

**PROTECTION OF THE RIGHTS OF INTERNALLY DISPLACED
PERSONS: A SOCIO-LEGAL STUDY UNDER THE INDIAN LEGAL
FRAMEWORK WITH SPECIAL REFERENCE TO THE SITUATION
IN SIKKIM**

Thesis Submitted to the University of North Bengal for the
Award of the Degree of Doctor of Philosophy in Law



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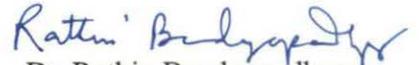
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CERTIFICATE

This is to certify that Shraddha has pursued research work for more than two years and fulfilled the requirement of the Ordinances relating to the Doctor of Philosophy of the University of North Bengal. The topic of her research is: "*Protection of the Rights of Internally Displaced Persons : A Socio-Legal Study under the Indian Legal Framework with Special Reference to the Situation in Sikkim*". She has completed her work and the thesis is ready for submission. To the best of my knowledge and belief, the thesis contains the original work done by the candidate and it has not been submitted by her or any other candidate to this or any other University for any degree previously. In habit and character, the candidate is a fit and proper person for the Ph.D. degree.

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Shraddha .
(Shraddha)

ABBERRATION

AAPSU	: All Arunachal Pradesh Students' Union
AIR	: All India Reporter
AU	: African Union
BNLF	: Bru National Liberation Front
CAT	: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment
CED	: International Convention for the Protection of All Persons against Enforced Disappearance
CEDAW	: The Convention on the Elimination of All Forms of Discrimination against Women, 1979
CERF	: Central Emergency Relief Fund
CIDICO	: City and Industrial Development Corporation
CIREFCA	: International Conference on Central American Refugees
CoE	: Organization for Security and Cooperation in Europe
CPDIA	: Permanent Consultation on Internal Displacement in the Americas
CPRs	: Common Property Resources
CRC	: Convention on the Rights of the Child, 1989
DDA	: Delhi Development Authorities

DHA	: Department of Humanitarian Affair
DRC	: Democratic Republic of Congo
ECOSOC	: United Nations Economic and Social Council
ERC	: Emergency Relief Coordinator
GHRD	: Global Human Rights Defense
HC/RC	: Humanitarian Coordinator/Resident Coordinator
HC	: High Court
IADD	: Inter-Agency Internal Displacement Division
IASC	: Inter-Agency Standing Committee
ICCPR	: International Covenant on Civil and Political Right
ICESCR	: International Covenant on Economic, Social and Cultural Right
ICRC	: International Committee of the Red Cross
IDPs	: Internally Displaced Persons
IHA	: International humanitarian law
IOM	: International Organization for Migration
MCRG	: Mahanirban Calcutta Research Group
NEFA	: North East Frontier Agency
NPRR	: National Policy on Resettlement and Rehabilitation
NSCN	: Nationalist Socialist Council of Nagaland.
OAS	: Organization of American States

OAU	: Organization of African Unity
OCHA	: Office for the Coordinator of Humanitarian Affairs
OHCHR	: Office of the High Commissioner for Human Rights
PA	: Protected Area
PAFs	: Project Affected Families
PESA	: Panchayats (Extension to Scheduled Areas) Act, 1996 R&R Rehabilitation and Resettlement
PIL	: Public Interest Litigation
RSG	: Representative of the Secretary General
SARRED	: Conference on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa
SC	: Supreme Court
SCC	: Supreme Court Cases
SEZ	: Special Economic Zones
SSP	: Sardar Sarovar Project
UDHR	: Universal Declaration of Human Rights
ULFA	: United Liberation Front of Assam
UNC	: United Naga Council
UNDP	: United Nations Development Programme
UNHCR	: United Nations Commission on Human Rights

UNICEF : United Nations International Children's Emergency Fund

UPA : United Progressive Alliance

UPA : Urban Poor Associates

WCD : World Commission of Dams

WFP : World Food Program

WHO : World Health Organization

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7. Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949;
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10. International Convention for the Protection of All Persons against Enforced Disappearances, 1992;
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13. International Covenant on Civil and Political Rights, 16 December 1966;
14. International Covenant on Economic, Social and Cultural Rights, 16 December 1966;
15. London Declaration of International Law Principles on Internally Displaced Persons 2000;
16. The Convention on the Elimination of All Forms of Discrimination against Women, 1979;
17. UN Convention Relating to the Status of Refugees, 1951;
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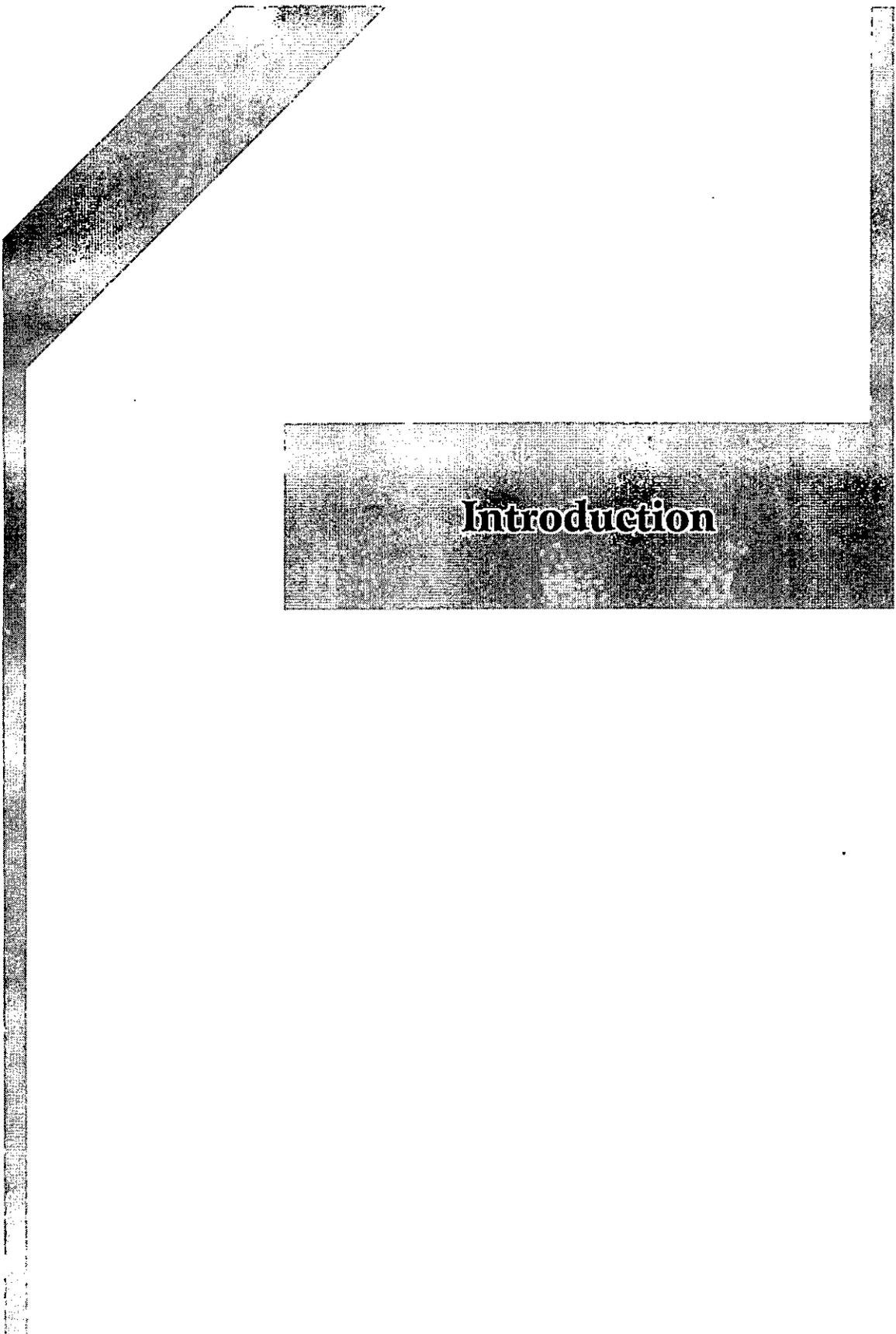
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Introduction

INTRODUCTION

“All human beings have a natural right to an equality of concern and respect, a right they possess not by virtue of birth or characteristic or merit or excellence, but simply as human being with the capacity to make plans and give justice”

Ronald Dworkin

Statement of Problem

Internally Displaced Persons (hereinafter referred to as IDPs) are to be found in every part of the world and with each year passing by, we find million of people being displaced. Displacement is painful; internal displacement causes humanitarian and human rights crisis of major proportion that calls for clear guideline that could be applied to all IDPs regardless of the causes of their displacement, the country concerned or the legal, social, political or military situation. The reality is that the IDPs constitute millions of vulnerable people whose human rights are to be protected and respected.

The displaced populations are in a vulnerable position; refugees within the borders of their own country, state. Unlike refugees, they are never able to move away from the site of conflict and often remain within the state boundaries in which they have to sustain their livelihood in spite of their being prone to exploitation. However, the fact remains alive that the displaced population and refugees have to leave their homes for similar reasons, the only difference being that the former remain within their state but the latter cross an international frontier taking asylum in other country and the doctrine of “non-refoulement” being more applicable to their position.

The problem of displacement has never received the attention it deserves. There is no adequate system of protection and assistance for the

displaced people. No specific legal instrument effectively covers the particular needs of the IDPs and no specific institution is mandated to address those needs. As internally displaced people do not cross international borders they cannot specifically come under the jurisdiction of United Nations High Commissioner for Refugees (UNHCR). Hence, the IDPs need more protection and humanitarian assistance. The absence of any legal instrument creates a vacuum in the protection of human rights of the IDPs under the regime of International Law.

The displaced populations, as stated above, are in a vulnerable position, refugees within the borders of their own country, state. Unlike refugees they are never able to move away from the site of conflict and often remain within the state boundaries in which they have to sustain their livelihood in spite of their being prone to exploitation. However, the fact remains alive that the displaced population and refugees have to leave their homes for similar reasons, the only difference being that the former remain within their state but the latter cross an international frontier taking asylum in another country.

It is necessary to highlight the fact that the refugee regime was established in the rise of World War II with the creation of the United Nations High Commissioner for Refugees (UNHCR) and the acceptance of the 1951 Geneva Convention. For most of the last half of the 20th century, many innocent victims of war and persecution, fitted neatly into this category. It was only in the post Cold War era that the very nature of conflict and the difficulties of the displaced persons began to change and it's not until the closing years of the last century that the world began to appreciate the enormity of the plight of IDPs.

The problem of internal displacement is critical from the perspective of the international community in the sense that they fall within the domestic

jurisdiction and therefore, not covered by the protection normally accorded to those who cross international borders and become refugees. International responses to emergencies involving them, have, in some circumstances been undertaken by agencies like UNHCR and UNICEF, but in the absence of clear directions and an effective international agency for the protection of IDPs, the international response has been ad-hoc and unsatisfactory.

When the United Nations Secretary General, Kofi Annan addressed the General Assembly for the last time in the old millennium, he proposed a radical departure from the way governments and agencies had been handling the problem. Effectively he urged member states to put aside their most jealously guarded powers—sovereignty and the sanctity of national borders—in the higher interests of protecting hapless civilians caught up in war;

“Nothing in the (U.N.) Charter precludes recognition that there are rights beyond borders ... There is no doubt that enforcement action is a difficult step to take. It often goes against political or other interests, but there are universal principles and values which supersede such interests, and the protection of civilians is one of them.”

More than half of this population is in Africa, six million in Sudan alone, the largest single group of displaced persons in the world. There are 3.7 million victims of conflict displaced in Americas, the bulk of them in Colombia, the second largest IDP global population.

As time went by IDP problem exploded. The international agencies realized their task and started to intervene financially, politically and with resources to help the million of people trapped in their own countries. Further initiatives in this field were taken by the appointment of Sudanese lawyer and

diplomat Francis M. Deng as Special Representative of the United Nation Secretary General for IDPs. The Representative after hard dialogue with various governments, lawyers and academics, produced a slim booklet called Guiding Principles on Internal Displacement – a set of 30 recommendations for the protection of this group.

After Mr. Francis M. Deng's term came to an end, Walter Kalin succeeded in 2004 to acknowledge the human rights of the Internally Displaced Persons. Apart from Representative to Secretary General, other United Nations specialized agencies were encouraged to take a “collaborative approach” to help the IDPs. To name a few of such agencies- WHO, UNICEF, WFP, OCHA, IDP Unit, Emergency Relief Coordinator (ERC) etc. However, UNHCR's role in the protection of IDPs has been most controversial and happening. It is said that the mandate of UNHCR is specific and does not cover IDPs. However, the UNHCR has been involved on an ad-hoc basis. It is felt that at times, the situation of refugees and IDPs often overlap and the UNHCR is hesitant to help the IDPs as their refusal of access to the displaced by governments and other insurgents. No matter what, it is always realized that a strong office is needed like UNHCR to assist and help this hapless population.

There are different versions as to how can and when does the situation of internal displacement arise. When are people said to have been displaced. It is the general tendency of politicians, journalists and the general mass to label all civilians as refugees. But where the issue of state sovereignty was involved they earmarked these civilians as IDPs. The Guiding Principles on Internal Displacement defines Internally Displaced Persons as;

“Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence in particular as a result of or in order to avoid the effects of armed

conflict, situations of generalized violence, violations of human rights, or natural or human made disasters and who have not crossed an internationally recognized state border.”

The definition reveals the causes of displacement. These causes range from armed conflict, communal violence, and ethnic cleansing to natural or human made disasters. The term “in particular” indicates that the listed examples are not exhaustive, these are only illustrative example. If we talk of Guiding Principles on Internal Displacement, the basic fact governing it is that it is not a legally binding treaty. It is based on established legal mechanism for aiding the human rights of the displaced people. In times to come, these Principles may slowly acquire the recognition of customary law. The Guiding Principles take particular interest in ensuring that ‘humanitarian assistance is carried out in accordance with the principles of humanity’. In spite of being a non-binding instrument, the Guiding Principles rely on a wide range of instruments including the UDHR, ICCPR, ICECSR, CERD, CEDAW, and CRC. With this, the two Geneva Conventions with their Protocols have also been useful. However, these conventions have their own limitations and restrictions in there applications.

India is also a house of millions of displaced people; it continues to reel under the controversy of displacement. In fact, India continues to reel under the controversy of displacement ever since the advent of Aryan Civilization started. India is under the pressure of communal conflagration, ethnic clashes, border tensions, natural calamity, and development induced displacement. All these causes has caused displacement of million of people. After India became independent, it caused displacement of million of people due to partition of India into Pakistan and India. The partition brought untold misery and an unfortunate story which only the people had to bear. In India conflict induced displacement affects more than half a million people mainly in the regions of

Kashmir and North-East. In addition to this, the recent violation of human rights in Gujarat carnage reveal the failure on the part of the government to protect the rights of people who have been displaced after the violence which took place. It is said that more than 2, 00,000 people were rendered internal refugees, as they fled their houses in fear. There was failure on the part of government in not just refusing relief and rehabilitation but even subverting the few non-government efforts to compensate for covering their failures. The carnage had an enormous impact on the survivors of the violence that they are still displaced and pauperized.

Since independence, thousand of development projects have caused displacement in India. These development projects have been undertaken to enhance our economic growth and to remove poverty and backwardness prevailing in our country. These development projects range from mining projects, parks and wildlife sanctuary, town planning or urbanization, industrial projects, power projects, dams etc. Among all the development projects, the construction of dams has displaced people and raised serious controversy when their impact is taken into consideration. There are a number of dam projects that have been undertaken in India, which have raised brows in the social field. In *N.D.Jayal v Union of India*¹ it was observed;

“The right to development is a declared component of Article 21. The right to development cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. The right to development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights. The word “development” is not only related to the growth of GNP. This idea is also a part of the UN

1. (2004) 9 SCC 3829

Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well being and realization of their full potential. It is an integral part of human rights".

Development is a continuous process which necessarily involves undertaking various kinds of ventures such as dams, factories, mines, roads, railways etc. In most cases such projects necessitate the acquisition of land. However, unlike the industrialized nations, we are a people primarily dependent on agriculture; any available land even in hills and forests is occupied. Therefore any project aimed at the exploitation of land and the natural resources necessitates the displacement of people, a large proportion of who are tribals. Hydel power and irrigation projects displace the largest number of people because they submerge vast tracts of land.²

In recent year most controversial of such dams for power generation has been the Narmada Dam which, as per report and survey, was going to effect the population of three states. Matter pertaining to the dam not only reached the political officials but landed in the Supreme Court. The story of the government was that it was going to reap enormous benefit not only for the three states but was also going to be a proud achievement for the country. The Apex Court also ruled in their favour, thus, causing great hardship to the displaced population. The main contention of the social activists/group was the rehabilitation and resettlement of the displaced people who had to leave their land due to submergence. Survey also revealed the fact that around 2, 50,000

2. Enakshi Ganguly Thukral, "Dams: For Whose Development" Social Action, Vol.38 April-June 1988Pp. 212-230 at p. 212

people would be directly affected and would lose their homes due to reservoir submergence in Gujarat, Maharashtra and M.P.

It is also found that development projects, such as mining and industrial activity are being undertaken in tribal areas which are producing adverse consequence upon the tribal and their lands. The tribal/ adivasi areas are found predominantly in forest areas which are rich in biodiversity, flora and fauna. These forests are now being invaded by project developers to exploit the available natural resources and to displace the innocent forest dwellers residing in these areas. These development projects are undertaken in constant violation of the Fifth Schedule and Article 244 of the Constitution which lay down provisions to protect the rights of tribals. The Schedule has demarcated nine states under the Constitution, who are culturally, linguistically and geographically unique.

Under the Fifth Schedule, the tribals are prohibited to transfer their land to persons other than tribals. However, manipulations from State Governments have caused transfer of tribal lands to non-tribals. The Government is involved in such acquisition and transfer of land. These violations of law came to light in Samantha's case. The case questioned the validity of transfer of tribal land to mining industries by way of lease in transgression of the Fifth Schedule. This led to a long legal battle that went on and got settled in Supreme Court in 1997. The case is one of its kind and important because it has at length dealt with the constitutional right of the adivasis and protection of their lives and livelihoods. Despite this judgment, some State Governments fail to regard and respect the essence of the rights of tribals and issues related to displacement.

Let it not be said of India, that this great Republic in a hurry to develop itself, is devastating the green mother earth and uprooting our tribal population.³

Not only is the Fifth Schedule to the Constitution violated, when development activities are undertaken but the *Panchayats Extension to Schedule Area Act, 1996* is also disregarded. The aim of the Act was to make it compulsory for the Government to consult the Gram Sabha before taking any decision that would affect that particular village/area. However, the irony is that the villagers do not even have knowledge of the Act. They are not informed about the purpose for which land is acquired and what public purpose that project, activity would yield.

The phenomenon of development envisages the idea that it is the only mode through which a State can and would be able to progress and make an identity for itself. But the most gruesome aspect attached with development is displacement which the authorities know but tend to ignore. Such development projects cannot be carried out at the cost of human beings in India wherein majority of people are poor and lack the basic necessity to meet and sustain a living. Development induced displacement strike at basic human rights of the people displaced like food, shelter and movement. The displaced population has to leave behind their land, houses, common property resources and their long cultivated human relation and these issues remain unresolved by the State Government.

The better approach to the issue of “development” would be “sustainable development”, which caters to the need of the present without negotiating the ability of the upcoming generation to satisfy their needs. This approach would indeed be a wholesome benefit. Development should be directed in such a manner that more and more benefit accrues to the less

3 From the Speech of the President of India, K.R.Narayan 25th January 2001

privileged class then to provide for the already existing beneficiaries. This could be ensured only by strict adherence to sustainable development without which life of the coming generations will be jeopardy.

The available resources are to be utilized in such a manner that our coming generation too can enjoy the benefit of that development which consume the resources for improving human health, welfare and comfort. A strategy for conserving or resource-effective use of non-renewable resources is the imperative demand of modern times. Whereas, minimum sustainable development must not endanger the natural system that supports life on earth, constant technological efforts are demanded for resource-effective production so that sacrifice of one ecosystem is counterbalanced or compensated by recreating another system.

Another Act which has been a bone of contention where displacement of masses is concerned is the *Land Acquisition Act, 1894*. The jurisprudence that has developed around this Act is that the state has power to compulsorily acquire land. This Act is centered on two aspects of “eminent domain” and “public purpose”. The sovereign being the owner of property, has the ‘eminent domain’ over all land within its territory which can be taken over for a ‘public purpose’ but what constitutes this ‘public purpose’ is subject to open public debate. The State Legislatures are rampantly sanctioning the deprivation of private land in the name of ‘public purpose’ and are not interested about displacement of people which such acquisition tends to cause. Another moot point attached to land acquisition is compensation which, once made, absolves the state from its responsibility. The state is not under an obligation to provide resettlement and rehabilitation under this Act. Moreover, there are no set of stringent rules which lay down the amount of compensation payable on acquisition of land. The result is that State is following different sets of rules for award of compensation, in accordance with the prevailing circumstances.

Another front on which we need to ponder is the aspect of *Resettlement and Rehabilitation*. The existing rehabilitation policies have their own shortcomings. The most common is that when there is a conflict between the Statute and the Policy, the latter yields to the statute. None can deny the fact that displacement is the inevitable consequence, but at the same time, this displacement also needs to take care of rehabilitation of the displaced population. When the cause of displacement is not human made, the State should in fact be ready to rehabilitate the displaced by providing them relief camp, food, shelter and housing. However, the overall response to the issue of internal displacement, rehabilitation and resettlement has been ad-hoc and incoherent. The relief camps which are established are short of basic necessity which makes their life more miserable. In this regard, it may be mentioned that a large number of displaced families in Kashmir valley have been housed by relatives or in relief camps but they are not happy as these do not cover their needs. Further, in the North-East, the relief camps are in deplorable conditions. Camps for the displaced family across the region are said to lack adequate shelter, food, health care, education and protection. In Gujarat, there are reports of immense trauma among children and women who witnessed brutal atrocities or were witness to the 2002 carnage. The internally displaced Muslims faced destruction of their livelihood in instigating violence. The State Government has failed to address their problem of Rehabilitation and Resettlement causing further displacement in search of a proper livelihood.

The problem of displacement has never received the attention it deserves. There is no adequate legal protection and assistance for the displaced people both in the international as well as national front. No specific legal instrument effectively covers the human right of the IDPs and no specific institution is mandated to address those needs. The IDPs, as nationals within their own country, require above all, respect, for an enforcement by the

authorities, of their human rights as full citizens, including the right to liberty of movement and freedom of residence, whether in the place from which they are displaced or elsewhere.

Therefore, the present study will take into account the development of laws relating to the IDPs in the national and international sphere as well as the role of the judiciary with regard to the protection of human rights of the IDPs.

Another issue which this work tends to highlight is the problem of displacement in Sikkim. Sikkim consists of basically four districts i.e. East District, West District, South District and North District. Sikkim is a small Himalayan State known for its scenic beauty and peacefulness. The State too has seen some stray incidents of displacement induced by natural calamity like landslide, to which the State authorities have acted promptly. Apart from this, displacement induced by any other reasons such as wars, internal strife, communal violence etc., have not been identified and witnessed till date. But, of late, Sikkim has also joined the race (rather, rat race) of development and modernization. The State has an enormous potential to tap the Himalayan Rivers and generate hydroelectricity. Therefore, several national and private projects have made entrance to the State with a view to develop the State and generate electricity. The main aim in undertaking this study is to analyze the situation of displacement in Sikkim and how the issue of displacement is looked upon by the agencies and machinery of the State Government. Since, the population of Sikkim is small and the people are hesitant in responding to the situation of displacement, an opinion survey in the form of structured questionnaire and interview has been undertaken wherein equal number of respondents from all four Districts of Sikkim, representing the different sections of society, have been taken into consideration. On the basis of this opinion survey, the scenario of displacement in the State has been analyzed.

Relevance of the Research on the Topic

The question involved is not just to study the issue of displacement and protecting the human rights of Internally Displaced Persons, but it involves the issue of Rehabilitation and Resettlement (R&R). The main deciding factor for Internally Displaced Person has been Rehabilitation and Resettlement. India has never looked upon this matter seriously and has failed to protect the rights of IDPs. In this context we look into the situation prevailing in Kashmir. Their position has not changed even after independence and the people continue to live in the atmosphere of terror and violation of their rights. We can see the situation prevailing in North-East which has its own cause and consequence attached to displacement, while in recent times, the Gujarat carnage has its own story to tell.

Apart from this, Rehabilitation and Resettlement of development induced displacement has been another herculean task for the Indian Government. In the name of nation development the Government has undertaken numerous development projects which tend to displaced people and cause problem of Rehabilitation and Resettlement which has been a neglected issue. Another aspect which is associated with development projects is acquisition of land under the Land Acquisition Act, 1894. Land is considered to be a necessary corollary for such development project. Only thing incumbent for the authorities after such acquisition is compensation which may be any amount but not any illusory amount. Those depending on such land hesitate to part with their property and when they are forcefully removed they are displaced. Though the State promises to rehabilitate them but to a minimum extent. It would indeed be significant to mention here that the approach of sustainable development and development has to be taken into

consideration and a healthy relationship be further developed between them when the United Nation has specifically outlined the “Right to Development” Convention.

Hence, this research work highlights all the issues which are involved in internal displacement. During the last three decades, the increase in population, urbanization and industrialization has brought havoc on the self cleansing systems provided by nature, as such, it is necessary to keep a balance between nature and man’s activity on Earth. *Barbara Ward* and *Rena Dubos* begin their book titled ‘*Only One Earth*’ by saying:

“Man inhabits two worlds; one is natural world of plants and animals, of soils and airs and waters which preceded him by billions of years and of which he is a part, the other is the world of social institutions and artifacts he build for himself, using his tools and engines, his science and his dreams, to fashion environment, obedient to human purpose and direction.”

Judicial Response to Internal Displacement

The role of the judiciary is to protect fundamental rights. A modern democracy is based on the twin principles of majority rule and the need to protect fundamental rights. According to Lord Styen, “*It is the job of the judiciary to balance the principles ensuring that the government on the basis of the number does not override the fundamental rights*”.

The Indian judiciary has not been directly involved in the protection of the rights of the displaced family. However, in 1996 an issue which was related to protection of the rights of the *Chakmas* came up before the Supreme Court when the *Chakmas* who were faced with life threat, moved the Apex Court. While dealing with this matter the Court held;

“We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law, thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit any body or group of persons, e.g. AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so. The State Government must act impartially and carry out its obligations to safeguard the life, health and well-being of Chakmas residing in the State without being inhibited by local politics.”⁴

Hence the judiciary accords to the State Government to protect its citizens and not to differentiate between two different groups of people. The State needs to look after the displaced people by rehabilitating them in proper and better-off places. If the needs of the displaced persons are not fulfilled then it would be a negation of Article 14 and Article 21 of the Constitution.

The Gujarat High Court in another case⁵ held that;

“The duties of the Government or the Court on occurrence of a disaster or natural calamity of this magnitude are not statutorily regulated. In fact, there is a complete lack of any legislation in this field. Article 21 of the Constitution which guarantees to every citizen protection of his life and personal liberty, is repository of all important human rights which are

4. National Human Rights Commission v State of Arunanchal Pradesh, (1996) 1 SCC 742

5. Bipin Chandra J. Diwan v. State of Gujarat AIR 2008 Guj. 99

essential for a person or a citizen. When there is a natural calamity like earthquakes, floods, fire, cyclones and similar natural hazards, the State, as a guardian of the people, is obliged to provide help, assistance and support to the victims of such natural calamities to help them to save their lives”.

The Court also accepts the view that there is a complete lack of legislation in this field where people have been displaced due to natural calamity. The Court cannot encroach upon the legislature to frame such rules and laws.

There are other catena of cases where not only the issue of displacement has been dealt with, but other material issues associated with displacement has also been dealt with. The role of judiciary has been active and commendable in protecting the rights of IDPs.

Hypothesis

At the turn of this century protecting and upholding the rights of IDPs has indeed become more important and challenging. In this respect when we look at the suffering of IDPs we can come to only one conclusion that the lot of IDPs are in a very poor condition where human rights have no value. Hence, the present study is confined to study the legal regime which is available to them and has its own shortcoming. Therefore the presents work is titled as “*Protection of the Rights of Internally Displaced Persons: A Socio-legal study under the Indian Legal framework with special Reference to the Situation in Sikkim*” on the hypothesis that “**The existing laws and governmental policies have been inadequate and insufficient to address the situation of the vulnerable displaced population and there is an urgent need to take steps to extend legal protection to them.**”

Literature Review

The Guiding Principles on Internal Displacement constitutes the basic and primary law for Internal Displacement which was formulated by Representative of Secretary General after much deliberation in the International Arena. Apart from discussing this Principle, the present work has made an analysis of the following international instrument which has application to the IDPs regime. The list is only illustrative and not exhaustive.

