# Chapter III

## The Problem of Internally Displaced Persons in India : An Introspection of Protection Mechanism and Policy Formulation under Indian Law

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# THE PROBLEM OF INTERNALLY DISPLACED PERSONS IN INDIA: AN INTROSPECTION OF PROTECTION MECHANISM AND POLICY FORMULATION UNDER INDIAN LAW.

## 1. OVERVIEW

In the previous chapter an attempt was made to study the legal position of Internally Displaced Persons in international scenario. The chapter tried to discuss the various international laws that exist for the protection of displaced persons. The chapter revealed that apart from the Guiding Principle there is no other law which is specifically applicable to the IDPs. Now in this present chapter, having discussed the position of IDPs in international scene, an attempt would be made to discuss the position of IDPs in India. That is to say, what mechanism exists for the protection of their human rights?

Justice is an attribute of human conduct. Law, as a Social Engineering, is to remedy existing imbalances, as a vehicle to establish an egalitarian social order in a Socialist Secular Bharat Republic. Social and economic democracy is the foundation on which political democracy would be a way of life in the Indian polity. Social and Economic retransformation requires that the material resources or their ownership and control should be so distributed as to subserve the common good. The concept of social engineering needs to be applied to protection of IDPs as the present laws are not appropriate for the protection of IDPs and they are found to be at the mercy of the state administration that have to look after the affairs of other people.

The Constitution was framed after an in depth study of manifold challenges and problems including that of poverty, illiteracy, long years of deprivation, inequalities based on caste, creed, sex and religion. The independence struggle and intellectual debates in the Constituent Assembly show

the value and importance of freedoms and rights guaranteed by Part III and State's Welfare obligation in Part IV of the Constitution.

## 2. CONSTITUTUIONAL PROVISIONS

Ours is a constitutional democracy and we are called a *'welfare state'*. Welfare does not mean that we have only to strive for fulfillment of political theory; "greatest happiness of greatest number". Our motto from the Vedic times has been *sarva jan hitay, sarva jan sukhai*, i.e. *benefit of all and happiness of all.*

The Indian Constitution guarantees certain fundamental freedom to all persons and not just too Indian citizens. Hence, persons who have been displaced from their state or their state of origin have the right to seek the protection of their rights by invoking the rights enumerated in the Constitution. This protection is independent of the need of any recognition by the Government. The Constitution makes it imperative for the State to secure to its citizens, rights guaranteed by Constitution and where the citizens are not in a position to assert and claim their rights the state can be activated and approached to effectively come upon the scene and protect the human rights of the victims of a disaster. The functions of the State, governed by Constitution and Rule of Law, are to take necessary remedial measures as a parent and guardian of the citizens of the country to help and support helpless victims of a massive disaster. The fundamental rights that all persons including the IDPS enjoy under the Constitution include:

### A. Right to Equality before Law and Equal Protection of Law

The Constitution of India guarantees that all persons enjoy equality before law and equal protection of law within the territory of India. The Constitution of India under Article 14[1] enshrines that there should be no discrimination between persons. The IDPs face discrimination at the hands of the

1. Article 14 of the Constitution *"The state shall not deny to any person equality before law or equal protection of the laws within the territory of India"*

authorities who are required to assist the IDPs during their course of displacement, resettlement and rehabilitation. The IDPs who are displaced due to various reasons are provided unequal treatment. Such unequal treatment is meted out to IDPs at the time of rehabilitation and resettlement and at the time of payment of compensation.

It is also felt that if rehabilitation of project oustees is to become a reality in India, the most fundamental and necessary condition is that they must be legally empowered to demand their rights. And the first step in this direction is the enforcement of the constitutional right of equality before the law, Article 14 – a right which is violated by land laws in India.[2]

Article 14 specifically provides that the state shall not deny to any person the equal protection of the laws. The language is wide and forbids class discrimination. Even administrative action cannot discriminate between the classes and the masses especially because it may be arbitrary when judged by the humanist scales of the Preamble. Maybe reasonable classification founded on intelligible differentia, distinguishing persons grouped together from others left out of the group, maybe permissible if the differentia has a rational relation to the object sought to be achieved by the Statute in question. The crucial point to remember is that discrimination is anathema. The further point to emphasize is that the differentiation must be reasonable. It is true that the legislature may have to classify when dealing with the complex problems that arise out of the infinite variety of human relations. But what can never be over looked is that the selection or classification should be based on substantial criteria and, more important, must be reasonable in the context of the values enshrined in the constitution. When the law classifies people with property and without property and throws out the

2. Chhatrapati Singh, *"Rehabilitation and Right to Property"*, in Walter Fernandez, Enakshi Ganguly Thukral ed. *"Development, Displacement and Rehabilitation"* Indian Social Institute, published by Indian Social Institute, New Delhi-03, 1988, at p. 97

proletariat and protects the proprietary, reasonableness is at stake in the context of Social Justice[3].

In the similar manner acquiring property in the name of public purpose from people who are dependent on the land is also unreasonable and arbitrary. Is not the Land Acquisition Act violating the provision of Article 14 of the Constitution?

## B. Freedom of Movement and Freedom to Reside and to Settle

The Constitution of India, guarantees to all its citizens the right *"to move freely throughout the territory of India"*, under Article 19(1) (d).[4]

Similarly, every citizen of India has the right *"to reside and settle in any part of territory of India"*.[5] These rights are however subject to reasonable restriction.[6]

It is felt that the right to reside and right to move freely throughout the country are complementary and often go together. The IDPs when they are displaced have suffered restrictions on their freedom of movement and expression. Hence, they have the right to move and reside in any part of the country subject to reasonable restrictions.

As people and communities are involuntary displaced under development projects, their right to move, to reside and settle in an part of the country under Article 19(1)(d) and (e) of the Constitution, subject to the reasonable restrictions, is compromised.

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3. Justice V.R.Krishna Iyer, "From the Album of Antodaya Jurisprudence" in Human Rights and the Law, Veedapal Law House, Indore 452007, First Edition, March 1984
4. Article 19(1) (d) of the Constitution, *"All persons shall have the right-to move freely throughout the territory of India"*
5. Article 19(1) (e) of the Constitution, *" to reside and settle in any part of the territory of India"*
6. Article 19(5) and (6) of the Constitution

In *P. G. Gupta v State of Gujarat,*[7] a Bench of three judges of the Supreme Court, considering the mandate of human right to shelter, read it into Article 19(1)(e) and Article 21 of the Constitution of India to guaranteed right of residence and settlement. Protection of life guaranteed by Article 21 encompasses within its ambit, the right to shelter, to enjoy the meaningful right to life.

In *M/S Shantistar Builders v Narayan Khimlal Totame,*[8] another bench of three Judges held that basic needs of man have traditionally been accepted to be three–food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its ambit their right to clothing, the right to decent environment and the reasonable accommodation to live in.

Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home, where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like road etc, so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable him to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live, should be deemed to have been guaranteed as a fundamental right.

In the present context what it would it can be said is that when the state is the agent and cause of displacement then it should move the population only when the rehabilitation justice can be provided by the law as according to the Constitution which speaks of the right to shelter as not only a fundamental right but also human right.

7. 1995 SCW 1540
8. AIR 1990 SC 630

## C. Right to Life and Personal Liberty

Right to life enshrined under the Constitution is considered to be an inalienable right and one of the most cherished values of any democratic set up. Article 21[9] is of widest amplitude and it covers a wide range of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights.

Article 21 of the Constitution reinforces *"right to life"*- a fundamental right– which is an inalienable human right declared by *the Universal Declaration of Human Rights* and the sequential convention to which India is a party.

The right to life was confined to protection against arbitrary executive action.[10] It is only after the decision of the Supreme Court in *Maneka Gandhi's case*[11] that a new dimension was provided to Article 21. The judgment touched many aspects of life; the one relevant for the purpose of present study is that of right to live. Right to live not merely being confined to physical existence but it enclosed within its ambit the right to live with human dignity. The IDPs too have the right to live with human dignity and they cannot be deprived of the right to live with human dignity except according to the procedure established by law and deprivation of the right by arbitrary State action would be the clear negation of the right enshrined under Article 21 of the Constitution. Once the IDPs are deprived of their source of livelihood or the resources on which their livelihood is dependent, their right under Article 21 is deprived, as right to livelihood is one of the basic rights guaranteed by Article 21 and deprivation of this right leads to their exploitation. They tend to migrate to other places for earning their livelihood and take up works for meager salary.

9. Article 21 of the Constitution *"No person shall be deprived of his life and personal liberty except according to procedure established by law"*
10. A. K. Gopalan v Union of India, AIR 1950 SC 27
11. Maneka Gandhi v Union of India, AIR 1978 SC 597

The Supreme Court has, in *Olga Telis case,*[12] held that

> *"An equally important aspect of right to life is right to livelihood, because no person can live without the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that Articles 39 (a) and 41 requires the state to secure to the citizen an adequate means of livelihood and the right to work, it would be great injustice to exclude the right to livelihood from the content of the right to life".*

In the present context, the IDPs are at the mercy of the State and the State has constantly violated the rights of IDPs enshrined under Article 21 of the Constitution. This is because when the state undertakes development projects it is found that the displaced persons are found to have lost their means of livelihood and the State also fails to provide appropriate forms of rehabilitation and resettlement. Even in case of displacement through other means, such as, famine, ethnic cleansing, flood or communal violence, the State has failed to provide shelter to displaced families. Such families are many times deprived of the right to life itself.

Here reference can be made of *Chakma* residents who had to face threat to their life. The *Chakmas,* who had migrated from East Pakistan (now Bangladesh) in 1964, first settled down in the State of Assam and then shifted to areas which now fall within the State of Arunanchal Pradesh. They were settled there for the last two and a half decades and raised their families in the said State. Their children being married and they too have children. The All Arunanchal Pradesh Students' Union (AAPSU) threatened them to forcibly drive them out to the

12. Olga Telis V Bombay Municipal Corporation, AIR 1986 SC 180

neighboring place, which in turn was unwilling to accept them. The residents of the neighboring State also threatened to kill them if they entered their state. Faced with the prospect of annihilation the National Human Right Commission was moved which, finding it impossible to extend protection to them, moved the Supreme Court for relief.

The Supreme Court in clear and unambiguous terms laid down that;

> *"The State is under an obligation to protect the life and liberty of every human being, be he a citizen or otherwise and there can be no authority to threaten the Chakmas to leave the State, failing which they would be forced to do so. No State Government worth the name can tolerate such threats by one group of persons to another group of persons; it is duty bound to protect the threatened group form such assaults and if it fails to do so, it will fail to perform its constitutional as well as statutory obligations. Those giving such threats would be liable to be dealt with in accordance with law. Hence, the State Government must act impartially and carry out its legal obligations to safeguard the life, health and well-being of Chakmas residing in the State without being inhibited by local politics."*[13]

This judgment is much applicable to IDPs because their forceful removal from their place of habitation has made them face violation of their right at the hand of the State authorities. The State has, on many occasions, failed to address their right which prove to be in violation of their right to life under Article 21. The displaced population due to communal violence (recent among this being the Gujarat violence 2002) is one of the most gruesome episodes of violence and glaring example of mass displacement. The State had on many fronts failed to

13. N.H.R.C. V State of Arunanchal Pradesh, (1996) 1 SCC 742

protect the displaced population who had fled in fear while their homes and livelihoods were plundered and destroyed. With this, the Government denies relief and rehabilitation in the immediate aftermath of the mass violence and hence, causing clear negation of Article 21 of the Constitution.

Article 21 of the Constitution touches yet another important aspect of displacement. That is of resettlement and rehabilitation of the displaced person. It is felt that not providing appropriate resettlement and rehabilitation is clear negation of Article 21. Rehabilitation is not only about providing just food, clothes or shelter. It is also about extending support to rebuild livelihood by ensuring necessary amenities of life. Rehabilitation is a logical corollary of Article 21. They should be rehabilitated as soon as they are displaced.

It is also to be seen that whenever rehabilitation and resettlement is undertaken for the displaced persons then they should be better off than their previous place of settlement. If the State fails to rehabilitate the displaced community it would once again constitute a violation of their fundamental right under Article 21. This view was also expressed by the Supreme Court in *N.D.Jayal v Union of India.*[14]

The High Court of Gujarat, in *Bipinchandra J. Diwan V. State of Gujarat,*[15] has opined that the duties of the government or the court on occurrence of a disaster or natural calamity are not statutorily regulated. In fact there is complete lack of any legislation in this field. Article 21 of the constitution of India which guarantees to every citizen protection of his life and personal liberty, is repository of all important human rights which are essential for a person or a citizen. When there is a natural calamity like earthquakes, floods, fire, cyclones and similar naturals hazards the state, as guardian of the people, is obliged to

14. (2004) 9 SCC 362 at p. 394
15. A.I.R. 2002 GUJ 99 at p. 103

provide help, assistance and support to the victims of such natural calamities to help them to save their lives.

## D. Enforcement of the Rights which are Available to Internally Displaced Persons

The Constitution not only provides fundamental rights but in fact provides an effective mechanism for the enforcement of these rights under Article 226 and Article 32 of the Constitution which itself is a Fundamental Right.

Article 32 has been an effective remedy for the enforcement of these rights[16]. Not only Article 32 which itself is a fundamental right but also Article 226 empowers all the High Courts to issue the writs for the enforcement of fundamental rights and other Constitutional rights.[17] These provisions empower the IDPs, including the victims of mega-projects as well as other development projects, to take assistance of judiciary for protecting their inalienable rights enshrined in the form of fundamental rights under our constitution.

