

# Institutional Concerns of Development Induced Displacements: Human Right View

<sup>1</sup>Meenakshi Awasthi and <sup>2</sup>Dr. T.N. Prasad

<sup>1</sup>Research Scholar, School of Legal Studies, Babu Banarsi Das University, Lucknow

<sup>2</sup>Dean and Head of the Department, School of Legal Studies, Babu Banarsi Das University, Lucknow

---

---

## ARTICLE DETAILS

### Article History

Published Online: 20 January 2019

### Keywords

Human right, Social Justice, Poverty

---

---

## ABSTRACT

In the 1950s and 1960s, the dominant view in the development was informed by modernization theory which if put crudely saw development as transforming outmoded, simple third world societies into modern, complex westernized ones. Seen in this light large-scale capital intensive developmental projects accelerated the pace towards a brighter and better future. If people were evacuated along the way it was believed a necessary evil or even an actual good, since it made them more susceptible to the change. In recent decades, however, a new development paradigm has been articulated, one that promotes poverty reduction, environmental protection, social justice and human rights. In this paradigm, development is seen as both bringing benefits and imposing costs. Among its costs, the greatest cost has been involuntary displacement of millions of vulnerable people.

---

---

## INTRODUCTION

*"Forced population displacement is always crisis prone, even when necessary as part of broad and beneficial development programs. It is a profound socio-economic and cultural disruption for those affected. Dislocation breaks up living patterns and social continuity. It dismantles the existing modes of production, disrupts social networks, causes the impoverishment of many of those uprooted, threatens their Cultural identity and in the risks of epidemics and health problems".*

-Michael Cemea, 1995

Large scale investments were made to execute various developmental projects like mega dams, roads, mines, power plants, heavy industrial establishments, defence base, new cities, large scale creation of infrastructure, wild life sanctuaries, national parks., power plants, transportation corridors, airports and other projects, all of which had the mandatory pre-requisite of land acquisition; leading to major changes in land use patterns, water and natural resources and. subsequent dispossession and displacement of large number of people who depend upon land, forest and other natural resources for their livelihood and lose their ultimate sources of subsistence. Thus, developmental projects which are often regarded as boon for national progress and advancement, have brought baneful consequences to the displaced population in the form of impoverishment, marginalization, dehumanization and frustration. So involuntary displacement, rehabilitation and resettlement, consequently resulting from the colonial principle of *eminent domain*, which confers upon the government the power to take over private property for public purposes, has become the unintended companion of development.

Development induced displacement, in the first instance; it can be defined as the forcing of communities and individuals out of their homes and homelands for the purpose of economic and national development. Such geographical displacement can be within a city or district, from one village or neighbourhood to another or displacement across long distances and borders, often to economically, socially and culturally quite different settings.

## HISTORY OF DEVELOPMENT

The process of socio-economic development initiated soon after independence of India under the successive plans, has given rise to building of large-scale irrigation projects, infrastructural establishments and industrial complexes in the endemic resource regions, which were the traditional homes of a large number of isolated groups of tribe. Although industrialization, which was a necessary concomitant of development, has brought about manifold benefits for the nation as a whole, however, it resulted in large scale deforestation for raw materials and for acquisition of vast pieces of land under cultivation, for the establishment of factories, power plants, for excavation for the purpose of milling, or for submergence for construction of reservoirs, dams, etc.

The industrial revolution of India which really began during the 2<sup>nd</sup> World war was caught up with the ushering in of planned development in the fifties. The power, irrigation and industrial projects in the 1<sup>st</sup> and 2<sup>nd</sup> Five Year Plan laid the real foundation of industrial development. Ever since the pace of industrialization continued at an increasing rate with the discovery of natural resources in the different parts of the country and also the availability of sophisticated technology, as a result, huge

investments were made in the research and developmental activities. As a corollary to this fast pace of industrialization, there has been widespread displacement of tribes from their ancestral habitat along with the loss of their traditional occupation. Industrialization has proved to be good for the nation but for the tribes it has proved to be disastrous.

So, involuntary displacement of people due to a deliberate economic policy is not new in India. It existed in the colonial times and has intensified in the decades of planned development. A conservative estimate of the number of people displaced from 1950-1991 is about 2,13,00,000 if only the study is restricted to the causal factors like dams, mines, wild life sanctuaries and industries. If the urban displacement due to various deliberate or "planned" activities is also included, then the number of displaced population would rise to 35-55 million. As per government records at least 75% of those displaced are still not cared for or rehabilitated<sup>1</sup> which is clearly a sad reflection of lack of government's sincerity and sense of responsibility towards the displaced and project affected people.

## **CHAPTER-1: LEGAL AND INSTITUTIONAL CONCERNS ON DEVELOPMENT -INDUCED DISPLACEMENTS**

In the closing days of 20<sup>th</sup> Century, International politics is increasingly being dominated by a Human rights agenda, meaning that one of the primary determinants of a country's standing in the community of nations is its respect for the human rights of its citizens and the degree to which this respect for human rights is internalized in democratic institutions. Development induced displacement and consequent human rights violation of the displaced population is one of the most blatant and shameless reality, spearheading worldwide during the last few decades. A major unmet need of this displaced population constitutes indigenous peoples, living in the world's most susceptible ecosystem, which are important repositories of unexploited natural resources.

### **1.1. RIGHTS OF THE DISPLACED AND PROJECT AFFECTED PEOPLE**

Under various international instruments the displaced population who bear the brunt of progressive projects have been granted various rights. These international instruments can be used as effective tools for the protection of the displaced population. Some of the rights guaranteed to the displaced population are as follows:-

#### ***Right to Life, Liberty and Security***

Right to Life, Liberty and Security is a fundamental right guaranteed to all persons including the victims of development induced displacement under a number of international instruments. *Article 3 of the Universal Declaration of Human Rights in 1948* expressly provides that everyone has the right to life, liberty and security. Again, *Article 6 of the International Covenant on Civil and Political Rights 1966* provides that every human being has the inherent right to life and this right shall be protected by law. No one shall be arbitrarily deprived of his life.