- 1) United Nation Charter;
- 2) Universal Declaration of Human Rights 1948;
- 3) International Covenant on Economic, Social and Cultural Rights, 16 December 1966;
- 4) International Covenant on Civil and Political Rights, 16 December 1966;
- 5) Convention on Elimination of All Forms of Discrimination against Women, 18 December 1979;
- 6) Convention on the Rights of the Child, 20 December 1989;
- 7) Convention Relating to the Status of Refugees, 28 July 1951;
- 8) International Convention for the Protection of All Persons against Enforced Disappearances, 2006;
- 9) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949;
- 10) Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949;
- 11) Geneva Convention Relative to the Treatment of Prisoners of War, 1949; and
- 12) Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949.

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Protocol Additional to the Geneva Convention of 12th August 1949 and Protocol Relating to the Protection of Victims of Non-International Armed Conflicts was adopted on 8th June 1977 and above all The Guiding Principles on Internal Displacement 1997.

In the Indian context, since there is no particular legislation, the study has inter-alia, analyzed other relevant and correlated enactments, such as;

- 1) The Constitution of India;
- 2) The Land Acquisition Act 1894;
- 3) Panchayats (Extension to Schedule Area) Act 1996;
- 4) The Forest (Conservation) Act 1980;
- 5) The Wildlife(Protection) Act 1972; and
- 6) Rehabilitation Policies
- 7) Special Economic Zones (SEZ) Act 2005

In this present work not only the efficacy of the enactments has been examined but they have been critically analyzed as these laws have their own shortcoming and do not prove to be sufficient for IDPs.

Analysis of various landmark judicial pronouncement of the Supreme Court and the High Court has also been made with regard to the protection of the right of Internally Displaced Persons. Cases which have representative character have only been highlighted.

Methodology

The present research may be designated as doctrinaire as well as non-doctrinaire (empirical). The methodology of this research is mainly analytical as the present study intends to examine the efficacy of the existing laws and analyze them to make a critical evaluation of the human rights of the Internally

Displaced Persons. Therefore, this research may also be designated as Action research. The work tends to highlight how the Constitution continues to be the protector of the rights of the displaced people and how the legislators have not drafted a law in this regard.

An opinion survey has also been conducted to understand the position of the persons who are displaced and for this; the researcher has fixed the universe as 200 in total, wherein equal representation of females and males of different age group from four Districts of the State of Sikkim has been taken into account. Survey has been conducted on the basis of structured interview method as well as by supplying structured questionnaire. As such, the sampling design is designated as 'Stratified Random Sampling Method'.

Chapterisation

Accordingly the present study has been divided into five main chapters. Under the chapter "*Conceptual and Historical Perspective of Internally Displaced Persons*" analysis has been made of the historical origin of the IDPs both with reference to international scenario as well as national scenario. Not only this, an attempt has been also been made to define IDPs and how they are different from Refugees. The study makes an effort to distinguish the two categories of people because there is a tendency to club the two together. The chapter also navigates through the different causes of displacement, the most important being, natural calamity, ethnic cleansing, and communal violence and development projects. Under the heading 'Development Induced Displacement', factors causing displacement, like, mining, industrialization, parks and wildlife sanctuary, urbanization and mega dam projects have been discussed as well as the need to strike a balance between development and displacement has been advocated.

Under the chapter, "*Protection of Civil Rights of the Internally Displaced Persons under International Human Rights Instruments*", an effort has been made to discuss the legal protection available to Internally Displaced Persons in the international regime. The role of UNHCR in the protection of human rights of IDPs has been discussed. An attempt has also been made to discuss the contribution of different specialized agencies of the United Nations for the protection of the rights of IDPs. The most important part of the chapter is the study of the Guiding Principles of Internal Displacement. The Guiding Principles is a remarkable achievement in the field of Internal Displacement and hence its study is essential for the purpose of this research.

Similarly, under the chapter, "*The Problem of Internally Displaced Persons in India: An Introspection of Protection Mechanism and Policy Formulation under Indian Law*", the position of IDPs in the national field and the legal protection available to the IDPs to address their cause has been discussed. The chapter discusses the various Constitutional Provisions which can be extended to protect the rights of the displaced population. The chapter also discusses various Acts and Statutes which tend to cause displacement of population, like, The Land Acquisition Act and Forest Act. The chapter attempts to oversee all the Rehabilitation and Resettlement Policies that have existed but failed to fulfill the aspirations of the displaced population, since R&R is one of the basic idea underlying displacements.

In the next chapter, i.e., "*Role of the State Executive and Judicial Organ in Protection of Internally Displaced Persons in India*", the work has been confined to study the role of the executive in protecting the rights of Internally Displaced Persons. The question as to what has been the response of the Government in looking after the displaced population, once they have been displaced, especially in view of the fact that the state is obliged to promote the welfare of its people under the Directive Principles of State Policy, has been

examined. The chapter also studies the contribution of the Indian judiciary in protection of the human rights of IDPs. All vulnerable and exploited section of the society has sought the guidance/interference of the courts in protecting their rights and hence, it becomes important to study the role of Indian judiciary in reference to protecting the right of IDPs.

In the chapter titled, "*Victims of Displacement vis-à-vis Civil Rights of Internally Displaced Persons in Sikkim*", an empirical study has been made with reference to the State of Sikkim. The empirical study would reveal the status of IDPs in the State of Sikkim. The situation has been assessed with the aid of structured interview method and opinion survey in the form of questionnaire framed for the purpose.

The last portion of the work consists of, "*Conclusion and Suggestions*", which not only concludes the study by making an overall evaluation of the work, but also makes some sincere suggestions which may indeed be helpful for reforming the existing laws.

Chapter I

Conceptual and Historical Perspective of Internally Displaced Persons

CHAPTER - I

CONCEPTUAL AND HISTORICAL PERSPECTIVE OF INTERNALLY DISPLACED PERSONS

1. OVERVIEW

Large number of internally displaced persons (hereinafter referred to as IDPs) have become the subject of international debate and also one of the most crucial issue of the present day government, having humanitarian, human rights, political and social implication. The welfare of IDPs has become the subject of international attention because the governments legally accountable for their care and protection are often unable or even unwilling to act on their behalf. At present, the global crises of internal displacement is acute, affecting some 25 million persons in at least 40 countries worldwide, uprooting them from their homes, exposing them to physical and psychological danger and depriving them of basic needs.¹ The fact remains that internal displacement is one of the greatest human tragedies of the modern world. In reality displacement is an act of sudden dissolution of sustenance or source of living of a person and a challenge to re-establish' his environment to regain his means of livelihood. There is a greater willingness on the part of the international community to address the problems of IDPs and to try and develop for the IDPs standards and mechanisms comparable to those that protect and assist the refugees.

The plight of IDPs is a problem that is not directly addressed by any international instrument, thereby contributing to the ad-hoc nature of the international community's response to such crisis. The failure of the international community to address this problem may result in a threat to the internal stability of states, since those persons who are not assisted and protected in their own country often seek such assistance and protection as refugees in other countries.

1. Francis Deng, "Annual Report to the United Nations General Assembly", World News, 24th August 2001, cited from <http://www.unhcr.ch> visited on 15th May 2008

In doing so, they join the already swollen ranks of approximately 17 million refugees.²

2. DEFINING THE INTERNALLY DISPLACED PERSONS

Before we examine the rights and protection of IDPs, it is necessary to focus on whom they are and how an IDP is defined in terms of international law. The need for defining IDPs arises from the fact that IDPs have often been mixed with refugees and vice-versa. However, it is essential to achieve one distinct definition of IDPs, both for achieving an accurate statistics and information and for comprehensive and direct action.

The question of how IDPs should be defined is central to many deliberations. When the United Nations Economic and Social Council (ECOSOC) considered for the first time the issue of IDPs in the year 1990, it relied on the definition contained in the analytical report of the Secretary-General which described the internally displaced persons as-

“Persons who have been forced to flee their homes suddenly or unexpectedly in large number, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country.”³

This definition appears to be a workable definition for the purposes of the mandate of the Representative of the Secretary General. ‘*Coerced movement*’ and ‘*remaining within one’s national borders*’ are for most part, an adequate description of the phenomenon of internal displacement. It also includes the major

2. Report on Refugees, Displaced Persons and Returnees, Prepared by Mr. Jacques Cue nod, Consultant, UNESCOR, 2nd Session, Annex, Provisional Agenda Item 12.UN.Doc.E/109/Add.1(1991).

3. Commission on Human Rights; Analytical Report of the Secretary General on Internally Displaced Persons (E/CN.4/1992/23)

causes of displacement. The definition appears to anticipate that it is to be used for the purpose of defining a category of persons to whom an appropriate agency could provide assistance and protection in an emergency.

Several organizations suggested that the definition in the analytical report was unnecessarily narrow and did not cover certain persons or groups of persons that needed protection. The United States, for example, argued against the quantitative requirement and observed that the definition proposed in the analytical report “*could be interpreted to exclude persons who are internally displaced in small numbers or even individuals who are internally displaced. While the initial study may focus on specific large groups of displaced persons, we would not want to lose sight of the fact that small groups and/or individuals may also suffer from displacement.*”⁴

International Office for Migration also argued against the exclusion of small numbers of persons from the working definition, especially since the rights that are affected are largely individual rights.⁵

World Food Programme also contended that the definition of internally displaced persons contained in the analytical report “*appears to be unnecessarily and inappropriately restrictive. We consider that the words ‘suddenly or unexpectedly’ should be replaced by ‘leave’ and ‘in large numbers’ should be deleted...*”⁶

There is no firm agreement, however, on what should be included in the definition. For example, there are those who would prefer to see the IDPs as persons in a refugee – like situation who have not crossed the borders of their country. The adoption of definition similar to definitions of refugee contained in

4. Note by the Secretary General, Annex: Comprehensive Study Prepared by Mr. Francis M. Deng, Representative of the Secretary General on the Human Rights Issues Related to IDPs. U.N. Doc. E.CN.4/1993/35 at p 11

5. *Ibid* at p. 11

6. *Id.*

the 1969 *Organization of African Unity Convention*⁷ and the 1984 *Cartagena Declaration*⁸ are favoured. Definitions that follow this pattern are the definition used by the *Permanent Consultation on Internal Displacement in the Americas (CPDIA)*.⁹ The emphasis in these definitions is on a presumed element of fear of persecution and on a consequent need for protection from large-scale human rights abuse emanating from internal strife or armed conflict.¹⁰

Some oppose the definition's inclusion of natural disasters because persons so displaced would not qualify as refugees. *Rainer Hofmann, Rapporteur for the International Law Association Committee* suggests that the working definition should not include assistance and protection from the government and because if the displaced had crossed an international barrier, they would not have qualified as refugees since there is no element of persecution. He proposes the following definition:

7. *Organization of African Unity Convention of 10th September 1969 Governing the Specific Aspects of Refugees' Problems in Africa*, United Nations, Treaty Series, vol. 1001, No. 14, 691, entered into force on 20 June 1974. The definition reads as follows:

1) "...the term 'refugee' shall mean every person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership, of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, so unwilling to avail himself of the protection of that country..."

2) The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

8. *The Cartagena Declaration on Refugees* defines refugees in Para 3 as "...who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order."

9. "An IDP is every person who has been forced to migrate within the national territory, abandoning his place of residence or his customary occupation, because his life, physical integrity or freedom has been rendered vulnerable or is threatened due to the existence of any of the following man-caused situations: internal armed conflict, internal disturbances and tensions, widespread violence, massive violations of human rights or other circumstances originating from prior situations that can disturb or disturb drastically public order."

10. The definition proposed by *Richard Plender* reads as follows: "Any person who, owing to well founded fear of persecution or of death, bodily injury, deprivation of the freedom of the person or of basic necessities of life, attributable to military or paramilitary conflict or other circumstances which seriously disrupt the public order, has been forced to leave his or her home but is not able to remain within, or return to, the country of his or her nationality." Quoted in *Report of the Representative of the Secretary - General, Mr. Francis M. Deng*, submitted pursuant to Commission on Human Rights Resolution/CN.4/1995/50 at p. 32

“The internally displaced person shall apply to every person who, owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or owing to external aggression, foreign occupation, armed conflict, internal strife, has been forced to leave his/her habitual residence; and who is within the territory of his/her own country, the government of which is either not willing or not in a position to effectively protect such person against the commitment of such acts of the effects resulting from such acts or situations.”¹¹

Further there have been expectations that the definition could be broadened to incorporate in the definition, displacement caused by “development projects” that cause relocation, as well as the “returned displaced” or those who return to their home areas from abroad but have lost their land, home or means of production. Further the phrase “fleeing in large numbers” has been questioned. The United Nation agencies favour this formulation because it describes the type of tragedy which triggers most acutely the concern of the international community. Others, however, fear that this formulation will exclude individuals fleeing alone or in small numbers, a concern raised by human rights groups, governments, and relief organizations. The problem was highlighted during the mission to Colombia, where the internally displaced were found to flee in small numbers.¹²

Realizing the shortcomings of the definition, in 1998 Francis Deng¹³ presented a revised definition of IDPs to the UN Commission on Human rights,

11. Report of the Representative of the Secretary General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolutions 1993/95 and 1994/68. E/CN.4/1995/50 dated 2 February 1995 at p 80

12. *Ibid* at p. 33

13. Guiding Principles on Internal Displacement, UN Doc /CN.4/1998/53/Add 2, 11 February 1998; *Francis Deng* served the Representative General on Internally Displaced Persons from 1992 to 2004. Thereafter *Walter Kalin* was appointed as Representative of the Human Rights of IDPs on 21st September 2004..

which unanimously adopted a resolution taking note of the Guiding Principles. In addition, the Inter-Agency Standing Committee (IASC), comprising the heads of the major international relief and development agencies, welcomed the Guiding Principles and encouraged its member agencies to share them with their executive boards and staff and to apply them when working with IDPs. The Guiding Principles define IDPs as:

“Persons or groups of persons who have been forced or obliged to flee or leave their homes or place of habitual residence, in particular, as a result of, or in order to avoid the effects of, armed conflicts, situations of generalized violence, violations of human rights or natural or human made disaster, and who have not crossed an internationally recognized state border.”

The defining elements in these sentences are the facts that the movement has been forced or otherwise involuntary and the persons remain within national borders. This is the broadest definition in regional or international level. This definition includes the major causes of displacement; armed conflicts, generalized violence, violations of human rights or natural or man made disasters. In relation to the question as to who qualify as IDPs, the current definition of the Guiding Principle is widely accepted. The wording, “in particular” has been intentionally used to imply that there is still room to include other possible reasons for internal displacement. According to refugee definition, a person fleeing the consequences of a natural catastrophe would not qualify as refugee if he would cross the border. Internal displacement can be said to be such movement of persons that takes place against their own will inside their own county.¹⁴

14. *Maria Stavropolou*, “Displacement and Human rights: Reflections on UN Practice”, Human Rights Quarterly, Vol. 20, No. 3, 1998, pp 514-554, at p. 518. The author in this article has developed a glossary and discussed various terms used in the context of displacement.

Another tool for identifying or defining IDPs is the *London Declaration of International Law Principles on Internally Displaced Persons 2000*, according to which, the term ‘Internally Displaced Persons’ refers to;

“persons or groups of persons who have been forced to flee or leave their homes or places of habitual residence as a result of armed conflicts, internal strife or systematic violations of human rights, and who have not crossed an internationally recognized State border”.¹⁵

This Declaration applies to persons displaced due to any reason. However, after many deliberations the Committee deleted ‘disasters’ from the IDP definition. The first reason was that people leaving their homes or places of habitual residence as a result of “natural or man made disasters” face only part of the problems encountered by refugees and persons internally displaced for political–military-human rights reasons. Broadly speaking, the disaster-related problems lie in the field of economic and social right, rather than civil and political rights. IDPs unencumbered by civil and political problems do not find themselves in a refugee-like situation. Since they can presumably enjoy the full protection and assistance of their own government, the basis for international concern is greatly diminished.¹⁶

Further, it speaks of participation and cooperation of de facto authorities in the implementation of the principles of this Declaration. *Article 1 (2)* of the Declaration provides thus;

“This Declaration applies to persons internally displaced by whatever reasons ...whenever the responsible State or de facto

15. Article 1(1) of the *London Declaration of International law Principles on Internally Displaced Persons 2000*

16 Report of the Committee on Internally Displaced Persons of the International Law Association (London Conference 2000) www.unhcr.org/refworld/docid/42808f3b4.html, visited on 24/5/2009

authority fails, for reasons that violate fundamental human rights, to protect and assist those victims.”

Further Article 2 (3) affirms;

“By de facto authorities are meant any non-state entities in effective control of parts of a State’s territory which are parties to an armed conflict and/or internal strife or have generated or hosted internally displaced person.”

The definition of the ‘*de facto authorities*’ represents an extension of its scope of application to such authorities as well as States. The Committee wishes to stress that nothing in the present text should be interpreted as preventing State, de fact authorities, the United Nations and other international organizations, both governmental (including regional) and NGOs, from extending humanitarian assistance to victim of natural or man-made disasters.¹⁷

3. DEFINING REFUGEES

After having defined IDPs we need to define the term refugee which would make our task easier of then distinguishing between the two groups of people. *Refugees* are defined under *the Refugee Convention 1951* as;

*“person who, owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”*¹⁸

17. *Ibid.* at p. 6

18. Article 1, of *Refugee Convention, 1951*

In addition to this conventional definition, several regional instruments have defined the term 'refugee'. In 1969, the *Organization of African Unity (OAU)* formally recognized the need for an expanded definition of refugee within the African context. The definition has applied the term 'refugee' to every person who, due to fear of external aggression, occupation, foreign dominations, is compelled to leave his place of habitual residence in order to seek refuge¹⁹.

Further, in 1984, ten Central American States signed the *Cartagena Declaration on Refugees* which, in non-binding language, extended the definition of *refugee* beyond the 1951 Convention. The definition reveals that the concept of refugee is closely related to two issues; one is being outside one's country and the other having fled due to well founded fear of persecution.²⁰

4. THE NEED TO DISTINGUISH IDPs AND REFUGEES

After having discussed the definition of Refugees and IDPs, the question arises as to what is then the distinction between a 'refugee' and a person who has been internally displaced. Internally Displaced Persons differ from refugees under international law in terms of protection mechanisms. Internally displaced persons, under the definition of the *Guiding Principles* are not simply 'internal refugees', differing only from their international counterparts by a fluke of geography. IDPs comprise a broader classification of person, which includes not only those who generally would be considered refugees if they crossed an international border but also those who are, in particular, displaced by natural disaster or arbitrarily by large-scale development projects. The nature of their displacement puts IDPs and refugees alike in situations of vulnerability and entitles each population to the enjoyment of all relevant guarantees of human rights and humanitarian law. The

19. *Supra.* note 7

20. *Supra.* note 8

specific laws that apply to both these group of persons, however, are not always the same.²¹

Refugees are protected under the *Refugees Convention 1951*, which provides them a special status under international law. The definition reveals that the concept of refugee is closely related to two issues; being outside one's country and having fled due to well-founded fear of persecution.²² It can be argued that refugees and IDPs should only be treated 'equally' if their factual legal situations were comparable and that is not the case. Although these two categories of persons often face same types of threats and suffer from same types of violations of their human rights and freedoms, the separating factor is still the issue of actually crossing the border. Because IDPs are displaced within the borders of their own state, they are distinct from refugees. However, from a legal perspective, there seems no need to create a new legal status for the internally displaced. So, one could argue that the definition of internally displaced persons does not exist to give them a special status under international law but merely to ensure that their specific needs are adequately addressed.²³ Hence, it can be opined that they are refugees in all but name.

Like refugees, the displaced are victims of civil wars, internal strife, communal violence, forced relocation and gross violation of human rights; they lack food, shelter, clothing, safety, basic health care and education. Vulnerable and unable to find places of safety, IDPs often suffer persistent violations of fundamental human rights and their needs go unmet.²⁴ For refugees, there is the international protective mechanism under the UNHCR mandate and a specific

21. W. Courtland Robinson, *"Risk, Rights, the Causes , Consequences, and Challenges of Development Induced Displacement"* The Brookings Institution-SAIS Project on Internal Displacement, www.brooking.edu/research visited on 31-12-07 at p. 5

22. *Supra.* note 18

23. Nils Geissler, *"The International Protection of Internally Displaced Persons"*, International Journal of Refugee Law, Vol.11, No. 3, (1999), Pp. 451-478 at p. 452

24. Boutros Boutros Ghali, *"Analytical report of the Secretary General, on Internally Displaced Persons"*, E/CN.4/1992/23 (United Nations, 1992), Para. 6

body of law to address their needs. The needs of IDPs remain to be addressed largely with general provisions of human rights law and humanitarian law, and through ad-hoc operational measures and mechanism. Therefore, none can deny the fact that despite the intensity of the scope of internal displacement, there is no adequate mechanism to address the protection and assistance of IDPs.

The term internally displaced persons are of descriptive character and it does not confer any rights specific to the situation of IDPs unlike the status of refugee. It is necessary that a line between IDPs and refugees must be drawn in certain situations. IDPs were not confined into a “closed status” because it could potentially undermine the exercise of their human rights in a broader manner.²⁵

On the one hand, IDPs remain in their own country without effective protection or assistance, because their own government is supposed to protect them and yet the same government can, in fact, be the persecutor.

Another feature which distinguishes IDPs from refugees is the doctrine of ‘*non-refoulement*’ (*non-rejection at the frontier*) which does not apply to the other group who are not interested in leaving their own state but are forced to leave due to certain reasons.

Lastly, another situation which distinguishes an IDP from refugee is that displacement involves element of coercion and non-coercion. Displacement which takes place due to dam projects or urban renewal scheme have element of coercion in it. But where displacement is the result of natural disaster, element of coercion is not involved. However, with regard to refugees the element of coercion is always involved.

25. Volker Turk and Francis Nicholson, “*Refugee protection in International law: An Overall Perspective*”, in Erika Feller, Volker Turk and Francis Nicholson (Eds.), *Refugee Protection in International Law*, UNHCR’S Global Consultation on International Protection ,Cambridge University Press, 2003. Pp 3-45 at p. 27

Another minor difference between IDP and refugee is that for IDPs the range of protection is very narrow. The IDPs are not entitled to any international attention but in case of refugee they gather the support of international law. They are entitled to protection under the Refugee Convention regime whereas the IDPs are entitled to protection and assistance of the Guiding Principles on Internal Displacement.

5. GENESIS OF INTERNAL DISPLACEMENT

After having discussed the definition of IDPs and having distinguished between IDPs and Refugees, a brief historical background of IDPs is needed. There is very little literature with regard to the historical background of IDPs. However, for the present purpose it can be divided into two categories International Perspective and Indian Perspective.

A. International Perspective

The United Nations has drawn the attention of the nations to the crisis of internal displacement. Apart from the nations it has drawn the attention of many organizations to the issue of displacement. It has appointed mandate to address their needs. In this regard, it is worth mentioning that the *Refugee Convention 1951* does not apply to IDPs. Unlike refugees, IDPs do not benefit from a specific international regime, such as, UN agencies, human rights organizations and international and local NGOs, who are exclusively devoted to ensuring their welfare, protection, assistance and development aid in a conflict situation.

Recognition of internal displacement emerged gradually through the late 1980s and became prominent on the international agenda in the 1990s. Starting in the late 1980s, the collapse of the former Soviet Union and the end of the Cold

War heralded a new dawn for many in the global community premised on the ostensible and peaceful transition to democratic rule coupled with material prosperity grounded on free trade. The main reasons for this attention were the growing number of conflicts causing internal displacement after the end of the Cold War and an increasingly strict international migration regime. The phenomenon of internal displacement, however, is not new. According to United Nations' Office for the Coordination of Humanitarian Affairs (OCHA), the Greek government argued to the United Nations General Assembly in 1949 that people displaced internally by war should have the same access to international aid as refugees, even if they did not need international protection. India and Pakistan repeated this argument after partition.²⁶

One of the first situations of large scale internal displacement to attract international concern was that of Sudan in the early 1970s. Following this was the *1972 Addis Ababa Agreement*, which put an end to protracted civil war and provided for the return and resettlement of refugees and IDPs. The Economic and Social Council requested the UNHCR to provide humanitarian assistance on behalf of these populations. Even during this period, the expression 'Internally Displaced Persons' was not yet in use. Few months later the General Assembly encouraged UNHCR to pursue its effort on behalf of refugees and 'other displaced persons', referring here to internally displaced persons in Sudan. Beyond Sudan, what really put the issue on the international agenda was the change of political circumstances.

The first United Nations initiative to raise the question of institutionalized assistance to IDPs was launched by the International Conference on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa (SARRED), held at Oslo in August 1988. The 1989 International Conference on Central American Refugees (CIREFCA), held in Guatemala, also focused attention on the plight of

26. *Guiding Principles on Internal Displacement*. Cited from, <http://www.reliefweb.int/ocha-ol>, visited on 20.12.2008

the internally displaced. The Economic and Social Council was seized with the issue a year later, adopting resolution 1990/78 of 27 July 1990 in which it requested the Secretary-General "to initiate a system-wide review to assess the experience and capacity of various organizations, in the coordination of assistance to all refugees, displaced persons and returnees, and the full spectrum of their needs and, on the basis of such a review, "to recommend ways of maximizing cooperation and coordination among the various organizations of the United Nations system" in responding to the problems of refugees, displaced persons and returnees.²⁷

An estimated 25 million people scattered across the regions of Africa, Asia, Europe and Latin America, due to which, one of the most acute and growing crisis was beginning to gain recognition as a global socio-political issue. The easing of cold war tensions opened new possibilities for assistance to the IDPs, but how much such assistance should be delivered remained unclear. The institutional developments that followed during 1990s were driven by some major crisis. 'Operation - Provide Comfort' in Northern Iraq was a turning point for international activism and the debacles of Somalia and Balkan Wars highlight the need for progress in developing international mechanisms for the protection of the IDPs.²⁸

Further, in the early 1990s, while scholarly attention to the problem of internal displacement was in its infancy, several United Nations agencies and international organizations outside the UN framework have been instrumental in placing the crisis of internal displacement on the global political agenda. In 1992, the United Nations Commission on Human Rights (UNCHR) asked UN Secretary-General Boutros Boutros-Ghali to appoint a special representative to the newly created post of Special Representative to the UN Secretary-General for

27. Note by the Secretary General, Annex: Comprehensive Study Prepared by Mr. Francis M.Deng, Representative of the Secretary General on the Human Rights Issues Related to IDPs. U.N. Doc. E.CN.4/1993/35 at p 4

28. *Supra*. note 25

IDPs. Despite this voluntary position, Special Representative did not have a mandate to politically and economically assist this category of people. In stead, within the UN system, only the UN High Commissioner for Refugees (UNHCR) has ever acted on behalf of IDPs in situations when they have been commingled with returning refugees.²⁹

The first aspect of his mandate is to analyze the normative framework for protection of IDPs. His hard work led to the first drafting of the ‘Compilation and Analysis of Legal Norms’ which culminated in the formulation of the Guiding Principles on Internal Displacement. Secondly, his mandate is to review the existing institutional framework and seek means of improving coordination between the various UN agencies. The third and final aspect of his mandate consists of on – site visits. IDPs not only outnumber, refugees, they also raise some of the most urgent human rights and humanitarian problem of our time and present a serious challenge to prevailing conceptions of sovereignty and intervention. They can be found on all continents, Africa is the region/continent worst affected with more than 13 million IDPs. Rebel activities and inter-communal violence were key factors in the displacement of civilians; although in several countries government armies or proxy forces also forced people to flee. In Latin America, the bloody conflict in Colombia with its complex displacement patterns still accounted for nearly all new displacements. The region also continued to struggle to find durable solutions for people uprooted in conflicts that had long ended. In Peru and Guatemala, the return and reintegration of the displaced was agreed in mid – 1990s, but these agreements have never been fully implemented. In Europe, the number of IDPs has decreased steadily during the past years, but there are still 3 million IDPs most of them in Eastern Europe and the Balkans and the majority displaced for many years. In 2003, the Russian Federation (Chechnya) was the only country in Europe where people were still at

29. Aaron Hale, “*Internal Displacement in Guatemala*”, International Third World Studies Journal and Review, Vol. XV, 2004 Pp. 1-9, at p. 1

risk of being forcibly displaced by ongoing fight. About half of the 2.1 million IDPs from Middle East, in Israel, Syria and Lebanon, have been displaced for two decades or longer. The largest group of IDPs in this region lives in Iraq. Conflict and instability continues to generate internal displacement with the violation of their human rights.³⁰

B. Indian Perspective

Displacement is a global phenomenon rooted in history. Forced displacement of people in India is also not new. Displacements on large scale have taken place in different periods of history. The displacement of tribal communities from their land by better skilled “Aryan Invaders” pushing them into the interior forests is well – known. But the incidence of such displacement was small and the low density of population permitted the displaced people to retreat to the unoccupied land. It was, however, the colonial rule which set in motion unprecedented displacement estimated at around 3.5 crores.³¹

In the early years of independence, not only the partition caused bloodshed and destruction of human being and properties but it caused displacement of lakhs of people as they did not know where they belonged. In India, refugees were divided into three categories.

