties involved in the land acquisition process might perceive to be 'good governance'.

⁸³ See generally Fran Quigley, 'Growing Political Will From the Grassroots: How Social Movement Principles Can Reverse the Dismal Legacy of Rule of Law Interventions' (2009) 41(1) Columbia Human Rights Law Review 13.

⁸⁴ Ramesh and Khan (n 3) 126. See KB Saxena, 'The Ordinance Amending the Land Acquisition Law (2013): Farmers Lose Out in the Unequal Contest of Power' (2015) 45(2) Social Change 324.

⁸⁵ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015.

⁸⁶ Wahi and others, 'Land Acquisition in India: A Review of Supreme Court Cases From 1950 to 2016' (n 7).

⁸⁷ Naoyuki Yoshino and others, 'Land Acquisition and Infrastructure Development Through Land Trust Laws: A Policy Framework for Asia' (2018) ADBI Working Paper Series No 854 11 <<https://www.econstor.eu/bitstream/10419/190275/1/adbi-wp854.pdf>> accessed 8 December 2020; Anil Sasi, 'Centre's Bill on Hold, States Move on Land Acquisition' *The Indian Express* (25 December 2015) <<https://indianexpress.com/article/india/india-news-india/centres-bill-on-hold-states-move-on-land-acquisition/>> accessed 8 December 2020.

B. The Role of the Judiciary: Legal Interpretation Matters

The second issue that has recently arisen with regard to the 2013 Act has to do with the scope of application of its provisions to instances of land acquired *prior* to its coming into force. Specifically, Section 24(2) of the 2013 Act provides that in cases where land was acquired and an award was passed under the Land Acquisition Act, 1894, five years or more before the coming into force of the 2013 Act, but where physical possession of the land has not been taken or compensation has not been paid, the acquisition proceeding will be deemed to have *lapsed* and the Government may initiate fresh proceedings under the 2013 Act.⁸⁸ A number of cases have since been brought before the higher judiciary where the delay in taking possession of land under the old Act had resulted from the refusal of landowners to accept the compensation awarded, and the compensation amount was consequently deposited with the government treasury.⁸⁹

Conflicting interpretations of this provision have been rendered by two three-judge benches of the Supreme Court, calling into question the legal rights of numerous landowners who found themselves caught between the application of the old and new land acquisition laws. On the one hand, the Supreme Court in 2014 held that “the deposit of compensation amount in the government treasury is of no avail and cannot be held to be equivalent to compensation *paid* to the landowners/persons interested.”⁹⁰ This was inferred on the basis of Section 31 of the Land Acquisition Act, 1894 that mandates the deposit of compensation amount in court rather than in the government treasury upon refusal by landowners to receive the amount.⁹¹ Subsequently in another case brought before it in 2018, the Supreme Court held that the failure to have deposited the compensation amount in court in the cases described above does *not* mean that compensation has not been ‘paid’ for the purposes of the 2013 Act.⁹² The Court’s view in this case was that Section 24(2) was intended to benefit those who had not been offered compensation despite an obligation on the acquirer to pay such an amount. It was not meant to benefit those who had refused to accept payment for their land, and consequently caused a delay to the acquisition proceeding. The deposit of the compensation in the government

⁸⁸ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, s 24(2).

⁸⁹ *Pune Municipal Corporation v Harakchand Misirimal Solanki* (2014) 3 SCC 183 (Supreme Court of India); *Indore Development Authority v Shyam Verma* (2018) 3 SCC 405 (Supreme Court of India). In this regard, *see also*, K Venkatraman, ‘Explained|What is the Furore Around the Land Law Case?’ *The Hindu* (20 October 2019) <<https://www.thehindu.com/news/national/what-is-the-furore-around-the-land-law-case/article29745931.ece>> accessed 8 December 2020.

⁹⁰ *Pune Municipal Corporation v Harakchand Misirimal Solanki* (2014) 3 SCC 183 [20] (Supreme Court of India).

⁹¹ *ibid* [15].