#### ***Right to Self Determination***

This is a fundamental aspect of the new concept of human rights with particular emphasis on equality. It is one among the recognized 'purposes of the UN' 'to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of people and to take other appropriate measures to strengthen the universal peace.'

The key to operational environment and development policy is for the nation states to redefine the concept of 'national sovereignty' to accommodate the right to self-determination of the displaced population.

#### ***Right of Access to Information***

In most of the cases of construction of projects, the displaced populations were denied any access to information about the project which drastically impacted their livelihood. Even though the amount of risks involved in undertaking a project, could be ascertained well in advance. The evacuated population were purposely deprived of having any access to information about the projects. Whatever little they came to know about the project, was either an unofficial declaration of the officers coming for surveys or from forest guards or other low grade officials/employees. It sternly violated the right to information of the displaced population although this right was guaranteed to them under the laws. This right has been expressly recognized in the *Report of the UN Conference on Environment and Development (Rio De Janeiro, 3-14 June, 1992) known as Agenda 21* which expressly provides for strengthening information systems.<sup>17</sup> Apart from this *chapter 15.6 of Agenda 21* further strengthens this right of the displaced population.

#### ***Right against Discrimination***

Discriminatory rights can be effectively used to protect the rights and interests of the displaced population particularly the women and children who are more vulnerable among the displaced population. The *UN Charter of 1945* seeks to achieve international assistance in solving international problems and promoting human rights and fundamental freedom for all without any distinction as to sex, race, language or religion as among one of the purposes of UN under *article 1 paragraph 3* of the UN Charter. The right against discrimination is one of the most basic human rights guaranteed to all including the displaced population. This was also further upheld under *article 2 of Universal Declaration of Human Rights 1948*.

#### ***Right to Equality***

Article 1 of the UDHR 1948 provides that all human beings are born free and equal in dignity and rights. This puts all displaced persons at par with other human beings with respect to rights and dignity.

### **Right to Freedom of Residence**

Right to freedom of residence within the borders of each state has been guaranteed to all persons including the displaced people. But very often in case of development induced displacement this right has been exceptionally violated where people are forced to vacate their land or original habitat within a very short time postulated by the project authorities, without any prior consent. This right has been fundamentally safeguarded under *article 13 of the UDHR 1948* and *article 12 of the ICCPR 1966*, which guarantees everyone including the project displaced persons, the freedom to choose his residence.

### **Right to Development**

All human beings are entitled to right to development which is one of the basis of human rights. This right has been specifically guaranteed under *Principle 3 of the Rio Declaration on Environment and Development 1992* and also under *ICCPR* and *ICESCR 1966*. The UN Declaration on the Right to Development adopted by the General Assembly on 4<sup>th</sup> December 1986, in its second paragraph of its Preamble expressly states that development is a comprehensive economic, social, cultural and political process which aims at continuous improvement of the well-being of the entire populace and of all individuals on the basis of their active free and meaningful participation and in the fair distribution of benefits resulting therefrom. *Articles 1 and 2 of this Declaration* recognizes right to development as an unassailable human right which also implies full realization of right to self-determination. This right also gains further recognition under *articles 2 and 3 of the UNESCO Declaration on Ethno-Development 1981* (Declaration of San Jose on Ethnocide and Ethno-Development, 1981). *It is also recognized under article 7 of ILO Convention No. 269 of 1989 and also under articles 19 to 24 of the UN Draft Declaration on Indigenous Rights.*

## **1.2. ROLE OF UNITED NATIONS**

Since its establishment the United Nations has as part of its overall human rights work, addressed some situations which pretentious indigenous peoples. The Bolivian Government proposed to establish a Sub-Commission of the UN Social Commission to study the social problems of the aboriginal population of the American continent.<sup>21</sup> As a result, UN system first addressed itself formally to indigenous issues in 1949 when the General Assembly invited the sub-commission to study the condition of indigenous Americans with the hope that the material and cultural connection of these people would result in a more lucrative utilization of the resources of America to the advantage of the world. But many states objected to this and a successive resolution effectively barred any such studies unless requested by the affected member states. No requests were made and thus it was the last initiative that was taken by the UN concerning the general problems of indigenous peoples.

In 1965, the *UN Sub-Commission on Prevention of Discrimination and Protection of Minorities* decided to recruit a study on racial discrimination. Mr. Hernan Santa Cruz was appointed to carry out this work and in his final report he encompassed a chapter entitled: '**Measures taken in Connection with the Protection of Indigenous Peoples.**'

## **1.3. ESTABLISHMENT OF WORKING GROUP AND STANDARD SETTING**

Following the lead of NGO conferences and the study of *Martinez Cobo*, the *UN Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities* proposed for the creation of a *Working Group on Indigenous Populations* in 1981. The Commission on Human Rights and the Economic and Social Council (ECOSOC) accepted this proposal in 1982 and since then the Working Group has taken place annually except in 1986.

This working group thus became the key focus of international activities by both governmental and non-governmental groups concerned with the indigenous people. At its first session, the working group took the unparalleled step of allowing oral and written intercessions from all indigenous organizations, which wished to participate in its work, thereby not limiting such participation to only those with formal consultative status.<sup>26</sup> Thus, the working group became one of the largest UN forums in the field of human rights of the indigenous people.

As a result of this wide partaking, the Working Group has provided a meaningful forum for the exchange of proposals regarding indigenous rights and for the exposition of indigenous reality across the world. The early sessions of the Working Group were devoted largely to collecting data which consisted of information from indigenous and other NGOs about the actual states of indigenous people under assault from the overriding societies in many parts of the world. The most common form of violations reported were dispossession of indigenous lands, either through displacement and resettlement or pursuant to state defined development projects, such as hydro-electric projects, large scale mining or agricultural projects which results in attempted destruction of indigenous culture and identity and also desecration or destruction of their religious sites.