External Refugees

- Hindu Muslim Refugees 1947
- Tibetans 1952
- N.E. refugees across the border of Burma;

30. IDMC 2004-2005, cited from <http://www.internal-displacement.org>, visited on 19.12.2008

31. Gurcharan Singh, “*Human Rights and J & K Refugees of 1947 Partition*”, in *Human Rights in India: Problems and Perspectives*, B.P.Singh Edition, Deep and Deep Publications, New Delhi (1996), Pp. 566-581 at p. 568

- Nepalese;
- 1971-Bangladeshi-Behari Muslims (Muhajees);
- 1982-Sri Lankans;
- Afghanistan-Political disturbances and Russian withdrawal.

Internal Refugees

- Assamese and N.E. states.
- Kashmiri Migrants from Kashmir due to terrorist activities.
- Displaced persons of 1971 war from Chamb under Shimla agreement.
- Muslims evacuees mainly of border districts of Rajouri and Poonch who were displaced during. Indo-Pak wars.

Short Term Refugees (Refugees due to Political and Religious Violence):

- Ram Janam Bhoomi Babri Masjit
- Sikh-Hindu (Punjab 1982)
- Naxilite Impact-West Bengal and Hyderabad.
- Racial Migration-Domicile Problem.
- Seasonal Migration e.g. Gujjars, Bakarwal, Rajasthani – Sansi, Bazigars, Nepalese Bihari, Harvest, Bhaias of U.P.

In India, the partition of British India and the emergence of the independent states and Pakistan in 1947 are linked to the largest recorded population dislocation in history. The two-nation theory negotiated by competing nationalist movement led by the congress Party and the Muslim League produced a territorial settlement linked to the principle of religious majoritarianism. The partition of British India and the emergence of the independent states of India and Pakistan in 1947, is linked to the largest recorded population dislocation in history. The two-nation solution negotiated by the competing nationalist movements led by the Congress Party and the Muslim League produced a

territorial settlement linked to the principle of religious majoritarianism. Pakistan came to consist of the North West Frontier Provinces, Baluchistan, Sind, and West Punjab, separated by nearly thousand miles from East Bengal and the Sylhet district of Assam. Though two-third of India's Muslims became Pakistanis; both nations included numerically large yet vulnerable minorities. In Punjab, nearly 12 million Sikhs, Muslims and Hindus were displaced and 1 million lost their lives during the so-called "exchange of populations". In the case of Bengal however, Partition was predated by sectarian violence in 1946 which spurred the initial two-way movement of Hindus to West Bengal and Muslims to East Pakistan, and unlike the situation in Punjab, the flight of Hindu refugees eventually overtook that of Muslims and has continued sporadically through the brutal civil war in Pakistan in 1971 and the birth of Bangladesh into the present. Not only is Partition associated with national and personal trauma for many Bengalis, the presence of over 8 million refugees from former East Bengal irrevocably shaped West Bengal's political economy and popular imagination and is seen to be symptomatic of Bengali decline.

The Government of India's conservative and disputed schematization of population dislocation from East Pakistan over nearly a quarter century helps situate the refugees' own assessment of their predicament. Among other things, it does not include the 9 million Hindu and Muslim refugees from the war of 1970-71 in East Pakistan. The United Nations estimated that the majority of these refugees returned home--an assessment disputed by the Government of West Bengal with regard to the displaced Hindus (Government of West Bengal 1980).

Initially, the Government of India attempted to discourage the migration of East Bengalis to India by exhorting them to pledge their allegiance to Pakistan, offering temporary and limited relief rather than permanent rehabilitation and signing a series of agreements with Pakistan aimed at assuring the minorities of security and preventing mass migration. But as the migrations became a persistent and irreversible reality, the state attempted to regulate them. The border in the

east was left open until 1952 to give people time to decide on their citizenship, and then passports were introduced to reduce further migration from East Pakistan. As the population movement continued, an additional barrier of permits and migration certificates was instituted in 1956.

Then from 1958-64, the Indian government tried to deter East Bengali Hindu migrants by refusing to recognize them as "refugees" and thereby making them ineligible for relief and rehabilitation assistance. This changed with the riots of 1964 in East Pakistan, and the displaced were given permanent refuge in India through the civil war of 1970-71 in Pakistan after which East Pakistan seceded as the independent state of Bangladesh.

Post-1971 migrants were declared ineligible for settlement assistance in India, a "deterrence" that seems not to have affected migration in subsequent decades. Border watchers seem agreed that displacement in the 1980s was mainly due to economic privation in Bangladesh and included Hindus and Muslims, while the early 1990s saw a rise in the numbers of East Bengali Hindu victims of communal violence following the demolition of the medieval Babri mosque in India by Hindu nationalists. The chart is interesting, not only because it reflects the Indian state's failure to stop the migration of East Bengalis, but a cursory reading of the causes of displacement indexes the latter to diplomatic ruptures in Indo-Pakistan relations, tensions between East and West Pakistan which finally culminated in the east's separatist movement for Bangladesh, and conflicts between Hindus and Muslims in each Nation which sparked retaliatory violence in the neighboring country. This is a representation of events which while not disputed in its details by the East Bengali Hindus refugees, is linked by them to one ordinary cause--Partition on religious lines--which, they contend, made all Muslims who migrate to India from Bangladesh are labeled "infiltrators" by the Indian state. East Bengali Hindus homeless in a Muslim dominated nation. Refugee rehabilitation was designated a national responsibility by the postcolonial Indian government and Prime Minister Jawaharlal Nehru explained in a public

speech that this was not merely a humanitarian act on the part of the state for the welfare of the displaced alone, but a pragmatic one.

Apart from this, in the early years of Independence (1947), there was little protest against big dams in India. The 1950s witnessed the construction of large river valley projects like the Bhakra Nagal in Punjab, the Damodar Valley Projects in Bihar and West Bengal, the Tungabhadra project in Andhra Pradesh – Karnataka border and the Rihand Dam in Uttar Pradesh, etc. Each of these projects ousted thousands of people, and yet there was very little opposition. Of late, there have been some significant studies explaining why internal displacement was not regarded as a problem during the early years of Independence. In contrast to the Narmada case; there was no reaction to the Bhakra in Punjab. Interestingly after almost four decades, the Bhakra Dam oustees are finally mobilizing themselves through organization such as the All-Party Bhakra Oustees rights protection Committee, the Bilaspur River Development Committee and the All-Party Citizens' Action Committee. This may be attributed to a combination of at least three major factors.

First of all, strong nationalist consensus could be built around the discourse that looked upon the construction of dams as a prerequisite for development. Displacement was seen as an inevitable corollary of development and the priority was given to easing the economic impact of displacement through compensation.³² During the last fifty years some 3,300 big dams have been built in India. Jawaharlal Nehru, India's first Prime Minister, for example, described the dams as 'the temples of modern India'.

Secondly, as the cost of displacement was off set by the gains consolidated by the green revolution that enormously augmented the agricultural productivity

32. Tapan Kumar Chattopadhyay, *India and the Ecology Question Confrontation and Reconstruction* (Calcutta: Ekushe, 1999) 31, quoted in Samir Kumar Das, *India: Homelessness at Home*, in Paula Banarjee, Sabyasachi Basu Ray Choudhury, Samir Kumar Das, (Eds.), *Internal Displacement in South Asia: The relevance of the UN Guiding Principles*. Sage Publication, New Delhi, 2005 at p 121

especially during the initial years, there was hardly any protest against displacement.³³

Thirdly, it would be wrong to say that there was no protest whatsoever against the construction of big dams, for example, in March 1946, when the foundation stone of the Hirakud Dam was laid, the peasants of Sambalpur district of Orissa who were to be displaced, organized anti-dam demonstrations. But the agitation fizzled out in part, due to the co-option of its leaders by the Congress party (that led India to Independence) and the administration.³⁴

As the nationalist consensus started getting eroded over the years, the development model that was hitherto almost uncritically accepted by the political elite faced criticisms from some quarters of the Indian public. Internal displacement is no longer seen as unavoidable problem of national development; it started being seen as a problem that could surely be taken care of, if not completely avoided, had an alternative model of development been followed in India.³⁵

On the one hand, we know of cases where an ethnic community lays its exclusive claim to what it defines as its 'homeland' on the ground that it is the 'original inhabitant' of the land. And by the same claim, the outsiders have no right to settle there. Mention here must be made of North-East India, India's North-East, sandwiched between China, Bhutan, Bangladesh and Burma is where

33. Paramjit Singh J, "Response to Dams and Displacement in two Indian States", Asian Survey (September 1997) 840-51, quoted in Samir Kumar Das, "India: Homelessness at Home" in Paula Banarjee, Sabyasachi Basu Ray Choudhury, Samir Kumar Das, (Eds.) "Internal Displacement in South Asia; The Relevance of the UN Guiding Principles", Sage Publication, New Delhi, 2005 at p. 211

34. Madhab Gadgil and Ramchandra Guha, "Ecology and Equity, the Use and Abuse of Nature in Contemporary India". (New Delhi, Penguin, 1995) 71 quoted in Samir Kumar Das, "India: Homelessness at Home", in Paula Banarjee, Sabyasachi Basu Ray Choudhury, Samir Kumar Das, (Eds.) "Internal Displacement in South Asia; The Relevance of the UN Guiding Principles", Sage Publication, New Delhi, 2005 at p. 211

35. Samir Kumar Das, "India: Homelessness at Home", in Paula Banarjee, Sabyasachi Basu Ray Choudhury, Samir Kumar Das, (Eds.) "Internal Displacement in South Asia; The Relevance of the UN Guiding Principles", Sage Publication, New Delhi, 2005 at p. 211

India looks less and less India and more and more like the highlands of Southeast Asia. This is one area of Post-colonial India that became to be incorporated into a centralized sub continental empire only during British rule. All previous attempts, by other pre-British empire of mainland India, to take over areas that currently constitute the country's northeast had failed. Even the mighty Mughals had to retreat from Assam after losing the battle of Saraighat to the legendry Ahom General Lachit Barphukan. That victory inspired present day Assamese Separatists who argue that 'they were never part of India and that they' are capable of throwing out the Indian occupation forces. The first major displacement in post-colonial northeast India was reported from Assam, where religious riots displaced around 100,000 Muslims in post-Partition riots. There has been the displacement of 60,000 from Gopalpur district, 20,000 from Kamrup district, 14,000 from Cachar district and 6,000 from Darrang district. But almost the entire displaced population that migrated to the then East Pakistan returned to Assam after the Nehru-Liaquat Pact in 1950.³⁶

Apart from this the largest displacement situation stems from the fighting between Bodos and Santhals which erupted in the early 1990s and displaced an estimated 2, 50,000 persons. As of August 2004, more than 2, 30,000 people were still; staying in relief camps in three districts of Western Assam. Their situation is desperate, as they have to survive without any help from local, national or international organizations.³⁷

36. Monirul Hussain, "*Post-colonial state, Identity Movements and Internal Displacement in Northeast India*", Paper presented to International Conference on Forced Migration in South Asian region organized by the Centre for Refugee Studies, Jadavpur University, 20-22 April 2000. Quoted in Subhir Bhaumik, "*India's Northeast :Nobody's People in No-Man's-Land*" in Paula Banarjee, Sabyasachi Basu Ray Choudhury, Samir Kumar Das, (Eds.), "*Internal Displacement in South Asia; The relevance of the UN Guiding Principles*", Sage Publication, New Delhi, 2005 at p. 150

37. MARG, December 2006 at p. 1084, quoted in "*India, Large number of IDPs are unassisted and in need of protection; A profile of the internal displacement situation*". 3rd May, 2007. www.internal-displacement.org. visited on 4-8-2007 at p. 12

Major waves of displacement have also occurred in Assam on January 2007 where a large number of Hindi-speaking migrant workers fled Assam following violent attacks by ULFA, an extremist outfit demanding separate state.

Manipur has witnessed substantial internal displacement and ethnic relocation in the wake of the Naga-Kuki and the Kuki Paite feuds in the 1990s that caused nearly 700 deaths and destruction of property worth million of rupees. There were also riots between the Hindu Meitei's and the ethnic Manipure Pangal Muslims in 1993. The Nationalist Socialist Council of Nagaland (NSCN)'s vision of an independent homeland –Naga Lim, includes all but on of the five hill districts of Manipur. Churachandpur where Kukis hold more than 95 percent of the landholding has never been part of their Naglim demand. The United Naga Council (UNC) of Manipur, which has close relations with the NSCN's Issac-Muivah faction, that is active in Manipur and is the stronger of the two NSCN factions, issued a quit notice to all Kukis who lived in the state new militia, Naga Lim guards, formed by Nagas of Manipur as a back-up force to the NSCN, came into existence and they started rampant attacks against the Kukis. The worst carnage occurred at Zopui, a remote hill village north of the state's capital Imphal, where 87 Kuki males were beheaded one night.³⁸ The Kukis are still reported to be living in camp-like conditions and receiving assistance from local community based organization, one problem hindering their return is reportedly a massive planting of landmines in their home areas by the UNLF. In a serious incident, more than 400 displaced people were captured and abducted across the border to Burma by UNLF militants, but they have reportedly been taken back again.³⁹

38. Subhir Bhaumik, *India's Northeast: Nobody's People in No-Man's-Land*, in Paula Banarjee, Sabyasachi Basu Ray Choudhury, Samir Kumar Das, (Eds.), *Internal Displacement in South Asia: The relevance of the UN Guiding Principles*. Sage Publication, New Delhi, 2005 at p. 161

39. SIRHRO, e-mail April 2007 quoted in *India, Large number of IDPs are unassisted and in need of protection; A profile of the internal displacement situation*. 3rd May 2007, at p. 13 cited from www.internal-displacement.org. Visited on 4-2-2007

In neighboring Mizoram, the majority Christian Mizos had reportedly unleashed a wave of terror against the minority Reang in 1998. From October that year, hundreds of Reang started fleeing into neighboring Tripura complaining of persecution. The Refugees spoke of villages burnt down, Reang women raped and men beaten up and killed. The Reang militant group, which calls itself the Bru National Liberation Front or the BNLNF started attacking Mizoram police and that further [provoked the Mizos to commit atrocities on the Reang who straddle Mizoram's western border with Tripura. The Tripura government says that 30,900 Reang belonging to 6,859 families have fled to Tripura during the last three years. But the Mizoram Government refuses to accept them. They say that the Tripura Government has not given details of residence of 10,435 people belonging to 2,075 families; therefore their claim to be residents of Mizoram is untenable.⁴⁰

The Mizos themselves were victims of large-scale displacement in the late 1960s when the Indian Army started Malaysia and Vietnam-style village regrouping to contain the MNF rebels. Nearly 45,000 Mizos from 109 villages were herded into 18 group centers guarded by a military company (120 soldiers) in the first phase of the regrouping. In the second phase, another 87,000 Mizos were grouped in 84 Regrouping Centers. The regrouping forced the Mizos farmers away from their lands, as he was forced to settle in roadside locations guarded by the army. The final phase of the regrouping could not be carried out due to a stay order issued by the Guwahati High Court.⁴¹ Unlike in Mizoram and Manipur, the conflict between the indigenous tribes of Arunachal Pradesh, the *Chakmas* and *Hajongs* refugees has been simmering but has not exploded into a bloody feud. The *Chakmas* and the *Hajongs* fled from what was then East Pakistan to escape persecution and displacement in the mid 1960's. Nearly 15,000

40. *Ibid.*

41. Lianzela, "*Internally Displaced Person In Mizoram*", in C.J. Thoma Ed. "*Dimension of Displaced Persons in Northeast India*", Regency Publication, Subhir Bhaumik, "India's Northeast: Nobody's People in No-Man's-Land", *Internal Displacement in South Asia; The relevance of the UN Guiding Principles*", Paula Banarjee, Sabyasachi Basu Ray Chaudhury, Samir Kumar Das Ed. Sage Publication, New Delhi, 2005 at p. 165

of them belonging to 2,748 families were settled over 10,799 acres of land in Lohit, Subansire and Tirap districts of Arunachal Pradesh (which was then centrally administered as North East Frontier Agency or NEFA). The indigenous tribes like the *Adis* and the *Nishis* resent the settlement of the *Chakmas* and the *Hajongs* who now number around 65,000. The indigenous tribes are upset with the Supreme Court order of January 1996⁴² that directs the state government to forward applications of the refugees to the federal government for grant of citizenship. The AAPSU and other local groups argue they have no objection if the *Chakmas* and the *Hajongs* are granted citizenship so long as they are shifted elsewhere in India, because they fear that so many settlers would upset the power equations and make the *Chakmas* and *Hajongs* a decisive factor in the legislative politics of the state.⁴³

6. CAUSES OF DISPLACEMENT

Having discussed the definition of 'internally displaced persons' the questions arises as to what are the causes of displacement. The analytical report of the Secretary-General on IDPs identified six causes of displacement: armed conflict and internal strife, forced relocation, communal violence, natural disasters, ecological disasters and the systematic violation of human rights.⁴⁴

Armed conflict, with the resulting violations of human rights, is by far the most pervasive cause of internal displacement. The replies of Egypt and Rwanda and those of DHA, WFP, ICRC, and several NGOs all pointed to armed conflict as the leading antecedent to displacement. Often mass dislocation occurs as groups seek to escape from physical danger and search for security and reliable

42. National Human Rights Commission V. State of Arunachal Pradesh (1996) 1 SCC 742

43. *Supra.* note 32 at p. 165

44. Note by the Secretary General, Annex: Comprehensive Study Prepared by Mr. Francis M. Deng, Representative of the Secretary General on the Human Rights Issues Related to IDPs. U.N. Doc. E.CN.4/1993/35 at p. 9

sources of survival. Several replies of the above mentioned agencies were that violations of human rights and humanitarian law are the causes of displacement.⁴⁵

Despite the differences between IDPs and refugees in legal status and of entitlements to aid from the international humanitarian community, the causes of displacement and the experience of being displaced are often similar. *The Guiding Principles on Internal Displacement*, in the definition portion,⁴⁶ clearly spells out the causes of internal displacement,

“...persons have been forced to leave their original place of habitation due to, armed conflict, situations of generalized violence, violation of human rights, ‘natural or man made disasters”.

When the Representative of the UN Secretary-General on IDPs was first appointed, the concerns of the United Nations and International community were focused on persons displaced by civil wars and ethnic conflicts. However, it later became evident that people displaced by development projects are also internally displaced persons and subject to deprivation, impoverishment and human rights abuse.⁴⁷

Here special mention can be made of *Principle 6* of the *Guiding Principles* which provides protection against internal displacement.⁴⁸ The inevitable truth is

45. *Ibid.* at p. 9

46. *Supra.* note 13

47. The Brookings-SAIS Project on Internal Displacement, Summary Report of the Conference on Development Induced Displacement, Washington D.C. December 2002, www.brookings.edu/fp/projects/idp/gp-page.htm visited on 19.12.08

48. *Principle 6* of The Guiding Principle on Internal Displacement reads:

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

2. The prohibition of arbitrary displacement includes displacement;

a) when it is based on policies of apartheid, ‘ethnic cleansing’ or similar practices aimed at or resulting in alteration of ethnic, religious or racial composition of the affected population.

b) in situation of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;

that the dynamics of displacement remains complicated and a challenging phenomenon for this world. Hundreds/countless of people continue to be uprooted by war and human rights violations every year. These people find themselves in states that lack the capacity, willingness or resources to provide them even a minimal degree of assistance and protection. It often happens that at times it is impossible to pin point a single reason as to the cause of displacement; though one reason may stand out predominantly than the others. The factors that cause displacement may be broadly grouped into two types; natural factors and man-made factors.

A. Natural Factors

Natural factors present particular challenges for the fulfillment of national responsibility as regards protection from displacement. Earthquakes, floods, tornados, tsunamis and other natural disasters are beyond the capacity of any state to prevent. However, the States are under an obligation to prevent the damage from such natural phenomena. This fact is evident from the '*Hyogo Declaration*' adopted at *World Conference on Disaster Reduction, held in Kobe, Japan in January 2005*. States have the primary responsibility to protect the people and property on their territory from hazard and to give high priority to disaster risk reduction in national policy, consistent with their capacities and resources available to them.

There are lakhs of people who are displaced every year due to natural calamities. Phenomenon like earthquake, landslides, floods are very common. Most classifications of disaster identify two main types, natural and human made. Natural disasters maybe broken down into three sub-categories, i.e., sudden

c) *In cases of large-scale development projects that are not justified by compelling and overriding interests.*

d) *In cases of disasters, unless the safety and health of those affected requires their evacuations, and when it is used as collective punishment.*

impact, slow onset, and epidemic diseases, while human made disasters include two sub-categories industrial/technological disasters and complex emergencies.⁴⁹

a) Sudden Impact Disasters

This includes floods, earthquakes, tidal waves, tropical storms, volcanic eruption, and landslides. Floods are the types of natural disaster most frequently associated with sudden migration of large populations and food shortages. Earthquakes cause the greatest number of deaths and overwhelming infrastructural damage.

b) Slow-onset Disasters

They include droughts, famine, environmental degradation, deforestation, pest infestation, and desertification (conversion of arable lands to deserts). These disasters are usually the result of adverse weather conditions combined with poor land use.

c) Epidemic Disease

Epidemic diseases such as cholera, measles, dysentery, respiratory infections, malaria and increasingly, HIV, generally do not trigger large – scale displacement even during a severe outbreak although displaced populations, especially those clustered in overcrowded and unsanitary conditions following a major disaster.

d) Industrial/Technological Disasters

49. *Protection of Internally Displaced Persons in Situations of Natural Disaster, Working Visit to Asia by the Representative of the United Nations Secretary-General on the Human rights of Internally Displaced Persons, Walter Kalin. 27th February to March 2005, cited from www.ohchr.org/English/issues/idp/index.htm visited on 15.12.2007*

Such disasters result from a society's industrial and technological activities that lead to pollution, spillage of hazardous materials, explosives and fires. They may occur from poor planning and construction of facilities or from neglect of safety procedures.

e) Complex Emergencies

They are usually human made with multiple contributing factors (these may include war, internal conflict, and natural disaster) and are marked by large scale displacement, food insecurity, human rights, violations and elevated mortality.

The year 2000 was the last year of *International Decade for Natural Disaster Reduction*. Studies reveal that there is special affinity of droughts, floods, earthquakes, cyclones and volcanic eruptions for the South Asian subcontinent .Although some areas are known to be prone to earthquakes, cyclones and floods, these disasters are unpredictable. Disasters combine two elements; events and vulnerable people. Disaster occurs when disaster agent (the event) brings vulnerable individuals and communities in such a way that their lives are directly threatened or sufficient harm is caused to the community's economic and social structure to undermine the ability to survive. The major need in times of disaster is to get into place, at the earliest, relief measures to tackle immediate problems- food, water, and shelter. There is a slow but noticeable veering round of the machinery of relief and rehabilitation, assessment and response from immediate succor to long- term community empowerment and development. The basic responsibility for undertaking immediate activities of rescue, relief and rehabilitation is that of the State government. The Centre provides supplementary physical and financial resources. There are financial allocations at the Centre. There is a National Crises Management Committee, which gives direction to the National crises Management Group. The ministry of Agriculture is the nodal Ministry at the Centre. There is also a national Centre for

disaster Management located in the Indian Institute of Public Administration. The centre provides the framework for National, State and District levels in the event of disasters: coordinates various research activities, training programmes and has a data base on natural disasters.⁵⁰

One may recall that the Garwhal earthquake on October 20, 1991 which affected over 2,000 villages in Uttarkashi, Tehri, Rudraprayag and Chamoli Districts had killed more than 800 persons and injured over 5,000 persons. More than 25,000 houses had collapsed and over 75,000 houses had developed severe cracks. More than 4,000 animals were killed. The total damage was estimated at Rs 370 crores. Landslide also played havoc. In 1998, an entire village, Malpa, in Pithoragarh district on the border of China and Nepal was wiped out by a massive landslide killing 200 persons including the entire batch of 60 pilgrims on its way to Kailash Mansarovar.⁵¹

Disasters are said to be disasters because there is loss of life and property or in other words, there is displacement of human population. When there are disasters, there is always the question of statistics. But information of the cyclone in Orissa in Eastern part of India in late 1999 was staggering. Thirteen million people were affected. The number of dead was about 10,000 (the un-official figures put it at 20,000-25,000) and the number of swelling units destroyed was 1.6 million. Many public buildings (schools, dispensaries, offices, community centers) were also destroyed. Thirty five thousand cattle perished and crops spread over 2.4 million hectares were lost; the cyclone was so devastating that there was great confusion as to the manner of tackling the problem. The '*need for food for work*', particularly for the most vulnerable groups, was emphasized. Eight months after the cyclone, rehabilitation was still at its initial stage. The case

50. S. Narayan. "*Anthropology of Disaster Management*", Delhi: Gyan Publishing House (2000) quoted in A.P. Barnabans, "*Development, Disasters and Displacement: An Appraisal of Policy for Resettlement*" *The Indian Journal of Social Work*, vol. 63, Issue 1, January 2002, Pp. 67-79 at p. 74

51. Ashish Bose, "*Are Natural Disasters Manmade?*", *Economic and Political Weekly*, Vol. 35 October 28, 2000. Pp. 3793-3794 at p. 3793

of earthquake, which occurred in the state of Maharashtra in Western India is taken as an example as to how relief and rehabilitation measures were undertaken. It occurred in September 1993. The earthquake which measured 6.4 on the Richter scale flattened 69 villages in two districts; the official figures of death were a little less than 8,000. Other estimates put it as between 9,000 and 10,000. About 15,000 were injured. Children below 14 years accounted for half the deaths and of the rest, women were 55 per cent of the dead. The number of villages affected was 2,500, houses flattened were 55,000 and those in need of repair were 1.8 million.⁵²

One of the worst natural disaster that has occurred in the recent year is the 'Tsunami' of 26th December 2004, which left in its wake more than 300,000 people killed, 500,000 injured, over 1, 00,000 still missing and more than one million internally displaced, mostly in South Asia, in particular Indonesia, Sri Lanka, India, Maldives, Thailand and to a lesser extent Bangladesh, Malaysia and Myanmar (Burma). Four countries in East Africa were also affected, Kenya, Somalia, Mauritius and the Seychelles. Some countries which were hit by the tsunamis had experienced the problem of internal displacement for the first time. In other cases, the tsunami had struck areas of ongoing armed conflict and internal displacement, exacerbating pre-existing humanitarian crises and forcing many persons previously displaced by violence to flee once again, further compounding their plight. In the aftermath of the disaster, efforts were focused on search and rescue, bringing clean water, food, clothing, medical care and shelter to survivors, and identifying and burying the vast number of dead. The response, local to global, in addressing these emergency needs had been truly unprecedented. Indeed, during his visits to Colombo and Bangkok, the Representative of The Secretary General repeatedly noted how impressed he was at the overwhelming humanitarian response to the disaster by Governments, NGOs, National Human

52. A.P. Barnabans, "*Development, Disasters and Displacement: An Appraisal of Policy for Resettlement*", *The Indian Journal of Social Work*, vol. 63, Issue I, January 2002, Pp. 67-79 at p. 76-77

Rights Institutions as well as United Nations and other agencies. However, much less attention has been devoted to issues of human rights protection that also have arisen and need to be addressed.⁵³

In situations of natural disasters, states may be willing to respond quickly to provide humanitarian assistance to affected population and to do so in collaboration with the international community than in cases of armed conflict. Once forced from their homes by natural phenomena, IDPs may then find their movements subject to restrictions. Frequently, authorities direct IDPs into temporary shelters or camps to house them, to facilitate the delivery of humanitarian assistance and to ensure their security. Sometimes, however, this is done against the will of those affected, who instead would prefer to stay close to their homes to discourage looting, maintain their sources of employment, seek lost relatives, or simply wish to find shelter and support elsewhere.⁵⁴ In recent year, the untold misery brought about by Hurricane Katrina cannot be forgotten. Lacking food, water, and shelter about 1 million people of America were displaced by the hurricane in late August and September 2005. The displaced were perched on punctured rooftops in the blazing sun for days. Others slogged through rising flood waters. However, the government agencies failed to quickly address the need of these evacuees. This sparked debate over the readiness of the United States Government to tackle with major disasters.