With regard to constitutional remedies, the Supreme Court and some of the High Courts have taken an enlightened view of constitutional provisions particularly relating to Fundamental Rights and Directive Principles of State Policy. The courts have been liberal in the interpretation of fundamental rights. Many cases relating to the IDPs, especially those who have been displaced by development projects have come up before the court under Article 32 of the Constitution.

16. Article 32 of the Constitution: ***Remedies for enforcement of rights conferred by this part***
    1) *The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.*
    *2)The Supreme Court shall have the power to issue directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.*
17. Article 226 of the Constitution deals with the power of High Courts to issue writs

The right to life of IDPs which is provided by Article 21 of the Constitution is sought to be enforced under Article 32 and 226 of the Constitution by socially motivated voluntary organizations and lawyers. This right tends to take care of a person, right from the cradle to grave. The results of litigations have been praiseworthy and the courts have also come to their rescue with quick remedies. However, recognizing the right of IDPs and providing them with quick remedies would not accord them with a permanent solution. The need of the hour is a permanent solution, a solution which would stay with them forever and answer their problem. The outcome of litigation is dependent on the interpretation of the judges. Therefore, the need of the hour is also not to sway our mind from the shortcomings of the pre-existing laws and shortage of law which has brought untold misery to the victims of displacement.

## E. Directive Principles of State Policy

The *Directive Principles of State Policy* contained in *Part IV* of the Constitution sets out the aims and objectives to be taken up by the States in the governance of the country. The Directive Principles are the ideals which the Union and State Governments must keep in mind while they formulate policy or pass a law. They lay down certain social, economic and political principles, suitable to peculiar conditions prevailing in India. The *Directive Principles of State Policy* have held to be part of the basic framework of the Constitution. The non consideration of the State of these *Directive Principles* may vitiate the executive action. Any law which may be formulated for the IDPs must take into account the principles enshrined in Part IV.

Part IV of the Constitution under *Article 39*[18] enshrines that the State shall, in particular, direct its policy towards ensuring that citizens, men and women, equally have the right to an adequate standard of livelihood. This means that the IDPs have a right to an adequate standard of livelihood as under *Article 21* of the Constitution and this has to be provided by the State through its policies i.e. the policies of the state are to be formulated in such a manner that it provides to every individual residing within the state an opportunity to earn livelihood.

*Article 39(b)* of the Constitution enjoins the state to direct its policy towards securing distribution of ownership and control of the material resources of the community as best to subserve the common good. The founding fathers with hindsight, engrafted with prognosis, not only inalienable human rights as part of the Constitution but also charged the state as its policy to remove obstacles, disabilities and inequalities for human development and positive action to provide opportunities and facilities to develop human dignity and equality of status and opportunity for social and economic democracy. Economic and social equality is a facet of liberty without which meaningful life would be hollow and mirage.

Hence, what *Article 39 (b)* of the Constitution provides is "*to minimize the inequalities in income*", "*to eliminate inequalities in status, facilities and opportunities*" among people in different areas. Hence when development takes

18. ***Article 39; Certain principles of policy to be followed by the State:*** *The State shall in particular, direct its policy towards securing-*

*a) That the citizens, men and women equally, have the right to an adequate means of livelihood;*

*b) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good;*

*c) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;*

*d) That there is equal pay for equal work for both men and women;*

*e) That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocation unsuited to their age or strength;*

*f) That children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.*

place and tends to displace people the government should look after the economic interest of that weaker section of the displaced population. Development specialist need to take the Directive Principles into consideration whenever they want to undertake any projects and which no doubt tend to displace people.

*Article 46* of the Constitution,[19] mandates the state to promote with special care the educational and economic interests of the weaker sections of the people, and in particular of the Schedule Tribes and Schedule Castes and protect them from social injustice and all forms of exploitation.

The said Article embodies the concept of '*distributive justice*' which connotes the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society. It means those who have been deprived of their properties by unconscionable bargaining should be restored to their property. By taking recourse to this Article the law invalidating transfers of land belonging to a member of the Schedule Tribes and restoration of such land to the transferor was held to be constitutionally valid.[20]

Considering the controversial nature of major projects and the mix of anticipated benefits and actual losses, the very concept of 'public interest' could raise important constitutional question, particularly in the light of the 'Socialist State' as declared in the Preamble and equitable distribution of national resources as enunciated in *Article 39 (b) and (c) of the Constitution.*

The plight of IDPs reveals that apart from payment of compensation, there is no clear liability on the part of the State to bear any additional responsibility in this regard. But a welfare state is under a constitutional obligation to ensure a decent standard of living for its citizens and hence any citizen not being

19. *Article 46 of the Constitution,* ***Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections*** *– The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.*

20. Samantha v State of A.P. A.I.R 1997 SC 3287 at p. 3371

adequately rehabilitated with compensation, the following Articles of Part IV are relevant:

***Article 41*** – The state shall... make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of deserving want.

***Article 42*** – The state shall make provision for securing just and humane condition of work....

***Article 43*** – The state shall endeavor to secure ....to all workers ... living conditions of work ensuring a decent standard of life....

***Article 46*** – The state shall promote with special care the educational and economic interest of the weaker sections of the people particularly of SCs and STs.

***Article 47*** – The state shall raise the level of nutrition and standard of living of its people and improve overall public health as among its primary duties...

The aforesaid Articles provide that it is duty of the state to prepare plans and schemes, policy and guidelines, administrative arrangements as may be necessary to prevent any impoverishment of IDPs and to organize all necessary resettlement and rehabilitation to all deserving IDPs who are victims of communal violence, partition, land acquisition, ethnic cleansing or natural or other factors.

## F. Article 244 of the Constitution and Fifth Schedule of the Constitution

*"...I have no doubt that, if normal factors were allowed to operate, unscrupulous people from outside would, take possession of tribal*

*land. They would take possession of tribal land. They would take possession of the forests and interfere with the life of the tribal people. We must give them a measure of protection in their areas so that no outsider can take possession of their lands or forests or interfere with them in any way except with their consent and goodwill."*

Jawaharlal Nehru

These words underlie the spirit of the Fifth Schedule of the Constitution with the purpose to protect 'tribal rights'. Tribals were the first settlers in this country but were gradually pushed back to the forests and hills by subsequent settlers who were non-tribals. The forests and hills provided a natural barrier and isolated the tribals from people living on the plains. On account of their isolation, they remained illiterate, uneducated, unsophisticated, poor and destitute and developed their own society where they allowed themselves to be governed by their own primitive and customary law and rituals.

From the beginning of the British regime in India, the Legislature had adopted the policy to exclude certain area entirely and some partially from the governance of the Executive Council and Governor Generals. The object was to prevent the tribals form the trap of moneylenders and also to allow them to live in accordance with their customs and culture. With a view to attain this objective, sub-section (1) and (2) of Section 92 of the Government of India Act, 1935 and the Cabinet Mission Statement of May 16, 1946 emphasized the special attention of the tribal areas.

At the time of formulation of the Constitution, the debate in the Constituent Assembly and the draft statements by the two Committees, one for the North-East area now called Sixth Schedule and the rest of the areas called the Fifth Schedule of the Constitution, emphasis 'was laid therein on the creation of Tribal Advisory Council to assist the Rulers of each state having Scheduled Area

therein so that the executive power of the Union shall extend to that area to give directions to the state with respect to the administration of the said area. Draft Part II, Clause 5 related to law applicable to Scheduled Area and Clause (a) of Sub – clause (2) of Clause 5, postulated, prohibition or restriction on the transfer of land by or among members of the Scheduled Tribes in such areas; Clause (b) regulate the allotment of the land to members of the Scheduled Tribes in such areas and Clause (c) regulate by person who lend money to members of the Schedule Tribes in such area. The debates also lay down that the allotment of vacant land belonging to the State in schedule area should not be made except in accordance with special regulation made by the government on the advice of the Tribal Advisory Council.[21] After authorization given by the Constituent Assembly to make necessary restructuring of the Fifth Schedule as explained by Dr. Ambedkar, the Draft was amended excluding all references to the allocation of land of tribals to non-tribals with no amendment proposed by any member.[22]

No doubt the members of Draft Constitution regarded the Fifth Schedule as its integral part; they deliberated to protect land, the precious assets to the tribals for their economic and social empowerment and also their social status and dignity. After restructuring Fifth Schedule, as presently found, the specific provision in the draft report to allot land to non- tribals was omitted which was accepted by the members of the Constituent Assembly without any demur or discussion. The Fifth Schedule manifests that land in the Scheduled Area covered by the Fifth Schedule requires to be preserved by prohibiting transfers between tribals and non- tribals; by providing for allotment of land to the members of the Scheduled Tribes in such area; and by regulating the carrying on of the business by money lenders in such area.

Chapter VI, Part X of the Constitution deals with "Scheduled Tribes and Tribal Areas". The Constitutional scheme for the protection of tribals is provided

21. C.A.D. Vol. 9 at p. 965-1001.
22. *Ibid.*

by Article 244 of the Constitution[23]. The framers of the Constitution found the necessity of vesting such power on the Governors of the State as the people of the Scheduled Areas were culturally backward and their social and other customs are different from the rest of the country. Further the Fifth Schedule makes the provisions as to the administration and control of Scheduled Area and Scheduled Tribes. By virtue of the Fifth Schedule of the Constitution the Governor is authorized to direct that any Act of Parliament or of the Legislature of a State shall not apply to a Scheduled area or shall apply only subject to exceptions and modifications. The Governor is also authorized to make regulations to prohibit or restrict transfer of land by or amongst the members of the Scheduled Tribes, regulate the allotment of land and regulate the business of money - lending and all such regulations by the Governor have to be assented to by the President

The question may arise as to why the present Article and Schedule is being enumerated. The answer to the present query is that the tribal communities face the maximum burnt of displacement. The most vital resources which are associated with tribal identity and are also important for their survival such as land, water and forests are being taken over by the Government under the garb of "public purpose" leading to devastating consequences, one among these being the labeling of tribals as IDPs.

As part of on going industrial advancement, large industries or projects are being set up or constructed in the Scheduled Areas displacing the tribals and rendering them impoverished landless labourers. When their lands are acquired for public purpose, the Government should give alternative lands for rehabilitation and easy loans for reclamation. Law relating to prohibition of

23. Article 244 of the Constitution *: **Administration of Scheduled Areas and Tribal Areas:***
*1) The provisions of the Fifth Schedule shall apply to the administration and control of the Schedule Areas and Schedule Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.*
*2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram.*

alienation and restoration of lands to tribes must be simple, less cumbersome and result-oriented. The machinery must be speedy and should provide sense of commitment to ameliorate the economic status of the tribes to assimilate them into national mainstream.

The object of Fifth and Sixth Schedules to the Constitution, as seen earlier, is not only to prevent acquisition, holding or disposal of the land in Scheduled Areas by the non-tribals from the tribals or alienation of such land among non-tribals inter-se, but also to ensure that the tribals remain in possession and enjoyment of the lands in Scheduled Areas for their economic empowerment, social status and dignity of their person. Equally, exploitation of mineral resources, national wealth undoubtedly, is for the development of the nation. The competing rights of tribals and the state are required to be adjusted without defeating rights of either. The Governor is empowered, to prohibit acquiring, holding and disposing of the land by non-tribals in the Scheduled Areas. The cabinet, while exercising its power under Article 298 should equally be cognizant to the constitutional duty to protect and empower the tribals. Therefore, the court is required to give effect to the constitutional mandate and legislative policy of total prohibition on the transfer of the land in the Scheduled Areas to non-tribals.

It is also felt that in the absence of any total prohibition, undoubtedly, Article 298[24] empowers the Governor being the head of the Executive to sanction transfer of its lands. Since the executive is enjoined to protect social, economic and educational interests of the tribals and when the state leases out the land in the

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24. *Article 298:* ***Power to carry on trade, etc.-*** *The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose:*
*Provided that-*
- *a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and*
- *b) the said executive power of each State shall. In so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.*

Scheduled Areas to the non-tribals for exploitation of mineral resources, it transmits the correlative above constitutional duties and obligation to those who undertake to exploit the natural resources should also undertake to improve social, economic and educational empowerment of the tribals.

It would therefore, be clear that the Executive power of the State to dispose of its property under Article 298 is subject to the provisions in the Fifth Schedule as an integral scheme of the Constitution. The Legislative power of the State under Article 245 is also subject to the Fifth Schedule, to regulate the allotment of the Government land in the Scheduled areas. In *Samantha's judgment*[25] *K. Ramaswamy, J*, who delivered the majority judgment, opined that as a part of the administration of the project, the licensee or lessee should incur the expenditure for;

- *Re-forestation and maintenance of ecology in the Scheduled areas;*
- *Maintenance of roads and communication facilities in the scheduled areas where operation of the industry has the impact;*
- *Supply of potable water to the tribals;*
- *Establishment of schools for imparting free education at primary and secondary level and providing vocational training to the tribals to enable them to be qualified, competent and confident in pursuit of employment;*
- *Providing employment to the tribals according to their qualifications in their establishment/factory;*
- *Establishment of hospitals and camps for providing free medical aid and treatment to the tribals in the Scheduled areas;*
- *Maintenance of Sanitation;*
- *Construction of houses for tribals in the Scheduled Areas as enclosures*

25 Samantha V. State of Andhra Pradesh, AIR 1997 S.C. 3287 at p. 3343

The expenditure for the above projects should be part of his/its Annual Budget of the industry establishment or business avocation/ venture.