## **1.4. CONTENTS OF THE DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE**

The Draft UN Declaration on the Rights of Indigenous Peoples is divided into nine parts:

*Part I* deals with the general universal human rights,

*Part II* guarantees the protection against genocide and ethnocide,

*Part III* includes the distinct ethnic rights,

*Part IV* is devoted with the rights related to language and education,

*Part V* includes economic and social rights,

*Part VI* deals with the rights of lands and resources including ownership, possession and environmental protection,

*Part VII* includes self-determination, autonomy and self-government,

*Part VIII* describes procedures for resolving conflicts or disputes between states and indigenous people,

*Part IX* is devoted to minimum standards for the survival of the indigenous peoples.

It provides that the rights set forth represent the minimum standards of protection for the rights and well-being of indigenous peoples worldwide. It also promotes fair and just procedures for resolving disputes between indigenous people and governments, such as mediation, negotiation, and international and regional human rights review and complaints apparatuses.

### 1.5. ROLE OF WORLD BANK

During the past few decades the scale of development related population displacement in third world countries has grown very promptly. It has been roughly estimated that during the last ten years approximately 80 to 90 million people have been involuntarily ousted as a result of developmental programmes for dam construction and other urban and transport infrastructural facilities. The World Bank financed projects alone involved the displacement of over two million people by the year 2000. Due to the high density of human population in south and south-east Asian countries, forced resettlement consequent to bank-financed projects attains enormous magnitudes. In India alone the Bank financed projects will displace a huge number of people.

### 1.6. EVALUATION OF THE SALIENT FEATURES OF THE WORLD BANK POLICY

After taking feed-back from the field experiences and after many disasters caused by development-induced displacement, the World Bank formulated a policy which was accepted as a major conditionality for financially assisting any project that involves intimidating displacement. In fact, coercive displacement and resettlement are the tactful and diplomatic terms given to involuntary resettlement. Some of the basic elements of the policy are:

1. The policy demands the avoidance or minimization, whenever feasible, of involuntary displacement, by conducting a comprehensive assessment of alternatives and selecting the least displacing alternative within the economic and technical parameters.

However, in reality, *this policy statement does not clearly identify the minimum level of basic human rights, which must not be violated or diluted, by using the argument of economic exigencies or trade-offs. The policy should always have indicated the threshold level or the cut-off point for rejecting a project at the inception stage.*

2. The policy states that wherever the displacement is unavoidable, the Bank will assist the displaced persons in their efforts to improve or at least restore their former living standards and earning capacity.

The means to achieve this objective, it consists of preparation and execution of resettlement plans, which are to be made an integral part of the basic project design.

3. The Bank policy assures compensation for the loss of all assets by calculating an amount equivalent to replacement cost.

This is a very far-reaching and noteworthy objective. But this policy guideline do not state or describe a clear mechanism by which a share in the benefits of the project can be determined.

It is a mere statement of intent without an instrument to operationalize it, and thus is of little value, rather more of hypocrisy. Pragmatically, in India in almost all the developmental

projects, majority of the displaced families have not been able to get any share of the project benefits. Additionally, the compensations are worked out according to the market value, and not according to the replacement cost.

4. The Bank requires the project authorities to minimize the distance between the departure and relocation sites so as to facilitate the resettles adaptation to the new socio-cultural and natural environment. It also suggested that during the preparation of the resettlement plans, the resettlers and the host populations should participate in the process of conflict resolution.

5. The Bank policy also envisages that the process of rehabilitation should be treated as an opportunity for development, for the new settlers by giving them infrastructural and service facilities and empowering them with training and aptitudes.
6. Finally, the Bank policy also speaks at length about the need to maintain the ethnic values and social relationships of the indigenous communities. It also talks about treating their informal customary rights to the land or other resources acquired for the project, as natural rights and hence to be compensated adequately.

### 1.7. EVALUATION OF THE WORLD BANK DIRECTIVES

In 1990 the World Bank came up with an Operational Directive on involuntary resettlement which was circulated as Operational Directive 4.30. The Bank claims that this directive is mandatory and that all borrowers and project authorities should comply with it very strictly.

But in reality the scenario is totally different and when it comes to compliance, the Bank allows itself to be flexible and bends backwards to accept the borrower's certification which invariably declares that rehabilitation has been completed in a satisfactory manner. In reality however, even when the Bank staff gets reports from its own consultants that the rehabilitation plans are non-existent or are woefully inadequate, the Bank does not take any stern action.

### 1.8. NEGLECT OF THE BASELINE SURVEY

The lack of seriousness and absence of sincerity of the project authorities regarding its intention on rehabilitation, are revealed by the way in which they conduct the baseline survey. The project authorities, who are serious on it, conduct a baseline survey exhaustively and arrive at reasonably accurate figures about the number of people likely to be displaced and an assessment of the tangible and intangible assets which would need to be compensated. In addition, a good baseline survey finds out the level of education, consumption pattern, the degree of dependence on community resources and the entire socio-environmental milieu.

Unfortunately many of the baseline surveys scrutinized, indicate callousness and indifference towards the people to be displaced. The surveys are conducted casually, merely to satisfy a technical requirement. The bureaucrats and agencies employed for conducting the survey looked at displacement and rehabilitation as a major obstruction on the highway to development, but not as a human rights issue.

In India, in the case of the notorious Sardar Sarovar Dam Project (Narmada), which the World Bank had to abandon in 1993, the figures of the people affected have increased from 35,000 persons in 1979 to a little above 3,00,000 by current estimates, which included the people affected by the reservoir, the project office complex and housing colonies, and the gigantic canal and distributary system.

Social and environmental trade-offs have been made such that they seemed to be insupportable today. The following table gives a small illustration of the farcical way in which the displacement data submitted to the World Bank were treated by the consultants and the Bank staffs.