B. Man-Made Factors

Action of man has resulted into displacement of people. It consists of a wide spectrum of factors- ranging from war to development. These factors are “armed conflicts”, Internal factor or political/secessionist movement, ethnic or

53. Walter Kalin “*Protection of Internally Displaced Persons in Situations of Natural Disaster*”, A Working Visit to Asia by the Representative of the United Nations Secretary –General on the Human Rights of Internally Displaced Persons. 27th February - 5th March 2005, at p. 7. www.ohchr.org/English/issues/idp/index.htm visited on 15.12.2007

54. *Ibid.* at p. 15

caste-induced violence, and environmental and development-induced displacement. These factors have been discussed in detail as under;

a) War or Armed Conflict

The world has witnessed a decline in armed conflict from a peak in the early 1990s. There has also been a dramatic drop in the number of autocratic regimes-and a corresponding reduction in repression and political discrimination against ethnic minorities. The number of 'ethno national' wars for independence which dominated the decade following the end of the Cold War - is at its lowest since 1960. Since 2001, 13 major self-determination conflicts have been settled or contained, as against the emergence of six new or renewed campaigns, including Darfur (Sudan). In Aceh (Indonesia), a protracted, low-intensity conflict that had grown more intense in recent years was defused following a ceasefire and negotiations in the wake of the Tsunami of December 2004. The post-11 September 2001 global war on terrorism has changed the world scenario, particularly in those areas where intensified military offences were justified for one reasons or other. This has been the case in Aceh, Afghanistan, Chechnya (Russian Federation), Georgia, Iraq, Pakistan and Palestine. People forcibly displaced by conflicts in these countries have faced closed borders, extremely hostile and insecure condition. Inter- state conflicts are not as prevalent today as internal strife and civil war, particularly in Africa. However, foreign involvement in civil wars has continued to frustrate efforts to secure peace and stability in a number of areas-including the Great Lakes region of Africa centered on Democratic Republic of Congo (DRC) as well as West Africa. Here, economic imperatives and commercial greed are intertwined with social and political

grievances, all manipulated by political, commercial and military actors within and outside the region.⁵⁵

In India, in low conflict areas such as the areas near the Line of Control in Kashmir, people have fled from their homes to save themselves from shelling. There are broadly three different categories of displaced persons in Jammu along the international border and the disputed Line of Control between India and Pakistan; those living in camps or in rented accommodation at their own expense away from their villages; those who are dispossessed of lands that have been mined and fenced out; and those whose entire village has been fenced out. They have access to their fields and homes in the mornings and afternoons but are forced to return back at what are called cluster colonies in the evening.

The border people living in camps in Aknoor, about 40kms from Jammu city were displaced in 1999 in the wake of Kargil war when the maximum burnt was borne by the inhabitant of 21 villages comprising 6070 families.⁵⁶ Apart from this, the war scare of December 2001, after Pakistan attacked Indian Parliament led to massive displacement from the border. Another war scare due to May 14, 2002 *Fidayeen* attack in Jammu and Kashmir also led to displacement.

b) Internal Conflicts, Political Reasons or Secessionist Movement

A large number of nations got decolonized in the second half of the twentieth century, due to which many political uprising took place in many parts of the world. These uprising were either for secession from or autonomy within the existing state. In India, after independence from the British reign there was a

55. M.Marshall and T. Gurr, "*Peace and Conflict 2005: A Global Survey of Armed Conflicts, Self-Determination Movements and Democracy*", Centre for International Development and Conflict Management, University of Maryland, 2005 pp 1-2, 44-45

56. Mahanirban Calcutta Research Group (MCRG) December 2006, *Voices of the internally displaced in South Asia*, quoted in "India, Large number of IDPs are unassisted and in need of protection; A profile of the internal displacement situation", 3rd May 2007, at p. 23. www.internal-displacement.org. Visited on 4-2-2007

lot of disturbance while trying to create the Indian Union. Various linguistic, culture and ethnic diversity caused difficulty in integrating the immense “Indian Culture”. This unaccomplished task has resulted in the secessionist movement in North-East India and also in the North-Western part of India. The movement is not only confined to non-violent protest and demonstrations, but also involves use of arms and ammunitions.

In north-east, every state in the region is currently affected by insurgent and terrorist violence, Assam, Manipur, Nagaland and Tripura witness scale of displacement which can be categorized as low intensity wars. The Naga movement led by underground rebels NSCN, the Assam movement led by the All Assam Students Union and now largely taken over by an extremist outfit United Liberation Front of Assam (ULFA) have been recorded in the post-independence period. Conflicts and retaliatory measures taken by these groups generate steady human displacement. The parallel violence including that of clashes between the Nagas and Kukis in Manipur and Bodos and the Santhals in Assam have in fact generated more on time but large scale displacement than any other well known movement in the North-East.⁵⁷

In Kashmir, it's a violent clash between the state forces and the militants which has been in the heart of displacement. The select killing of Kashmiri Pundit by fundamentalist secessionist groups like *Hizbul Mujahedeen*, the widespread anarchy created by the political instability and the continuous violation of fundamental human rights (arson and looting, targeted massacres extra-judicial killings, disappearances, torture, long detention without charge or trial, rape and destruction of property) by both the state and militants groups, have led to large

57. Mahendra P. Lama “IDPs in India: Causes, Protection and Management Dilemma”, in Chowdhury R. Alwar, Mahindra P. Lama ed. *Displaced Within Homeland, Refugee & Migratory Movements Research Unit*, 2003, at p. 154

scale displacement mainly that of Kashmiri Pundits. They migrated to Jammu and cities like Delhi.⁵⁸

c) Localized violence

Internal Displacement has arisen from localized violence which includes factors like ethnicity, race/caste, communalism etc. All these factors have caused major displacement in India. There have been frequent tensions between the Muslims and Hindus who constitute the majority population in the states. Incidences like the Babri-Masjid demolition, retaliatory or reprisal attacks of the Godhra train carnage have caused communal violence and riots leading to displacement of large number of people, mostly Muslims. India's North –Eastern state which is known for its rich culture, has failed to unite with these cultural values. Culture has failed to bind these people instead they are driven with conflict between one or more ethnic groups of people. The influx of migrants from neighboring areas have aggravated the situation leading further to ethnic conflicts over land and strive for political autonomy or secession.

Another factor which may or has led to localized violence vis-a vis internal displacement is the slogan of fundamentalist like “son-of-soil policy”. Thousands of Hindu-speaking people, predominantly from Bihar and Uttar Pradesh, fled Assam after ULFA launched campaign ordering them to leave Assam or be killed. Similar situation was to be seen in Bombay recently.

Lastly, displacement due to localized violence has arisen out of sociological reasons like caste stigma which is found mostly in Bihar and Uttar Pradesh. *Dalits* or so called ‘untouchables’ known in Indian legal terms as scheduled castes are vulnerable to forced displacement in the aftermath of episodes of caste violence. In a report submitted to the *UN Commission on the Elimination of Racial Discrimination*, it is argued that the typical scenario is one

58. *Ibid.* at p. 155

where the *Dalit* villages are attacked and looted by neighboring upper caste villages, forcing them to settle for months in temporary homes on government property. The perpetrators, largely enjoy full immunity and little is done to help the displaced *Dalits* return home or to prosecute those responsible for the attack.⁵⁹

C. Development Induced Displacement

Development induced displacement is broadly understood in terms of the technological and industrial intervention for modernizing Indian society similar to the western path of development. It includes recent trends in the globalization of national economy with the key role of multinational and international financial organization. Development is said to be a continuous process which necessarily involves undertaking various types of ventures such as dams, factories, mines, roads, railways etc. Hydel project and irrigation projects displace the maximum number of people because apart from submerging vast tract of land they displace a large number of people. The state has played a major role in such development which not only deprives the people of their land but also renders many homeless. Development has been one of the major causes of displacement and it dominates the IDP scenario.

When at independence, India turned freedom from poverty and economic stagnation into its main goals, its planners viewed industrialization as the best method of achieving it. The past few decades have witnessed rapid economic growth in the country and the process forms a part of 'planned development'. This is manifested in the setting up of large-scale projects in power generation, mining, industry, infrastructure development, irrigation and even in creating new urban settlements.

59. Centre for Human Rights and Global justice, Human Rights Watch, February 2007, Pp 45-46, quoted in "*India, Large Number of IDPs are Unassisted and in Need of Protection; A Profile of the Internal Displacement Situation*", 3rd May 2007, at p. 16. www.internal-displacement.org. Visited on 4-2-2007

Development, displacement and forced resettlement of persons affected by various projects suggest that there was a complicated past which has now been replaced by devastating modern development. Displacement for some people seems to be inherent in the process of development and in reality it has become difficult to take up development projects without displacing people. The question arises is how can such development project be undertaken without displacing the masses. Such arbitrary displacement tends to violate the human rights of the displaced person.

The planning process in India, appears to, defy the spirit of the Indian constitution. It cannot be denied that while planning is important for the democracy in India, both in its intent and form, but in this planning process the Indian citizen are merely regarded as objects of development decisions. In no area is this singular inversion of the Constitution more acutely demonstrated than, perhaps, in the decisions concerning large, medium and small irrigation and other development projects. The beneficiaries of such project as well as the victims of development project tend to loose their sovereignty to the mighty and benign bureaucracy who alone decides what is good for them in the short as well as long run.

In the International scenario, the period between 1950s and 1960s had a dominant view of development which was informed by modernization theory, which, put crudely, saw development as transforming traditional, simple, third world societies into modern, complex, westernized ones. Seen in this light, large-scale development projects accelerated the pace towards a brighter and better future. In recent decades, however, a “*new development paradigm*” has been articulated, one that promotes poverty reduction, environmental protection, social justice, and human rights. In this paradigm, development is seen as both bringing benefits and imposing costs. Among its greatest costs has been involuntary displacement of millions of vulnerable people. Not only is development-induced displacement a widespread and growing phenomenon, but evidence suggests that

while the beneficiaries of development are numerous, the costs are being borne disproportionately by the poorest and most marginalized populations.⁶⁰

In 1986, the *UN General Assembly adopted a Declaration on the Right to Development* which provides that every human being are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. The declaration also asserts that the human person is the central subject of the development process and that development policy should therefore make the human being the main participant and beneficiary of development.

Declaration of "Right to Development Convention 1986" adopted by the United Nations and ratified by India, under *Article 1(1)* provides thus;

"The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized"

By virtue of this right, every human person and all people are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms would be fully realized.

Clause (2) of the said Article provides;

"The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants

60. W. Courtland Robinson, *"Risks and Rights: The Causes, Consequences and challenges of Development-Induced Displacement"*, The Brooking Institution, SAIS Project on Internal Displacement. May 2003 www.brookings.edu/fp/projects/idp/gp-page.htm visited on 31.12.2007

on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.”

Clause (3) thereof provides;

“The States shall have the right and duty to formulate appropriate national development policies that aim at the constant improvement of the well being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting there from”.

Article 3(1) of the Declaration recognizes and enjoins that it is the State’s primary responsibility to create conditions favorable to the realization of the right to development. Under Clause (3) thereof, it reminds the State of its duty to cooperate with each other and of “ensuring development and elimination of obstacles to development”. *Article 6(2)* reassures;

“Human right and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion, and protection of civil, political, economic, social and cultural rights”.

The *Directive Principles* in Part IV of the Constitution of India is forerunner to the Convention. India being an active participant in the successful Declaration of the Convention on Right to Development and a party signatory thereto, it is duty to formulate its policies , legislative or executive, accord equal attention to the promotion of, and to protect the rights, social, economic, civil and cultural of the people, in particular the poor.

Project that involves displacement often lead to the loss of livelihood of the poor, the marginalized and the powerless, and it all happens in the name of national development. Displacement is associated with a variety of developmental

interventions. The development projects with a high chance of displacing people include;⁶¹

Construction of dams for irrigation, hydro energy and water supply which create man made lakes on previously inhabited areas;

Development of forest on similar public land where the land has already been (illegally) settled, or is the traditional abode of indigenous people;

Construction of transportation corridors - railways, highways, airport, and transmission lines, irrigation canal networks and others that require right of way;

Construction of new ports and towns;

Construction or improvement of urban infrastructure (e.g. sewerage systems, subways, intra-city roads etc);

Inception of mining operations, particularly strip mining; and protection of grazing areas of transhumance routes.

Development is perceived by its protagonist in terms of modernization improved standard of living and industrial progress. The large infrastructure emerges as its manifestation. These projects cannot be executed without land which is usually provided to the executing agencies through compulsory acquisition by the government. The displacement of people subsisting on such land has, therefore been considered as inevitable and unavoidable. The articulation of development paradigm rests on certain assumptions. One is that

61. Sakarama Somayaji, Vimal Khawas "*Capacity Building for Resettlement Management: A Note on the CSD Programme*", Social Change, Vol.36. No. 1, March 2006. Pp. 191-196 at p. 191

'development' benefits people across society and is, therefore governed by an inherent welfare rationality of social welfare.⁶²

Development induced Displacement include cases where population have been displaced by industrialization, mining projects, wildlife sanctuaries and national parks and lastly those displaced by dams. Hence, we can study the causes of development induced displacement under the following heads:

a) Urbanization

With urban growth rates exceeding 6% annually, according to the UN figures, by the year 2025 more than two billion people will be living in large cities of more than one million inhabitants. As Michael Cerena has noted, "In cities such as Sao Paolo, Lagos, Douala, Rabat, Shanghai, or Mexico City, massive investments in infrastructure for transportation, re-housing, sanitation and other services are needed, and will be increasingly needed, for improving living standards and economic expansion. Such urban investment will inevitably entail further land acquisition and involuntary displacement."⁶³

Urban development and infrastructure project already are a principal cause of development induced displacement worldwide and the trend is likely to accelerate. Examples of involuntary displacement due to urban development and infrastructure projects from around the world include the following;

In *Madagascar*, a World Bank funded urban development project displaced a total of 2,341 households in urban areas and resettled them in Antanarivo Plain. A follow up study found that only three of the households settled at the intended permanent settlement sites and concluded that a substantial

62. K.B Saxena, "*Development, Displacement, and Résistance: The law and the policy on land Acquisition*", *Social change*, Vol.38, No. 3, September 2008, Pp. 351-410 at. 353

63. Michael Cerena, 1997, "*African Involuntary Population Resettlement in a Global Context*" (Washington DC: World Bank) quoted in W. Courtland Robinson, "*Risks and rights: The causes, consequences and Challenges of Development-Induced Displacement*", The Brooking Institution, SAIS Project on Internal Displacement. May 2003 www.brookings.edu/fp/projects/idp/gp-page.htm visited on 31.12.2007, at p 18

proportion of the displaced households have been made worse off by resettlement.⁶⁴

In *Brazil*, police used tear gas, rubber bullets and nightstick on May 19, 2000 to evict an estimated 2,000 squatters from homes that they occupied for 17 years in Sao Paolo. None were given relocation assistance following the eviction.⁶⁵

In the *Dominican Republic* between 1986 and 1992 at the height of the nation's urban renewal campaign, about 30,000 families in Santo Domingo were evicted from their homes. Though the numbers have decreased, eviction continues. The most unprotected group in the Dominican Republic continues to be Haitians or Dominicans of Haitian descent, particularly women.

In *Burma (Myanmar)*, the State Peace and Development Council have carried out numerous evictions of "squatters" in the name of urban development and beautification. According to US Department reports, an estimated 500,000 residents of Rangoon were removed from their homes often to break up anti-government strongholds in the city and relocated to satellite settlements outside the city. An earlier report from the UN Center for Human Settlements (UN-Habitat) estimated that about 1.5 million people nation wide had been relocated, half of them from four cities of Rangoon, Mandalay, Bago, and Taunggyi. This 'massive social engineering exercise' involved 4% of the entire population and 16% of Burma's urban population.⁶⁶

64. P. Francis, "Field Report: Involuntary Resettlement in Urban Development Plan, Performance and Outcome in the World Bank-funded Antartica Plain Project, Madagascar", *Journal of Refugee Studies*, 1999, Vol. 12(2) 1999 Pp. 180-202

65. COHRE 2002, "Forced Evictions: Violations of Human Rights", at p. 65 quoted in W. Courtland Robinson, "Risks and rights: The causes, consequences and Challenges of Development-Induced Displacement", The Brooking Institution, SAIS Project on Internal Displacement. May 2003 at p. 19, cited from www.brookings.edu/fp/projects/idp/gp-page.htm, visited on 31.12.2007

66. Stephen Lanjouw, G. Mortimer and V. Bamforth, "Internal Displacement in Burma", In *Disaster*, vol. 24(3) 2000, Pp. 228-239 at p. 229

In the *Philippines*, the Urban Poor Associates (UPA), local NGOs estimated that 165,000 families have been evicted nationwide. In Metro Manila, UPA reported that 6,059 people had been forcibly evicted in 2000, of which only 1,342 families had received relocation assistance. Most of the evictions were related to government infrastructure projects.⁶⁷

In India, urbanization induced displacement is much larger in intensity than the involuntary displacement caused due to setting up of industrial/ infrastructure projects. However, displacement due to urbanization go largely unnoticed except for few reports in newspapers because much of the land (converted into urban sable lands) are sold out “voluntarily” by the owners, or are surrendered under threats from builders/mafia. In addition, many local governments declare green lands close to city boundaries as ‘urban sable’ lands which are then utilized by municipalities, housing boards or development authorities for urban use. The depletion of agriculture lands due to induced urbanization is a distinct phenomenon which surpasses the effects of ‘involuntary displacement’ caused by urbanization.⁶⁸

Slum demolition in Delhi and the new land use on the evacuated sites have been contributing to the restructuring of the urban space in the capital. Despite its initial stated good intention to integrate people with low incomes into the urban fabric, the public policy of urban planning and housing implemented by the Delhi Development Authorities (DDA) failed to meet the demand of the poorest section of the population. Thus, the latter resorted to informal habitat, and had no option but to occupy vacant lands, essentially public land, where they self constructed makeshift housing or *jhuggi-jhompri*. Further, the massive evictions along the banks of the Yamuna River where the argument of polluting the river was utilized

67. *Supra*. note 65 at p. 19

68. R.N. Sharma, “*Involuntary Displacement: A Few Encounters*”, Economic and Political Weekly, Vol. 38. (9); March 2003, Pp. 907-912 at p. 908

by the Delhi High Court to justify the removal of all slum clusters led to displacement of 3,00,000 residents of Yamuna Pashtu.

Around Mumbai city, in the late 1960s, City and Industrial Development Corporation (CIDCO) plans affected more than 90 villages during the setting up of the Navi Mumbai Township. Now the Maharashtra government proposes to take over the lands of five villages for creating another mega city close to Navi Mumbai. Through the earnings from creating this new mega-city, the State Governments expects to finance another ongoing roadways project - The Mumbai-Pune Super Express Highway, which itself has displaced several hundred families.

The depletion of agricultural lands due to induced urbanization is a distinct phenomenon which surpasses the effects of 'involuntary displacement' caused by infrastructure/industrial projects. However, there is no authentic data to gauge its intensity and also to know how much of such land is transferred voluntarily by farmers and how much is forcibly appropriated by interest groups. Ngo's also do not show much interest in bringing out the dangerous effects of such fast depleting agricultural lands due to 'induced urbanization'. It is closely interlinked with the 'model of development', which separates people from their communities and traditional sources of sustenance.⁶⁹

b) Parks, Wildlife Sanctuaries

Creation of Wildlife Park and sanctuaries have caused displacement of people. However, this issue has not been of much importance as has been the matter of protection of wildlife. The authorities are much concerned with the preservation of wildlife parks and sanctuaries but not with the displacement of people. The fact is that the wildlife has law for their protection but no law exists

69. *Ibid.*

for the protection of those who have been displaced by the direction of the state for the creation of parks and wildlife sanctuaries.

The implementation of the Wildlife Protection Act (1972) and its role in the establishment of national park and wildlife sanctuaries has often caused displacement and relocation of people, such relocation has caused the forest dwellers, tribals and others to loose their livelihood. Relocation has specially been prevalent in those cases where national park has been established, because in such parks no or very restricted use of forest is allowed. Such relocation has caused the displaced persons to disassociate themselves from their source of livelihood and has caused adverse effect in the live of those who belong to traditionally marginalized groups.

More than 580 National parks and sanctuaries have been set up in India with the primary aim of conserving biodiversity. The implementation of the Wildlife Protection Act 1972 in the establishment of national parks and wildlife sanctuaries or protected areas (PAs) has often necessitated the relocation of people. Relocation has specially been prevalent in the case of national parks where no or very restricted use of forest is allowed. Relocation of people from protected areas has been opposed by many as unjust and unnecessary, because it has adversely impacted the livelihoods and lives of the displaced people, many of whom belong to traditionally marginalized groups. However, relocations have been thought necessary by the governments in many cases where growing human wildlife conflicts and increasing pressures on the natural resources bases appear to be threatening biodiversity to the extent that many plant and animal species are faced with the possibility of extinction.⁷⁰

Mention must be made of Sariska Tiger Reservè which is one such Indian protected area where village relocation has a long history (Sariksa is one of the

70. Shahabuddin Ghazala, Amita Shah, "Relocation of People from Wildlife Areas, Socio-Economic Issues". *Economic and Political Weekly*, Vol.38 (43); November 2003; Pp. 4945-4946 at p. 4945

important conservation areas for the Royal Bengal Tiger in north-western India until it recorded local extinction in 2004-2005). Karnakawas, a village in Sariska, has a long history of relocation, moved from the Core area between 1975 and 1977 and unsuccessful attempts have been made to move two other villages comprising 493 household located inside Core Zone. This plan has been on the anvil since before 2000 but gained impetus after the local extinction of tigers was revealed in early 2005, as it was felt by the government that the presence of people in the Reserve was the primary reason for the observed 'tiger crises'. Of these 11 villages located inside Core Zone I, beneficiary lists and village specific plans have been drawn up for 4 villages located centrally in the Core Zone, whose relocation has currently been prioritized.⁷¹

Situated in Gujarat State in the Western part of India, Gir is one of the largest compact tracts of dry deciduous forest spread over an area of 1,412.sq.km. The area had faced severe risk of extinction of its flagship wildlife species i.e. the Asiatic lion (*Panthera leo persica*), before it was notified as national park in 1975. By the turn of the century, wildlife population had overshoot what traditionally used to be considered as "carrying capacity" of the ecosystem. The notification of Gir as "sanctuary" in 1965 and park in 1975, led to displacement and relocation of a subset of the *Maldhari* families since the mid 1970s. Relocation of these families is not being seen as high priority agenda in the current thinking of protected area (PA) management.

Apart from this, six long years have passed since the first villages began moving out from their original location on the banks of the river Kuno; where Kuno wildlife sanctuary in district Sheopur of Madhya Pradesh is located. In 1995, the Wildlife Institute of India recommended that before lions were brought into Kuno, villages situated inside the Sanctuary should be relocated outside. This

71. Shahabuddin Ghazala, Ravi Kumar Manish Shrivastava, "Policy and Process from Conservation Areas: The Case of the Sariska Tiger Reserve Rajasthan". *Social Change*, Vol.36. No. 1, March 2006, Pp. 130-140, at p. 131

resulted in relocation of 24 villages from the sanctuary. The displaced villages had to loose fertile, well drained land which they had cultivated for decades inside the sanctuary. The displaced households have been given upland farm plots, which are of much lower quality than the land they held inside the sanctuary, with lower soil depth and very low soil moisture retention capacity. However, the dilemma remains that whether relocation of village has actually resulted in unequivocal improvement of the conservation of the Kuno sanctuary.⁷²

It is being said that creation of Wildlife Park and sanctuaries has caused the forest dwellers, tribals and adivasis to loose not only their natural habitat but it has caused them to loose their means of livelihood. Studies reveal that these displaced groups are basically dependent on such area for sustaining their lives. Land and things attached holds more to their heart than to the authorities who give to it only a commercial value.

The Supreme Court in *Banwasi Seva Ashram v State of U.P.*⁷³ tried to protect the interest of forest dweller and held that curtailment by the Government the access to forest violated the fundamental right to life of the local people guaranteed by Article 21 of the constitution.

The provision to eliminate human intervention within national parks and sanctuaries operate harshly against forest communities, one of the poorest and politically weakest constituencies in India. Tribal activists argue against protected areas because they deprive forest dwellers of access to common property resources, uproot communities, halt development activities and heighten tensions between local residents and the wildlife bureaucracy, severing forest dwellers from their traditional access to forest produce ‘criminalizes’ honest citizens who

72. Kabra Ashmita, “Wildlife Protection: Reintroduction and Relocation”, Economic and Political Weekly, Vol. 41, No. 4, April 8, 2006. Pp. 1309-1311 at p. 1309-1310
73 AIR 1987 SC 374

have little choice but to tap the forests for fodder, fuel, food and minor forest produce.⁷⁴

c) Industrial Projects

The past few years have witnessed rapid economic growth in the country and this has been part of 'planned development'. The liberalization of the economy, growing need of infrastructure in fast growing cities and new partnership ventures in industrial sectors have undoubtedly caused heartburn in the farmers and also threatened traditional ways of sustenance of people. More and more agricultural land is being acquired for industrial purpose.

The construction of the first steel plant of independent India began in 1956 at Rourkela, in the Sundergarh district of Orissa. At the time of its selection for the steel plant, Rourkela was a remote tribal area inhabited by 32 villages with 2,465 families of which 70% were tribals. All these families turned out to be IDPs. However, at present only 1,200 families are found to be rehabilitated in the two settlement colonies at Jalda and Jhirpani.

Further the Heavy Engineering Corporation Ltd, established at Hatia near Ranchi in 1958 acquired 9, 2000 acres of land for the purpose of construction of factories. This land was acquired from 25 villages, out of which 12 villages were acquired fully and the rest partly. This acquisition leads to the displacement of almost 2,198 families. These families belonged to *Orion* and *Munds* tribes and some Hindu castes. Out of these, only some of the families were rehabilitated. Further, in 1967, the construction of Bokhara Steel Plant was started and for this about 46 villages were acquired for the construction of the plant and the township.

74. Shyam Divan, Armin Rosencrantz, "*Environmental Law and Policy in India*" Second Edition, Oxford University Press, 2001, New Delhi, at p. 335

The setting up of this plant had led to the displacement of 12,487 families of which 2,707 were tribals.⁷⁵

Growth has an intensive impact on the affairs of the country. Acquisition of fertile lands for industrial uses undoubtedly causes heart burn in the farmers and is also a serious issue by itself. People use every bit of nature, and every time we hear that the government has made over a certain expanse of unused land to some company, you can be sure that there are hundred, whose needs have been slighted by default.