The purpose of the Fifth and Sixth Schedule to the Constitution is to prevent exploitation of truthful, inarticulate and innocent tribals and to empower them socially, educationally, economically and politically to bring them into the mainstream of national life. The founding fathers of the Constitution were conscious of and cognizant to the problem of the exploitation of the Tribals. They were anxious to preserve the tribal culture and their holdings. At the same time, they intended to provide and create opportunities and facilities, by affirmative action, in the light of the Directive Principles in Part IV, in particular, Articles 38, 39, 46 and cognate provisions to prevent exploitation of the tribals by ensuring positively that the land is a valuable endowment and a source of economic empowerment, social status and dignity of persons. The Constitution intends that the land always remain with the tribals, even the government land should increasingly get allotted to them individually and collectively through registered Co-operative Societies composed solely of the tribals and would be managed by them alone.

The tribals are being rapidly alienated from their land despite the protection accorded to them by Constitutional provisions. The displacement deprives them of the privileges and protection guaranteed by constitutional provisions and local and special laws. No law exists for them and if any laws are made for them these are not in consonance with the protection accorded to them by the Constitution.

For tribals, displacement means a loss of livelihood and habitat, from an ecosystem which has sustained them prior to displacement. It brings disruption of their social institution. It means a catastrophe they could not cope with. Tribals do not share the fruit of sacrifice, which they are told is for national purpose. Further, due to lack of education, information and economic condition, they are not in

position to bargain for monopoly of their land from which they have been displaced.[26]

Money lenders, traders and land grabbers from the plains have illegally occupied vast areas in the Scheduled Areas/Tribal Areas and caused their displacement. In the guise of development the government authorities tend to by-pass the age old tribal institution of self-rule and impose upon them their wish and desire. The authorities tend to allocate funds only for displacement and development of the tribal area. The irony is that this alienation of tribals has largely benefitted contractors and middlemen.

Land is sacred to the tribals because that is the only resource they have for their sustenance. About 70% of India's population, most of whom are tribals, primarily depend on land related work and agricultural production. Thus, land for them is a means of livelihood and the basis of socio-economic relationships. Alienation from land and displacement has threatened the livelihoods of millions. People are displaced without any consultation or participation in the development process. Furthermore, they are denied their rightful share in the gains of the development project that displaces them.

In *Samantha V. State of A.P.*,[27] the Apex Court opined that the Constitution recognizes the pre-existing rights of the tribal people. It classifies the areas of tribal concentration into three categories, namely, the tribal areas, Scheduled Areas and areas not falling within these two. Special regulations apply to tribal areas. General regulation applies in modified form in the Scheduled Area. In the third category, the general laws apply. In this case, a modified regulation relating to the Scheduled Area was involved. According to regulation, transfer by a person of any immovable property would be null and void unless such transfer

26. Pankaj Kumar, *"Displacement and Rehabilitation in Jaduguda Region of Jharkhand"*, Third Concept, February 2006, Pp. 25-27 at p. 25
27. AIR 1997 SC 3297

is made to a person belonging to Scheduled Tribe or to the member of a co-operative society composed solely of the members of the Scheduled Tribes.

The Court also opined that since the mining activities are being carried out mostly within the Scheduled Areas, it is the duty of the state to see that a part of the profit earned by the lessees should be spent for ameliorating the living conditions of the tribals by the lessees themselves. It was also felt that legislation should be made, making it compulsory for the lessees within the tribal area to spend a portion of the income arising out of the mining business for the general upliftement of the living conditions of the tribal people. This should be in addition to the royalty and other cess under different legislations. The State may also consider the question of incorporating some provisions in the leases itself for achieving the aforesaid objectives.

## 3. AN ANALYSIS OF CENTRAL AND STATE LEGISLATIONS WHICH HAVE AN IMPACT ON THE RIGHTS OF THE INTERNALLY DISPLACED PERSONS

### A. Land Acquisition Act

For the present purpose, the Land Acquisition Act may be studied in the following sub-headings:

#### a) Evolution of Land Acquisition

The legislation at the centre of the debate is the Land Acquisition Act 1894.The Act is a statutory statement of the state's power of eminent domain, which vests the state with ultimate control over land within its territory. The problem concerning the right to property began soon after independence. The Constitution had guaranteed a fundamental right to property at that time. The use of law has been the privilege of the rich.

The concept of land acquisition is felt right from the time of Emperor Sher Shah Suri who constructed the Grand Trunk Road from Bengal to Punjab within a

period of four years. However during those days neither the effect of land acquisition nor the concept of compensation was realized. Similarly when the Nawab Mir Zumla of Bengal shifted his capital to Dhaka, in the first half of the eighteenth century, he acquired land by issuing a so-called notice through the beating of drums, at night. The people of several villages, who confirmed that they had heard the sound of the drum at night, were informed to have alienated their lands, as message of acquisition was communicated by the sound of drum. The ultimate control and domain over the land by a monarch was unquestionable and seeking compensation was unthinkable.[28]

The history of evolution of land acquisition laws in India indicates a journey from blatant exercise of sovereign power to a more liberal approach to protect the lawful rights and interests of the landowners. The first legislative approach adopted by the British to alienate land from private hands started with the introduction of Regulation No.1 of 1824 of the Bengal Code. The Regulation was intended "for enabling the officials of Government to obtain a fair valuation of land or other immovable property required for roads, canals or other purposes'', which assured that a just and full compensation maybe secured to all persons holding an interest in the property so appropriated. The British Government did so, despite the absence of such a tradition in Indian society, due to the tradition of considering private property as sacrosanct, since the days of the Magna Carta. Their policies in India were influenced, shaped and guided by the Compulsory Purchase Act of mid eighties followed by the Land Clauses Consolidation Act of 1845, Railways Clauses Consolidation Act of 1845, and subsequently by the Acquisition of Land (Assessment of Compensation) Act of 1919. All these law and legislations prescribed appropriate compensation for acquiring private land in public interest. The basic theme of such legislation is reflected in the provisions of the Land Clause Consolidation Act of Britain, which

28. Quoted from Sukumar Das, *"Acquisition, Compensation and Rehabilitation"*, The Administrator, Vol. XLIII, April- June 1998 Pp. 37-45 at p. 37

contends that "all persons who are deprived of any interest in land to be purchased or taken or where land or interest therein is injuriously affected by the execution of the works by the undertakers, are entitled to receive compensation for such loss as they may sustain". [29]

After the Bengal Regulation, many other acquisition laws were brought into effect, such as, the Building Act XXVII of 1839 for acquiring land in Bombay, Act 1 of 1850 to acquire land in the township of Calcutta, Act of 1852 and Act 1 of 1854 to "facilitate acquisition of land for public purpose in the Presidency of Fort St. George. The first Act that was meant for the whole of British India was known as Act VI of 1857. The most interesting feature of the Act was fixing of compensation through consent award to be made by the Collector, failing which the award was to be finalized by the arbitrators. The legislation failed to deliver the desired results due to rampant corruption, as there was no provision for making any appeal against the order of the arbitrator. The situation was further aggravated by amendment of the Act of 1857 by Act 11 of 1861 which provided for taking temporary possession even up to 2 miles on both sides of the road, canal or railways under construction, and causing surrender of land in Presidency Towns, by use of force in case of resistance, by the Commissioner of Police.[30]

The Act X of 1870 remedied the defects of the 1857 Act by providing for constitution of Tribunals and detailed procedures were prescribed for assessment of compensation. The District Court was brought into the picture for adjudication of cases referred to it. The judges were provided with the assistance of one or more assessors. If, however the judges and the assessors disagreed on the assessment of compensation an appeal was usually allowed in the High Court.

29. Halsbury's Law of England, Third Edition, Vol.10, Article 7, at p. 8
30. *Supra. note*, 28 at p. 38

Act X of 1870 was found unsatisfactory especially with regard to the procedures to be followed in the matters of reference to the courts. The procedures nearly compelled Collectors to make a reference in every conceivable case, even in the absence of any of the claimants. On account of various other reasons, a comprehensive amendment of Act X of 1870 became necessary and Act 1 of 1894 came into existence which is still in existence despite a number of substantial amendments in the year 1919, 1921, 1923, 1933, 1962, 1967 and 1984.[31]

**b) The Right to Property**

All issues relating to right to property began soon after independence. At the onset of the Constitution, right to property was a fundamental right. However this right was a privilege right for few classes of people. The people who exploited this right were the zamindars who had lost their property to the government due to the Zamindari Abolition Acts. The Zamindars started to assert their right in law courts. The law courts upheld the zamindars' right to property in the famous case of *Kameshwar Singh v State of Bihar.*[32] The High Court said that the gradual scale of compensation according to the size of the landholding was discriminatory, arbitrary and was violative of the 'equality' clause in Article 14 of the Constitution.

The State moved in for appeal to the Supreme Court. But before the matter could be decided finally by the Supreme Court, Parliament intervened and amended the Constitution to immunize any negative decision against the State. This was the *First Constitutional Amendment of 1951.* This amendment inserted *Articles 31A and 31B and Scheduled IX* with a view of taking away all land reform measures from the purview of judicial review. In other words the effect of this amendment is no law relating to the acquisition by the state of any estate or of

31. *Ibid.*
32. AIR 1951 Patna 31

any rights therein or the extinguishment or the modification of any such right shall be deemed to be void on the ground that it is inconsistent with the fundamental rights conferred by *Articles 14, 19 and 31.*

By the time of *Keshavananda Bharti*[33] case and the Forty Fourth Amendment of the Constitution even the right to due compensation had been removed from the Constitution. It maybe reiterated that after the 44th amendment of the Constitution, *Article 19(1) (f) and 31(1)* has been replaced by Article 300-A[34] which lays down that the right to property is merely a constitutional right and in case of violation of this right by the state, the individual or even any socially spirited person can move to the High Court under Article 226. Moreover *Article 300-A* categorically ensures that a person cannot be deprived of his property merely by an executive fiat. No law, no deprivation of property is the principle underlying Article 300-A.

In State of U.P. V. Manohar,[35] a Constitution Bench of the Supreme Court held;

> *"Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19 (1) (f) was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution. And this is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are state authorities."*

In *Jilubhai Nanbhai Khachar V State of Gujarat,*[36] the Court stated the law in the following terms;

33. Keshavananda Bharti v state of Kerala AIR 1973 SC 461
34. Article 300-A of the Constitution provides, *"No person shall be deprived of his property save by authority of law."*
35. (2005) 12 SCC 77

*"The word "property" used in Article 300-A must be understood in the context in which the sovereign power of eminent domain is exercised by the state and property is expropriated. No abstract principles can be laid down. Each case must be considered in the light of its own facts and settings. The phrase "deprivation of property" of a person must equally be considered in the fact situation of a case. Deprivation connotes different concepts. Article 300-A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by Parliament or a State Legislature, a rule or a statutory order having force of law. It is inherent in every sovereign state by exercising its power of eminent domain to expropriate private power without owner's consent. Prima facie, state would be the judge to decide whether a purpose is a public purpose. But it is not a sole judge. This will be subject to judicial review and it is the duty of the court to determine whether a particular purpose is a public purpose or not. Public interest has always been considered to be an essential ingredient of public purpose. But every public purpose does not fall under Article 300-A nor every exercise of eminent domain an acquisition or taking possession under Article 300-A. In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation. Acquisition of mines, minerals and quarries is deprivation under Article 300-A."*

36. 1995 Supp (1) SCC 596 at p. 627

### c) Land Acquisition Act vis-à-vis Rights of IDPs

In India, the only National Law regarding displacement is the Land Acquisition Act of 1894. In reality it is one of the draconian legislations enacted during the British regime and retained in its much original form by the Republican Government of India after independence. The Act provides a legal framework for the authority to take over land for public purpose. Under the Land Acquisition Act, there is a permanence in the severance of the relationship between a person and his property which maybe seen as absent in its essence from this legislation. Acquisition reduces the rights of individuals and communities and the maximum value that it can bestow on its market value. Acquisition sanctions the claim that the land and all rights and privilege that go with it has been 'legitimately sold' to the state and the people are not entitled to any direct share in the benefit of the project.[37]

The original Land Acquisition Act was enacted in 1894 by the British. Ninety years later, it was amended by the Indian Parliament and passed as a new Act. The two middle numbers were transported as the year was 1984. The idle coincidence acquires significance when we read the two Acts together; by and large the new Act is old wine in new bottle. A few changes, generally for the worse have been made, the whole exercise not being fit to be called enactment of a new law.[38]

Two fundamental concepts underlie the overarching conceptual frame of the law on land acquisition. One is the doctrine of *'eminent domain'* which gives the state an enormity of control over land and related resources. In other words, it is the juristic basis for exercise of sovereign power. The other is *'public purpose'* which provides the moral justification for its use. If both conditions were met, the

37. Usha Ramananthan, *"Displacement and the Law"*, Economic and Political Weekly, vol. XXI, 15 June 2006, Pp 1486-1491 at p. 1487

38. Vasudha Dhagamwar, *"The Impact of Land Acquisition Act on our Rehabilitation Policies"* The Administrator, Vol XLIII, April-June 1998, pp 29-35 at p 30

individual whose land is acquired would receive compensation as per rule. Hence we can study the Land Acquisition Act under three heads, namely, Eminent Domain, Public Purpose and Compensation.