	Year Appraised	SAR* Estimate of the No. of people	Revised Estimate of the No. of people affected
Singrauli I St II	1982	0	49,000
Farakka	1984	0	53,500
Madhya Pradesh Medium Irrigation	1981	8,000	19,000
Andhra Pradesh Irrigation II	1986	63,000	1,50,000

\*SAR. Staff Appraisal Report (World Bank).

FIG. 1.1 Inaccuracies in Baseline Surveys for Some Indian Projects

### 1.9. DIFFICULTIES IN IMPLEMENTING THE POLICIES AND GUIDELINES

Resettlement of the displaced and project-affected persons is always difficult, expensive and time consuming. *The inherent difficulty in re-establishing standards of living and community services is compounded by the limited technical and institutional resettlement capacity of most borrowing countries and by weak commitment from executive agencies. Consequently, in a large number of projects, the actual results of R & R are not consistent with the standards defined and demanded by the World Bank Policy.*

Power Project, for more than 70% of the families, the conditions were unknown, unassessed and unrecorded. These 7,090 families are being treated as lost to the world. Again in Maharashtra Composite III Project, which displaced 1,68,000 people, only the land holding families were stated to have recovered their standard of living but the landless families, which

represented more than 50% of those displaced, have been severely affected

### 1.10. RECENT INITIATIVES OF THE WORLD BANK

In past the environmental and social costs of large scale developmental projects were often ignored or dismissed as inevitable. Although these costs have not been eradicated, recognition that sustainable development cannot be achieved through projects that impoverish communities and destroy environment has increased. Acknowledging the importance of mitigating the negative impacts of developmental projects, the World Bank and other international financial institutions developed social and environmental policies to guide their project lending in the 1980s and 1990s.

These World Bank safeguard policies are important tools to protect communities and environment. By ensuring environmental assessment standard holding consultation with the affected communities, information disclosure, compensation and livelihood restoration, protection of biodiversity and other goals, the safeguard policies help to reduce negative impacts of developmental projects.

## CHAPTER 2 INDIAN LEGISLATION AND POLICY RELATING TO REHABILITATION AND RESETTLEMENT

*"We have for over a century been dragged by the prosperous West behind its chariot, choked by the dust, deafened by the noise, humbled by our own helplessness, and overwhelmed by the speed. We agreed to acknowledge that this chariot-drive was progress, and that the progress was civilization. If we even ventured to ask, 'progress towards what and progress for whom', it was considered to be peculiarly and ridiculously oriental to entertain such doubts about the absoluteness of progress. Of late, a voice has come to us bidding us to take count not only of scientific perfection of the chariot but of the depth of the ditches lying across its path".*

- Rabindranath Tagore.

The paradigm of development that has found favour with the planners makes displacement of large number of people, even the whole communities, and an unavoidable event. The utilitarian principle of maximum happiness for the maximum numbers has been invoked to lend respectability to making the lives of communities into a cost in the public interest, thereby throwing the displaced impoverished scum of the society into the abyss of death and destruction, as they bear the main brunt of *national development*. The law is ill-equipped to counter this attitude and in fact abets it by lending the force of state power.

Last fifty years of independence have witnessed the conversion of millions of people into hapless victims of national development as a direct consequence of administrative land acquisition. So, through this chapter an effort is made to critically analyse the policy perceptions, legal prescriptions, their implementation as well as judicial interpretations regarding the rehabilitation of the displaced communities.

In the context of displacement due to developmental activities, and rehabilitation and resettlement of the displaced and affected victims, the Land Acquisition Act of 1894 is one of the pioneer legislations in India, which has been the backbone of all land acquisitions due these developmental projects. So, here it is necessary to assess that how far the Land Acquisition Act of 1894 confirm to the Constitutional scheme of governance, resource allocation and use.

### 2.1. THE LAND ACQUISITION ACT, 1894

#### Applicability of Land Acquisition Act, 1894 (as amended in 1984) in the Present Scenario


The Act of 1894 has to be understood and judged in the light of the tunes it served when the totalitarian state, with the colonial mind-set was exploitative in nature. Thus, the Act of 1894 clearly does not serve the new milieu. This is because firstly, it was not basically meant to help the powerful non-democratic government to acquire land as and when it wished. But the government, during that time, aimed at acquiring land for extremely limited purpose.

Secondly, in the present welfare regime of the state, the well-being of the people is its guiding spirit, as a result of which, it must intervene in every sphere of life to accord protection and to help the citizen from the cradle to grave. Defence, law and order are not its be all and end all. Consequently, compared to the earlier situation, the objectives and frequency of land acquisition have increased.

#### **The Main Features of the Land Acquisition Act of 1894 (as amended in 1984)**

The Land Acquisition Act is no longer appropriate or adequate for meeting the objectives of the changed situation. This colonial legislation has sharp and focussed purpose to take away privately owned land for public purposes. Payment of compensation is only ancillary to the basic aim. Some of the main features of this Act are namely:

- ✚ Land is acquired for public purpose. For this public or individual notices are given at various stages.
- ✚ The persons whose lands are acquired have certain rights to raise objections. But the Act confers a limited right to object to land acquisition. This right has to be exercised within one month of receiving the notice under section 4. No specific grounds for objections have been mentioned under Section 5A of the Act.

 The government can take away the land for reasons of emergency or urgency with a much

shorter notice. For reasons of urgency, a notice of 15 days is given. For reasons of emergency the Collector is required to give 48 hours' notice for vacating a building

### **A Closer Look**

The century old Land Acquisition Act of 1894 was passed by a colonial government, when the population was sparse and the grounds for land acquisition were few. All these factors have changed since independence, with an enormous leap in the population figure. The nature of state has also transformed, from being exploitative, in the pre-independence era, to being more welfare-oriented in the post-independence period. But at the time of enactment of this legislation, the colonial government had an overwhelming profit-making motive which wished only to exploit the country's natural resources. There was no question of it making India a self-sufficient, export-oriented industrial giant.