For three consecutive years, the Indian economy has grown at more than 7.5% a year. Growth matters for the ordinary people and the poor, because it increases their income, it looses shackles of a long tradition of oppression. Enriching, empowering and ultimately liberating, that is how we would like to view growth. But for a lot of Indians, growth would mean dispossession of the land on which they make a living. Displacement and dispossession has been continuing since a long time back. If we analyze the past the advent of Aryan civilization to the present day's industrial development, it is the cause and effect of the pretext in search of survival strategies to explore and establish business and industrial development. This was the earlier part of the displacement. Economic development is directly related to the creation of infrastructure. For the developed countries the displacement problem is not so big due to balance of land-man ratio. On the other hand, for the developing countries the displacement problem has emerged as an issue due to adverse land-man ratio.⁷⁶

Orissa is the first State to have the highest direct foreign investment. The savagery of the Kalinga Nagar massacre is yet another bloody link in the chain used to dispossess the tribals of their lands, rivers and forests. More than 600

75. Areeparampil Mathew, "*Industries, Mines and Dispossession of Indigenous People: The Case of Chotanagpur*", Social Action Vol. 38 July-September 1998, Pp. 231-251 at p. 239

76. Ashok Kumar Sahay, Prabira Shetty, "*Tribal Displacement and Resettlement :Effective Safeguard*", Social Action, Vol. 58, January-March 2008, Pp. 1-6 at p. 1&2

families have been driven out of their land. They eke out their living from stone-crushing. The project displaced people are losing faith both in the government and the companies. Both have been giving false promises to the people. The gap between the state governments promises and reality is huge. The state government had promised that the plants would create employment opportunities for the displaced people. Four of the 12 industries to be set up at Kalinga Nagar, Neelachal Ispat Nigam Ltd, Visa Steel, Mesco Steel and Jindal have started operation. From 87 families evicted for setting up Mesco Steel Plant, only five people got jobs. In Neelachal Ispat Nigam Ltd, only 53 people from 634 displaced families found employment, out of the 430 families displaced to make way for Visa Steel, only 42 people got jobs.⁷⁷

The Lanjigarh Project located in the South-east part of the Kalahandi district in Orissa, has become the site of an ongoing struggle against the company and government establishment of bauxite refinery. The ongoing project has so far displaced four villages, two completely and two partially and it may displace more in the future. Equally alarming is the observation on how the project affected communities were forcibly evicted and rehabilitated. The people have been forcibly displaced by use of physical force by the district administration. Many were beaten up by the employees. The tribal people living on the plant site belong to the *Kondhs* community who were illiterate and depended completely on their agricultural lands and forest for their subsistence.⁷⁸

The undesirability of acquisition of fertile land for industries is a circumstance that has helped governments to get away with grants of huge tracts of land described as wasteland where nothing grows and which no one owns. Part of the claim is patently dishonest, for private land which yield good income for the farmers are often described as land of poor quality while approving their

77. *Indian Express*, 17 January 2005, quoted in Ramesh C Nayak "Development and Displacement in Kalinga Nagar, Orissa", *Social Action*, vol. 58, January-March 2008 Pp. 19-30 at p. 26

78. *Ibid.*

acquisition for industrial uses. But in most cases the revenue records do show the land to be wasteland, and therefore presumed to be unused, but the reality is starkly otherwise.

In a large scale effort transforming India's competitiveness in the global market, the United Progressive Alliance (UPA) government enacted the Special Economic Zones (SEZ) Act in 2005. The increasing role of the state as the promoter of the corporate-led economic growth is underlined by its acquisition of land for Special Economic Zone and the transfer of ownership of this land to developers. Displacement, thus, gets pushed to private arena with compensation potentially negotiated by the market and without the state's responsibility for rehabilitation. Considering that these SEZs will acquire thousands of hectares of land with little regard to land ceiling provisions, with up to a minimum of 1,000 hectares for multi-product and 100 for service sector SEZs, the displacement and disruption of livelihoods to be caused by SEZs and their grave implications are emerging even as the country witnesses steadfast resistance by peasants. One serious concern and contention of SEZs is the imminent displacement of thousands of people and livelihood in the country side where these SEZs are planned to come up. The fact is that while a factsheet on SEZs on the government of India website gives details of the number and proposed SEZs, their land requirements as well as export and employment potential, there is no mention of the number of people to be displaced by these zones, leave alone how the government intends to attend to the issues of displacement. Indeed, the entire website dedicated to SEZs by the Ministry of Commerce and Industry makes no mention of this necessary "first step" for the establishment of SEZs.⁷⁹

The creation of SEZ is said to violate many legal provisions. The main legal provisions which this Act is said to violate are;

79. Preeti Sampat, "*Special Economic Zones in India*", *Economic and Political Weekly*, Vol. 43. No. 3, July 12, 2008, Pp. 25-29 at p. 25

- 1) *It violates the letter and spirit of the Indian constitution.*
- 2) *It overrides the fundamental rights of the citizen.*
- 3) *Relaxation/inapplicability of many labor laws (including under the Industrial Disputes Act, Contract Labor Act, Factories Act, Minimum Wages Act etc.).*
- 4) *Environment Protection Act is inapplicable to SEZs. No environment clearance is needed.*
- 5) *Violates Panchayats Raj Act (1996) for local self government.*

Estimates show that close to 1, 14,000 farming households (each household on an average comprising five members) and an additional 82 farm worker families who are dependent upon these farms for their livelihoods, will be displaced. In other words, at least 10 lakhs people who primarily depend upon agriculture for survival will face eviction. The government promises ‘humane’ displacement followed by relief and rehabilitation. However, the historical record does not offer any room for hope on this count. An estimated 40 million people (of which nearly 40% are Adivasis and 25% Dalits) have lost their land since 1950 on account of displacement due to large development projects. At least 75% of them still await rehabilitation.⁸⁰

This model of industrialization is described by the critics as corporate industrialization which would lead to displacement of a large number of farmers, deprive them of their only source of livelihood, generate little employment for the displaced, threaten food security of the country, give rise to acquisition of land at low prices by corporate developers, generate a lot of inequality in the society along with a massive loss of public revenue with negative implications for social sector spending especially public spending for weaker sections. Due to intensive public debate and opposition to this policy, there are continuous changes in the content of this programme ever since it came into existence in 2000. The Act

80. "SEZ and Land Acquisition – Fact Sheet for an Unconstitutional Economic Policy" www.sacw.net/nation/sezland.eng.pdf, visited on 22.04.09

makes provision for development of world class infrastructure within SEZs. The success of the Chinese experience for development of export oriented units in SEZs has been cited as reason for developing them in India to give a big push to industrial development in the Country.⁸¹ However, the farmers/peasants in various states such as Orissa, West Bengal, Maharashtra and Punjab have opposed acquisition of their lands for SEZs. The highest level of opposition has been witnessed for the Tata Group at Singur and Salim group of Indonesia at Nandigram. Singur and Nandigram have become the symbols of protests against SEZs as there has been mobilization of rural people. Peasants protest in West Bengal have attracted a lot of attention of the mass media in the wake of violence and killing of several people and support to peasants has come from political parties, NGOs and intellectuals. In the wake of protest, several scholars and civil society activists have highlighted the land grabbing tendency of corporate capitalism with its adverse effect on the rural people of India.

d) Displacement by Mining

Mines are perhaps more representative than many other sectors of the impoverishment of the most powerless sections. Most of India's mines and other sources of raw material are located in the interior forest and tribals inhabited regions of Andhra Pradesh, Bihar, Jharkhand, Maharashtra, Madhya Pradesh, Orissa and West Bengal.

The expansion of the mining sector in India in the twentieth century has been phenomenal. The value of mineral production has increased from a figure of Rs 10.6 crores in 1930 A.D. to Rs 62,000 thousand crores in 2002 A.D. Since the 1980s, there has been a major change in the method of mining as well as in size of mines. The new technology involved in the extraction of minerals causes great damage to the land and in addition needs a lot of land for external overburden

81. Sucha Singh Gill, *"Special Economic Zones and Displacement, Need for Alternative model"*, Man and Development, December 2007, Pp. 95-106 at p. 99

dumping. Such kind of mining operation apart from requiring vast tract of land causes displacement of people and cannot provide jobs to the displaced family which is usually promised by authorities before land is acquired.⁸²

The largest mining organization in the country, Coal India Ltd., did not face much problem in acquiring land in the 1970s and early 1980s as it followed the practice of offering a job to at least one member of each displaced family from whom land was acquired. During the period of 1973 to 1993, a total of 33,470 land losers were employed by the subsidiary companies of Coal India Ltd. No corporate guidelines existed from Coal India Ltd. in those days on the subject detailing the rehabilitation packages to be offered to the land oustees.

The establishment of mining industry also requires acquisition of land and simultaneously displacement of people which is involuntary. When persons are deprived of their land, the only thing which they are entitled to receive is compensation under the Land Acquisition Act. Further a mining project not only affects the people whose lands and houses have been taken over, but also people living in surrounding areas. Further, the environmental quality is deteriorated due to mining activity. The starting of a new mine brings in a few jobs for the land oustees and others but for a vast majority of the villagers no special or ordinary benefit arises. On the other hand, influx of a large number of outsiders with a different life style and a much higher earning capacity give rise to social tension.

In case of mining, further displacement takes place where mining operation have ceased to operate and mineral ore have ceased to exist. Closure of mines would mean a loss of job for those employed in the mining industry. First, they are deprived of their land they depended on and later, the benefit of job. The rehabilitation and resettlement policies fail to address such kind of deficiencies.

82. S.P. Banerjee, "*Social Dimension of Mining sector*", IE (I) Journal – MN, vol. 85, August 2004, at p. 5, cited from, www.ieindia.org/publish/mm, visited on 22.04.09

It has been found that mining has its predominant existence in forest areas. Such mining operation causes the forest areas to lose its charm and causes the forest dwellers, tribals and other persons who are dependent on such forest areas to lose their source of livelihood and forest as a source of common property resource. It is always the people who are at loss.

A case with respect to mining operation arose in *Dehradun Valley Litigation*.⁸³ In this case the impact of mining operation not only had impact upon the environment but it had caused landslide, thereby resulting in displacement. Another important case in this respect is the *Samantha case*.⁸⁴ In this case, mining operation were being carried out mostly within scheduled areas causing alienation of the tribals from their land and transfer of tribal land to non-tribals. The court held that where such activities are being carried out in tribal areas then it is the duty of the court to see that a part of the profits earned by the lessees should be spent for ameliorating the living conditions of the tribals by the lessees.

The judgment in this case also reveals the fact that 'displacement' was not 'fact in issue' as much as 'degradation of environment was'. The current law and policy governing mining or for that matter, development projects, allow wholesale destruction of forests but does not encourage or facilitate potentially less harmful uses of forest product by local people.

e) Displacement by Dams

Development can be said to be a continuous process, which includes within its ambit various ventures such as dams, factories, mines, roads railways etc. As discussed above these ventures have displaced numerous people, however studies reveal that hydel power and irrigation projects displace the largest number of people. Prior to 1947, water resource development works in India comprised

83 *Rural Litigation & Entitlement Kendra, DehraDun v State of Uttar Pradesh* AIR 1987 SC 2426

84 *Samantha v State of Andhra Pradesh* AIR 1997 SC 3297

mostly of diversion weirs or small earth dams not exceeding 15 to 20 meters in height, mainly in the form of small tanks and bunds with localized networks of canals. In fact, there were only 30 dams that were 30 meters or more in height before the onset of independence. With the adoption of policies for planned development after freedom in India, a major priority for policy makers was the harnessing of the country's water resources for irrigation and power. Support to earlier technologies, based on diversion or run-of-the-river schemes, gradually diminished in favour of large dams. The visibility, scale and sweep of mega-dams made them potent emblems of the reconstruction and regeneration of the battered economies of long suppressed post-colonial nations.

It is now an accepted fact that development is inevitable but the associated fact is that citizen's protest for the protection of their human rights. Whenever a development project is undertaken it results in the flagrant violation of their human rights. The core issue in the citizen campaign is the problem of displacement—the backwaters of a large dam generally displace many thousands of people—often tribals and forest dwellers who are the poorest and most powerless members of society. To compound this problem, the Indian Government's often extreme reactions to protests by potentially and actually displaced people have drawn unfavourable attention from international human rights community.⁸⁵

Large storage works such as the Bhakra, the Hirakud, the Tungabhadra and the Damodar Valley Dams were amongst the earliest projects undertaken in the post independence period in the country. Construction of high dams for hydropower generation was also taken up, especially in the peninsular India, and this included schemes such as the Machkund, Pykara and Kundah hydro-electric projects. Although enthusiasm for mega-dam projects amongst policy makers remains largely undimmed, a formidable body of independent empirical research

85. *Supra.* note 74 at p. 417

into many of these large dams has established how their social, human and environmental costs have been ignored or grossly understated in the planning of these projects, and the expected benefits exaggerated. Of the very many neglected costs of the big dams, some of the most grave are the social and human consequences of displacement.⁸⁶

According to the World Commission of Dams (WCD), between 40 and 80 million people worldwide have been physically displaced by dams. In China, by the late 1980s roughly 10 million people were counted as “*reservoir resettlers*” while, in India, estimates of the populations displaced by large dams ranged from 21 million to 33 million people. These figures, however large, are only partial estimates and does not count the millions more people living upstream and downstream of dams who have suffered what the WCD calls “*livelihood displacement*”. Among the many concerns that the World Commission has raised about dam- related displacement are;

- *Displaced and affected people rarely receive complete and adequate information on the dam project, the nature and extent of displacement and provision for resettlement and reconstruction.*
- *Displaced an affected people normally have no role in generating baseline information or in developing resettlement plans.*
- *The relocation process is often traumatic, involuntary and prolonged.*
- *Compensation is inadequately assessed and monitored.*
- *Resettlement sites are plagued by poor infrastructure and problematic relationships with host communities.*⁸⁷

86. Ravi Hemadri, Harsh Mander, Vijay Nagaraj, “*Dams, Displacement, Policy and Law in India*”, at p. v, cited from www.dams.org, visited on 5.02.2008

87. *World Commission on Dams 2000*, Dams and Development, at p. 104, cited from www.dams.org. visited on 19.2.2008

In China, for example, in the first years after the Revolution of 1949 that established the People's Republic of China, the Government has resettled an average of 8,00,000 people per year for development purposes. The Three Gorges Dam project, launched in 1994 at a total cost in excess of USD 25 billion, is expected to result in the largest dam-related displacement in history. Flooding more than 1,000 square kilometers of land with a reservoir of more than 400 miles in length, the Three Gorges Dam project will displace the population of 17 cities and 109 towns in 19 countries- a total of more than 1.2 million people.⁸⁸ The Chinese Government's argument in favor of the dam is that it will control the effects of monsoon floods on farmland as well as on industrial and urban centers in the lower Yangtze River basin; moreover it will also serve as the centre of an expansion of electricity generation capacity in China.

Studies of persons in China resettled because of dams indicate that they are often left in poverty. A study measuring the effects of displacement due to dam construction stated that one third of those resettled had re-established their lives at satisfactory standard .Another third had returned to "subsistence livelihood" while the remaining were mired in poverty.⁸⁹

Litigation with respect to dam first arose in the Tehri Dam case⁹⁰. The Tehri dam project had provoked controversy which focused on three issues. The completed dam will displace many people and submerge several towns, among them, the town of Tehri; the region is vulnerable to earthquakes and the dams may be structurally incapable of withstanding them and the possible failure of the dam could kill hundreds of thousands of people. It was found that the project would

88. Stein Martin, *"The Tree Gorges: The Unexamined Toll of Development-Induced Displacement"*, Forced Migration Review, January –April, 1998 Pp. 6-10 at p. 7-8

89. Ministry of Water Resources Resettlement office, 1988, *"Selected essay on reservoir resettlement and poverty alleviation"*, quoted in W. Courtland Robinson, *"Risks and rights: The causes, consequences and Challenges of Development-Induced Displacement"*, The Brooking Institution, SAIS Project on Internal Displacement. May 2003, at p. 16, cited from, www.brookings.edu/fp/projects/idp/gp-page.htm visited on 31.12.2007

90. Tehri Bandh Virodhi Sangharsh Samiti v. State of Uttar Pradesh 1992 Supp (1) SCR 44

submerge nearly 100 villages, including Tehri. As many as 85,000 families will have to be relocated.

In fact the opposition against the Tehri Dam began in the mid 1970s. Initially it enjoyed the support of all political parties. As construction advanced the opposition started to lose its impetus. The expert opinion on the safety of the project was divided and during this period a sum of over Rupees 3 billion had already been spent on the project. The Supreme Court also took an easy way out. It quite rightly disclaimed experts to render any final opinion on the rival contention of the expert. The Court opined;

“In our opinion the court can only investigate and adjudicate the question as to whether the government was conscious to the inherent danger as pointed out by the petitioners and applied its mind to the safety of the dam”.

The court found that the government had indeed considered the question of safety, and hence rejected the petitioners' challenge.

Litigation with respect to mega project reached its zenith in *Narmada Bachao Andolan* case.⁹¹ The case dealt with the Sardar Sarovar Project. The case raised many problems. One of the problem raised was with regard to displacement of people, inter-alia their rehabilitation and resettlement. If we go by the judgment we find the following portion relevant;

“The allegation that the Sardar Sarovar Project was not in national or public interest is not correct seeing to the need of water for burgeoning population which is most critical and important. Dams play a vital role in providing irrigation for food

91. *Narmada Bachao Andolan V Union of India*, AIR 2000 SC 3751

security, domestic and industrial water supply, hydro-electric power and keeping flood waters back."⁹²

The Court further held;

*"The displacement of tribals and other persons would perse result in the violation of their fundamental or other rights. The effect is to see that their rehabilitation at new locations they are better off than what they were. At the rehabilitation sites they will have more and better amenities than which they enjoyed in their tribal hamlets. The gradual assimilation in the main stream of the society will lead to betterment and progress."*⁹³

The petitioner's contention was that their major lacuna in the resettlement and rehabilitation was that different resettlement and rehabilitation package was being provided. To this the court opined;

"Resettlement and rehabilitation packages in the three States were different due to different geographical, local and economic conditions and availability of land in the States. The liberal packages available to the SSP oustees in Gujarat are not available to the project affected people of other projects in Gujarat. It is incorrect to say that the difference in R&R packages, the package of Gujarat being the most liberal, amounts to restricting the choice of the oustees. Each State has its own package and the oustees have an option to select the one which was most attractive to them. A project affected family may, for instance, chose to leave its home State of Madhya Pradesh in order to avail the benefits of more generous package of the State of Gujarat while other PAFs similarly situated may opt to remain at home and take advantage

92. *Ibid* p. 3786

93. *Ibid* at p. 3787

*of the less liberal package of the State of Madhya Pradesh. There is no requirement that the liberalization of the packages by three States should be to the same extent and at the same time, the States cannot be faulted if the package which is offered though not identical with each other, is more liberal than the one envisaged in the Tribunal's Award."*⁹⁴

The Court held that the principle in forming the R&R policy was not merely of providing land for PAFs but there was a conscious effort to improve the living conditions of the PAFs and to bring them into the mainstream. If one compares the living conditions of the PAFs in their submerging villages with the rehabilitation packages first provided by the Tribunal's Award and then liberalized by the states. It is obvious that the PAFs had gained substantially after their re-settlement.⁹⁵

The Supreme Court's view was that though dams have been important instruments in the construction of the modern Indian nation, they have often been built ignoring popular demands for equity, efficiency, participatory decision making, sustainability and accountability. The Court delivered its verdict bringing to an uneasy close to one of the most important judicial journeys in recent times. Confronting bitterly contested imaginations and construction of the Indian nation, the court was forced to respond, however, unsuccessfully to the sustained interrogation of the idea of 'national development'. When such projects are undertaken and hundreds of crores of public money is spent, individual organization in the garb of PIL cannot be permitted to challenge the policy decision taken after a lapse of time. It is against the national interest and contrary to the established principles of law that decisions to undertake development

94. *Ibid.* at p. 3813

95. *Ibid.* at p. 3814

projects are permitted to be challenged after a number of years during which period public money has been spent in the execution of the project.⁹⁶

After this writ petition the Narmada Bachao Andolan activist filed another writ petition as they felt that the directions of the Court were not implemented in letter and spirit, the state had failed to rehabilitate each of them in accordance with the NWDTA and the orders of the Court. The Court in the instant case⁹⁷ observed;

“The state had adopted a policy of rehabilitation of oustees, in terms whereof contention had been raised and a judgment has been obtained and in that view of the matter it is now not open to it to raise a contention which would run counter there to or inconsistent therewith.”⁹⁸

The Court further held;

“In a case of this nature we do not accept the contention raised on behalf of the applicants herein that the oustees are entitled to opt for land of their choices and the state is bound to acquire or purchase lands for the said purpose. The state has constituted a land bank. Normally, those lands which are available from land bank should be allotted and in relation thereto, the parties may have a choice. But they cannot reject such land only unless it is shown that the lands are not irrigable or cultivable or otherwise unsuitable. In view of the dicta of this court that the oustees would

96. *Ibid.* at p. 382 per Kirpal B.N. J (for himself and on behalf of Dr. A.S. Anand, CJI) Majority view

97. *Narmada Bachao Andolan V Union of India*, AIR 2005 SC 2994

98. *Ibid.* at p. 3007

be better off at the rehabilitated places, they should be offered lands which are really cultivable or irrigable."⁹⁹

In continuation with the Narmada Case, Madhya Pradesh High Court laid down various guidelines for the displaced family.¹⁰⁰ In this case, the petitioners filed a PIL for appropriate directions for the R&R of the oustees' families of the Omkareshwar Project in the State of Madhya Pradesh. The construction of Omkareshwar Project was over in October 2006 and by the letter dated 28th march 2007, the Narmada Valley Development Authority permitted the respondents to close the radial and sluice of the dam so as to achieve a water level of 189 meters at the dam site, The petitioner then filed the present writ petition contending that in judgments delivered in connection with the SSP and Tehri projects, the Supreme Court had held that there can be no submergence of villages without rehabilitation of the people living in such villages, and that all entitlements as the R&R must be given before one year and rehabilitation must be completed in all respects, six months before submergence. The petitioner also contended that though acquisition of property and R&R measures was initiated by the respondents in the villages which were to be submerged, these were yet to be compensated. The petitioner also prayed that eviction of all project affected families and severing of drinking water and electricity supplies be stopped and the respondents be restrained from taking any coercive measure and from closing the gates of the Omkareshwar Dam Project until all the project affected families are rehabilitated as per the R&R plans.

The Court answered thus;

"The law is settled that submergence cannot take place until rehabilitation of the oustees is complete, as their fundamental right under Article 21 of the Constitution would be affected and their

99. *Ibid* at p. 3010

100. Narmada Bachao Andolan V State of Madhya Pradesh, AIR 2008 MP 142

trust and confidence will be shaken but at the same time the court must ensure early completion of project, we have taken a view that the displaced family and encroachers are entitled to allotment of agricultural land. The court further affirmed that till rehabilitation is complete, no further submergence can be allowed of the remaining 25 villages."¹⁰¹

Most of the hydel projects are located in remote and inaccessible areas, where local population is like, in the present case, illiterate or having marginal means of employment and the per capita income of the families is low. It is true that the people displaced are removed from their ancestral homes. Displacement of these people would undoubtedly disconnect them from their past, culture, custom and traditions; but then simultaneously it becomes necessary to harvest a river for larger good. But what is to be remembered is that whenever any village is earmarked for such development project, the project implementing authority has to implement Resettlement and Rehabilitation programmes.

The debate over large dam is continuous. The Supreme Court lay down in unambiguous terms that large dams bring prosperity, even better environment. It is also a fact that construction of dams has led to displacement of people for thousand of years and continues today leading to an intermixing of diverse cultures. The Narmada decision highlights the fact that the people in other development sites are better off than people living in villages in whose vicinity no development projects has come. Dams submerge the forest area but they convert wasteland into greener areas. The balance of advantages clearly lies in favor of large dams. However, the relief and rehabilitation requires that at least two questions be authoritatively answered before the project could be allowed to continue; Was a master plan for the relief and rehabilitation exercise, taking into account all persons who would be affected by the fully completed project,

101. *Ibid.* at p. 167

prepared by the concerned authorities?; Were all persons who were to be affected by the project actually rehabilitated? In fact, these are the questions which have ever remained unanswered!

7. THE CONCEPT OF DEVELOPMENT AND SUSTAINABLE DEVELOPMENT

In a society characterized by wide social and economic inequalities, 'development' like other political goals is a widely contested notion with sharply antagonistic meaning given to it. This is because development is not a natural phenomenon with uniformly beneficial implications. Development activities have dissimilar effects on different social groups depending on how they are placed in society and what their interests are. Some may gain from them while others may loose. Therefore, the perception of what constitutes development is not the same with all social groups. Both the meaning of development and the route to achieve it are therefore viewed in different terms by different groups. Each social group tends to interpret development in terms of how its interest can be served and how the distribution of benefits would affect it. The ecology-economics interface subordinates environment to the primacy of economic growth. Nature is repudiated for generation of wealth, goods and services. The ecological degradation resulting from this distorted priority has emerged as the pervasive consequence of the pattern of development. The alternative uses of land interferes with all elements of environment, they pollute and overdraw water resources, degrade quality of air and damage biodiversity. The ecological imbalance destroys the existing symbiosis between people and their environment and threatens the survival of those dependants on it. It also leads to irreversible loss of natural genetic diversities evolved over the years. The shrinking of the resource base of an increasingly large number of people causes imbalance in man-nature relationship. It forces people dependant on it to over exploit the reduced

environmental space for survival which causes further degradation, reducing its utility for the very communities' dependant on it.¹⁰²

Experience of the recent past has brought to us the realization of the deadly effects of development on the ecosystem. The entire world is facing a serious problem of environmental degradation due to indiscriminate development. Concern for environmental pollution is of recent concern which has been triggered mainly by the establishment of industrial concern in developed countries. Apart from environmental disaster, the projects fail to be technically feasible. The project fails to produce the desired socio-economic benefits for which the project is undertaken. The projects have caused displacements of people and that strong resistance is felt in the failure to provide adequate food and shelter.

The *Stockholm Conference* recognized the links between environment and development. But little has been done to integrate this concept for international action until 1987 when the *Bruntland Report* stimulated debate on development policies in developing and industrialized countries alike and called for an integration of our understanding of the environment and development into practical measures of action. Further the *Earth Summit held in Rio de Janeiro in 1992* altered the discourses of environmentalism in significant ways. Sustainability, introduced in the 1987 *Bruntland Report 'Our Common Future'* and enacted *Rio Agreement*, became a new and accepted code word for development. The *UN Conference on Environment and Development held in Rio de Janeiro in 1992* provided the fundamental principles and the programme of action for achieving sustainable development.

The Supreme Court, in *Vellore Citizen's Welfare Forum vs. Union of India*¹⁰³ acknowledged that the traditional concept that development and ecology

102. 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. 358

are opposite to each other, is no longer acceptable. Sustainable development is the answer. Some of the salient principles of 'Sustainable Development' as culled out from Bruntland Report and other international documents are intergenerational equity. The Court observed that 'the precautionary principle' and 'polluter pays principle' are essential features of 'sustainable development'. In *M.C. Mehta vs. Union of India*,¹⁰⁴ the Apex Court gave a number of directions to 292 industries located nearby Taj Mahal. The Court observed that the old concept that development and ecology cannot go together is no longer acceptable. Sustainable development is the answer. The development of industry is essential for the economy of the country, but at the same time the environment and ecosystem have to be protected. Further, in *Samantha vs. State of Andhra Pradesh*,¹⁰⁵ and in *Madhu Kishwar vs. State of Bihar*,¹⁰⁶ the Court went a step forward and held that the right to development is also declared as a component of Article 21.

The Court in its judgment of *Narmada Bachao Andolan* however, laid down a different proposition. It held that merely because there will be a change is no reason to presume that there will be ecological disaster. It is when the effect of the project is known then the principle of sustainable development would come into play which will ensure that mitigative steps are and can be taken to preserve the ecological balance. Sustainable Development means what type or extent of development can take place which can be sustained by nature/ecology with or without mitigation. The dam is neither a nuclear establishment nor a polluting industry. The construction of a dam undoubtedly would result in the change of environment but it will not result in an ecological disaster. India has been engaged in the task of construction of dam and the experience in such construction does not show that it has lead to ecological or environmental degradation.¹⁰⁷ Whenever

103. (1996) 3 SCC 347

104. (1997) 3 SCC 353

105. (1997) 8 SCC 191

106. (1996) 5 SCC 125

107. *Supra*, note. 91 at p. 3803

development projects are undertaken, the aim of the project should be to improve the environment, bring prosperity and remove poverty.