### *i. Eminent Domain*

The doctrine of 'eminent domain' is embedded in the notion of sovereignty which is one of the attributes of a state; it is 'the highest and most exact idea of a property remaining in government or in an aggregate body of people in their sovereign capacity".[39] Eminent domain" is also defined as a "right which a government retains over the estate of individuals to resume them for public use."[40]

The power of compulsory acquisition is described by the term "eminent domain". This term seems to have been originated in 1525 by *Hugo Grotius*, who wrote of this power in his work *De Jure Belli et Pacis,* as follows:

> *"The property of subjects is under the eminent domain of the State, so that the state or he who acts for it may use and even alienate and destroy such property, not only in the case of extreme necessity, in which even private person has a right over the property of others, but for ends of public utility, to which ends, those who founded civil society must be supposed to have intended that private ends should give way, but it is to be added that when this is done, the state is bound to make good the loss to those who lose their property."*

The doctrine was part of the Common Law in England. It was applied to the colonies and later to India coming under colonial occupation irrespective of the prevailing indigenous practices regarding occupation and use of land. The

39. Black's Law Dictionary, 6th Edition
40. Whartons Law of Lexicon, 4th Edition

government after independence did not change the colonial doctrine of Eminent Domain as the basis for compulsory acquisition of private land. Rather, it has used it extensively for further eroding the rights of individuals and communities over land and other natural resources. The colonial view was derived from the principles expressed in the Latin word *'terra nullius'* which implies that the land (property) which is not burdened by any validly acquired ownership belonging to one and hence, accrues to the state. The ownership implied here is the one conferred by the state or the law enacted by it. This principle was used by colonial government to convert vast stretches of forest land into state property and to de-recognize rights or claims of individuals or communities over them which had no backing of an authenticated document issued by competent authority.[41]

The legal rationality of Eminent Domain creates such a tilt in favour of the state that it becomes immune to any challenge in the courts. The resulting skewed balance between the state power and individual/ community rights is untenable in a democracy and therefore unacceptable to citizens. The discourse on the acquisition law, therefore, has strongly advocated that the doctrine of Eminent Domain should be abandoned and citizens be given the right to challenge state action at least, in situations where its consequences are patently unjust. This could be done by empowering citizens to contest the use of state power and to refuse to part with land in specified situations.[42]

The right of eminent domain entitles the state to enjoy through its sovereignty the right to reassert, either temporarily or permanently, its domain over any piece of land existing in the state, including private property without the owner's consent on account of public purpose. The right of the state to exercise the power of eminent domain is exclusive. It can exercise it any time and

41. B.K. Roy Burman, *"Indigenous People and Their Quest for Justice"*, cited in K.B.Saxena, *"Development, Displacement and Resistance: The law and the policy on Land Acquisition"*; Social Change, Vol. 38 No. 3 September 2008, Pp. 351-410 at p. 366

42. K.B.Saxena, *"Development, Displacement and Resistance: The law and the policy on Land Acquisition"*; Social Change, Vol. 38 No. 3 September 2008, Pp 351-410, at p. 366

anywhere it wants. The state is the custodian of all land and soil that exist in the country. The moment the state requires land for a purpose it can acquire it by exercising its sovereign power of eminent domain.

The doctrine of Eminent domain used by the government, representing state power to take over privately owned property is rationalized on the basis of utilitarian consideration which lends ethical force to it. This moral basis is provided by the stated objective that it would serve the interests of a large number of people defined by the phrase 'public purpose'.

In fact the major premise is the doctrine of 'eminent domain' that all land ultimately vested in the State. The State could not be prevented from putting the land to any use it deemed necessary. No subject could thwart the State's intentions. Acquisition could not be prevented except by proving that the purpose was not public purpose or that the particular piece of land was not needed for that purpose. All this had to be done in such a short period that it was just no possible. In effect the State could not be stopped[43].

### *ii. Public Purpose*

The phrase "public purpose" is defined in the Land Acquisition Act, 1894 under *Section 3(f) of the Act* as to what would constitute public purpose.[44]

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43. *Supra.* note 38

44. **Section 3 (f):** The expression '*public purpose*' includes-

i) the provision of village sites, or the extension, planned development or improvement of existing village sites;

ii) the provision of land for town or rural planning;

iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned

iv) the provision of land for a corporation owned or controlled by the State;

v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State"

Public purpose will include a purpose in which the general interest of community as opposed to the interest of an individual is directly or indirectly involved. Individual interest must give way to public interest as far as public purpose in respect of acquisition of land is concerned.

In the Constitution of India, some guidelines can be traced as far as public purpose is concerned in *Article 37 of the Constitution.* The provisions contained in Part IV of the Constitution shall not be enforceable by any court, but the principles laid down are nevertheless fundamental in the governance of the country. It shall be the duty of the State to apply these principles in the making law.

The State acquires property and put it to a use which according to the authority is termed as public purpose. Now this public purpose is extended to private purpose. In other words, the scope and activity of the phrase 'public purpose' has widened extensively to include manufacturing, trade and commerce which is more private oriented than public. In other words, the Act does not provide any specific guideline which can be followed for acquisition of land for private purpose under the guise of public purpose. Neither is their any framework to distinguish acquisition of land for public purpose and acquisition of land for private purpose. The only outcome of such acquisition is the demand of land has increased enormously.

The vague phrase "public purpose" dealt in *Hamabai V. Secretary of State,*[45] where *Justice Batchelor*, held that

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vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such Scheme.....

vii) the provision of land for any other scheme of development sponsored by Government or, with the prior approval of the appropriate Government, by a local authority;

viii) the provision of any premises or building for locating a public office,

But does not include acquisition of land for companies."

45. (1911) 13 Bom LR 1097

> *"General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase 'public purpose' in the lease; it is enough to say that, in my opinion, the phrase public purpose, whatever else it may mean, must include a purpose, that is, an object or aim in which the general interest of the community as opposed to the particular interest of individuals is directly and virtually concerned".*

The definition of public purpose has been relied on in number of subsequent decisions including the Constitution Bench judgment of the Supreme Court.

In *State of Bihar v Kameshwar Singh*,[46] the opinion of the Court, as per *Mahajan J* was;

> *"The expression public purpose is not capable of precise definition and has no rigid meaning. It can only be defined by a process of judicial inclusion and exclusion. In other words, the definition of the expression is elastic and takes its color from the statute in which it occurs, the concept varying with the time and state of society and its needs".*

Further *Justice Das* observed;

> *"We must regard as public purpose all that will be calculated to promote the welfare of the people as envisaged in the Directive Principles of State Policy whatever else that expression may mean."*

46. AIR 1952 SC 259

The phrase "public purpose" cannot be defined precisely. When public purpose is to be sought by private agency then also there is nothing to prevent the government from acquiring it and direct the private agency to carry out its purpose. The courts of justice do not have much role to play.

In *State of Bombay V. Ali Gulshan,*[47] the dictum of the Court was that acquisition of sites for the building of hospitals or educational institutions by private benefactors will be a public purpose, though it will not strictly be a State or Union purpose.

Hence, what is evident from judgment is the fact that public purpose cannot be defined and its scope and ambit be limited as far as acquisition of land for the public purpose is concerned. Acquisition of land deprives people of their settled modes of livelihoods and various life supporting benefits. Further the fundamental right to life guaranteed under Article 21 of the constitution has been interpreted by the Courts in restricted terms, as far as acquisition of land by the state in exercise of its sovereign power is concerned. The discourse on land acquisition has severely attacked the existing provision.

The first criterion which the Act fails to fulfill is that it fails to define the term 'Public Purpose' for which the land is acquired. This gives the state the power and authority to expand 'public purpose' at its whim and fancies. It is not possible to minimize the limits of the state on the basis of illustration of the state.

Further, the affected person should be given the right to challenge the application of public purpose in specific cases of acquisition. The people should be given the liberty to scrutinize the utility of public purpose. The public purpose should satisfy the Directive Principles of State Policy and such project should be limited to public welfare activities funded by the Government

47. AIR 1955 SC 810

Experience with public purpose has demonstrated its utilitarian potential. Utilitarianism is a pragmatic philosophy advocating the seeking of the greatest happiness of the greatest number. It does not actually advocate the marginalization of those who get excluded from the benefits of the system; yet it is implicit in its vey statement. Public purpose works on similar philosophy. What may be public purpose for a group of person may represent the trauma of displacement for another group of persons. The exercise of state power is governed by the identification of the public purpose, without the constraint of addressing the adverse impact it may have on the affected population. Differently from utilitarianism, pursuing state understanding of public purpose may cause relatively more distress in real terms than the benefits it generates.[48]

Not only are all private lands acquired in the name of "public purpose", but the justification for taking over control of common lands, forests and water bodies have also been in the name of 'public purpose'. This public purpose is to be attained without providing any information relating to the development project. There is always unwillingness on the part of the State to render information and there are situations where these development projects are shrouded in absolute secrecy. People's participation in the planning process is really a far cry under such miserable state.

India being a welfare State, the process that determines public purpose must be brought within the judicial and executive scrutiny. The method and devices adopted by the State for determining must be made participatory with the citizens; especially with those whose rights would be affected, that is they should be given information of the proposed project. The State should adopt a democratic process in formation of public purpose.

48. *Supra.* note 37 at p.1487

The net result is that the right of eminent domain of the State over each and every property for public purpose is also justified on the ground of compensation which is paid to the land losers.

### *iii. Compensation*

Whenever 'displacement' takes place, the phenomena of compensation is involved with it. Compensation is considered to be the touchstone of displacement. Displacement which may be due to a myriad of factors always involves the element of compensation. The governments also escape their liability by providing compensation. Compensation is considered to be a critical issue.

Generally, compensation is provided either in the form of cash, land or job to the people who lose their land due to the project.

#### *I. Monetary Compensation*

The most significant reparation for displaced persons guaranteed by law is the payment of monetary compensation for compulsorily acquired land or houses.

The scheme of compensation is even more complex than defining *eminent domain* and *public purpose*. The Land Acquisition Act provides for payment of compensation to those whose interest in the land is acquired. This is the only obligation imposed on the state and which the state has to discharge. The payment of such compensation is meant to reduce hardship which falls on the person due to such acquisition.

The most significant reparation for displaced persons guaranteed by law is the payment of monetary compensation for compulsorily acquired land or houses. But this scheme of compensation has a very restricted interpretation. In the case

of *Land Acquisition Officer V. Jashi Rohini,*[49] the Hon'ble Supreme Court observed that;

> *"The question of fixation of market value is a paradox which lies at the heart of the law of compulsory purchase of land. The paradox lies in the facts that the market value concept is purely a phenomenon evolved by the court to fix the price of land arrived at between the hypothetical willing buyer and willing seller bargaining as prudent persons without a modicum of constraints or without any extraordinary circumstances."*

In the leading case of *Keshavananda Bharti V. State of Kerala,*[50] the Apex Court had observed that;

> *"Parliament cannot empower Legislatures to fix an arbitrary amount or illusory amount or an amount that virtually amounts to confiscation, taking all the relevant circumstances of the acquisition into consideration. Whatever may be the consideration for the legislature the Act has not given any fixed formula for assessing compensation".*

Payment of cash compensation is considered to be the easiest way of escaping liability or the most convenient way of discharging responsibility once land is acquired for development project by the authorities under the garb of public purpose. No matter what may be the intention behind payment of cash compensation, it is always found that the land owners and house owners are the ultimate losers.

The Land Acquisition Act provides for payment of compensation in terms of money. The law provides that the compensation is to be computed on the basis

49. AIR 1995 SC 823
50. AIR 1973 SC 1461

of the 'market value' of the land.[51] The term 'market value' has not been defined in the Act. The Act only lays down matters which are to be taken into consideration while calculating compensation.

The Court is also barred from exercising its jurisdiction while determining matters related to payment of compensation. Section 24 of the Act lays down the term and condition which the court shall not take into consideration in payment of the compensation.[52]

Perusal of the above section reveals that the government is the authority to determine the market value of the land, as it is an interested party in the transaction involved in the acquisition.

Monetary compensation is determined on the basis of sale/purchase transaction. If land transaction does not generally take place in an area, an imputed market value is worked out. One method of doing this has been to capitalize income for a specified period (usually 15 years) from the concerned land. Where land market exists, the practice of the government with regard to the determination of market value is based on an average of the registered transactions (sale/purchase) of a similar quality of land in the vicinity of the land

51. Section 4(1) of the Land Acquisition Act 1894
52. Section 24 reads as under:
*"First, the degree of urgency which has led to the acquisition;*
*Secondly, any disinclination of the person interested to part with the land acquired;*
*Thirdly, any damage sustained by him, which, if caused by a private person would not render such person liable to a suit;*
*Fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put;*
*Fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;*
*Sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;*
*Seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the collector after the date of the publication of the notification under section 4, sub-section (1); or*
*Eighthly, any increase to the value of the land on account of its being part to any use which is forbidden by law or opposed to public policy."*

acquired over a period of 3 to 5 years. This practice is unjust for several reasons; It does not recognize the imperfections of the market; It assumes that the land market is fully developed, which is not so in India; The other presumption is that the transactions have taken place between willing buyers and sellers, which in the case of acquisition of land is not true; It also supposes that buyers and sellers are equal in terms of knowledge, market information, staying and bargaining power and urgency, which is usually not so; The transactions arrived at between parties in such a situation cannot reflect the correct market value; Besides, land valuations in official transactions are typically undervalued so as to avoid the registration fee and other taxes; The value of land is also affected by many regulatory restraints and control over use such as zonic restrictions, imposed densities, use for non-agricultural purposes.[53]

Further, the State Government can act arbitrarily as the determination of market value lies with government and is not carried out by any independent agency or professional valuers. A vast gap is created between the post and pre-acquisition values of the land. The future benefit for the value of the land is transferred to the acquirer of the land.