It is a statutory statement of the state's power of eminent domain, which vests the state with the ultimate control over the land within its territory. It denies to the person from whom the land is acquired, the right to exercise choice as to whether to part with the land or not, so long as the acquisition is for a 'public purpose'.

The British essentially required legal sanction for all the efforts that were made towards land acquisition with the subtle intention to satisfy the profit-making greed of non-democratic government. *Public purpose* meant any developmental activity to implement any scheme or policy of the government, including making provision of land for any government sponsored educational, housing, health or slum clearance scheme.

## **2.2. OTHER LEGISLATIVE PROTECTION TO THE RIGHTS OF TRIBAL OR INDIGENOUS PEOPLE**

### **Constitutional Safeguards**

Till date in India, the Land Acquisition Act has been the pioneer legislation which has been the backbone of land acquisition for various developmental projects leading to displacement of millions of people. Even though till date, there have been no other national laws in India with regard to land acquisition, or rehabilitation and resettlement of the project-affected persons or displaced families, the Indian Constitution has laid down its mandate for realization and protection of the rights of tribal and indigenous populations in India, who form the major chunk of the displaced population, i.e. the Fifth and the Sixth Schedule of the Indian Constitution.

### **Administration of Scheduled Areas and Tribal Areas**

The provisions of the Fifth Schedule shall apply to the administration and control of the Schedule Areas and Schedule Tribes in any states other than the states of Assam, Meghalaya, Tripura and Mizoram. The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram.

According to joint recommendations of the two sub-committees, separate financial provisions were adopted to the Constitution by virtue of article 275(1), which provides for grants-in-aid from the Union of India to meet the costs of schemes of development as may be undertaken by the state with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that state or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that state. A special provision to the article 275(1) refers to the states of Assam, Meghalaya, Tripura and Mizoram and provides for grants-in-aid equal to the excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution in respect of the administration of tribal areas ... the cost of such schemes of development as may be undertaken by the state with the approval of the Government of India for the purpose of raising the level of administration.

Besides this, article 39 (a), (b) and (c) read with article 48A of the Constitution expressly recognizes the right of the tribal people to natural resources and community management of these resources.

Article 39(a) imposes constitutional obligations upon the state to secure that all the citizens (which also include tribal and indigenous communities), men and women, have the right to an adequate means of livelihood.

Article 39(b) imposes constitutional obligation upon the state to secure community management of the natural resources.

Article 39(c) imposes obligation upon the state to secure equitable distribution of the economy so as to prevent concentration of wealth in particular segment of the society which may lead to common detriment.

Besides this, article 48A also imposes an obligation upon the state to protect and improve environment and also to safeguard forests and wild life of the country.

### **Forest Laws and Policies in India**

The Land Acquisition Act is not isolated in its relevance to displacement. There is *Forest Act of 1927*, which anticipated the displacement of people from forests in which the state declared its interest to acquire, much earlier than the Indian Constitution. Unlike the Land Acquisition Act, which was mainly premised on the private ownership of the property, the Forest Act was aware that the long established user and its intricate mesh of dependency characterized the rights it would dislodge. Still then the continuance of the rights of the people depended on individual determinations made by the state functionary.

The present ecological and social crisis with regard to forest dwellers and the tribal are basically result of conflict between the greed and the need, luxury and survival, growth and sustainable development. The governments, particularly those in developing countries like India, are caught in this dilemma. They attempt to reconcile the conflict between the two ends by enacting more laws and policy resolutions that deal with slogans and symptoms, but tend to ignore the root causes. As a result the problem continues to exist perpetually.

### **WILDLIFE PROTECTION ACT, 1972**

Another significant legislation which has had immense adverse impacts on the rights and interests of the tribal, indigenous and other forest dwelling communities is the Wildlife Protection Act, 1972. Recently, the Ministry of Environment and Forests, have been making significant efforts by appointing a committee to review and recast the Wildlife Protection Act of 1972, by enactment of Environment (Protection) Act of 1982 and the Public Liability Insurance Act, 1991, which provided an excellent opportunity for proposing legal reforms, so as to give a pro-people orientation to the Wildlife Protection Act.

### **Other National Legislations**

There are other legislations in India dealing with land acquisition. The security of the state demands that open spaces should be available to the army for its field firing and artillery practice. This leads to the origin of another cause of displacement, which is in the interest of safety of persons likely to be harmed. As a result, the Manoeuvres, Field Firing and Artillery Practice Act, 1938 was enacted. However, the displacement under this Act is a mere dislocation for the period that the army needs it. They may be re-habited thereafter. If in the process any harm is sustained by the person or property, there is statutory provision for compensation.<sup>100</sup> Like other legislation this Act concentrates power in the hands of the state but with a passing thought to what effect it might have in the lives of the displaced people. It is this reluctance to acknowledge the responsibility involved that makes the law suspect.

## **CHAPTER 3**

### **STATE POLICIES AND LEGISLATIONS: A CRITIQUE**

#### **3.1. THE MADHYA PRADESH RESETTLEMENT ACT, 1985**

Madhya Pradesh is a state in India full of natural resources and has been exploited to a large extent to fulfil the demands of the modern industrial development. Consequently, large population have been displaced to make way for the dams, mines, industrial plants, factories, wild life sanctuaries and national parks. Those who are invariably displaced as a result of this nation building got a raw deal. Consequently, there was increasing unrest and the swelling discontent amongst the population already displaced and those in danger of being ousted in future. As a result the displaced and affected population went berserk jeopardizing the implementation of these projects and resulted in outright cancellation of many of these projects. Thus, the Government of Madhya Pradesh was forced to address this problem. In the year 1985, The Madhya Pradesh *Pariyojna Ke Karan Visthapit Vyakti (Punsthapan) Adhiniyam* was enacted to provide for the resettlement of certain persons displaced from lands which are acquired for irrigation projects, power projects or public utility projects and for matters connected therewith or incidental thereto.