The measures that have been implemented for sustainable development with regard to preserving the socio-cultural environment of the displaced persons in the three states of Maharashtra, Gujarat and Madhya Pradesh¹⁰⁸ may be mentioned in this regard;

- *The oustees' choice has been actively looked after for R&R and they have been given three choices of relocation sites.*
- *Establishment of rehabilitation committee at different levels.*
- *Integration of the displaced person with the neighboring villages by organizing medical check-up camps, animal husbandry camps, festivals, eye camps, rural development seminar for village workers etc.*
- *Establishment of rehabilitation committees at different levels.*
- *Respect of traditional beliefs, rituals rights at the starting of house construction, the day and time of leaving the old house and village and the day and time of occupying the new house etc.*
- *The sacred places at the native villages are being recreated along with their settlements at new sites.*
- *Installation of all the religious deities with the due consultation of religious heads.*
- *Promotion of cultural milieu viz. Social festivals, religious rights, rights of passage, presence of priests, shaman kinsmen, clansmen etc.*
- *Special consideration for the preservation of holistic nature of the culture.*

108. *Ibid*, at p. 3811-3812

- *Proper use of built-in-mechanism of cultural heritage of the displaced persons.*
- *Launching of culturally appropriate development plan.*
- *Genuine representation of the traditional leaders.*

After this judgment the court has at length dealt with “development” and “Sustainable Development” in *N. D. Jayal v Union of India*¹⁰⁹

“The right to development can not be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. The right to development encompasses much more than economic well-being and includes within its definition the guarantee of fundamental human rights. This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples’ well-being and realization of their full potential. It is an integral part of human rights. Of course, construction of a dam or a mega-project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component of development.”¹¹⁰

The Court further held;

“The adherence to sustainable development principle is sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right “to sustainable development” cannot be singled out. Therefore, the concept of “sustainable development”

109. (2004) 9 SCC 362

110. *Ibid.* at p. 382

cannot be singled out and therefore, the concept of “sustainable development” is to be treated as an integral part of ‘life’ under Article 21.”¹¹¹

The Apex Court, in *Essar Oil Ltd vs Halar Utkarsh Samiti*,¹¹² further observed;

“Indeed the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need not necessarily be a deadlock between development on the one hand and environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other”.

We see significant progress when we carefully evaluate the entire journey of judicial progress between development and environment development. Sustainable use of natural resources should essentially be based on maintaining a balance between development and the two ecosystems. We have reached at a point where it is necessary to strike a golden balance between development and ecology. The development should be such as it can be sustained by ecology.

Apart from answering the relation between ecology, development and sustainable development, there is a need to answer the question that whether dams actually lead to sustainable development. The purpose of dams is to increase irrigated land and income levels of beneficiaries. Do people affected by the project actually gain? It is also claimed that dams help in controlling floods. Serious doubts have been expressed with regard to the claim of these benefits.

111. *Ibid.*

112. (2004) 2 SCC 392 at p. 406

There are also questions relating to cost-benefit analysis as the dams take a long time to be built and there is substantial escalation of costs.¹¹³

It is true that given the growing needs of our society, not all projects can be stopped. Therefore, before undertaking any new project there is a need for extensive viability study of all social, environmental and economic costs of the project. The cost benefit analysis is undertaken presently too, but the methods used so far have lost their credibility because the project authorities have failed to evaluate the social and environmental costs. New methods and new parameters of evaluation will have to be drawn up to make more holistic evaluations. In other words, every human being must have a right to just and 'sustainable' development: a process which must not violate the principles of democracy and human rights of the people involved. It must ensure, as far as possible, people's participation in planning and implementation and it must bring a share of the benefits to them. Displacement of people in the name of development, especially when it is without the human consolation of rehabilitation or a share in the benefits, violates their right to development.¹¹⁴

8. SUM-UP

- 1) For every person internally displaced there are 25 million different stories for their displacement. Every year, hundred and thousand of people all across the world are forced from the safety of their homes to other places. They tend to take refuge with family or friends or in camps with the hope to find safety, food and shelter.

113. A. P. Barnabas, "Development, Disasters and Displacement: An Appraisal of Policy for Resettlement", The Indian Journal of Social Work, Volume 63, Issue 1, January 2002, pp 67-79 at p. 68

114. Enakshi Ganguly Thukral, "Displacement and Rehabilitation of Project Displaced Persons: Some Thoughts" Mainstream, August 6, 1994, pp 31-33 at p 31

- 2) Armed conflict, relocation, and communal violence, natural and ecological disasters, systematic violations of human rights, as well as traditionally recognized sources of persecution combine to produce these massive movements within State borders. These groups of people are vulnerable due to their peculiar position and hence the IDPs suffer continuous violation of basic human rights and their humanitarian needs go unmet.
- 3) The response of the international fraternity to the problems faced by the IDPs is viewed from the post-cold war era in which long-suppressed ethnic and religious conflicts have been unleashed in many parts of the world. This caused greater willingness on the part of the international community to address these problems and to try to evolve for the IDPs standards and mechanism on similar basis to those that assist and protect refugees.
- 4) The need to identify and assist the population affected by internal displacement had raised the issue of definition. Many a times there have been confusion with respect to defining IDPs as the authorities were not clear as to what should be included in the definition. For e.g. some oppose the definition's inclusion of 'natural disasters'. There are those who would like to see the definition broadened to include 'development projects' that cause displacement. All these points were discussed and a working definition finalized. The adoption of a definition, it was felt, would facilitate the gathering of statistics and other data on IDPs.
- 5) There is a need to distinguish between IDPs and refugees, though at times they have much in common. The distinction is that crossing an international border turns IDPs into a refugee. To some, this is an arbitrary distinction which tries to limit the applicability of refugee law to IDPs. It is of enormous consequence, as a displaced person's

presence in a country other than his or her own implicates a well established protective regime, and affords the persons, rights recognized under international law.

- 6) It is emphasized that in the need to establish a comprehensive framework for the protection of IDPs, one should not undermine the obligations in the existing human rights and refugee law, in particular the right to seek asylum from 'persecution' and to '*non-refoulement*'. Generally speaking, the protection derived from refugee law in so far as IDPs are concerned is limited in its application because, the IDPs, unlike refugees, are within the borders of their own countries and the causes of their displacement are not always identical to those of refugees. Hence, to extend the refugee law to IDPs would extend only partial protection.
- 7) It is felt that the problem of displacement is in and from developing countries with acute problem of nation-building; crisis of national identity and unity, limited capacity for economic productivity and resource distribution and of course development which tends to displace the maximum. Not only international legal standards but also national laws are critically important to remedy the gross violations of human rights that emanate from different forms of displacement.
- 8) Causes of development induced displacement include dams and irrigation projects, urbanization, mining, wildlife and sanctuaries. Not only is development induced displacement a widespread and growing phenomena, but evidence suggests that while the beneficiaries of development are numerous, the costs are being borne disproportionately by the poorest and most marginalized population.
- 9) There are many people displaced by development projects than there are refugees. It is an irony that the millions displaced by development project do not have an adequate protection regime. The displaced

people face permanent poverty and end up being politically and socially marginalized. Many of them drift into urban slum and become part of that increasing population.

- 10) In this globalized world, addressing the human rights abuses of IDPs and also addressing development failures that force so many millions to leave their homes remains an immense challenge. The need to respect for the rights of uprooted population is essential if prevention and protection efforts are to be effective. Simultaneously greater cooperation between the many political, humanitarian and development actor is needed.
- 11) The IDPs remain under the control of national authorities, unlike refugees. They do not receive the assistance and protection of the international community. Overwhelmingly, they live under the adverse conditions of a hostile domestic environment, where the access to protection and assistance is constrained by national sovereignty.
- 12) No doubt development is very essential for state's progress but a state's approach should be 'sustainable development'. To meet the future demand is very essential else that development would not be a wholesome development. Development tends to cause a large scale of displacement which in the coming year would overthrow all other cause of displacement.

Chapter II

Protection of Internally Displaced Persons under International Human Rights Instruments

CHAPTER - II

PROTECTION OF INTERNALLY DISPLACED PERSONS UNDER INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

1. OVERVIEW

In the last chapter an attempt was made to discuss the genesis of internal displacement. The chapter discussed various aspects related to displacement. It discussed the definition of IDPs and tried to distinguish IDPs and refugees. Further the chapter makes an attempt to discuss the causes of displacement. After having discussed the conceptual part of IDPS, in this foregoing chapter I will discuss the protection mechanism available to the IDPs in the International Human Rights Instruments.

The UN has facilitated domestic responses to internal displacement not only through the humanitarian assistance provided by its specialized agencies, but also through the identification of the rules of international law that governs all states' responses to displacement.¹ The first Representative of Secretary General, Dr. Francis Deng, was appointed in 1992 with a mandate to compile international standards composing the normative framework for addressing displacement. The challenge of meeting the needs of the internally displaced, it must be emphasized,

1. These efforts have been strengthened since 2006 with the gradual implementation of a reform of the humanitarian system composed of three components: (1) Creation of a Central Emergency Relief Fund (CERF); (2) Improved support for UN resident and humanitarian coordinators; and (3) Introduction of the cluster approach by designating clusters with an agency responsible for leading the cluster at the international as well as the country levels and for acting as provider of last resort if no other organizations are available in given situations to undertake necessary cluster activities. The clusters and designated agencies are nutrition (UNICEF), water and sanitation (UNICEF), health (WHO), shelter in conflict for IDPs (UNHCR), protection in conflict for IDPs (UNHCR), logistics (WFP) telecoms (OCHA/UNICEF/NFP), early recovery (UNDP), and education (UNICEF). Cited from, *Protecting Internally Displaced Persons: Manual for Law and Policy makers* www.brooklin.edu/projects/idps/Policies.index.aspx visited on 15.12. 2008.

is both one of providing material assistance to the needy and of ensuring their protection and respect for their human rights.

Since the end of the Cold War, the number of people uprooted by conflict, ethnic strife and human rights violations has soared. In 2004 there were between 20-25 million internally displaced persons. By then the number of refugees- those who fled or had been pushed out of their own countries- had declined to 9.2 million from 9.6 million in 2003. This trend was already apparent in 2001 during the war in Afghanistan, when the number of internally displaced persons in the country stood at two million. However, in the same year only 2, 00,000 Afghans crossed into Pakistan as refugees. In 2003, during the war in Iraq, hundreds of thousands of displaced people remained at risk inside the country; only a very few small number were able to flee abroad. In some African humanitarian crises, there can be ten internally displaced persons for every refugee. Currently there are an estimated 1.4 million people displaced by conflict in Uganda, at least 1.5 million in the Democratic Republic of Congo and 6 million in Sudan. But only 30,000 displace people from Uganda have gone on to become refugees, while the number for the DRC and Sudan are 4, 69,000 and 7, 03,000 respectively.²

Despite the intensity and scope of internal displacement, there is no system of protection and assistance for the displaced people, "*no specific legal instrument covers the particular needs of the internally displaced and no specific institution is mandated to address those needs*". Within the perspective of the international community the crisis of the IDPs is that they fall within the domestic jurisdiction of the state and are therefore, not covered by the protection normally accorded to refugees, whereas, the fundamental rights and human needs of IDPs for international protection and assistance appear to be greater. The UNHCR has underlined the importance of establishing a legal framework that could be used by

2. UNHCR; UNWRA; US Committee for Refugees (1990-2000); The Global IDP Project/Norwegian Refugee Council (2001-2004)

humanitarian organizations in their discussion with relevant authorities. The value of having a legal framework has become increasingly evident.³

The millions of people caught in the midst of violent conflict without the basic necessities of life present a political and strategic concern, not to mention a profound humanitarian and human rights problem, requiring international action. Conflict and massive displacement can disrupt stability, turn countries into breeding grounds for lawlessness and terrorism, and undermine regional and international security. Whether in the Great Lakes region of Africa, the Horn of Africa, West Africa, or the Balkans, conflict and displacement have spilled over borders, overwhelming neighboring countries with large numbers of refugees and even igniting regional wars. Unless addressed, situations of displacement can create political and economic turmoil in entire regions.⁴

IDPs are entitled to enjoy equally and without discrimination, the same rights and freedoms under international and national laws, as enjoyed by others in their country. International law does not specifically address the plight of IDPs, but this does not mean that they are not protected under the law. In fact, as citizens or habitual residents of their country, IDPs remain entitled to full and equal protection under the State's national law, which should be compatible with the State's obligations under international law.

2. THE ROLE OF UNITED NATIONS IN PROTECTION OF THE RIGHTS OF IDPs

Human rights and humanitarian law may be seen as the principal source of existing protections for IDPs; along with refugee law, they may also be the foundations for articulating a basis for further protections. While these bodies of

3. Sumit Sen. *"Exiled at home: The International Regime of Internally Displaced Persons"*; Indian Journal of International Law, Volume 38; 1998, Pp. 182-207, at p. 183

4. Kofi Annan, *"Preface,"* in Roberta Cohen and Francis M. Deng, *"Masses in Flight : the Global Crisis of Internal Displacement"*, Washington DC : The Brooking Institution 1998, at p. xix

law are conceptually distinct, they have influenced and informed each other and also contribute to a generous corpus of laws capable of application to the problems experienced by the IDPs.

Before we proceed with the system of examining different international legal framework it is essential here to examine different violations of human right which are faced by the displaced population. The most reported human rights abuses against IDPs are extra-judicial execution, torture, rape, sexual assault, abductions and forced recruitment. Those responsible for the violations are largely government and rebel forces. However, in some instances, civil members of the resident population are also to blame. While the greatest volume of human rights violations is reported out of the continent Africa, extremely poor human rights records in Burma and Colombia- to name just few countries-underline the fact that the IDPs are at high risk across the globe. The worst violations generally occur at the height of the fighting when perpetrators are more easily able to act with impunity. Women and children are widely recognized as the most vulnerable of IDPs. In camp, non-camp situation, they are victim to rape, sexual assault, forced recruitment and other form of forced labour. In many instances, vulnerable women and children are reported to be under to sell their goods and even their bodies in order to procure scarce food and other rations.⁵

The principal sources of the existing standards for protection, as well as the foundations for articulation for protection in all situations of internal displacement, including during armed conflict are, *International human rights law; International humanitarian law; and Refugee law embodied in the 1951 Convention.*

These international standards may be discussed as under;

5. Internally Displaced People: A Global Survey, Norwegian Refugee Council, 2nd Edition, Earthscan Publications Ltd, 2002, U.K and U.S.A 2002 at p 6

A. Human Rights Law

Unlike refugee law, which largely applies only when a border is crossed, or humanitarian law, which applies to situations of armed conflicts, human rights law proclaim broad guarantees for the fundamental rights of all human beings.

International human rights law, which consists of both customary and treaty law, guarantees these rights and obliges states to respect, protect and fulfill the human rights of all persons without discrimination of any kind, such as, on the grounds of age, gender, ethnic origin, language, religion, national or social origin, birth, sex or other status, including on the grounds of being or having been internally displaced.

The International Bill of Human Rights mainly comprises of Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR).⁶ The Universal Declaration of Human Rights, 1948 is the first human rights instrument developed by the United Nations. It provides the main civil, political, economic, social and cultural rights to which all persons are entitled without discrimination of any kind. The later two rights were built upon the UDHR and incorporate its principles in the two legally binding covenants. Although none of these instruments specifically address internal displacement, they do cover a range of risks that IDPs often face and reinforce protection for particular group of persons who tend to be disproportionately affected by displacement.

A Government that is responsible for or condones the large scale displacement of its own citizens violates its obligations under the Charter of

6. The others include the 1966 First Optional Protocol and 1989 Second Optional Protocol to the International Convention on Civil and Political Rights (XLI) of ECOSOC and Resolution 1503 (XXVIII) of ECOSOC.

United Nations. Most specifically, under Article 55⁷ and 56⁸ of the Charter of United Nations, according to which, all member states of the UN are obliged to promote universal respect for, and observance of human right and fundamental freedom for all. Not only the Charter, the Declaration clearly spells out in its Preamble, the inherent dignity and equal and inalienable rights of all the members and is the foundation of freedom, justice and peace in the world.

Not only the UDHR and the other two covenants, but there are other selected international human rights instruments that definitely care for the protection and promotion of the welfare of the IDPs. These key international instruments are; *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT)*. The Convention defines and prohibits torture under all circumstances. *International Convention on the Elimination of All Forms of Racial Discrimination, 1966 (CERD)*, prohibits racial discrimination when a person or group is treated differently. Next, the *Convention on the Prevention and Punishment of the Crime of Genocide, 1948*, defines genocide as an act committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group and declares it as a crime, whether committed during peace time or war. The *Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW)*, sets a framework for national action for ensuring women enjoy an equal footing with man. *Convention*

7. Article 55 of the Charter of the United Nations provides, "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- (a) Higher standard of living, full employment, and conditions of economic and social progress and development;
- (b) Solutions of international economic, social, health, and related problems and international cultural and educational co-operation; and
- (c) Universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

8. Article 56 of the Charter of the United Nation provides, "All members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55".

on the Rights of the Child, 1989 (CRC) together with Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2000 and Optional Protocol on the Involvement of Children in Armed Conflict, 2000, is a comprehensive code to protect the rights and best interest of children (under 18 years of age). The Convention obliges the State to take measures to ensure protection, care, psychological recovery and social reintegration of children affected by armed conflict, including unaccompanied or separated children. The Optional Protocol on the Involvement of Children in Armed Conflict prohibits compulsory recruitment and direct use in hostilities of persons less than 18 years of age. with); Declaration on the Protection of All Persons against Enforced Disappearances, 1992, defines and prohibits enforced disappearance under any circumstances and obliges states to prevent such acts, to prosecute and punish or extradite those responsible, and provide reparations for victims and their families. Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Form of Child Labour (ILO Convention No. 182), 1999, obliges states to take all necessary measures to eliminate the worst forms of child labour, such as, slavery, trafficking, prostitution or forced labour, including recruitment of children (under 18 years) for use in armed conflict. The International Convention on the Protection of All Migrant Workers and Members of their Families, 1990, provides a framework for the protection of the human rights of migrant workers during all stages of the migration process before departure, during transit and in the country of employment.

a) Prohibition of Discrimination

A basic concept underlining international human rights law is the prohibition of discrimination. The idea underlying non-discrimination is that the rights and freedoms recognized by international human rights apply to everyone and that the state shall not make any distinction. *Article 2 of the UDHR affirms that;*

“Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, sex, language, religion, political or other opinion, national or social origin, property birth or other status.”

Similar kind of provision—‘prohibition of discrimination’ has been spelt out in *Article 2(1) of the International Covenant of Civil and Political Rights* which says;

“Each state party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant without distinction of any kind, such as, race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The international human right instrument of ‘prohibition of discrimination is to be read along *Article 7 of Universal Declaration of Human Rights*, which provides that;

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

Other international human right instruments prohibit discrimination and prescribe positive or special measure in favour of vulnerable groups. Although such measures result in different treatments they are not prohibited as being discriminatory; rather they are required by the basic principles that what is

different must be treated differentially, as long as they respond to genuine vulnerability of the groups.⁹

b) Movement Related Rights

Freedom of movement encompasses the right of everyone lawfully within a country to move freely and to choose one's place of residence within its borders as well as the right to leave one's own country and freely to return to it. This right is recognized in *Article 13* of the Universal Declaration of Human Rights;

"Every one has the right to freedom of movement and residence within the borders of each State.

Everyone has the right to leave any country, including his own, and to return to his country."

Article 12 of the International Covenant on Civil and Political Right also recognizes this right. The Article provides;

- 1) Everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*
- 2) Everyone shall be free to leave any country, including his own.*
- 3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.*
- 4) No one shall be arbitrarily deprived of the right to enter his own country.*

9. Article 1(4) of the CERD and Article 4 of CEDAW

Movement related rights are subject to the constitutional provision, in such cases, limitations on free movement and choice of residence should be set out in domestic laws, which should be reviewed in times of displacement in order to ensure that they do not impose unreasonable burden on IDPs.

The Convention on the Right of Child also protects the right of child movement through *Article 10* of the Convention.

c) Right to Family

Family is protected in international human rights laws and every IDP has the right to respect of his or her family. Family being the fundamental unit of society, the widest possible protection and assistance should be accorded to the family. *Article 12* of the Universal Declaration on Human Rights affirms that-

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks”

Article 16 of the Declaration further elaborates this article by providing that-

“Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

Marriage shall be entered into only with the free and full consent of the intending spouses.

The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.”

The two articles read together explain the fact that the family and marriage are inter-related. That is to say, right to family encompasses within its ambit the right to marry and to found a family. This right is further found in *Article 17* of the International Covenant on Civil and Political Right –

- 1) *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honor and reputation.*
- 2) *Everyone has the right to protection of the law against such interference or attacks.*

This right is again supported by *Article 23* of the International Covenant on Civil and Political Rights which provides that

- 1) *The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.*
- 2) *The right of men and women of marriageable age to marry and to found a family shall be recognized.*
- 3) *No marriage shall be entered into without the free and full consent of the intending spouses.*
- 4) *State Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibility of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.*

The Convention on Elimination of all Forms of Discrimination against Women, 1979 also provides an obligation on the state to eliminate discriminate against women in matters relating to marriage and family relation.¹⁰

10. Article 16 of the *Convention on Elimination of all Forms of Discrimination Against Women, 1979*

d) Right to Food

Food is necessary for survival, its provision, therefore, is an essential precondition for the exercise of virtually all other human rights. *Article 11* of the Convention on Economic Social and Cultural International Covenant Rights affirms the right of everyone to an adequate standard of living for himself and his family including adequate food, clothing and housing and to the continuous improvement of living conditions.

The right is affirmed under *Article 14(h)* of the Convention on Elimination of Discrimination against Women;

“To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication.”

The Convention on Right of Child also affirms the ‘right to food’ under *Article 27(1)*;

“State parties recognize the right of every child to a standard of living adequate for the child’s physical, mental spiritual, moral and social development.”

Displacement disrupts access to food by both separating those who supply them with food as well as those with the means of producing it (for e.g. productive land) and also separate those who purchase their food from both the income sources and the markets necessary to buy it. As a result, all IDPs, regardless of the causes of their displacement, tend not to enjoy access to their

traditional sources of food and therefore, are inherently vulnerable to deprivation of this most vital resource.¹¹

e) Right to Health

Every person has the right to enjoy the highest attainable standard of physical and mental health without discrimination. *The Universal Declaration of Human Right* enunciates the right to health. This right extends to the IDPs. *Article 25(1)* of the Declaration provides;

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.”

The Covenant on Economic Social and Cultural Rights under *Article 12(1)* also provides this right;

“The states parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

The *Convention on Elimination of Racial Discrimination* provides the right to public health, medical care, social security and social service.¹² Similarly, the CEDAW also provides the right to protection of health and to safety in working conditions including the safeguarding of the function of reproduction.¹³

The trauma of displacement tends to aggravate pre-existing physical and mental conditions and also causes serious implications during displacement which can give rise to new health conditions. IDPs are at a high risk of attack, injury and

11. “*Protecting Internally Displaced Persons: A Manual for Law and Policy Makers*”, Brooking Institution – University of Bern, at p. 107, cited from www.brookin.edu/project visited on 11.12.2008

12. Article 5 (e) (iv) of the CERD

13. Article 11 (1) of the CEDAW

sexual assault in the course of flight, and they often find themselves isolated from family and without any access to medical care.

f) Right to Recognition

The core right of human right is the right to recognition everywhere, as a person before the law. *Article 6* of the *Universal Declaration of Human Rights* asserts;

“Everyone has the right to recognition everywhere as a person before the law.”

This right is further enunciated in *Article 16* of the International Covenant on Civil and Political Rights. This right is not subject to exceptions and is non-derogable in times of crisis and it must be respected without distinction of any kind.¹⁴

In accordance with this principle, state should take affirmative steps to ensure that IDPs have sufficient documents to be able to establish their identities and enjoy their human rights and legal entitlements on the same basis as other citizens. Every person is entitled to registration and name immediately at birth. *Article 24 (2)* of the International Covenant on Civil and Political Rights affirms this right;

“Every child shall be registered immediately after birth and shall have a name.”

g) Right to Property

The International Instruments also extend to providing the right to property. The Declaration on Human Rights affirms under *Article 17* that;

14. Article 2 of UDHR and Article 2(1) of ICCPR

- 1) *Everyone has the right to own property alone as well as in association with others.*
- 2) *No one shall be arbitrarily deprived of his property.*

The right to own property also encloses within its ambit, the right to adequate housing and to freedom from arbitrary or unlawful interference with the home, including the right to legal security of the term.¹⁵

Many times, countries experiencing conflict and displacement have significant resource constraints. In this situation the state, with very limited resources, might not have the capacity to ensure full realization of certain economic, social and cultural rights of the IDPs. But the state can not use 'lack of resources' as an excuse to do nothing to ensure the protection of IDPs. The state is under an obligation to take steps to the optimum of its available resources with the objective of achieving progressively the full rights of IDPs.

B. International Humanitarian Law

International humanitarian law (IHA) is a system of legal rules specially conceived for the implementation in the event of armed clashes, but it does not supersede the other system of international rules protecting the individuals in situations of armed conflicts, which means that it also contains principle which are applicable to the displaced population, such as, the principles which state that those who are not participating directly in hostilities, should be treated humanely. Important to International Humanitarian Law is the distinction between the civilian population, persons who do not take a direct part in hostilities and combatants. The parties to a conflict must, at all times, distinguish between the civilians and combatants, in order to spare the civilian population and civilian property.

15. Article 12 and 25 of UDHR, Article 17 of ICCPR and Article 11 of ICESCR

International law does not explicitly provide for right of IDPs to humanitarian assistance, except in situations of international armed conflicts, where civilians in occupied territories have the right to directly select and receive humanitarian assistance from international humanitarian organizations.

The core instruments of international humanitarian law are the four *Geneva Conventions of 1949*¹⁶ and their two *Additional Protocols of 1977*.¹⁷ The four Geneva Conventions are particularly relevant because they prohibit violence to life and/or persons. While other articles deal with international armed conflicts, *Article 3 is common to all the four Geneva Conventions, which categorically-*

*“Prohibit violence to life and person, the taking of hostages and outrages upon personal dignity of persons in situations of armed conflict not of an international character occurring in the territory of one of the high-contracting parties”.*¹⁸

16. The Four Geneva Conventions are;

- (a) *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949;*
- (b) *Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949;*
- (c) *Geneva Convention Relative to the Treatment of Prisoners of War, 1949; and*
- (d) *Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949.*

17. *Protocol Additional to the Geneva Convention of 12th August 1949 and Protocol Relating to the Protection of Victims of Non-International Armed Conflicts* was adopted on 8th June 1977.

18. *Common Article 3 to the Four Geneva Convention states*, “In the case of armed conflict not of an international character occurring in the territory of one of the high contracting parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever, with respect to the above-mentioned persons:

- (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) Taking of hostages;
- (c) Outrages upon personal dignity, in particular humiliating and degrading treatment;

The Article assures a due process requirement and imposes obligations to provide the sick and wounded with medical care. The obligation to apply Article 3 is absolute for “each party to the conflict and is not contingent on reciprocity.”

The specific need for protection of IDPs during civil conflict is recognized by *Article 17 (1)* of the *1977 Second Protocol to the Geneva Conventions*, which underlies that-

“The displacement of the civil population shall not be ordered for reasons related to the conflict unless the security of the civilian involved or imperative military reasons so demand, in which case, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, safety and nutrition.”

Article 17 (2) states;

“Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.”¹⁹

We find that the internal displacement occurs often in situations of armed conflict. International Humanitarian Law is especially important for the protection of IDPs and other affected populations. Indeed, in many instances, respect for international humanitarian law would prevent the displacement of civilians. If displacement does occur, IDPs, like all other civilians, are entitled to protection and assistance as required. Parties to a conflict have a duty to allow humanitarian

(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized people.

(2)The wounded and the sick shall be collected and cared for.

(3)The parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present convention.

(4)The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

19. Article 17, Protocol II, *Geneva Convention of 1977*

access and assistance to civilian population in need. In addition to the express prohibition of displacement, the rules of international humanitarian law that are intended to spare civilians from the effects of hostilities help prevent forced displacement. It is often the violation of these rules that cause civilians to flee their homes and become displaced.²⁰

These wordings make it clear that Article 17 prohibits, as a general rule, the forced displacement or movement of civilians during internal hostilities. The forced displacement of civilians is prohibited, unless the parties to the conflict were to show that the security of the populations or a meticulous assessment of the military circumstances so demand. Clearly imperative reasons can not be justified by political motives, such as the movement of population in order to exercise more effective control over a decedent ethnic group.

In situation of armed conflict, both involuntary transfer of civilian population within their own countries and deportations across international borders are prohibited except when justified by considerations of their own security or imperative military reasons, and evacuated persons must be permitted to return to their homes as soon as hostilities in the area have ceased.²¹

Article 49 of the Geneva Convention further states that any removal must be carried out in satisfactory conditions of hygiene, health, nutrition and accommodation. It provides that-

“The occupying power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene,

20. *The Hand Book for the Internally Displaced Persons, Provisional Release, 2007*, Chapter Two, The Legal Framework, at p. 25

21. Article 49 of the Geneva Convention

health, safety and nutrition, and that members of the same family are not separated.”