Apart from these technical problems, there are other social evils attached when monetary compensation is paid to the displaced family. It is found that the oustees have very little experience in handling cash compensation. They tend to run out with cash compensation in a very short period of time either by repayment of old debts or in liquor and also they spend in conspicuous consumption.

Getting the compensation amount due is not a simple matter for most poor people. Project authorities are not known for their integrity in seeing that the rightful claimants get their due amounts promptly, in a hassle free manner.

53 Sebastian Morris and Ajay Pandey, (2007), *"Towards Reform of Land Acquisition Framework in India"*, Economic and Political Weekly, cited in K.B.Saxena, *"Development, Displacement and Resistance: The law and the policy on Land Acquisition"*; Social Change, Vol. 38 No. 3, September 2008, Pp 351-410 at p. 374

Further the rampant corruption hits poorest the hardest. They rarely get in their hands the full amount of compensation for their properties, meant to aid them in getting back on their feet.[54]

Acquisition of land tends to cause the people to leave their age long relations. It causes alienation not only with land but it causes the people to leave behind their social relation to which they are bound emotionally and for every other purpose of life. Further, such acquisition of land causes economic hardship for them. It causes loss of agricultural land for some and loss of access to common property resources, the benefits of which are derived by a majority. The payment of compensation fails to take into account the emotional attachment a person has with his land and also the fact that such property support the entire family which at many times is the only source of livelihood of the displaced family.

*II.* *Land Compensation*

Survey reveals that land is another mode of providing compensation. Experience suggests that resettlers usually do well when on relocation they get new land in lieu of land lost to the project, as no occupational change is involved. Thus, land for the displaced people with agricultural background from rural areas remains the best way to compensate them.[55]

Land-based rehabilitation is guaranteed to meet with a high degree of success because land remains the fundamental productive resource in the Indian countryside, the fulcrum of economic and social security, and already- existent cultivation skills need only to be adapted for cultivation in irrigated areas.[56]

54. Hari Mohan Mathur, *"Resettling People Displaced by Development Projects : Some Critical Managements Issues"* Social Change, Vol. 36 No 1, March 2006, Pp. 36-86 at p. 54
55 *Ibid.* at p. 55
56. Ravi Hemadri, Harsh Mander, Vijay Nagraj, *"Dams, Displacement, Policy and Law in India"* www.dams.org visited on 05.02.2008

The Land Acquisition Act speaks of providing compensation in terms of cash only. It does not provide for alternative mode in terms of landed property. However the Rehabilitation and Resettlement Policy provide that compensation in terms of land is provided to the displaced family. At the same time the policy provide that such land is to be provided to the extent it is available. It is a fact that in the past when development project were undertaken there was enough land for the displaced population to buy and settle down in the same locality without losing their social attachment. However, this is not the position now. Land is no longer available and indeed in short course it would become scarce.

The activists for displaced family feel that land based rehabilitation is guaranteed to meet with a higher degree of success because land remains the fundamental productive resources in the Indian countryside, the pivot of economic and social security.

Even in the famous case of Narmada decision, the Supreme Court directed the authorities to provide land compensation to the oustees' family. The displaced family were to be resettled in the commence area where the land was twice as productive as the affected land and where large chunks of land were available.[57]

Even in the case of designating Kuno Sanctuary it was found that most of the displaced households had been given upland farm plots that are of much lower quality than the land they held inside the sanctuary, with lower soil depth and very low soil moisture. Many of these plots were judged unsuitable for cultivations. Most of these farm plots have no source of irrigation.[58]

A policy for land-for-land has to be made mandatory if this form of compensation is to succeed. In fact, it should be the necessary component of rehabilitation programme. And such king of land can be made available if it is

57. Narmada Bachao Andolan v Union of India AIR 2000 SC 3751
58. Asmita Kabra, *"Wildlife Protection, Reintroduction and Relocation"*, Economic and Political Weekly, Vol. 41(4): April 8, 2006, Pp 1309-1311 at p 1309

compulsorily acquired from bigger land owners in the command area. This would not only make the displaced family utilize the project benefit but also make them close to the land and environment which had sustained them for centuries.

*III. Jobs*

Whenever a development project is undertaken, the authorities promise to provide jobs to the member of the displaced family. Making promise is very easy for the agency but when it comes to fulfilling their promise they tend to shy away. People who find permanent jobs are capable of resettling themselves rapidly as compared to those without jobs.

In public sector establishment, providing jobs/employment is in vogue. In addition to cash compensation, one member of the displaced family is entitled to employment subject to the condition that he has the qualification, skill and capacity. Coal India Ltd., one of the leading public sector undertakings, can be taken as an example here, which was able to provide jobs in mines to compensate the loss of land. But now there is surplus labour due to modernization of mining operations. The number of available jobs has rapidly decreased. The Coal India study reveals that it is grooming under the weight of overstaffing and it feels that it needs to halt the practice of giving jobs in exchange for land acquired.

The present position is that no agency commits itself to provide employment to the displaced person. What they promise is that if vacancies exist and candidates from the displaced families have qualification laid down for specific post, they may be given a chance. But the majority of the displaced persons come from poor and vulnerable sections and who may not be qualified enough for claiming the job. Hence, there maybe very little job opportunity for the displaced family.

The Land Acquisition Act has failed to address many crucial matters associated with acquisition. The Act conveys absolute power in the state to acquire land with no choice being left in the people to resist such acquisition. The

sole power vests with the state to define 'public purpose', the freedom to acquire land partially or wholly and even to avoid the processes involved in acquisition.

Had the Act been confined to acquisition it would have been fine, but the Act tends to supersede certain host of measures for Scheduled Tribes protection in the Constitution. Certain areas with concentration of Scheduled Tribes have been acquired by the state in the garb of public purpose. This is being done in constant violation of the constitutional provision- where Constitution is presumed to be the law of the land.

The Act tends to assume supremacy over the provision of *Panchayats (Extension to Scheduled Area) Act, 1996* which is one of the latest enactments for recognition of local governance. However, when acquisition of land is taken, the Land Acquisition Act assumes primacy as the authority of Gram Shaba under the Act of 1996 whose power is only recommendatory.

Further, the Land Acquisition Act is justified legally on the ground that the Land Acquisition Act is a Central law while protective legislations are State laws and morally on the ground that "public purpose" supersedes "individual" or "group" purpose in laws enacted for the tribes. The inherent inequality is evident in the arrangement because such laws may still apply to non-tribal individuals but the Government gets exempted because of its superior power and moral legitimacy. The whole ideology of protection which intentionally provides a different treatment for Scheduled Tribes, particularly in terms of their rights in and the control over land is negated by the dominant law of acquisition.[59]

The ubiquitous Act is essentially concerned with only economic value of the land; it is not concerned with the 'cultural dimension of land'. For the tribals, land relates to their 'identity' and 'spiritual moorings'. The Act also does not consider the life-supporting multiple land benefit that land provides to the people.

59 K.B.Saxena, *"Development, Displacement and Resistance : The Law and the Policy on Land Acquisition"*, Social Change, Vol. 38 No. 3, September 2008, Pp 351-410 at p. 384

The community is ignored as a whole. It fails to recognize that 'a community' is more than a sum of individual. The law does not recognize the concept of common property resources. Neither these concepts are taken into consideration for payment of compensation. The Act provides compensation and is free of its obligation. The displaced individuals are to start their life themselves and in a new environment. These are individual interest and hence, do not come within the ambit of public purpose. Such acquisition tends to destroy not only the common property resource but also infrastructure such as schools, primary health centre and hospitals. The Land Acquisition Act does not provide compensation with respect to such loss. The displaced community has to fend for themselves in a new environment.

It is now an accepted fact that acquisition of land which was meant for public purpose is now being extended to the needs of private companies who are only profit oriented. As there is no check on the government's power, this has leaded the government to expand the scope of acquisition. The government need not satisfy as to what public good is involved in such land acquisition. The way out is that a separate framework for acquisition of land by private agencies should be formulated for this purpose. This framework should impose obligation on the land acquiring agency to simultaneously carry out the task of providing compensation, resettlement and rehabilitation. The government should play a role of a mediator in carrying out the task of not only providing compensation but also the task of payment of compensation, rehabilitation and resettlement.

**d) Land Acquisition (Amendment) Act, 2007**

Dissatisfaction and strong resistance from peasants, social activists, NGOs, against the mode of acquisition of land, the central Government responded by proposing amendments to Land Acquisition Act 1894. The proposed amendments were contained in the Land Acquisition (Amendment) Bill 2007. The bill was passed on 11$^{th}$ April 2007 and finally came into force on 7$^{th}$ May

2007. By far the most important part of the Land Acquisition Act is the commitment to rehabilitate and resettle the persons affected by involuntary displacement. This makes resettlement and rehabilitation of the displaced persons integral to the process of acquisition of land and also enforceable.

The amendment provides that in cases where the appropriate government intends to acquire land for public purpose involving physical displacement of four hundred or more families *enmasse* in plain area or two hundred or more families *enmasse* in tribal or hilly areas specified in V Schedule and VI Schedule of the Constitution, a social impact assessment study shall be carried out in the affected area for the purpose of social impact appraisal.[60] But the Act does not anywhere mention the publication of the assessment. Neither such publication is made compulsory, nor is any time frame provided for such Social Impact Assessment.

The term 'public purpose' has been revised to include land acquired for important purposes like defense purpose, which is vital to the state and infrastructure projects, and any other purpose which tend to benefit the general public. The mode of acquisition in such case is that 70% of such land would be acquired directly by the acquiring agency, which means, there would be a direct dealing with the displaced person for the purpose of acquisition and the rest 30% would be acquired by the state.[61]

The above provision gives an impression that an attempt has been made to curtail the power of acquisition to the extent of 70% between the buyer and the seller. But the picture can be otherwise as the Acquisition Act now transfers the acquiring power to land acquiring agencies. The concept of eminent domain still remains. The poor and vulnerable among them would find it difficult to withhold pressure given by the company who being in a stronger position may use muscle power.

60. Section 3A of the Land Acquisition (Amendment) Act 2007
61. Section 3 (f) and 3(ff) of the Land Acquisition (Amendment) Act 2007

The Land Acquisition Act has proposed changes to the definition of 'person interested' by including tribals and traditional forest dwellers as persons interested.[62] The changes proposed fail to take care of a large number of 'informal tenant' and agricultural labourers who are dependent on the acquired land for their livelihood and other life supporting benefits

The Land Acquisition (Amendment) Act 2007 has restricted the explanation of 'public purpose' to camaflouge the general public. The wide enough explanation provided to the 'infrastructure projects' which not only includes a large number of sectors whose scheme would qualify for this label but also an open-ended provision by which any other facility notified as an infrastructure project by the government can also be added to the activities already included. The ambit of infrastructure projects has been enlarged as to bring in mining activities as well as requirement of land for mineral–based industries and its supportive infrastructure besides extractive operations. The redefinition of public purpose protects the whole range of requirements for which currently land is being acquired except for those activities which cater to the welfare activities focused on the poorer sections of society such as educational, housing, health, slum clearance, etc, which form part of the existing list. The exclusion of acquisition of land for companies also turns out to be a cosmetic exercise in this light. Most of the infrastructure activities in the current economy are being financed and executed by companies and this trend would only increase. The entire requirement of land for such projects would now be acquired as 'public purpose'.[63]

The amendment does not provide for any provision where it makes it incumbent to check the excessive acquisition of land. The acquiring authorities are found to acquire more land then is necessary for the purpose. A move by the government disempowering the project agency to transfer acquired land even for

62. Section 3(b) Land Acquisition( Amendment) Act 2007
63. *Supra.* note 59 at p. 402

public purpose without prior approval of the government and placing a time limit on utilization of the acquired land may restrain requiring agencies from misusing their demand for land. In other words, the acquiring agency must be put under an obligation that they would have to return the land to the people or government if the land turns out to be excess, they would not be entitled to deal with that land.

Across India, crucial economic investment are floundering, bogged down in controversy over land acquisition, land acquisition for public purpose is emerging as the most burning issues of our time. It cannot be denied that industrialization is one of the steps to break the curse of poverty, but project after project is being sidelined into resistance. One of the most glaring examples of such resistance was of Singur. But the issue is not just of Singur. Across the country, from the forest-clad Niyamgiri Hills in Orissa to Raigad on the Western Ghats, from the lush fields of Punjab to plains of Karnataka, industrial projects are floundering, trying to sort out an incendiary mix of local resentment, bureaucratic bungling and political brinkmanship. Such resistance, not only causes loss, but at stake is the livelihood of five lakhs farmers, perhaps, not such a significant number in a country of a billion-plus population, but large enough not to be brushed aside with disdain. These are people who have been living on this land for centuries and survive only because of it.[64]

A question was raised as to why is land acquisition proving to be such a big problem? Especially when it is for something that could pull millions out of subsistence existence, and is of vital importance to the country. The answer to such queries was that, the biggest hurdle though not only one is the issue of compensation. In most cases, due package is offered to those who are directly displaced because they own that land. However, this does not seem to solve the problem. Often as is the case in Singur, non landowners, like share-croppers and farm lands, also subsisted on the Tata land (and have now been compensated).