#### **Criticism**

Even though the Madhya Pradesh Resettlement Act of 1985 has number of positive features, but this Act is not free from loopholes or drawbacks. In fact many of the positive features of this Act are far outweighed by many loopholes and conceptual shortcomings of this legislation, which reduces its utility considerably. The Act suffers from many internal inconsistencies which are bound to create confusions and legal irregularities.

The term *displaced person* has been defined as any tenure holder, tenant, government lessee or owner of other property who on account of the acquisition of his land or other property has been displaced from such land or property.<sup>181</sup> In this definition, there is no clarification given with regard to the status of major sons or daughters. Considering the outdated state of the land records in the Madhya Pradesh, and also the existing rule that the sons and daughters cannot be considered tenure holders as long as their father is alive, this omission is bound to deprive many a genuine oustee of resettlement. So, in other words, the term '*displaced persons*' has not been adequately defined and still leaves many of the questions unanswered.

The Resettlement Commissioner has been made the final arbiter on objections lodged against the assessment by the resettlement staff, provisions of the resettlement plan and allotment of lands and grants in sections 13, 16 and 21 of the Act. Section 29 places a bar on jurisdiction by making the working of the Act non-justiciable in a civil court. This is a blatant violation of the fundamental constitutional right of judicial remedy.

### 3.2. KARNATAKA RESETTLEMENT OF PROJECT DISPLACED PERSONS ACT, 1987

Soon after the state of Madhya Pradesh, Karnataka ranks the third state in India to come up with a progressive legislation for the project affected population in the year 1987 as *Karnataka Resettlement of Project-Displaced Persons Act*. But standing in the present time, if one makes an attempt to look back at the practical experiences of implementation of this legislation, the situations appear to be quite grim and gloomy. The heart wrecking condition and livelihood of the hapless victims of multiple displacements<sup>189</sup> on account of Nagarhole National Park in the Mysore District of Karnataka, along with the painful spectre of strewed and unsettled existence of the displaced million from the Linganamakki and Hirebhaskar area of the Sharavathi project instantaneously raises doubts and apprehensions about the effectiveness of the *Karnataka Resettlement of Project Displaced Persons Act, 1987*.

#### **Provocations behind Enactment of the Karnataka Act**

This Act was mainly enacted to bridge up the gap that was mainly created on account of legislative deficit due to lack of any welfare legislation concerning the interest of displaced and project affected population. The prolonged, uninterrupted application of the age-old colonial legislation, i.e. the Land Acquisition Act of 1894,

#### **Criticism**

The Karnataka Act of 1987 is definitely a marked improvement over the other state legislations like Maharashtra and Madhya Pradesh Act. Under the Karnataka Act, express provisions are laid down for detailed census of the displaced peoples and the assessment of the extent of land from which people are likely to be displaced. This helps in the proper assessment of the situation and helps to come up with a better and more scientific rehabilitation action plan.

## **CHAPTER 4 SEZ IN INDIA: POLICIES, PERFORMANCE AND PROBLEMS**

### **4.1. INTRODUCTION**

The global economic crisis of 2008–09 had resulted in a substantial fall in demand for new special economic zones (SEZs) in India owing, among other factors, to a general slowdown in global trade, and the resultant withholding of investment plans, and an increase in the cost of borrowing. Within the country, the SEZ policy and related land acquisition practices became the centre of a great public debate. This followed the well-known 2007 protests in West Bengal over government acquisition of private agricultural land for an SEZ, during which several farmers lost their lives. Acquisition of private land, particularly farmland, for the purpose of establishing SEZs has now become one of the important public policy issues in India.

### **4.2. EVOLUTION OF SEZS**

India launched its first export processing zone (EPZ) in 1965 in Kandla, Gandhidham, Gujarat. It was the first EPZ in Asia. EPZs were conceived of as duty-free areas in which the operating units avail of a host of fiscal and other concessions to produce and export goods and services. The EPZ units in the country operated within the framework of export-import policies. Though the performance of Indian EPZs was considered listless in comparison with their counterparts in other parts of Asia, the EPZ scheme was continued through the 1970s and the '80s.

With a view to overcome the multiplicity of controls and clearances, the absence of world-class infrastructure, and an unstable fiscal regime, and to attract larger foreign investments, the Special Economic Zones (SEZs) Policy was announced by the Government of India in April 2000. The policy envisaged the development of an internationally competitive and hassle-free environment for exports in the designated zones so that the then existing process hurdles could be removed. The policy intended to make SEZs an engine for economic growth, supported by providing quality infrastructure and complemented by an attractive fiscal package, both at the Centre and in the states, with the minimum possible regulation. SEZs in India functioned from 1 November 2000 to 9 February 2006 under the provisions of the Foreign Trade Policy, and fiscal incentives were made effective through the provisions of relevant statutes.

The SEZ Act, 2005, supported by SEZ Rules, came into effect on 10 February 2006, providing for drastic simplification of procedures and for single-window clearance on matters relating to the central as well as state governments. The SEZ Rules provide for different minimum land requirements for different classes of SEZs. With the enactment of the 2005 legislation, SEZs received a major thrust. There has been a significant increase in the number of SEZs in India since then. The act has 56 sections, containing legal provisions for the establishment of SEZs, constitution of the Board of Approval,

appointment of development commissioners, provisions for dispute settlement, etc. After the SEZ Act and Rules were notified, amendments to the SEZ rules were notified in 2006 and again in 2007. The main objectives of the SEZ Act are:

- ✚ Generation of additional economic activity
- ✚ Promotion of exports of goods and services
- ✚ Promotion of investment from domestic and foreign sources
- ✚ Creation of employment opportunities
- ✚ Development of infrastructure facilities
- ✚ According to Section 53 of the SEZ Act, SEZ shall be “deemed to be a territory outside customs territory of India for the purpose of undertaking authorized operations.” The government has notified such a list of authorized operations. As a consequence, the Union government converted the existing Economic Policy Zones into SEZs. Accordingly, all the EPZs in the country were notified under the Customs Act, 1962, as SEZs. Even though EPZs and SEZs have several differences, the units in both EPZs and SEZs enjoy the facility of duty-free import/procurement of required equipment and raw materials.
- ✚ Currently, units in SEZs enjoy the following incentives and facilities:
  - ✚ Duty-free import/domestic procurement, of goods for the development, operation and maintenance of SEZ units.
  - ✚ Exemption up to 100 per cent, from income tax on export income for SEZ units under Section 10AA of the Income Tax Act, 1961, for the first five years, 50 per cent for the next five years thereafter, and 50 per cent of the ploughed-back export profit for the next five years.
  - ✚ Exemption from Minimum Alternate Tax (MAT) under Section 115JB of the Income Tax Act.
  - ✚ External commercial borrowing (ECB) by SEZ units up to US\$ 500 million in a year, without any maturity restriction, through recognized banking channels.
  - ✚ Exemption from Central Sales Tax (CST). Exemption from service tax.
  - ✚ Single-window clearance for central and state-level approvals.
  - ✚ Exemption from state sales tax and other levies as extended by the respective state governments.

#### 4.3. EXPORTS FROM SEZs

The establishment of SEZs is seen as an important strategic tool to expedite the growth of trade in a region. Trade expansion is mainly measured in the form of increased exports as units set up in an SEZ have to produce goods and services mostly for exports. Hence, the increased level of exports has been critical to the success of SEZs and is directly related to productivity gains. An annual trend analysis of the cumulative exports contribution of all the SEZs in India reveals that they have had a catalytic effect in promoting goods and services in the international market.

It is observed that the contribution of exports from SEZs to the overall exports from India has increased from 4.7 per cent in 2003–04 to 26 per cent in 2009–10. Physical exports from SEZs have increased by 121 per cent to Rs. 2,20,711 crore in 2009–10, with a compound annual growth rate (CAGR) of 58.6 per cent during the period 2003–04 to 2009–10 compared to the CAGR of 19.3 per cent for the total merchandise exports of the country for the same period.

Exports from the new SEZs, i.e., SEZs notified under the SEZ Act, 2005, have grown rapidly over the years. Their share at 53.4 per cent is the highest in 2009–10 compared to central government SEZs and state government/private SEZs that were established prior to the enactment of the SEZ legislation in 2005.

The data suggests that SEZs have made a significant contribution to the growth of exports of India. It is appropriate here to provide an insight into the contribution of Chinese SEZs to the growth of exports of their country to develop a comparative perspective.

China started with the establishment of SEZs in the late 1970s and early 1980s. The country has less than 10 SEZs, while India has 377 notified SEZs. Shenzhen is the largest SEZ in China and spreads over 32,700 ha; while the largest SEZ in India is Reliance, spread over 14,000 ha. Table 1 presents an interesting comparison between the two economies.

Table 1: Comparative View of SEZs in India and China

<u>China</u>	<u>India</u>
Government ownership	Private ownership, majority of SEZs developed by real estate firms in India
China has less than 10 SEZs	No. of SEZs in India (notified): 377 Largest SEZ: Reliance (14,000 ha)
Largest SEZ: Shenzhen (32,700 ha)	
Exports from SEZ (Shenzhen alone) in 2008: US\$ 179.72 billion	Exports from SEZs (total) in 2008: US\$ 22.1 billion

It is observed that the contribution of SEZs to the Indian economy is not at par with that of their Chinese counterparts in terms of the overall exports. As Table 1 shows, exports from the Shenzhen SEZ alone were worth US\$ 179.72 billion for the year 2008, which constituted about 14 per cent of the total Chinese exports, against US\$ 22.1 billion worth of exports from *all the SEZs* in India for the same year, which constituted 10.2 per cent of the total exports of India during 2007–08.<sup>207</sup> An empirical study conducted on the SEZs' performance in India concluded that an increase in the number of units by 200 will increase the national income by 0.006 per cent, which is a very marginal rise (Leong, 2007). Thus, the total exports of India appears to be good. But it pales in comparison with their Chinese counterparts. There are also concerns that the improved exports performance of SEZs is largely due to the relocation of export units to these zones from non-SEZ areas so as to avail the fiscal incentives offered to the units located in SEZs.

#### 4.4. REGIONAL DEVELOPMENT

While SEZs are conceptualized to achieve balanced growth across all the regions of the country, ironically, statistics reveal that out of the 322 notified SEZs in India, 211 are in the most developed states of the country.<sup>14</sup> Table 3 provides the details on the state-wise distribution of the SEZs. The numbers are themselves testimony to the persisting imbalance in the locational preferences of SEZs in India. In China, SEZs have been established in coastal areas to encourage the growth of relatively underdeveloped regions along the country's coast. The Chinese government's policy on SEZs was initially designed to give a fillip to industrial development in the less developed parts of the country. All the major Chinese SEZs are located along the coastline, in contrast to Indian SEZs—a majority of which are located near major urban agglomerates.

Despite these modest gains, the government is establishing SEZs at a pace that is likely to make India the hub of the largest number of SEZs in the world in the near future. Some might argue that every development has a cost associated with it, and the question really is about the efficiency with which a government is able to balance the losses with the gains. It is vital that we look at this question in the context of the land grab, forceful evacuation, population displacement and resettlement, and unfair land deals that have recently mired Indian SEZs in controversy.