The Convention contains a general prohibition on individual or mass forcible transfers both within the occupied territory and beyond its borders, either into the territory of the occupying power or as is more often the cases in practice, into third states. In addition to prohibiting displacement and laying down protection to be granted to displaced civilians, international humanitarian law requires state parties to the Geneva Conventions to criminalize the violation of the prohibition under their national law and to search for and prosecute persons alleged to have violated it.²²

In armed conflict settings, arbitrary displacement is most often a consequence of violations of international humanitarian law, including disregard for the obligation to all times. Hence, the need is to distinguish between civilians and combatants and the prohibition of directing attacks against civilians, of indiscriminate attacks, and of spreading terror among the civilian population.

In all situations of armed conflict, parties to the conflict are entitled to carry out controls of humanitarian relief, but must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and provided without adverse distinction.²³

However, the existing international standard humanitarian law has certain shortcomings. According to the protocol, this provision applies only to persons displaced because of armed conflict, and only to states parties to it.

C. Refugee Law

22. E. Gillard, *“The Role of International Humanitarian Law in the Protection of Internally Displaced Persons”*, Refugee Survey Quarterly, Volume 24 (3), p. 38, 39

23. Article 23 and 59 of the Fourth Geneva Convention; Article 70 of the First Additional Protocol to the Geneva Convention; Article 18 of the Second Additional Protocol to the Geneva Convention

The international refugee regime came into existence in the aftermath of the First World War, when governments were confronted by massive numbers of homeless people devastated by the war and the break up of multi-ethnic empires, mainly in Europe and Asia. Millions of uprooted people rendered stateless by their governments, without national passports and therefore, without identification or protection, wandered outside their home countries searching for refuge. Fearing huge flows of displaced people, European governments rushed to erect protective barriers, closed borders and expelled thousands of individuals across national frontiers.²⁴

. The United Nations Convention relating to the Status of Refugees was adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons held at Geneva in July 1951. The Convention opened for accession on 28 July 1951 and entered into force on 22nd April 1954. Today, the 1951 Convention remains the most prominent instrument in international refugee law. Besides defining the term 'refugee' and providing for their rights and obligations as well as laying down minimum standards for the treatment of persons who are found to qualify for such status, the Convention was confined by a date line and a geographical limitation. This date line referred to the application of the Convention to "...events occurring before 1 January 1951...." And the geographical limitation generally referred to events occurring in Europe prior to January 1951.²⁵

With time and during the late 50s and early 60s new refugee situations emerged across the globe necessitated a widening of both the temporal and geographical scope of the 1951 Convention. This was broadly recognized by Governments and achieved through the conclusion of the 1967 Protocol to the

24. Dr. N. Subramanya, *"Human Rights and Refugees"*, APH Publishing Corporation, New Delhi, Pp. 1-12. Please see, V.Vijaykumar, *"Refugees and Human Rights, International and National Experiences"* in Human Rights in India, C.J. Nirmal Edition, Oxford University Press 1999.

25. Sumbul Rizvi, *"International Dimensions of Refugee Law"*, ISIL Yearbook of Internal Humanitarian and Refugee Law, Volume 4, 2004, pp 103-115

Convention which was approved by the United Nations General Assembly in 1966 and opened for accession on 31st January 1967 and came into force in October 1967²⁶.

India is not a party to these legal instruments relating to refugees i.e. not signatory to the 1951 Convention or the 1967 Protocol, neither it has passed any domestic legislation on the subject of Refugees.

The archetypical example of forced migration is that of the refugee, who according to the *UN Convention Relating to the Status of Refugees, 1951*, must be outside his or her country of nationality and unable or unwilling due to well-founded fear of persecution for any one of the five reasons; race, religion, nationality, membership of a social group, or political opinion. It is the definition that has been accepted and endorsed by 135 member states and that guides the work of the UNHCR.

The narrow conventional definition, combined with the lack of international institutional control over the interpretation and application of the refugee law instrument, provides a possible basis for states to restrict their own obligations. In the industrial states, the inclination is to consider would-be immigrants, including asylum-seekers, as threat to stability and security. Ambiguities or contradictions arise when persons who are within UNHCR's competence for international protection only receive protection by states on a discretionary basis or are denied any form of humanitarian status. There are 'persons of concern' to UNHCR but they do not necessarily fall under the provisions of the 1951 Convention and 1967 Protocol. Other persons in need of international protection or assistance are not covered by either the existing legal instruments or the expanded institutional arrangements. Plight across an international border can occur from the effects of anarchy, the devastation of war, famine or other disasters where no direct persecution was involved. While some

26. *Ibid.*

refugees from war are covered by the 1951 Convention, as they are also fleeing persecution, others are not necessarily covered because they seek to escape mainly from the indiscriminate dangers of attack by fire and bombardment. IDPs, who are disqualified from conventional status and from UNHCR's statutory mandate because they do not cross a state boundary, equal or outnumber refugees. The concept of 'persecution' itself remains without an explicit or generally accepted definition in international law.²⁷

Further, the difficulties as well as the complexities inherent in the circumstances and developments described above, the use of terms become more nuanced in the practice of states and international organizations. For example, the expression 'displaced persons' is found with several meanings, but for UNHCR it refers to internal displacement within a state. Hence, the general expression currently favoured is 'persons considered to be of concern to UNHCR'.²⁸

The dynamics of displacement have changed greatly over the half century of UNHCR's existence. So too, have international responses to the problem of forced displacement. The UNHCR has frequently been called upon to address the needs of persons who have been forced to flee their homes. To address the contemporary challenges facing refugees and other displaced people, UNHCR has formed new kind of strategic partnership, with human rights organizations, military forces, the private sector and range of other actors. It has been involved in a number of activities which might previously have been considered beyond its mandate; environment protection, mine clearance, community development

27. Macalister Peter Smith, "*Refugees and Displaced Persons in a Troubled World: Human Needs, Human Rights and the Role of the United Nations High Commissioner for Refugees*"; *Indian Journal of International Law*, vol. 37, 1997, Pp. 633-657 at p. 638

28. *Ibid.*

projects and anti-racism campaigns – to name but a few. UNHCR helps refugees and displaced people to find what are indeed durable.²⁹

Since comparison exists between IDPs and refugees, certain analogy may be drawn from refugee laws for the protection of IDPs. For instance;

- *Right not to be returned forcibly to areas where the life or the freedom of the displaced persons could be threatened.*³⁰
- *Right not to be identified as displaced person if that would result in discrimination.*³¹
- *The freedom of movement especially in and out of the camp or the shelter for the displaced.*³²
- *Right to be provided with adequate documentation.*³³
- *Right to benefit from measures towards family unification.*³⁴
- *The right to voluntary return to the original area of residence.*³⁵

There has been persistent concern both from UNHCR itself and by government and other agencies, over the possible contradiction in trying to help the two groups simultaneously. According to the UNHCR and the government concerned, helping people in situ, in their own country could complicate another vital branch of the agency's work; helping refugees to seek asylum. With refugees, UNHCR basically defends their legal right to asylum and refoulement. With IDPs, they are in their own countries and should enjoy the same rights as other citizen, but there are no international legal agreements to help.

29. The Changing Dynamics of Displacement, in *"The State of World Refugees: Human Displacement in the New Millennium"*, Oxford University Press. Cited from, www.unhcr.org/cgi-bin/texts. Visited on 6-8-2007

30. Article 33 of the Refugee Convention 1951

31. Article 3 of the Refugee Convention 1951

32. Article 26 of the Refugee Convention 1951

33. Article 27 of the Refugee Convention 1951

34. Article 17 of the Refugee Convention 1951

35. Article 19 of the Refugee Convention 1951

In March 2000, noting the continued lack of protection and assistance for large number of IDPs as well as a renewed international interest in finding solutions, UNHCR drafted a position paper on its role with IDPs. Among the key points of the paper were,³⁶

- *UNHCR has an interest in the protection and welfare of persons who have been displaced by persecution, situations of general violence, conflict or massive violations of human rights, because of their similarities to refugees in terms of the causes and consequences of their displacement and their humanitarian needs.*
- *The interest places upon UNHCR responsibility to;*
 - a) *Advocate on behalf of the internally displaced;*
 - b) *Mobilize support for them;*
 - c) *Strengthen its capacity to respond to their problems; and*
 - d) *Take the lead to protect and assist them in certain situations.*
- *UNHCR's involvement in a specific operation will require;*
 - a) *A request or authorization from Secretary General or a competent principal organ of the UN;*
 - b) *Consent of the state concerned and where applicable, other entities in a conflict;*
 - c) *Access to the affected population;*
 - d) *Adequate security for staff of UNHCR and implementing partners;*
 - e) *Clear lines of responsibility and accountability with the ability to intervene directly on protection matters; and*
 - f) *Adequate resources and capacity.*
- *Recognizing the fundamental importance of co-operation and collaboration, UNHCR will work closely with the emergency relief coordinator (Office for the Coordinator of Humanitarian Affairs)*

36. *Internally Displaced Persons: The Role of the United Nations High Commissioner for Refugees.* www.unhcr.org. Visited on 15th Feb 2007 at p. 1

and relevant organizations concerned and to improve the mechanism for allocating responsibilities.

Though it has committed to 'greater engagement' with the internally displaced and to greater cooperation with an array of other organizations and actors, UNHCR has insisted that such engagement must remain "*within the parameters of its principles and prerequisites for operational involvement*". In terms of possible involvement with development-displaced populations, the UNHCR position seems fairly clear that this could only happen if such populations had been displaced by persecution, general violence, conflict, or massive violations of human rights. In other words, if it involved, "those, who, had they crossed an international frontier, would have had a claim to international protection".³⁷

Where UNHCR does assume responsibility for IDPs, its involvement is comprehensive, comprising both protection and assistance. 'Humanitarian action', the High commissioner has affirmed, '*is not only about the delivery of relief but first and foremost about ensuring the basic human rights and security of the victims on all sides of conflict*'.

UNHCR's greater involvement with the IDPs has raised a serious concern for the agency. There are fears that its involvement will change the character of the agency and detract from its primary responsibility of helping refugees in countries of asylum. Additional problems have also been raised; the shortage of resources, the lack of legal framework, the difficulty of protecting persons in a situation of armed conflict, the high risk to staff and, most importantly, the conflict that invariably arises between protecting people in their countries of origin and simultaneously defending their rights to leave their country and seek

37. *Ibid.*

asylum from persecution. Further problems have arisen when UNHCR has sought to address the problems of both refugees and IDPs in the same country.³⁸

Nevertheless, UNHCR has made it increasingly clear that it may not always be reasonable or feasible to make distinction between the IDPs and refugee movements. As pointed out to its Executive Committee the UNHCR in its recent report has observed thus;

*“To the extent that refugees flows and internal displacement have the same causes, it makes little sense to deal only with the trans-frontier aspects of coerced population movements, either in responding to immediate humanitarian needs or in seeking solutions. From the vantage point of UNHCR, as the international agency responsible for refugees, it is clearly preferable, where possible, to operate the need for people to leave their country, and thus to become refugees in order to find safety and to obtain vital humanitarian assistance”.*³⁹

UNHCR has an interest in the protection and welfare of persons who have been displaced by persecution, situations of general violence, conflict or massive violations of human rights; in other words, all those, who, had they crossed an international frontier, would be entitled to claim international protection. This interest arises from the similarity between such IDPs and refugees in terms of the causes and consequences of their displacement and their humanitarian needs.

While UNHCR’s statute makes no reference to IDPs, it recognizes that the High commissioner may, in addition to the work with refugees, ‘engage in such activities as the General Assembly may determine, within the limits of the

38. Report of the Representative of the Secretary General, Francis M. Deng, submitted pursuant to the commission on Human Rights Resolutions 1993/95 and 1994/68, Commission on Human rights, Fifty-First Session. E/CN.4/1995/50, at p. 40

39. *Ibid*

resources placed at its disposals'. Based on this article and over a period of several decades, a series of UN General Assembly resolution have acknowledged UNHCR's particular humanitarian expertise and encouraged its involvement in situations of internal displacement.⁴⁰

The interest, arising from the office's humanitarian mandate, places upon UNHCR a responsibility to:

- *Advocate on behalf of the IDPs;*
- *Mobilize support for them;*
- *Strengthen its capacity to respond to their problems, and*
- *Take the lead to protect and assist them in certain situations.*

In view of the growing linkages between refugee problems and internal displacement, UNHCR is committed to greater engagement with the IDPs within the parameters of its principles and pre-requisites for operational involvement. In specific situations of internal displacement, they will analyze the needs, opportunities and constraints and assess the impact of its proposed involvement in the light of relevant considerations and conditions. The pros and cons of involvement will be assured carefully in each case, keeping in mind the importance of promoting effective humanitarian action to address the problem and the 'value added' which UNHCR could bring to bear on it.⁴¹

The internally displaced persons require not only humanitarian assistance but also protection against further displacement and also protection of their human rights while they are displaced and following their return. The fact is that whenever, UNHCR is called upon to extend protection and assistance to IDPs, internationally recognized human rights and humanitarian law is involved. The office also takes cognizance of the relevant national laws.

40. Article 9 of the United Nation Statute of the Office of UN High Commissioner for Refugees

41. *Supra.* note 36

Within the UN agency, UNHCR has taken on the broadest assistance and protection role for the IDPs. Although its mandate does not include the IDPs, UNHCR has increasingly become involved in situations of internal displacement at the request of Secretary General or the General Assembly. The criteria provide that it will assume prime responsibility in situations where there is a 'direct link' with its basic activities for refugees, in particular, in those situations in which returning refugees are mingled with IDPs and also where there is a 'significant risk' that the IDPs will become a refugee problem. Although its criteria are broad, UNHCR does not become involved in all situations of internal displacement.⁴²

UNHCR and its partners who were struggling to cope with the massive population displacements unleashed by the ethnic conflict that followed the end of the cold war, no longer restricted to the care and protection of refugees who had crossed international borders, they are now much more widely engaged in the dangerous and uncertain task of trying to assist and protect displaced people within their countries of origin usually in situations of continuing violence and political upheaval. These developments compelled UNHCR and its allied agencies to reassess their priorities and capacities. They renewed their efforts to seek durable solutions to displacement crisis through better links between humanitarian relief and longer term development and peace building effort. With the majority of new forcibly uprooted populations remaining within their countries of origin, more attention was focused on assisting and protecting the internally displaced.⁴³

UNHCR's long experience with refugees and its comprehensive mandate, encompassing both protection and assistance, makes it an obvious candidate for dealing with the IDPs for e.g. In 2004, following a visit to camps for IDPs in

42. *Supra*. note 38, at p. 39

43. "Current Dynamics of Displacement" in *The State of World Refugees: Human Displacement in The New Millennium*, Oxford University Press, www.unhcr.org/cgi-bin/texts, visited on 6-8-2007 at p 9.

Darfur, the UK's Secretary of State for International Development, *Hilary Benn*, posed the question; "Is it really sensible that we have different systems for dealing with people fleeing their homes dependent on whether they happen to have crossed an international border?" "I have my doubts." In 2005 in the United States, a congressionally mandated bipartisan task force on the United Nations recommended 'redefining' the mandate of UNHCR to ensure the delivery of aid to refugees, IDPs and those affected by natural disaster. Similarly, a report of the US Institute of peace called upon the United Nations to designate UNHCR the lead agency for IDPs.⁴⁴

Currently UNHCR is engaged in helping some 5 million IDPs, one-fifth of the world's total. This number includes million people in Africa, the continent most ravaged by conflict and displacement. Those in favour of a 'UNHCR Solution' also argue that current institutional arrangements; namely the collaborative approach under the Emergency Relief Coordinator have failed in protecting especially the IDPs. As no other agency has the background or experience when it comes to uprooted populations, they see UNHCR as the only realistic alternative for dealing with the problem.⁴⁵

UNHCR's parameter of operational involvement in a specific situation will be based on a thorough assessment of the situation and fulfillment of certain operational pre-requisites.⁴⁶ The assessment will analyze the risks and the

44. "Internally Displaced Persons", in "The State of World Refugees: Human Displacement in the New Millennium", Oxford University Press, cited from www.unhcr.org/cgi-bin/texts visited on 6-8-2007 at p 166

45. *Ibid.*

46. "Internally Displaced Persons: The Role of the United Nations High Commissioner for Refugees", cited from, www.unhcr.org, visited on 15th February 2007, at p. 7-8

Parameters of Operational Movements will include:

- i) *Impact on the non-political and humanitarian nature of UNHCR's mandate:* Internal displacement is usually most acute in situations of unresolved and prolonged conflict. These are also situations of gross and systematic violations of human rights and humanitarian law, of high security risk for humanitarian staff, and manipulation of

opportunities as well as the possible impact of the proposed involvement. Further, the nature of operational involvement of UNHCR⁴⁷ will vary, depending upon

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- humanitarian aid and actors for political purposes. In making its decision UNHCR will seek to ensure that its involvement does not compromise its humanitarian mandate.
- ii) *Impact on refugee protection and the institution of asylum:* There can be both positive and negative fall-out of UNHCR's involvement. Countries of asylum may be more inclined to maintain their asylum policies if something is done to alleviate the suffering of the internally displaced, reduce their compulsion to seek asylum and create conditions conducive to return. On the other hand, UNHCR's activities for internally displaced may be (mis)interpreted as obviating the need for international protection and asylum. UNHCR's involvement should seek to improve the situation of the internally displaced while upholding their right to seek asylum.
 - iii) *Impact on internal displacement:* To what extent will UNHCR's involvement actually improve the protection situation and solutions possibilities of the internally displaced? This will depend not only on UNHCR's skills and resources but also on the presence and support of other organizations, and most importantly, on concurrent political action to resolve the conflict. As an organization committed to the pursuit of solutions, UNHCR will give preference to engagement in operations where political efforts to resolve displacement are underway or being clearly contemplated.
 - iv) *Relevance of UNHCR's experience and expertise:* UNHCR's "value added" lies in its protection and solutions skills. It will be necessary in any given situation to measure their relevance in relation to the needs of the victims and to consider how they would complement or compare with the mandates and expertise of other agencies present or contemplating presence.

47. Ibid. Nature of Operational Involvement:

The nature and degree of UNHCR's involvement will vary, depending upon circumstances and the skills and activities that are needed at different stages of the problem. UNHCR may take the lead in providing protection and assistance with the co-operation of other agencies, or it may play a subsidiary role, depending upon:

1. *The phase of the displacement:* In the early or pre-displacement phase, when tensions are heightened but there has been no significant displacement, the main focus will be on defusing tension, promoting appropriate national laws and policies, building awareness, training, and preparedness measures. At this stage, UNHCR's role may be only catalytic or supportive of other actors and organizations that have clear responsibility for conflict prevention and promotion of human rights. During displacement, UNHCR's skills of providing protection and assistance will be most relevant, and in such situations UNHCR can be expected to take the lead. Once displacement has stopped or slowed down and solutions can be implemented, given its expertise in humanitarian solutions, UNHCR can again take the lead in promoting return or settlement elsewhere.
2. *Relationship to refugee solutions:* By virtue of its mandate, UNHCR has the responsibility to promote solutions to refugee problems, including the voluntary repatriation and reintegration of refugees. In situations where the successful reintegration of returnees requires addressing the needs of the internally displaced. UNHCR will be ready to take the lead because a comprehensive strategy to address displacement on both

various circumstances and also the skills and activities that are needed at different stages of the problem. UNHCR may take the lead in providing protection and assistance with the cooperation of other agencies, as it may play a subsidiary role.

UNHCR has been concerned with the discontinuity between emergency relief and long-term development assistance. Displacement has many a times caused poverty and causes wide discrepancies in living standards, which turns out to be a fertile ground for conflict and displacement. Refugees and IDPs often suffer greater, from the lack of resources to re-establish a sustainable livelihood, when they return to their homes in post-conflict situation. This in turn provokes the recurrence of conflict and renewed displacement of people. Hence, UNHCR is therefore working with the World Bank, UN agencies and other key donor governments to bridge the institutional and funding gaps between emergency relief and longer term development efforts.

In 2005, OCHA's Internal Displacement Division proposed that UNHCR carve out areas of responsibility for which it could be relied upon in emergencies. By assuming responsibility for specific functions, it could help make the overall UN response more predictable and the collaborative approach work better. UNHCR's greater involvement, moreover, would not diminish other agencies' roles and they would have to work together, just as they do now, when protecting refugees. In support of an enlarged role, the positive consequences of UNHCR's

sides of the border is often the best way of promoting a lasting solution. As in the case of refugee reintegration, UNHCR will seek to work closely with development organization in an effort to close the gap between relief and rehabilitation.

3. *The presence and activities of other organizations:* At each phase of the displacement it will be important to assess whether the needs of the displaced are being adequately met by others, and whether it is necessary for UNHCR to address a gap relevant to its expertise. The political and operational environment, including security considerations may limit UNHCR's presence and activities. UNHCR's operational experience has shown that in certain situations it is difficult to draw a meaningful distinction between the internally displaced and other vulnerable war-affected population in the same area. In such cases it may be necessary, in addressing the needs of the internally displaced, to adopt a border, more comprehensive approach towards all those affected in the community, for instance through co-operation and co-ordination with other agencies.

involvement have been pointed out. Countries of asylum might be more inclined to maintain their asylum policies if something is being done to alleviate the suffering of the IDPs, reduce their need to seek asylum and create conditions conducive to their return.⁴⁸

Lastly, UNHCR's 12 September 2005 agreement to assume lead responsibility, for protection, camp management and emergency shelter for IDPs enclosed by the Inter-Agency Standing Committee, makes a milestone in the evolution of UN policy on this issue. Beginning in January 2006, UNHCR will take on this role in two or three countries, if it performs effectively, calls to expand its mandate will no doubt continue, and so will the debate on the best way to deal institutionally with the IDPs.

3. UNITED NATION AND OTHER INSTITUTIONAL ARRANGEMENTS FOR THE PROTECTION OF INTERNALLY DISPLACED PERSONS

Within the United Nation framework, there are few agencies and offices that have authority to serve IDPs, refugees and migrants. The agencies can be classified under two heads, namely, agencies specifically for IDPs, United Nations specialized agencies.

A. Agencies Specifically For IDPs

In the international scenario, a multitude of organization exists to offer protection to IDPs and help them with aid for reintegration and development. The agencies which have been specifically dedicated to the protection of IDPs may be discussed as under:

48. *Supra.* note 44 at p. 167

a) The Representative of the Secretary General

In recent years, the international community has become increasingly aware of the plight of the IDPs and is taking effective steps to address their needs. In 1992, on the request of the Commission on Human Rights, the Secretary-General of the United Nations appointed a Representative on IDPs to study the causes of internal displacement, the status of the IDPs in international law, the extent of the coverage accorded to them within existing international institutional arrangements and ways in which their protection and assistance could be improved, including through dialogue with Government and other pertinent actors.

The mandate of the Representative of the Secretary General on IDPs derives from resolution 1992/73 of 5th March 1992 of the Commission on Human Rights, approved by the Economic and Social Council in its decision 1992/243 of 20th July 1992, the Commission, “*deeply disturbed by the serious problem that the large number of internally displaced persons throughout the world and their suffering is creating for the international community*”, recognized that “*internally displaced persons are in need of relief and of protection*”⁴⁹

Taking note of the analytical report, the Commission requested the Secretary-General, “to designate a representative to seek again views and information from all Governments on the human rights issues related internally displaced persons, including an examination of existing international human rights, humanitarian and refugee law and standards and their applicability to the protection of and relief assistance to IDPs.” The Commission encouraged the Secretary-General “to seek also views and information from the specialized

49. Note by the Secretary-General, Annex: comprehensive Study prepared by Mr. Francis. M. Deng, Representative of the Secretary General on the Human Rights Issues Related to Internally Displaced Persons, UN. E/ CN.4/ 1993/35 at p 5

agencies, relevant United Nations organs, regional intergovernmental and non-governmental organizations and experts in all regions on these issues.”⁵⁰

In accordance with his mandate, thus interpreted, the Representative of the Secretary-General (RSG) formulated and sent a questionnaire to all Governments, organizations and agencies specified in the resolution, requiring information on the pertinent themes of the stipulated study, drawing attention to the analytical report and in particular to a number of issues. In the course of carrying out his mandate, the RSG encountered a certain number of issues which demonstrated the gaps in the United Nations system in so far as responsibility for IDPs is concerned and, therefore, the importance of the Commission’s initiative in this area. Among these issues are scope of the mandate, the alternative models from which the Commission might choose a mechanism for its future work in this area, and the need for a comprehensive multi-faceted approach to the problems of the internally displaced.⁵¹

Since the appointment of the Representative, his role as defined by the various resolutions of the Commission on Human Rights and the General Assembly, as well as by the guidance of the Secretary-General himself has evolved into one of a catalyst, a liaison, and an advocate for the displaced. During intervening period the RSG has compiled and analyzed legal norms relevant to the protection of IDPs from arbitrary displacement. Not only this, the RSG has undertaken field study in different part of the country.

In his 1998 report to the Commission on Human rights, the RSG submitted a compilation and analysis of legal norms relevant to the protection of IDPs from arbitrary displacement. This analysis reiterates;

*“Forced removal from one’s home and home area and relocation
to another area of the country may be based on legitimate grounds*

50. *Ibid.* at p. 5

51. *Ibid.* at p. 8

and undertaken in accordance with international law. In other cases, they maybe based on legitimate grounds and undertaken in accordance with international law. In other cases they may not be compatible with international law and will be arbitrary.”⁵²

- *First, the eviction or displacement of persons is unlawful if it is based on grounds not permissible under international law. This aspect of the right not to be arbitrarily displaced implicitly derives from the rights to freedom of movement and residence, to the inviolability of the home and to housing.*
- *Second, a violation might occur if minimum procedural guarantees are not complied with.*
- *Third, the manner in which an eviction is carried out may violate other human rights such as personal liberty, freedom from torture, inhuman and degrading treatment or even the right to life.*
- *Finally, the effects of evictions and displacement may have a negative impact on the enjoyment of other human rights, in which case the State is required to take measures to respond to the concerns that arise.*

This report formed the basis for the provision in the Guiding Principles on protection against displacement. The office of the RSG is limited—the Representative is a voluntary position with a few resources and staff at its disposal.

The Representative of the Secretary General has focused the activities of his mandate on developing appropriate normative and institutional framework for the protection and assistance of IDPs, working in close collaboration with a team

52. Report by Francis M. Deng, Representative of the Secretary General, 1998, “*Internally Displaced Persons, Compilation and Analysis of Legal Norms: Legal Aspects Relating to the Protection Against Arbitrary Displacement*”, submitted pursuant to Commission on Human Rights Resolution 1997/39, E/CN.4/1998/53/Add.1, February 11, 1998

of international legal experts, the Representative prepared a “*Compilation and Analysis of Legal Norms*” relevant to the needs and rights of IDPs and to the corresponding duties and obligations of states and the international community for their protection and assistance. The Compilation and Analysis was submitted to the Commission on Human Rights by the RSG in 1996. The RSG has focused the activities of his mandate on developing appropriate normative and institutional frameworks for the protection and assistance of the internally displaced, undertaking country missions in an ongoing dialogue with governments and others concerned, and promoting a systemic international response to the plight of IDPs.

b) The Internal Displacement Unit

A second IDP focused body within the UN system is even newer one. The IDP Unit was set up in the Office for the Co-ordination of Humanitarian Affairs (OCHA) in 2002. Housed within OCHA and staffed with IDP advisors seconded by IASC member agencies, the new IDP Unit has a four fold mission statement:

- *Using the Guiding Principles as an overall framework, the unit will identify and draw attention to gaps in response to internal displacement, particularly protection, and upon its own initiative, or the request of involved actors, will seek to provide recommendations and guidance.*
- *This unit will seek to bring increased attention and greater understanding to the needs of the displaced, especially women and children, by issuing reports, studies and providing field-focused training.*
- *Recognizing sovereignty as a form of responsibility, the unit will seek to use all force to engage governments and non-state actors to provide access and physical security to the displaced.*

- *The unit will call on UN agencies, inter-governmental and non-governmental organizations as well as the displaced themselves, to enhance their commitment and accountability to a credible institutional response to internal displacement.*⁵³

c) Collaborative Approach

In an effort to develop a more effective response to the assistance and protection needs of the IDPs, the Inter-Agency Standing Committee (IASC), chaired by the Emergency Relief Coordinator (ERC), created an Inter-Agency Task Force on IDPs in 1992. The IASC strengthened this decision by approving the recommendations of its Task Force that the Emergency Relief Coordinator serve as the reference point in the U.N. system to receive request for assistance and protection on the actual or developing situations of IDPs that require a coordinated international response.