64. Subodh Varma, *"Why Land has Become a Battleground"*, Sunday Times of India, Kolkata, dated August 31, 2008 at p. 7

Another answer for such question is the fact of ignoring the complex lives of the people who are associated with the land. Loss of employment opportunities is the biggest curse that can befall an Indian, especially in the countryside. So, compensation needs to be defined more broadly to cover all those that may be linked to land, and to include concrete job opportunities[65].

It is an undisputed fact that land is the cause of misery but a recent judicial pronouncement has put emphasis on the human right aspect of property. The court in *Chairman, Indore Vikas Pradhikaran V Pure Industrial Coke & Chemical Ltd & Ors,*[66] the Court opined that the right to property is now considered to be not only a constitutional right but also a human right. Reference being made to the *French Declaration of Human Right and Civic Rights of 1789,* which enunciates the scope of the right under Article 17 and so does *Article 17 of the Universal Declaration of Human Rights, 1948*, adopted in the United Nations General Assembly. Earlier human rights were restricted to the claim of individual's right to health, right to livelihood, right to shelter and employment, etc. but now human rights have started gaining a multifaceted approach. Now property rights are also incorporated within the definition of human rights. Right to property, while ceasing to be a fundamental right would, however, be given express recognition as a legal right, provisions being made that no person shall be deprived of his property save in accordance with law.

## B. Forest Act and Policy

The Land Acquisition Act is not isolated in its relevance to displacement. The Forest Act apprehends displacement of people who are basically forest dwellers, tribals and adivasis. The only difference being Land Acquisition Act is based on the notion of eminent domain whereas the Forest Act is based on the intricate relationship of forest dwellers with forest. The Forest law and Policy

65. *Ibid.*
66. (2007) 8 SCC 705at p. 731

intend to protect the forest but their intention has only furthered commercial interest of the state and the reason of displacement of the weaker and vulnerable tribal and forest dwellers.

The first legislation for the management and preservation of forests was enacted in the year 1865 which was followed by legislation in the year 1878 repealing the earlier Act. The Act divided the forests into three categories namely reserve forests, protected forests and village forests and also established control over the forest. However, in the year 1927 a comprehensive statute namely, the Indian Forests Act, 1927, was enacted.

During 1952 National Forest Policy was enunciated, which opposed the indiscriminate extension of agriculture by the encroachment on the forest land, since, this not only deprived the local population of firewood, grass and many other minor forest products, but of its natural defense.

The debate over how to balance the various demands of the nation on the forest intensified in the 1970s. The 42nd Amendment Act of 1976 transferred forests from the State List to the Concurrent List of the Constitution. This transfer empowered the Central Government to act directly in managing India's forests. Since 1976, the Central Government has taken some major actions with regard to forests: the Forest (Conservation) Act of 1980, an Amendment in 1988 of this Act, and the adoption of a revised National Forest Policy in 1988.

The Forest Act of 1980 was Parliament response to the rapid decline in forest cover. Until then, deforestation averaged 1 million hectares a year. The Act prohibits the deletion of a reserved forest or the diversion of forest land for any 'non-forest' purpose. Contravention of the provision of the Act attracts up to 15 days in prison.

The State, by invoking the power of 'eminent domain', has acquired forest land mostly habituated by the tribals and negotiated the sovereign forest land

which belongs to tribals. Displacement tends to destroy two important bases of tribal life- one is natural resource and the other is the community life. And as mentioned earlier the compensation package cannot compensate for the loss of forest, river, ancestral land, river fish, forest produces, medicinal plants, which are intricately woven in social and cultural life of tribal and forest dwellers.

Destruction of forest is mainly caused due to development projects. The setting up of these projects have caused not only destruction of forest but caused displacement of those dependent on such forests. The question of displacement and rehabilitation first came up before the Supreme Court (though not directly) in *Rural litigation Entitlement Kendra* case.[67] This case arose from haphazard and dangerous limestone quarrying in the Missouri Hill Range of the Himalayas. The miners also dug deep into the hillsides, an illegal practice which resulted in cave-inns and slumping, the case was complex and provides a series of judgment touching various aspects of environment. However, the one, important for the purpose of present study is that the mining operation had cause displacement. Indisputably displacement had been suffered by the lessees and the sudden displacement had unsettled their activities and brought substantial change (inconvenience) to them. Further, the impact o such mining project was that it caused landslide which killed and displaced the villagers and destroyed their homes, cattle and agricultural lands.

In *Banwasi Seva Ashram V. State of U.P.,* [68] case which was initiated as a public interest writ petition under Article 32 of the constitution, on behalf of local people protesting reservation of forest land by the people. People in 433 villages had lived in or near the forest for generations and relied on the forest products. The petitioners alleged that the state had ignored the claims of these people over the forests and that steps were taken for eviction of many of the forest dwellers. The petitioners further asserted that this curtailment of access to the forest

67. Rural Litigation Entitlement Kendra, Dehradun V. State of U.P. AIR 1988 SC 2187
68. AIR 1987 SC 374

violated the fundamental right to life of the local people guaranteed by Article 21 of the constitution. The Supreme Court ordered that the thermal plant must be allowed to be constructed and the 'oustees' are rehabilitated after examining their rights.

But in the second *Banwasi Seva Ashram V. State of U.P.* case,[69] the Court came out with various measures to be adopted by the NTPC and directed the National Thermal Power Corporation to take certain measures to rehabilitate the evictees, like;

- *plot of land be provided for the construction of houses;*
- *To provide shifting allowance of Rs 1500 in addition to the lump sum of Rs 3000/-*
- *Free transportation;*
- *Monthly subsistence allowance for a period of 10 years (maximum Rs 750/- (per month);*
- *Employment to 'evictees' first;*
- *Shops and business in the premises to be offered to 'evictees' first;*
- *To provide road, schools, adult education classes;*
- *Drainage system wells, potable water, sports centre; and*
- *Training for carpet weaving, sericulture, masonry, dairy farming, poultry fanning and basket weaving to the evictees.*

Directions were also issued for 'provisional compensation', which was subject to final compensation.

The Court has at times failed to protect the interest of tribals or forest dwellers that are dependent on such forest area on the belief that their existence on forest area would be harmful and have adverse effect on the forest. Such

69. (1992) 2 SCC 202

situation arose in the case of *Pradeep Krishen V. Union of India.*[70] In this case, the villagers had been dependent on forest for long but were later prohibited from collecting 'tendu leaves' which was a source of livelihood for the villagers from Sanctuaries and National Parks. The contention of the petitioner was that such permission was not proper as it tends to disturb the wildlife and also adversely affect the flora and fauna of the area. The Supreme Court in this case accepted the contention of the petitioner and held that if one of the reasons for the shrinkage of forest is the entry of villagers and tribals living in and around the Sanctuaries and the National Parks, there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment. If the only reason which compels the State Government to permit entry and collection of tendu leaves is not having acquired the rights of and having failed to locate any area for their rehabilitation, the inertia in this behalf cannot be accepted.

## C. IDPs and Panchayat (Extension to Scheduled Areas) Act, 1996: An Analysis

The Panchayats (Extension to Scheduled Areas) Act, 1996 (hereinafter referred to as PESA) applies to the areas covered under the Fifth Schedule of the Constitution of India. This Act clearly prohibits the State to make any law, which would not be in consonance with the customary law, social and religious practices and traditional management practices of community resources.[71] The section reads as under;

> "A *State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources"*

70. AIR 1996 SC 2040. Also see *Animal and Environment Legal Defense Fund V. Union of India,* AIR 1997 SC 1071

71. Section 4(a) of the PESA Act of 1996

It further mandates that 'Gram Sabha or the panchayats at the appropriate level shall be consulted before making the acquisition of land into the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas.[72] The section affirms that;

> *"The recommendation of the Gram Sabah or the Panchayats at the appropriate level shall be made mandatory prior to grant of processing license or mining lease for minor minerals in the Scheduled Areas.*

The Act, a welcome step in the protection of the tribals in the Scheduled Areas, however, fails to mention the right to the tribals to have a say in the legitimacy of setting up of development projects. They are never consulted on the type of development project that would be beneficial for their existence. The tribals do not have control over their land as to whether to part with their heritage or not.

There are numerous powers vested in the Gram Sabha, but vital and important purpose of the present study is that the Gram Sabha has to approve development plans, programmes and projects that are taken up for implementation by the panchayats at the village level.[73] The Gram Sabha or the Panchayats at the appropriate level shall be consulted before granting or licensing of mining leases for minor minerals. Prior recommendation is mandatory for grant of concessions or the exploitation of minor minerals by auction.

The Act, however, fails to address certain important issues like, while recommendation under *Section 4 (k) of the* Panchayats (Extension to Scheduled Areas) Act, 1996 has been made mandatory; the question arises as to whether these recommendations are binding or not, is unclear. Similarly, consultation has to be made before a project is to be undertaken and acquisition of land is made.

72. Section 4(k) of the PESA Act of 1996
73. Section 4(e) of the PESA Act of 1996

But the question that arises is whether consultation takes the form of consent on the part of Gram Sabha, because actual planning and implementation of projects in the Scheduled Areas shall be coordinated at the state level. In other words, consultation and recommendation are of absolute nature, that is, no project can be undertaken before the authorities undertake the recommendation of the Gram Sabha.

Further, the Act speaks of consultation with regard to re-settling or rehabilitation of persons affected by such projects in the Scheduled Areas, whereas, the Act fails to describe the recommendatory nature of the Gram Sabha and the Panchayats, with regard to the nature of the project. In such situation, it is not clear that how such authority can exercise its powers with regard to resettling and rehabilitation of the displaced family. The Act does not provide the circumstance as to how rehabilitation would be carried out. When acquisition is being carried out by one Act then how can rehabilitation be carried out by other Act. Neither of the Acts describes the procedure for carrying out the task of rehabilitation.

The Act does not mention the course of compensation to be adopted once acquisition inter-alia displacement takes place. The Act is silent in this respect. Though the Act mentions that every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution, but as a matter of fact, once development project is undertaken, the obligation to preserve the tradition vanishes. The nation is so interested in development process that it would not care for preservation or for that matter, displacement of people. Had the government been so interested in protecting the right of tribals then provision relating to Scheduled Area in our constitution would have been enough. Making of laws and policies would not have been necessary. In spite of having constitutional provision we do not care about tribals then the question as to how far can an Act like PESA protect the tribals from the scourge of development and

displacement, which, after careful analysis, turns out to be half hearted–remains unanswered.

## 4. RESETTLEMENT AND REHABILITATION POLICY

The concept of displacement, resettlement and rehabilitation can be discussed under the broad spectrum of distribution of power. Resettlement and Rehabilitation has been witnessed wherever displacement has taken place. No doubt, some efforts by the government and independent group have been taken but data on the number of people displaced since independence and their current location are non–existent. Before making an attempt to discuss the different Rehabilitation and Resettlement policies, an effort is being made to make it clear that what actually is Resettlement and Rehabilitation. Hence, the concept of Resettlement and Rehabilitation can be discussed under two heads, namely, Concept of Resettlement and Rehabilitation–A Neglected Issue and Resettlement and Rehabilitation Policies.

### A. Concept of Resettlement and Rehabilitation – A Neglected Issue

Clarity has to be developed as to what is resettlement. Resettlement maybe defined as;

> *"The final movement of displaced persons to new relocation site after getting full compensation for their land and properties."*

The stages of resettlement include payment of compensation for land, houses and properties acquired; allotment of agricultural land and house plots at new sites; free transport for shifting to new site; payment of ex-gratia

rehabilitation grant, subsistence allowance, development assistance; ration card issued at new R&R site and civic amenities provided at new site.[74]

The next question that arises here is that what rehabilitation is. It may be defined as;

*"A long run trend towards ecological restoration."*

In other words, it is a restorative attempt to recover the features of a natural state. It includes various measures and strategies to make the resettlement site ecologically sustainable.[75]

In a paper published by the World Commission on Dam, it is provided that;

> *"There is a considerable confusion, and some furriness, in the use of the terms,' compensation, reparation, resettlement and rehabilitation. These are sometimes used interchangeably, but often different social scientists and policy documents use the terms with variations in emphasis and meaning. This confusion is serious not merely because of lack of academic precision, but because speaking of compensation interchangeably with rehabilitation can be used in effect to devalue of rehabilitation."*[76]

Further the paper provides that "compensation as a package in cash or kind, for persons directly or indirectly adversely affected by development projects, as reparation for their acknowledged losses, not only of assets but also of livelihoods, common resources, shelter and habitat." We shall understand "resettlement" as the packages and processes provided in new resettlement sites in

74. Afroz Ahmad *"Rehabilitation for the Displaced – A Comprehensive Policy Approach"*, The Administrator, Vol. XLIII April – June 1998, Pp. 47-64 at p. 52
75. *Ibid.*
76 Ravi Hemadri, Harsh Mander, Vijay Nagraj, *"Dams, Displacement, Policy and Law in India"* at p. xii; Cited from www.dams.org visited on 05.0822008

addition to compensation, for those who are physically dislocated from their original habitations as a result of any developmental projects. Finally, 'rehabilitation' may be seen as packages and processes provided in addition to those for compensation and resettlement, in order to ensure that persons affected by projects and their offspring are sustainably better off as a result of the project.[77]

Discussion reveals that providing compensation in cash or kinds have proved to be inadequate. Not only is this, providing land as an alterative form of compensation has been found to be not appropriate. They have their own drawbacks and shortcomings.