⁹² *Indore Development Authority v Shyam Verma* (2018) 2 SCC 405 [153] (Supreme Court of India).

treasury was hence considered to have amounted to ‘payment’ to landowners, with the effect that no new acquisition proceeding was required to be initiated under the 2013 Act.⁹³

The question regarding the correct interpretation of Section 24(2) of the 2013 Act has since been referred to a larger five-judge bench. This was settled by way of a recent judgment holding that land acquisition proceedings will not be deemed to have lapsed if compensation, even when it is refused by the landowners, is deposited with the government treasury.⁹⁴ Ultimately, this illustrates the extent to which legal rights, even when demanded, and subsequently supplied by way of an Act of Parliament, can remain a distant dream for some of its beneficiaries. Ultimately, as can be seen here, much hangs in the balance, in terms of the intricacies and technicalities of legal interpretation of such legal rights and the circumstances in which they may be granted.

V. CONCLUSION

This paper has analysed the relationship between the rule of law and eminent domain, in the context of their common association with economic development. The broad-based demand for reform of the land acquisition law in India has raised questions of procedural justice and democratic participation in the process of India’s economic development. The analysis presented demonstrates that this demand can be viewed as resulting significantly from the *legal empowerment* of rural landholders, facilitated by non-state actors who provided them with improved channels of information about the price of their land, as well as the law and how to challenge it. Overall, it is seen that it was significant that this took place in a political environment in which the Central Government was cognizant of, and conceded to, the injustices caused by the colonial-era eminent domain law.

The Singur issue, in the manner that it has broadly been viewed, has been a movement to facilitate the trickle down of profits from capitalist development rather than a direct challenge to capitalism itself, while spurring a larger democratic debate on the unjust exclusion of agricultural landholders from the rural land market economy.⁹⁵ It is significant that armed with knowledge about their rights and the value of their land, farmers in Singur have applied free market principles to argue against government intervention in determining the price of their land – to them this was essentially a denial of their opportunity to be free

⁹³ *ibid* [99].

⁹⁴ Ananthakrishnan G, ‘SC: Land Takeover Won’t Lapse if Money Deposited Even if Owner Refuses to Accept’ *The Indian Express* (7 March 2020) <<https://indianexpress.com/article/india/supreme-court-land-takeover-will-not-lapse-if-owner-refuses-to-accept-6303157/>> accessed 10 March 2020.

⁹⁵ Nielsen, ‘Contesting India’s Development? Industrialisation, Land Acquisition and Protest in West Bengal’ (n 27) 166.

market actors in negotiating with the Tata company. They were acutely aware that once their agricultural land was acquired for industry, their neighbours would benefit from soaring market prices – an opportunity they were deprived of, at least in theory.⁹⁶ It is in this sense that the inherent relationship between a “thick” or substantive conception of the rule of law, as demanded by the farmers of Singur, and a well-functioning *market economy*, comes into sharper focus. That the awareness of the market value of land went hand-in-hand with an increased understanding of legal rights sparking the demand for change, is a sign of the maturing, as well as the co-evolution of the market and legal systems in the country.

In conclusion, by emphasizing participatory governance, legal empowerment may be viewed as playing an important role in addressing issues around inequitable access to markets and services for the poor. The legal empowerment approach through its participatory mechanisms plays a significant role in ‘levelling up’ the playing field to ensure that the poor can effectively participate in the broader market economy.⁹⁷ Though many obstacles remain in the realization of the purpose of the Land Acquisition Act of 2013 for its intended beneficiaries, based on this law reform experience, it would seem that the legal empowerment approach is a powerful alternative to the *stand-alone use* of orthodox approaches to legal and judicial reform, addressing asymmetries of both power and information in developing countries. That the Land Acquisition Act was born of a specific domestic *demand* for legal reform, despite the many challenges it faces, is promising for the overall effectiveness of this legal institution and the prospect of economic development that it brings.⁹⁸

⁹⁶ *ibid* 455.

⁹⁷ ‘Doing Justice to Sustainable Development: Integrating the Rule of Law into the Post-2015 Development Agenda’ (International Development Law Organization 2014) 5 <<https://www.idlo.int/sites/default/files/pdfs/Doing%20Justice%20to%20Sustainable%20DeveloDevel%20report.pdf>> accessed 8 December 2020.

⁹⁸ Daniel Berkowitz, Katharina Pistor, and Jean-Francois Richard, ‘Economic Development, Legality, and the Transplant Effect’ (2003) 47(1) *European Economic Review* 165, 192.