#### 4.5. LAND ACQUISITION AND IMPACT ON COMMUNITIES

The state has sought to acquire land for SEZ development largely under the Land Acquisition Act of 1894, a legislation enacted by the colonial government in India. Acquisition under this act has been labelled undemocratic, as it seemingly allows for the unchallenged acquisition of land, regardless of ownership or user status, for what is termed 'public purpose'. Given that a SEZ is a manifestation of public-private partnership in building townships to be run and administered largely by the private sector for generating export-oriented and profit-making activities, the appropriateness of public purpose as ground to justify the acquisition of land for SEZs on par with land acquired for public utilities like roads, dams and public sector industrial units came under question. Do SEZs qualify as public purpose projects that require compulsory acquisition and resettlement? The very idea of public purpose dates back to an era when the government carried out many development activities that, today, are in the domain of the private sector. The SEZ Act, 2005, remains silent on this issue. At a time when displacement, relief and rehabilitation issues related to projects such as dams, roads and

bridges dating back many decades remain unresolved, SEZs throw up a whole new set of challenges.

#### 4.6. DISPLACEMENT AND LOSS OF LIVELIHOODS

Estimates show that close to 114,000 farming households (each household on an average comprising five members) and an additional 82,000 farm worker families who are dependent upon these farms for their livelihoods, will be displaced. In other words, at least 10 lakh (1,000,000) people who primarily depend upon agriculture for their survival will face eviction. Experts calculate that the total loss of income to the farming and the farm worker families is at least Rs. 212 crores a year. This does not include other income lost (for instance of artisans) due to the demise of local rural economies.

The government promises 'humane' displacement followed by relief and rehabilitation. However, the historical record does not offer any room for hope on this count: an estimated 40 million people (of which nearly 40% are Adivasis and 25% Dalits) have lost their land since 1950 on account of displacement due to large development projects. At least 75% of them still await rehabilitation.

Almost 80% of the agricultural population owns only about 17% of the total agriculture land, making them near landless farmers. Far more families and communities depend on a piece of land (for work, grazing) than those who simply own it. However, compensation is being discussed only for those who hold titles to land. No compensation has been planned for those who don't.

### **CONCLUSION**

After independence India has seen prompt economic growth through a process called *planned development* which had been conceded out by succeeding 5 Year Plans. There has been a particular amplification of development induced displacement in past few years which is one of the results of increasing globalization. In upshot, the economic liberalization policies, structural adjustment and stabilization suites have made the problem of development induced displacement all the more urgent.

The essential key theme of this study is to examine the magnitude of accommodation of human rights and interests in developmental activities in order to determine how displacements resultant from undertaking developmental activities get remedied and what the adequacy of such remedies is. This requires an enquiry into conceptualization and paradigms of *development* so as to ascertain as to what level the developmental activities deem rehabilitation of the displaced, as a part of the process of development. The *Introductory chapter* gives a closer look at the historical aspects of the process of development induced displacement along with analysis of magnitude of displacement, which clearly shows the vastness of the extent of this problem. It also helps to focus on the detrimental consequences of displacement, following the developmental activities. These helps to focus on the importance of this research study, keeping in mind the vastness of the extent of this problem and human rights defilement of the displaced which is an unintended companion of the '*national development*'. As a result, this automatically raises question with regard to the credibility and genuineness of the term national development. Is it a national development or Bharat Nirman in the true sense? Or is it a development for all? Or is it development of a wealthy few striking the harmful consequences upon the disadvantaged majority?

*Chapter II* gives a study of the international legal and institutional anxieties in safeguarding the human rights and interests of the displaced people and thus in this effort tries to answer the research question as to what degree the actions taken in the international platform succeed in safeguarding the rights and interests of the development-induced displaced population.

### **BIBLIOGRAPHY**

#### **BOOKS:**

1. Pandey Balaji, *Displaced Development: Impact of Open Cast Mining on Women* (New Delhi: Friedrich Ebert Stiftung, 1998).
2. Muthayya B.C., Tripathy R.N., *Rehabilitation Plans-Typologies and Their Assessment in the Rehabilitation of Displaced Villagers-A Plan* (A Study in Nalco Complex Damanjodi, Koraput District, Oddisha (Hyderabad: National Institute of Rural Development, 1984).
3. Ganguly, Enakshi Thukral, *Big Dams, Displaced People: Rivers of Sorrow Rivers of Change*, New Delhi and London: SAGE Publications, 1992.
4. Mathur, Hari Mohan and Cemea, Michael M., *Development, Displacement and Resettlement: Focus on Asian Experiences*, (New Delhi: Vikas Publishing House Pvt. Ltd, 1995)
5. Sharma Dr. B.D., *The Fifth Schedule*, [New Delhi: Sahyog Pustak Kuteer (Trust)].
6. Posey Dr. Darrell, *Traditional Resource Rights: International Instruments For Protection and Compensation For Indigenous Peoples and Local Communities*, (Gland, Switzerland and Cambridge, UK: IUCN, 1996)

#### **ARTICLES:**

1. Sinha B.K., *Draft National Policy for Rehabilitation: Objectives and Principles*,

Economic and Political Weekly, Pg. 1453-1460 (Special Articles, June 15, 1996).

2. *Dams and Development: A New Framework for Decision-Making; The Report of the World Commission on Dams: An Overview*, Collected from MARG Library.
3. Thukral Enakshi Ganguly, *Development, and Rehabilitation: Locating Gender*, Economic and Political Weekly, Pg. 1500-1503 (Special Article, June 15, 1996).
4. Sayed Javed Ahmad, *Good Governance in Bangladesh: A Quest for a Non-Political Party*, Journal of Politics and Law, Pg. 144, Vol.2 No.4, December 2009
5. Gagandeep Dhaliwal, *A Review on Human Rights and Good Governance and Status of Human Right in India*, IJEAR, Pg. 25, Vol. 3, Issue 2 (July - Dec 2013)
6. Cemea Michael M., *Public Policy Responses to Development-Induced Population Displacements*,

Economic and Political Weekly, Pg. 1515-1523 (Special Article, June 15, 1996)

7. Cemea Michael M., *Risks, Safeguards and Reconstruction: A Model for Population Displacement and Resettlement*, Economic and Political Weekly, Pg.3659-3678 (October 7, 2000)

8. Madhavi Sunder, *Piercing the Veil*, 112 YALE L.J. Pg. 1399, 1401 (2003)