During the entire process of evolution of land acquisition legislation the concept of resettlement and rehabilitation was never associated with the land acquisition statute. However it has been provided that the Collector may, *"instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way as may be equitable having regards to the interests of the parties concerned."*[78] The aforesaid arrangement of payment is in no way near the concept of resettlement and rehabilitation.

The concept of 'rehabilitation' needs to be reformed from its present aspect of impoverished and impoverishing sense. Money compensation is one component but not necessarily the most decisive one of 'rehabilitation'. 'Resettlement' is not often, in case of irrigation projects, in the command areas. Diverse population areas–in terms of gender, ethnicity, age, economic levels, and other vulnerabilities–cannot be lumped together under general administrative scheme of 'rehabilitation'. Alternative means of livelihood, which ensure

77. *Ibid.*
78. Section 31(3) of the Land Acquisition Act 1894

immunity from the most abject forms of exploitation, such as prostitution, begging, forced labour, etc. should be crucial component of rehabilitation. Clearly, legislative framework and not ad-hoc, patchwork, executive generosity, is needed to fashion a viable conception of rehabilitation.[79]

The authorities do not deny the fact that there is a lack of attention towards resettlement and rehabilitation programme. This ignorance not only harms the project area people, it has other serious implications as well. The on-going project costs go-up when the dissatisfied people mount protests that can completely upset the project implementation schedule.

The International Finance Co-operation has underlined some common type of resettlement and the issues that are associated with them;

**a) Involuntary Resettlement**

Resettlement is involuntary when it occurs without the informed consent of the displaced persons or power of choice, or where that consent or choice is being exercised in the absence of reasonable alternatives. Resettlement is also involuntary when it occurs in the presence of an explicit or implicit threat of expropriation or exercise of eminent domain by the power of the state.

Involuntary resettlement includes social and economic impacts that are permanent or temporary and are caused by;

- Acquisition of land and other fixed assets,
- Change in the use of land, or
- Restrictions imposed on land due to a project operation.

79. Upendra Baxi, *"Notes on Constitutional and Legal Aspects of Rehabilitation and Displacement"*, in Walter Fernandez, Menakshi Ganguly Thukral, *"Development, Displacement and Rehabilitation"*, Indian Social Institute, New Delhi-03, 1988 at p. 169

**b) Rural Resettlement**

Displacement of people in rural areas typically results from acquisition of farm land, pasture or grazing land or the obstruction of access to natural resources on which affected population rely for livelihoods (for example, forest products, wildlife, and fisheries). Major challenges associated with rural resettlement include; requirements for restoring income based on land or resources; and the need to avoid compromising the social and cultural continuity of affected communities, including those host communities to which displaced populations may be resettled.

**c) Urban Resettlement**

Resettlement in urban or periurban or settings results in both physical and economic displacements affecting housing, employment, and enterprises. A major challenge associated with urban resettlement involves restoration of wage-based or enterprise-based livelihoods that are often tied to location (such as proximity to jobs, customers and markets). Resettlement sites should be selected to maintain the proximity of affected people to established sources of employment and income and to maintain neighborhood networks. In some cases, the mobility of urban populations and the consequent weakening of social safety nets that are characteristic of rural communities require that resettlement planners be especially attentive to the needs of vulnerable groups.

**d) Linear Resettlement**

Linear Resettlement describes projects having linear patterns of land acquisition (highways, railways, canals, and power transmission lines). In sparsely populated rural areas, a linear project such as an electric transmission line may have minimal impact on any single landholder. Compensation is characterized by a large number of small payments for the temporary loss of assets such as standing crops. If well designed, linear projects can easily avoid or

minimize the demolition of permanent structures. Conversely, in a densely populated urban area, a linear project such as a road upgrading may require the demolition of structures along the project right-of-way, thereby significantly affecting large numbers of people. Linear resettlement contrasts with, site specific resettlement because of the problems that frequently arise when resettlement actions have to be coordinated across multiple administrative jurisdictions and/or different cultural and linguistic areas.

**e) Site-specific Resettlement**

Site-specific resettlement is associated with discrete, non-linear projects such as factories, ports highway interchange, hotels, commercial plantations, etc., where land acquisition encompasses a fixed area. However, site-specific resettlement associated with mining and other extractive industries such as oil and gas may require progressive land acquisition over long periods. As a result, displacement of communities may occur in phases over a number of years, even decades. Communities threatened with displacement at some future date often prefer to remain in place until resettlement is maintaining a consistent approach to compensation and income restoration over the life of the project. Similarly, the creation of reservoirs for hydropower and irrigation projects can result in significant economic and physical displacement or rural communities. Such projects with large effects need to support development initiatives to reestablish the affected people in significantly improved social and economic conditions.[80]

Resettlement and Rehabilitation of displaced person has turned out to be a herculean task and the government has failed every time the issue of Resettlement and Rehabilitation is involved. It is not that policies have not been formulated but

80. Hand Book for preparing a Resettlement Action Plan, www.ifc.org/ifcext/enviro.nsf, visited on 26.06.2008

these policies have lacked implementation and hence not being able to provide justice to the displaced people.

*Michael Cerenea,* a *Guru* of resettlement holds that project induced displacement exposes the displaced population to a set of risks that are typical for such projects. These projects have to be addressed for a meaningful rehabilitation. The impoverishment is represented through a model of eight interlinked potential risks intrinsic to displacement – landlessness, joblessness, homelessness, marginalization, increased morbidity and mortality, loss of excess to common property, and social disarticulation. When not counteracted, these risks convert into economic, social and cultural impoverishment.[81]

His hypothesis is that the State can reverse the risks by the following reconstructive actions:[82]

- From landlessness to land based resettlement;
- From joblessness to re-employment;
- From food insecurity to safe nutrition;
- From increased morbidity to better health care;
- From homelessness to house reconstruction.
- From social disarticulation, marginalization and deprivation of common assets, to community reconstruction and social inclusion.

## B. Resettlement and Rehabilitation Policies

The problem of displaced person vis-à-vis displacement has never received the attention it was to get. As a consequence neither law nor policy was

81. Michael Cerenea, *"Why Economic Analysis Is Essential to Resettlement: A Sociologist View"*, Economic and Political Weekly; Volume XXXIV, No 31 July 31-August 6,1999,pp 2149-2158 at p. 2151

82. Michael Cerena, *"Impoverishment or Social Justice? A Model for Planning Resettlement"* in *Development Projects and Impoverishment Risks"*, H.M. Mathur and David Marsden Edition, 1998, Oxford University Press, New Delhi, at p. 47

formulated to protect these groups of persons. It was only in the year 1988 that the Government felt a necessity to formulate a National Policy on Resettlement and Rehabilitation of Project Affected Families (PAF). In the initial stage, during 1988-92, the Ministry of Welfare had prepared a Draft National Policy for Resettlement and Rehabilitation of Displaced Tribals and submitted it to the secretaries. The Cabinet Secretariat thereafter directed the Ministry of Rural Development to prepare a general policy for Resettlement and Rehabilitation which would take cognizance of the plight of the tribal. On 31st October 1998, the Union government rejected the Daft National Policy on Rehabilitation. Thereafter the Ministry of Rural Development finalized and circulated the National Policy on Resettlement and Rehabilitation for PAFs 2003. The policy inter-alia claims to provide some special benefits for displaced tribals.

**a) National Policy on Resettlement on Rehabilitation 2003: An Analysis**

The Preamble of National Policy on Resettlement and Rehabilitation enunciates that the object of the policy is to minimize displacement to the maximum extent and where displacement is inevitable, the need to need to handle with utmost care and forethought issues relating to Resettlement and Rehabilitation of Project Affected Families (PAF).

The National Policy on Resettlement and Rehabilitation 2003 applies to projects displacing 500 or more families' *enmasse* in the plains and 250 in the hills or Scheduled Areas.[83] Each PAF owning agricultural land in the affected zone and whose entire land has been acquired may be allotted agricultural land or cultivable waste land to the extent of actual land loss subject to a maximum of one hectare of irrigated land or two hectares of unirrigated land/cultivable waste land subject to availability.[84] However what course is to be followed where such land is not available with the government.

83. Chapter V, Provision 4.1 of National Policy on Resettlement and Rehabilitation, 2003
84. Chapter VII, Provision 6.4 of National Policy on Resettlement and Rehabilitation, 2003

A PAF owning house and whose house has been acquired maybe allotted, free of cost, house site to the extent of actual loss of area of the acquired house but not more than 150 sq. m. of land in rural areas and 75 sq. m. of land in urban areas.[85]

Perusal of other provision reveals that there has been an improvement with regard to some provision of NPPR 2003 as it broadens the definition of PAF to include Common Property Resources (CPRs) and restrict benefits of those who have lived in the affected area for three years before the notification under *Section 4 of Land Acquisition Act,* while the law includes those in possession on the date of the notification. Such an appeal will counteract outsider, who tend to buy pieces of land when the news of project spreads.

However, the policy does not recognize resettlement as a right nor is it mandatory to provide resettlement and rehabilitation. The PAF may be resettled if the project so desires and land is to be provided if there is availability of land. One can get round it by saying that no government land is available. The Policy also does not take care of tenant and landless PAFs who are dependent in one way or other on the land or the community.

The NPRR only shows gestures for minimizing displacement. It says that the notifying agency should discuss it with the requiring agency but does not include the Displaced person or the PAFs in the discussion. The agency would not be aware of the problems of the PAFs and their involvement would make them aware of their problems and hence, help them to solve their problems. Rehabilitation depends on the mercy of the district authorities – if the need be felt then they may be rehabilitated or they have to look after themselves.

Another flaw in this policy was with regards to payment of compensation. Payment of cash compensation is dependent on district authorities. And it is found

85 Chapter VII, Provision 6.1 of National Policy on Resettlement and Rehabilitation, 2003

that the district authorities are corrupt and tend to seek money from the PAFs on the ground that their compensation will be paid if they pay money to them. Next payment of cash compensation has proved to be a disaster. The PAFs either spend the whole amount without any check and balance. Further they may spend this amount in building shed, houses only and then nothing is left with them for the future.

With regard to compensation, another flaw was found in the Policy. It was found that the compensation for land acquired is not according to the market value. Payment of illusory amount can make the authorities escape their liability and in this era market price of land is changing every day. Land is not only the basis of livelihood for the owner but it tends to employ other person. In other words, it is a source of livelihood for other persons. Hence, the authorities need to work out a plan which compensates both the owners as well as those dependent on the land.

The Policy has no provision to control situation where the project authorities have acquired more land than was required for the purpose. Neither the government considers it obligatory on its part to neither inquire as to how much land would be required, nor do the PAF is involved in the negotiations. There have been situations where more land is acquired than was required.

The Policy lays down that this policy is to apply only to projects that displace 500 families in the plains and 250 families in the hills enmasse. The policy mentions the maximum families but does not fix a minimum number of families for it to apply. The question which arises here is that at times, projects like mining projects acquire plots in phases that displace fewer than 500 families. In such case, these families will not be entitled to rehabilitation.

**b) National Policy on Resettlement and Rehabilitation 2006: An Analysis.**

The Draft Resettlement and Rehabilitation Policy 2006 provided liberal and equitable provisions for the displaced. It tried to improve on the 2003 National Policy for R&R. While the National Policy 2003 is applicable only where 500 families in the plains are displaced and 250 families on the hilly/Scheduled Areas, the present policy takes care of those where displacement is 400 or more families enmasse in plain areas, or 200 or more families enmasse in tribal or hilly area.[86]

The Policy had the objective to minimize displacement and to promote, as far as possible, non-displacing or least displacing alternatives.[87] Where displacement is on account of land acquisition, there is a need to facilitate harmonious relationship between the requiring body and displaced persons through mutual cooperation.[88] The policy also provides guidelines to undertake environment impact assessment and social impact assessment with regard to the project undertaken involving physical displacement of 400 families enmasse in plain areas, or 200 or more families enmasse in tribal or hilly areas. [89]

The Policy though may have some good features but fails to address few pertinent questions. The call for the 'active participation of affected persons' in the process of resettlement an rehabilitation is not reflected in the processes of development of the project. The affected persons have no say in the process of determination of a project site even if it is on their lands.

As mentioned above, the Policy provides for undertaking Social Impact Assessment as well as Environment Impact Assessment and for this purpose a 'multi-disciplinary expert' group is to be constituted. The members for this

86. Provision 6.1 of NPRR 2006
87. Provision 2.1 (a) of NPRR 2006
88. Provision 2.1 (f) of NPRR 2006
89. Provision 4.1 of National Policy on Resettlement and Rehabilitation 2006

purpose are to be nominated by Central and State Government. The policy has failed to mention as to whether in this committee the PAF would have a say. Further, while undertaking Social impact Assessment and Environment Impact Assessment, the affected families are not consulted prior to their submission to the expert group for examination.

The Policy provides that the main objective of the Policy is to "minimize displacement". But perusal of Sub-clause (b) of Clause 6.11 states, "If sufficient government land is not available there, then land may be purchased or acquired under the Land Acquisition Act, 1894, for the purpose of resettlement and rehabilitation scheme/plan." This allows further displacement of non-project affected persons from their land in the process of resettling the PAF in a particular resettlement zone.

The Policy also fails to provide adequate safeguards to the displaced persons. Only those PAF who were having possession of forest lands prior to 25th October 1980, which is prior to the commencement of the Forest (Conservation) Act, 1980. This is not in consonance with the Scheduled Tribes and other Forest Dwellers (Recognition of Forest Rights) Act of 2006, whose cut off date for ownership of land rights is 13 December 2005.

The policy has no adequate guarantee of employment to the oustees. Employment as per the terms of the policy will be provided by the Requiring Body only to those affected families who have lost their employment due to the project. Whether such employment will be available to the laborers, artisan, tenants or agricultural farmers and those who are part and parcel of that project affected locality has not been mentioned by the policy. Also such employment will be 'subject to availability of vacancies and suitability of the affected person for the employment'.[90]

90. Provision 7.11 of National Policy on Resettlement and Rehabilitation 2006

The Policy has tried to deal with displacement of Scheduled Caste and Scheduled Tribe families separately. The Policy does not mention as to how the SC/STs are to be separated from other category of PAPs. Tribals who practice traditional mode of agriculture, such as shifting cultivation which requires temporary shifting from one place to another every year for cultivation of crops, and other nomadic forms of life, may not be "residing continuously for a period of three years" at a particular place and hence, may not come under the strict definition of "affected person" to get the benefit under this Policy.

The Policy provides for setting up a Tribal Development Plan for the benefit of SC/ST. The Policy does not provide guide line as to how the authorities would deal with those cases where the tribals fail to produce land right as the tribals are not much conscious of their rights, as they are simple and mostly illiterate. They have a world of their own and fail to understand the hum-drum of modern life. The policy also fails to take into consideration the provisions of Scheduled Area as enumerated in the Constitution.

The Resettlement and Rehabilitation Committee which is constituted to monitor and review the progress of implementation of resettlement and rehabilitation schemes is constituted by the State Government under the chairmanship of the Administrator of Resettlement and Rehabilitation. The setting-up of such Committee have not been fruitful. The displaced persons' membership in such committee is unheard. Further, the displaced families have to wait for long until the final outcome of result of such Committee. The committee consists of highly qualified persons and it is found that they fail to understand the problem of the PAFs.

**c) Government's Resettlement and Rehabilitation Policy 2007**

For the protection of land owners' interest, National Policy on Resettlement and Rehabilitation, 2007 has been implemented throughout the country from 31st October 2007. The National Policy on Resettlement and

Rehabilitation 2007 will be applicable not only to the persons affected by the acquisition of land for projects of public purposes, but also to involuntary displacement of a permanent nature due to any cause.[91] Thus, this policy is a welcome step as compared to the other two policies.

The Policy provides that the beneficiaries of National Policy on Resettlement and Rehabilitation 2007 are not only those whose land and property is acquired but also the families whose source of livelihood is adversely affected i.e., any tenure holder, tenant, lessee, agricultural and non-agricultural laborers, landless persons, rural artisans and small traders.[92]

Social Impact Assessment by independent multi-disciplinary expert group is made mandatory in cases of displacement of 400 or more families in plain areas and 200 or more families in tribal and hilly areas, or areas specified in Schedule V and Schedule VI of the Constitution.

The Administrator has to prepare a draft scheme for the rehabilitation and resettlement of the affected families after consultation with their representative. This draft shall be published for discussion in the concerned Gram Sabha.[93] This is a good provision as it enables the affected person to know in advance the scheme of their rehabilitation.

Many provisions in the Policy are applauding. However, for better implementation of National Policy on Resettlement and Rehabilitation, it must be seen that the displaced families are living in a more favorable condition as compared to their previous settlement. Though the Policy has cast an obligation on the authority to monitor the scheme of rehabilitation prior to acquisition, the authorities must take all steps to find that the host community are ready to accept the displaced family not only in cases where displacement is due to land

91. Section 2 of the National Policy on Resettlement and Rehabilitation, 2007
92. Section 3 (iii) of the National Policy on Resettlement and Rehabilitation, 2007
93. Section 23 of the National Policy on Resettlement and Rehabilitation, 2007

acquisition or due to any other factor. The problem not much realized is that there rarely exist large unoccupied areas available for resettlement of oustees. Where they are settled amidst existing settlements, there is inevitable competition for scarce resources and jobs. There may also be social and cultural incompatibility which may result in conflict between the two groups. Steps must be taken to mitigate such situation as this may cause second displacement.

The most undesirable part of the Bill is the over abundance of authorities. Establishment of authorities has always proved to be of no help. They should be reduced. In fact a better way out will be to amalgamate the National Monitoring Committee with the National Commission. The Commission should have independent experts and should be empowered to monitor the implementation of the Act.

The Policy speaks a lot in cases where displacement takes place due to land acquisition and an alternative land being provided in such case. Further the National Policy on Resettlement and Rehabilitation, 2007 is to guide the Land Acquisition Act 2007. But the Act nowhere mentions as to what course is to be adopted in cases of displacement caused by other factors. No guideline is provided for such kind of displacement.

The Policy has no provision to make it applicable to the displaced persons from earlier projects. Thus, masses of people who have been displaced may not be rehabilitated again. Further, the Policy mentions land would be provided to the extent of availability of government land and if such land is not available than 750 days of agricultural wages would be provided. But the question that arises here is where such alternative land will be available and that will payment of wages solve the problem of the displaced family for ever.

The Rehabilitation and Resettlement of the displaced family has to be wholesome. The approach of the authorities should not be half hearted. The attitude of the Government should not be such that if one benefit is not available

then they would provide with another benefit. Such kind of approach will not uplift the displaced rather it will create more confusion and chaos. The displaced family has to wait for the course of action the authorities would adopt; that is, whether land would be available or they would be entitled to agricultural wages. Displacing people may be an easy task for the authorities but rehabilitating and resettling them is not and easy task; a whole community/society have to be established. Moreover, the authorities have to provide an accessible site to the displaced family; accessible to town, conveyance, health services, schools, markets and all that goes to make life complete and worth living. In other words, the displaced family has to get all the facilities which they used to avail in their previous settlement, or even better otherwise, his resettlement and rehabilitation would be namesake.

The civic amenities provided at the displaced site are of low quality. Hence, it is felt that a minimum scale has to be provided for every family. Electrification, water supply and sanitary arrangements like drainage, etc., have to be provided at an appropriate scale, not below what is admissible to the urban areas. Common threshing platform/common watering place for livestock, bus stand for state and private buses, grazing land of adequate size, pond; wherever feasible, cremation ground, public latrine etc. have also to be provided as a part of the civic system.[94]

The National Policy on Resettlement and Rehabilitation does not take into account the fact that there is degeneration in the lives of the displaced family. If jobs are provided on the basis of preference and availability, then they may be forced to migrate and become migrant laborers or urban slum dwellers. Apart from depriving them of their land, livelihoods and resource base, displacement has other traumatic psychological and socio-cultural consequences. The policy does not compensate the displaced for the loss of livelihood.

94. *Supra.* Note 28 at p. 57

It is felt by writers that it is necessary to rehabilitate people, especially those groups which do not enjoy physical and mental mobility in clusters, so that their surroundings do not become too strange. Collective resettlement of the displaced family or persons is very essential no matter what is the cause of their displacement.

## 5. REHABILITATION AND RESETTLEMENT IN INDIA – A HOLISTIC APPROACH

The basic issue which underlies displacement is the phenomenon of Resettlement and Rehabilitation. The need arises to develop clarity in concept while designing a Rehabilitation Policy. There are certain fundamental mantras involved in R&R which needs to be examined by policy makers, which may be pointed out as follows:

1) The first and foremost task is to minimize the level of displacement by examining all viable alternatives in the project. The Government before launching of the project need to justify that in the light of various technical and location options, this is the least displacing alternative available.
2) The right to information of the project affected family and all other concerned citizens or group should also be involved
3) Consultation of the project affected family likely to affected by the acquisition should also be made compulsory.
4) The Social and human costs which is involved in the project need to be assessed and accordingly achieved by the Government and Project developers. The report should not exaggerate greatly the expected benefits of any project.
5) An investment guide with regard to monetary compensation is also necessary because the resettlers do not know what to do with the compensation amount and spend it in conspicuous consumption. They do not have any idea about productive investment.

6) Importance of providing assistance at the time of shifting and support during the transition period of resettlement. This phase between displacement, rehabilitation and resettlement needs the greatest support.
7) While providing R&R it is also important that the Government and project developers not only rehabilitate and resettle them but put efforts to improve their living standard, income earning capacities and production level in comparison to their erstwhile settlement.
8) Special resettlement programme have to be designed for the Scheduled Tribes, marginal and small farmers, agricultural labourers.
9) The Rehabilitation and Resettlement programme has to be backed up by a good counseling service by social workers and this should be added with a grievances redressal forum.
10) The Rehabilitation and Resettlement programme should also dictate that the sustenance derived from Common Property Resource should be compensated.

## 6. SUM-UP

1) Discussion reveals that, the problem of internal displacement is a phenomenon which is attached with adverse impact on the life of those who have been displaced. Constitutional protection can be guaranteed to them and any law which is made for them should be made in consonance with the fundamental rights, directive principles of state policy and other provisions of the Constitution.
2) Article 21 of the Constitution is as much applicable for the protection of the rights of the IDPs. The IDPs have a right to life which cannot be deprived except according to the procedure established by law. The moment they are voluntarily or involuntarily displaced from their place of residence, it would constitute a violation of Article 21 of the Constitution.

This Article is one of the most essential Articles for the protection of the human right of IDPs, as there is no proper legislation for their protection. The dynamics of Article 21 can come to the rescue of the IDPs.

3) The requirement of Article 21 of the Constitution has been that the displaced persons must be rehabilitated and resettled in such a manner that they are better off than what they were before their displacement and they enjoy more and better amenities than those they enjoyed before their displacement. Therefore, it is for the government or the agency constructing a dam to consider all relevant aspects including its resource and decide how exactly the displaced persons will be Rehabilitated and Resettled, so as to lead a decent and better life at new location.
4) Right to live, guaranteed in any civilized society implies at least, the right to food, shelter, water, decent environment, education and medical care. These are basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Conventions or under the Constitution of India cannot be exercised without these basic human rights. These are fundamental rights which are essential for a human existence and if these essentials are available then and then only, other rights can be realized.
5) Once the IDPs are deprived of their right to life they remain at the mercy of the state. The state is under an obligation to maintain the displaced family. However, the state, instead of protecting the displaced family, has always involved, in one way or other, in facilitating the displacement of people. When people have been displaced by natural calamity and ethnic /communal violence, the state has never been up to the mark in providing relief and rehabilitation to the families. There have always been lapses on the part of the government. Even in land acquisition the government has acquired land for private purpose which has resulted in displacement of people. But the state has only to pay compensation and nothing more. The

land is acquired from those whose life is dependant on this land resulting in the deprivation of their livelihood under Article 21.

6) It is found that the history of forced eviction and the existing resettlement policies suggest that it is sometime naive to rely on the authority of the national and state government and resettlement officials to exclusively act in the interest of the oustees. This is due to the fact that there is a massive gap between the Resettlement and Rehabilitation policy and actual practice. And also there is a lack of interest on the part of the authorities to sincerely carry out the task of Rehabilitation and Resettlement. It becomes necessary to rehabilitate people in collective manner. Collective resettlement is necessary and favorable so that surroundings for the displaced family does not become alien,

7) The state which is actively involved in the task of acquisition is however, not involved in the process of resettlement and rehabilitation. In fact, for the past few years, there has been no settled law for Rehabilitation and Resettlement of displaced person. The discussion reveals the fact that resettlement is not only an important issue but how it has to be implemented is more important. There has to be an effective mechanism for carrying out the task of relief and rehabilitation if these persons are not deprived of their human rights. They cannot be left to their self, because they are citizens of the country under the protection regime of the state and as good as any other citizens.

8) In the era of globalization we are still governed by the Colonial Land Acquisition Act of 1894. This Act is centered on two concepts of 'eminent domain' and 'public purpose'. These matters are to be determined solely by executive wing. This relation of the state with land acquisition cannot be tamed by the judiciary. The court also holds that eminent domain was the power of the sovereign to take property for public purpose. The term public purpose cannot be strictly defined because what is public purpose

in one set of circumstances may not constitute public purpose for another set of circumstances.

9) Whenever displacement takes place there is a clear negation of the fundamental rights, Directive Principles of State Policy as well as other constitutional directives. It is clear negation of principles of 'Right of Equality'. For example, whenever compensation is provided, the authorities differentiate between influential and non influential beneficiary. Even in providing relief and rehabilitation, the authorities tend to ignore the hardships of the displaced family. Their right to shelter and right to movement are also hampered. Not only this, industrialists have also violated the constitutional provision under Article 244 and Schedule VI of the Constitution. The industrialists have acquired land in Scheduled Areas which is violative of the Constitutional provisions. In this regard, the Samantha judgment has thrown much light on this aspect of the Constitutional provisions.

10) The development paradigm is concentrated on the 'utilitarian principle of maximum happiness for the maximum number'. This aspect totally ignores the community's loss of 'public property' or the common property resource like school building, clubhouse, co-operatives, hospitals, *panchayat-ghars* and so on. Those displaced are deprived of these benefits in a new place and they are not compensated for all the common property loss. It maybe the case that the displaced family may not be welcomed by the host population who may be struggling for their livelihood and who may also have born the burnt of displacement It is also needed that rehabilitation programme should be extended to landless laborers and the people affected due to land acquisition for development projects. The displaced persons should be identified and rehabilitation should be allocated to them. The consideration and entitlement to allotment of land to landless laborers should be as per law, the rules or the policy of the government. The State Government, after considering all relevant facts

including the resources of the state, should work out as to how the Resettlement and Rehabilitation has to be carried out.