In December 1994, the IASC agreed that the Emergency Relief Coordinator should establish sufficient capacity within Department of Humanitarian Affairs (DHA) to allow him effectively to serve as reference point, and also called upon all IASC member organizations to establish within their organizations sufficient capacity on matters relating to IDPs.

A second IDP-focused body within the collaborative framework was the decision of the Secretary-General, to establish the Inter-Agency Internal Displacement Division (IADD) in July 2004 within the Office for Coordination of Humanitarian Affairs (OCHA) with the sole purpose of achieving that international organizations collaborate to adequately address the need of IDPs.

53. UN Internal Memorandum, "IDPs Units Mission Statement and 2002 Work Plan" February 26, 2002 quoted in W. Courtland Robinson: "Risks and Rights: The Causes, consequences, and Challenges of Development-Induced Displacement"; The Brookings Institution, SAIS Project on Internal Displacement, May 2003, www.brooklin.edu, visited on 31.12.2007, at p. 38

Under the 'collaborative approach' all the United Nation agencies are expected to work together, coordinated by the UN Emergency Relief Coordinator at Headquarters and Resident/Humanitarian Coordinators in the field.

At the global level, the Emergency Relief Coordinator, who also heads the Office for the Coordinator of Humanitarian Assistance, is responsible for providing support to the field, including negotiating access to IDPs, advocating for both assistance and protection, and mobilizing resources. The UN Resident Coordinator/Humanitarian Coordinator (RC/HC) works closely with, and provides leadership to the UN Country Team, which includes representative of the UN humanitarian agencies present in the affected country. The RC/HC would thus be able to call upon cluster leads for support as required.⁵⁴

However, most UN and independent evaluations have found the collaborative approach inadequate to the task and difficult to implement. Critics charge that UN agencies regularly resist coordination and that there is no real centre of responsibility for the displaced in the field.

The collaborative approach has been found inadequate to the task. The UN agencies regularly resist coordination and that there is no real head of responsibility for the displaced in the field. There is also a truth in the statement when it is said that there is 'lack of predictability', since the different agencies basically pick and choose the situations in which they react on the basis of their mandates, resources and interests.

For instance, most agencies rushed to South and South-East Asia to help those displaced by the 2004 Tsunami, but only a limited international presence

54. J. Egeland, "Towards a Stronger Humanitarian Response System", *Forced Migration Review*, vol. 4, at p. 4-5

could be mobilized for northern Uganda, where tens of thousands of children were at risk each night, of abduction or maiming.⁵⁵

B. United Nation Specialized Agencies

Within the United Nations other institutional arrangement exist which offer assistance and protection needs that best address the needs of IDPs. In this regard we can study the following:

a) International Committee of the Red Cross

The Committee was founded in 1863, and it has a presence in over eighty countries, acting 'to help all victims of war and internal violence', attempting to ensure implementation of humanitarian rules restricting armed violence. In the field, the ICRC performs a variety of tasks, which include providing protection and assistance to civilian populations, conducting health-related activities, visiting prisoners of war and security detainees, and restoring contact between family members separated by war.

ICRC makes no distinction between assistance and protection activities. While relief and development agencies often consider that protection responsibilities could jeopardize their assistance role when faced with a situation of internal displacement in an armed conflict, the ICRC invokes the principles and rules of humanitarian law. At the same time, the ICRC's independence and insistence on confidentiality sometimes complicate its ability to work with other agencies in the field. This is because it has its own rules of operation or because the U.N. operation are not always perceived as neutral, in which situation the ICRC may wish to distance itself to ensure respect for its neutrality. ICRC may also be precluded from involvement when internal displacement is unrelated to

55. "Internally Displaced Persons" in *The State of World Refugees: Human Displacement in The New Millennium*, Oxford University Press, at p. 39, cited from www.unhcr.org/cgi-bin/texts, visited on 6-8-2007 at p 168

warfare and when its conditions for involvement are not met. In recent years, the ICRC has endeavored to find ways of working in closer consultation with other agencies while maintaining its independence.⁵⁶

ICRC independence and insistence on confidentiality sometimes complicate its ability to work with other agencies in the field. The enormity of humanitarian emergencies makes collaborative work essential. Collaboration is not always easy, however, either because ICRC has its own rule of operation or because the United Nations operations are not always perceived natural, in which case ICRC may wish to distance itself to ensure respect for its independence and utility. ICRC may also be precluded from involvement when internal displacement is unrelated to warfare and when its conditions for involvement are not met. In such cases it needs to continue its exploration of ways it can cooperate with United Nation agencies and NGOs that can provide additional support in the area of protection⁵⁷.

When faced with a situation of internal displacement in an armed conflict, the ICRC invokes the principles and rules of humanitarian law. The Guiding Principles could nonetheless serve a useful purpose in contexts where humanitarian law does not make provision for certain needs⁵⁸.

b) International Organization for Migration

Established in 1951, IOM helps governments and civil society through rapid humanitarian responses to sudden migration flows, post-emergency return and re-integration programs. The Organization has been involved with IDPs in rapid analysis of migratory flows, in organizing transport for IDPs and assistance

56. Report of the Representative of the Secretary General, Francis M. Deng, submitted pursuant to the Commission on Human Rights Resolutions 1993/95 and 1994/68, Commission on Human Rights, Fifty-first session. E/CN.4/1995/50 at p. 41

57. *Ibid.* at p. 42

58. Jean Phillippe Lavoyer, " Guiding Principles on Internal Displacement", International Review of the Red Cross, No 324, September 1998, pp 467-480, at p 469

during re-settlement and re-integration. To IOM, migrants include both, those who migrate internally and internationally.

On the basis of this mandate, the organization has concluded with numerous members and observer states' cooperation agreements that stipulate the involvement of IOM in internal migration and the provision of migration assistance or protection to internally displaced persons. In this connection, a number of pertinent issues need to be addressed, for instance

- *The organization of the registration of IDPs requires that effective safeguards be developed against potential abuse.*
- *Transporting people back to war-torn countries or moving ethnic groups from one area of a country to other raises the question of whether the movements are voluntary and whether conditions are sufficiently safe to warrant return.*
- *Guidelines may well be needed to address such collaborative approach undertaken with human rights bodies to ensure that protection is ensured during the return and resettlement process.*⁵⁹

In May 2000, IOM Director *General Brunson Mc Kinley* stated that, "the human rights of migrants' deserve greater attention. Trafficked migrants are routinely exploited, mistreated or even killed. Migrant workers often find themselves without protection or recourse, either from their own governments or in the country where they are working. IOM is dedicated to assisting migrants in distress."⁶⁰

c) United Nations Children's Fund

Besides this, first created in 1946, UNICEF works for the protection of children's rights to help meet their basic needs and help them reach their full

59. *Supra note, 56*

60. IOM Mission Statement, (www.iom.int) visited on 12-2-2008

potential. While its primary concern remains assistance, UNICEF offers a good example of relief agency that has recognized the internal connection between assistance and protection. It is to be remembered that UNICEF's commitment is to children and women as a category of people in need. Where other institutions have been given a mandate to assist and protect a group of people as a whole, UNICEF takes the position that they – and not UNICEF should bear the responsibility to aid all persons, including women and children. This policy should be taken into account in deciding whether assisting and protecting IDPs should become the mandate of a single agency.⁶¹

d) United Nations Development Programme

Next is the UN's principal provider of development, technical assistance, advocacy and grant support. UNDP in particular has become increasingly involved in programs involving the resettlement and reintegration of internally displaced population. Its role with IDPs also extends to emergency situations, where the Resident Representative normally serves as the Resident Coordinator of the entire UN system. There has been some questioning within UNDP of the involvement.⁶²

Though progress is being made, substantial effort is still required to gain clarity regarding the dual role of UNDP officials as resident representative and resident coordinators. Certainly there has been some questioning within UNDP of the involvement of their senior officials in the field with issues other than development ones. The proliferation of internal conflicts, the existence of collapsed and reforming states, and the occurrence of famine and drought, however, have generated a multiplicity of emergency situations in the developing

61. W. Courtland Robinson, *"Risks and Rights: The Causes, consequences, and Challenges of Development-Induced Displacement"*, The Brookings Institution, SAIS Project on Internal Displacement. May 2003, at p. 44, cited from www.brookings.edu/fp/projects/idp/gp_page.htm, visited on 15.12.2007

62. *Ibid.*

world that the United Nations system is increasingly called upon to address. Inevitably, UNDP officials in the field have been requested to help out.

e) World Food Program

The World Food Program has been providing food aid to IDPs for the past thirty years. While the essential condition for the provision of WFP is the food insecurity of the displaced people. Displacement does not automatically make a person food insecure, but it can be a major factor, either causing or contributing to food insecurity. Where WFP is providing food and WHO monitors the health situation and health care delivery system in member states, WHO becomes involved in a situation of internal displacement when the health services have been disrupted, in such case WHO assumes its responsibility for providing or assisting in the provision of health services to these persons.

The Rome based food agency's Emergency Operations assisted more than 14 million people displaced by conflict and sudden natural disasters while its Protracted Relief and Recovery operations targeted 5 million IDPs, for a total of 19 million people and identified issues that it deemed important⁶³.

63. World Food Program, *Reaching People in Situations of Displacement* (Rome: World Food Program), March 2000 at p 4, 6-10. Following a review of its experiences with IDPs, WFP identified five issues that it deemed most important:

The importance of understanding the particular needs of IDPs in different situations and the special concerns of displaced women. Distinct IDPs needs are particularly evident during initial displacement and the resettlement/ return phases and, with respect to protection, during all stages of displacement. IDP needs are influenced by: the causes of displacement (conflict/ natural disaster/ development); the phases of displacement; previous livelihood strategies; new coping mechanisms; location in urban areas; and the length and number of times they have been displaced.

Targeting of food assistance on the basis of food insecurity. The essential condition for the provision of WFP food is the food insecurity of the displaced people. Displacement does not automatically make a person food – insecure but it can be a major factor either causing or contributing to food insecurity. While IDPs do not have particular needs, it is not appropriate to target them specifically as a group for food assistance.....when displacement is accompanied by ethnic tension; it is preferable not to distinguish between IDPs and other conflict affected people. *Complementary inputs are essential for the effective use of food and promoting self-reliance.* The essential needs of IDPs go beyond food..... Other inputs required by IDPs include safe drinking water, shelter, health, sanitation, agricultural inputs, education and income-generating activities.

f) High-Commissioner for Human Rights

The Office of the High Commissioner for Human Rights (OHCHR) has been tasked with coordinating human rights promotion and protection to IDPs. The High Commissioner is also in a position to raise specific cases of internal displacement in his dialogues with governments. The

Commissioner ensures that the recommendations made by the representatives and supporters of the Commission are carried out, and also the Commission supports the work of the Representative of the Secretary General on IDPs.

Under his authority, field officers have already been deployed and actively looking into human rights issues of internal displacement in Rwanda; in Burundi, a preventive presence has been established. The High Commissioner has given special importance to strengthening the ability of the Centre for Human rights and the Commission on Human rights to react rapidly to human rights emergencies.

g) World Health Organization

WHO is concerned with the health situation and health care delivery systems in member States, which are requested to provide data on a set of indicators for the country as a whole as well as for the different geographical areas, and for male, female, urban rural and priority population groups. WHO becomes involved in a situation of internal displacement when health services

Assistance – protection linkages require greater attention. Protection covers the prevention of physical violence against IDPs as well as ensuring respect for their rights. More systematic promotion is needed of the broad rights of the displaced and other vulnerable population groups, through joint statements with partner agencies on humanitarian principles; advocating for access to food and related inputs, freedom of movement and property right, and reporting when rights are abused.

Assisting and protecting the internally displaced, especially during recovery, reintegration, and resettlement, requires effective collaboration with partners. While the displaced often face some of the most difficult and hazardous situation, their care is often insufficient because of gaps in the division of responsibilities. Much work remains in ensuring a more predictable delineation of responsibilities for IDP assistance and protection among the humanitarian actors and between these actors and development agencies

have been disrupted, or when a specific group of IDPs has been identified as “special” by the United Nations, in which case WHO assumes its responsibility for providing or assisting in the provision of health services to these persons.

4. LIMITATIONS IN THE EXISTING MECHANISM

Though there is a myriad of provisions in International Human Rights and Humanitarian law and in Refugee law, but some are applicable in certain circumstances and not in others. There are numerous gaps existing in the international legal regime as well as institutional protection regime.

For example, the Human Rights Law can be derogated from, in times of public emergency or internal strife, which coincides with the times of greatest need for protecting the displaced. It is also not binding on insurgent forces, and humanitarian law too applies only to armed conflicts situations, and not to lesser situation of civil strife in which many IDPs are caught up. The shortcomings of the scope are also evident from the fact that some states have failed to ratify these key human rights treaties, the Geneva Convention and its Protocol, and hence, the member states are not bound by their provisions unless they are reflective of customary law.

There are numerous gaps existing to address identifiable protection needs of the IDPs. No particular norm exists for the application of the general principle of law to IDPs. The right not be arbitrarily displaced is not expressly provided for in any general human rights instrument and can only be inferred from a number of provision. It can be inferred from the general provision contained in the human right treaties. These rights, however, does not provide adequate and comprehensive coverage for all instances of arbitrary displacement, as they do not provide for the circumstances under which displacement is permissible.

Another specific situation where IDPs have no protection is, the law relating to the documentation for the displaced and also for restitution or

compensation for property lost during displacement. In all the instruments discussed above, there is no explicit protection of IDPs. Governments are also not explicitly obliged to accept international humanitarian assistance.

The provisions of existing human rights and humanitarian law are not explicit in the rights applicable to IDPs and for this reason consider it essential to articulate protection more appropriately tailored to the needs of the IDPs. In particular, they have recommended that principles be explicitly enunciated to ensure safe access by displaced persons to essential facilities and commodities necessary for survival. To require that conscription practices comply with domestic and international legal standards and in particular, international law relating to due process and non-discrimination.

For ICRC there are limits for its operation. ICRC can not become involved in situations below the threshold of armed conflict and they are denied entry into conflict areas. ICRC focused exclusively on the right of displaced persons within its area of competence, and did not address the question of the possible need for standards concerning all displaced persons, including those displaced for reasons other than armed conflict.

It is to be hoped that a strengthened collaborative arrangements can be made, where it will be possible to address the vacuum of responsibility that often exists in cases of internal displacement and that the existing gap in meeting the protection and assistance concerns will be more adequately addressed. There are steps that could be taken within the United Nations system to enhance the capacity of the agency.

The inadequacy of existing law and the need for stipulating new standards that would incorporate and add to the provisions of international instruments pertaining to the internally displaced persons was underscored by the reply of the Under-Secretary-General for Humanitarian Affairs, who wrote:

“It is evident that there are gaps in the legal protection of the various categories of displaced persons and that the current situation is not satisfactory as far as basic legal protection of displaced persons is concerned. It would consequently be desirable to undertake a more detailed review of available legislation, national and international, and on that basis, consider whether new instruments are required to improve the safety and well being of the victims of displacement.”⁶⁴

The Refugee Policy Group suggested specific areas for which new standards would be *desirable*. “While we strongly urge that greater attention be paid to better implementation of existing standards of human right and humanitarian law, and that a compilation of existing standards are necessary, the standards or guidelines should contain express prohibitions against the forcible of persons on political, racial, religious or ethnic grounds, as well as stringent restrictions on the displacement of persons in wartime. They should elaborate fully on the right to food and focus on obstruction of people’s ability to produce or find food as well as interference with humanitarian assistance. Special provisions should be included for vulnerable groups such as women, children, the elderly and the handicapped. No derogation from these standards, even in time of emergency, should be permissible. The standards should apply not only to governments, but also to insurgent groups under whose control large numbers of displaced persons are often located”⁶⁵

Lastly *Roberta Cohen*, has suggested that “the need to design a more predictable and effective international system for ‘*internal refugees*’ is critical because the overall international humanitarian response system is a thoroughly inequitable one. UNHCR attends to the needs of the world’s 9.2 million refugees,

64. Note by the Secretary-General, Annex: Comprehensive Study prepared by Mr. Francis M. Deng, Representative of the Secretary General on the Human Rights Issues Related to Internally Displaced Persons, UN. E/ CN.4/ 1993/35 at p 11

65. *Ibid.* at p. 21

and a dedicated international treaty, the 1951 Convention Relating to the Status of Refugees, set forth their rights. In contrast, no organization has a global mandate to protect and assist the much larger number of IDPs, who are in far more desperate straits, when their own governments fail to do so.”⁶⁶

5. THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

The above loopholes in the existing mechanisms show the way for amending it to frame a new comprehensive legal document for the IDPs that would define the rights of IDPs and the obligations of governments towards them. Many, thus, began appealing for an international document that would define the rights of IDPs.

Development of a legal framework for IDPs became one of the main tasks taken on by the Representative of the Secretary General on IDPs, Francis Deng; following his appointment in 1992. In collaboration with a team of international legal experts, the Representative has prepared two studies analyzing existing legal standards pertaining to internal displacement. The first was the *Compilation and Analysis of Legal Standards*⁶⁷ applicable to persons once displaced and the other was the *Right not to be Arbitrarily Displaced*⁶⁸. The latter document consolidates the numerous relevant norms which are at present too dispersed and diffuse to be effective in ensuring adequate protection and assistance for the internally displaced. At the same time it clarifies grey areas and gaps in the law that have been identified.

66. Roberta Cohen, “Strengthening Protection of IDPs, The UN’s Role”, *Georgetown Journal of International Affairs*, Winter/Spring 2006, pp 101-109 at p 102

67. U.N. DOC. No. E/CN.4/1996/52/Add.2, 19 April 1996. In this resolution the commission requested the Secretary General to publish the *Compilation* and to disseminate it widely. This was reiterated in resolution 1997/39 of 11 April 1997, in which the Commission called for the rapid publication of the compilation in all of the United Nations working languages.

68. E.CN.4/1998/53/Add.2, Annex, 11 February 1998

Whether the rights of IDPs should be set forth in a Declaration, Convention or Principle was a further difficult decision. Principles were decided upon for three reasons. First, there was no support for a legally binding treaty given the sensitivity surrounding the sovereignty issue. Second, treaty making could take decades, whereas a document was needed urgently. Third, sufficient international law already existed to protect IDPs. What was needed was a restatement of the law tailored to the explicit concerns of IDPs.⁶⁹

According to *Walter Kalin*, the Guiding Principles are based on the following conceptual ideas:⁷⁰

- *Although internally displaced persons have departed from their home, unlike refugees they have not left the country of which they are citizens. As such they remain entitled to enjoy the full range of human rights as well as those guarantees of international humanitarian law which are applicable in a given situation.*
- *Internally displaced persons experience a very special; factual situation, and therefore, have specific needs. Like other vulnerable groups such as children, or the wounded and the sick for whom special provisions are made in international humanitarian law and refugee law, internally displaced persons do not constitute a distinct legal category. However, they have many special needs and the point of departure for the Guiding Principles has been the identification of these specific needs.*
- *It is necessary to restate in more detail those legal provisions which respond to the needs of the IDPs and to spell them out in*

69. Cohen Roberta and Francis M. Deng, "The Genesis and the Challenges" in "Ten years of the Guiding Principles", GP10, Forced Migration Review, December 2008 at p. 4

70. Walter Kalin, "The Guiding Principles on Internal Displacement", *International Journal of Refugee Law*, Vol 10 at pp 557-560 at p 557

order to facilitate their application in situations of internal displacement.

The Guiding Principles are based on International Human Rights Law and international humanitarian law, and restate in greater details, guarantees relevant for the displaced that are implicit in the more abstract prescription of these bodies of law.

A. The Content of Guiding Principles

The Guiding Principles consist of an introduction followed by the phases of displacement (before, during and after) as well as a particular section concerning the rights and obligations of humanitarian aid providers. The phases of displacement in the Guiding Principles are divided into five categories;

- *General Principles,*
- *Principles relating to protection from arbitrary displacement,*
- *Principles relating to protection during displacement,*
- *Principles relating to humanitarian assistance, and*
- *Principles relating to return or resettlement.*

The Guiding Principles are principally addressed to governments, taking at their point of departure, a positive notion of sovereignty not as a barrier to the realization of rights but as affirmative duty.⁷¹

a) General Principles

As set out in the Guiding Principles, National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction. The Principle provides that;

71. Report of the Representative of the Secretary General on Internally Displaced Persons, Mr. Francis M Deng which reports on the results of four major studies on the collaborative approach, U.N.Doc.E.CN.4/2004/77, Para. 61 and 66

*“National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction”.*⁷²

The Guiding Principles call for observance of the rights they articulate not solely by governments but by ‘all authorities’, groups and persons irrespective of their legal status.⁷³ Thus, by their terms, the Guiding Principles address rebel groups (sometimes euphemistically called ‘non-state actors’), humanitarian organizations, civil society, and any other persons and entities that might impact upon the IDPs. While international norms have traditionally been considered to be binding only upon governments, this approach is consistent with humanitarian law, which binds rebel armies in addition to state forces in situations of armed conflict.⁷⁴

b) Principles for Protection from Displacement

The Principles go on to ensure that individuals and groups are not to be subjected to involuntary displacement.⁷⁵ The Principle affirms that;

“Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.”

This principle ensures respect for relevant rules of International Humanitarian Law in armed conflict settings as well as the imposition of criminal responsibility for arbitrary displacement that amounts to a war crime or crime against humanity. States should also take positive steps to prevent foreseeable

72. Principle 3 of the Guiding Principles on Internal Displacement

73. Principle 2 of the Guiding Principles on Internal Displacement

74. Walter Kalin, “*Guiding Principles on Internal Displacement – Annotations*”, American Society of International Law, Studies in Transnational Legal Policy, No 32 (1998) at p 9, cited from <http://www.asil.org/study-32.pdf> visited on 23-7-08

75. Principle 6 of the Guiding Principles on Internal Displacement

displacement and mitigate particular populations existing vulnerability to displacement.

The fact is that not all kinds of displacement are prohibited. What is prohibited is arbitrary displacement and *Principle 7* of Guiding Principles provides the guidelines to be adopted for avoiding arbitrary displacement. The Principle provides procedural protections that must be guaranteed, including decision-making and enforcement by appropriate authorities, involvement of and consultation with those who would be affected.

Further *Principle 9* of Guiding Principles, cast an obligation on the State to protect its citizens against arbitrary displacement. The Principle provides that;

“States are under a particular obligation to protect against the displacement of indigenous people, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.”

c) Rights of Displaced Persons

Under the Guiding Principles the displaced persons enjoy the full range of rights enjoyed by civilians in Humanitarian law and by every human being in human rights law. These include the right to life, integrity and dignity of the person, non discrimination recognition as a person before the law, freedom from arbitrary detention, liberty of movement, respect for family life, an adequate standard of living (including access to basic humanitarian needs), medical care, access to legal remedies, possession of property, freedom of expression, freedom of religion, participation in public life and education.⁷⁶

In several instances, the Guiding Principles specify how generally expressed rights apply in situations of displacement. These should be of particular

76. Section III, Principles Relating to Protection during Displacement and Principles 10-23 of the Guiding Principles on Internal Displacement

interest to those designing and assessing domestic policies on internal displacement. The Guiding Principles provide for special consideration of the needs of women and children (as well as for other especially vulnerable groups, such as the elderly and disabled. Section III of the Guiding Principles in fact clarifies the implementation of civil and political rights vis-a-vis economic, social and cultural rights in the case of IDPs.

d) Rights and Obligations of Humanitarian Organizations:

The Guiding Principles also lay out a number of rights and obligations of humanitarian organizations.⁷⁷ The principles stress the point that the primary duty and responsibility for providing humanitarian assistance to IDPs lies with national authorities. In this regard it is provided that-

*“The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities”.*⁷⁸

Humanitarian aid comes to represent an important means of fulfilling these rights during displacement with the goal of eventually encouraging the assumption or resumption of their self-sufficient exercise. The Organization involved in providing assistance should give due regard to protection of human right of IDPs. In this regard *Principle 27 of the Guiding Principles provides thus;*

- 1) International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced person and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.*

77. Section IV, Principles Relating to Humanitarian Assistance; Principles 24-27 of the Guiding Principles on Internal Displacement

78. Principle 25(1) of the Guiding Principles on Internal Displacement

- 2) *The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by states.*

As of now only two international agencies, the ICRC and UNHCR have the skills and experience to undertake a full range of protection activities for IDPs. NGOs should also be encouraged to provide protection by following the example of the International Rescue Committee, Peace Brigades International and others who have pioneered in this area. The greater engagement of international organization and NGO staff on the ground could create the “critical mass” needed to form protection coalitions and mobile protection teams in addition to creating a protection standby force for emergencies, steps often recommended but not yet implemented.⁷⁹

e) Resettlement and Reintegration of Internally Displaced Person

In their final section, the Guiding Principle addresses return resettlement and reintegration and emphasize the rights of IDPs to return voluntarily and safely to their homes or to resettle voluntarily in another part of the country.⁸⁰ Principle 28 in this regard affirms the right of IDPS to;

“...return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons...”

79. Simon Bagshaw and Diane Paul, “*Protect or Neglect: Towards a More Effective United Nations Approach to the Protection of Internally Displaced Persons*”, The Brooking-SAIS Project on Internal Displacement and OCHA, November 2004, at p 10

80. Section V, Principles Relating to Return, Resettlement and Reintegration and Principles 28-30 of the Guiding Principles of Internal Displacement

The right to return or resettle is not expressly stated in any particular human rights instrument, this interpretation is to be taken as a necessary corollary of the right to free movement which is enumerated in other international instruments.

Principle 29 of the Guiding Principles provides that competent authorities also have “the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possession.” This is coupled with another duty that is if such recovery of property is not possible then the competent authorities are to provide appropriate compensation or other form of reparation.

Moreover, although the displaced have the right to return, *Principle 28* of the Guiding Principles carefully specifies that they must not be forced to do so, particularly (but not only) when their safety is imperiled. The issue of the voluntariness of return or resettlement is recurrent in protracted displacement situations around the world. In many places, governments and insurgent groups have ceded to the temptation to use the return or resettlement of displaced persons as a political tool. For e.g. in India there have been instances where Indian officials pressured Muslims displaced after riots in Ahmadabad to return home notwithstanding an ongoing atmosphere of intimidation in the city to foster electoral advantage.⁸¹

f) Evaluation of Guiding Principles on Internal Displacement

There is evidence that the Guiding Principles have acquired universal acceptance and probably developed to soft law norms. The UN agencies, regional organizations, NGOs and a growing number of governments have begun to cite them and to use them as the basis for policies, laws, and programs for the IDPs.

81. David Fisher, “*Epilogue: International Law on the Internally Displaced Persons*” in “*Internal Displacement in South Asia, The Relevance of Guiding Principles*”, Paula Banarjee, Sabyasachi Basu Ray Chaudhury, Samir Kumar Das Edition, Sage Publications, New Delhi 110017, 2005 at p 326.

The Principles have not successfully addressed the plight of IDPs whose number continues to rise. The discussion below discusses the weaknesses of the Principles.

Above all, one of the most significant weaknesses of the Guiding Principles is that it is a non-binding instrument. However, with respect to the actual significance of these principles it is primarily intended to provide guidance to the representative in implementing his mandate, in particular in his dealings with state.

No monitoring and supervising mechanism exists for the Guiding Principles and this presents a huge challenge to the implementation of the Principles. As the Representative of Secretary General commended in 2002, *“while the Guiding Principles have been well received at the rhetorical level, their implementation remain problematic and often rudimentary”*.⁸²

The Guiding Principles as mentioned under Section III provide for civil, political and economic rights but as a result of their displacement, IDPs are no longer able to access fundamental, economic and social rights. In some cases, lack of access may result from IDPs remote location or lack of information aid. In armed conflict insecurity and IDPs may be unable to reach delivery points themselves for some reasons.

Although the Guiding Principles address most aspects of the problem of internal displacement, some issues are mentioned too briefly or not at all. For instance “gender” has not been taken into account in setting up system for the provision of humanitarian assistance, such as food, health care and other relief supplies. Further, registration of the displaced for benefits, such as, food, often is done through male heads of household who then are given assistance, goods and

82. Report of the Representative of the Secretary General Mr. Francis M Deng on Internally Displaced Person, UN. Doc. E/CN.4/2002/95.16 January 2002 Para 98

services on the assumption that they will provide for their families. This means that women heads of households may encounter difficulties receiving assistance; moreover, experience has shown that aid distributed to male household does not always benefit their families.

As mentioned about the universal acceptance of the Guiding Principles, the heads of the State and Government assembled in September 2005 in New York for the World Summit recognized the principles as an “*important international framework for the protection of IDPs*”, an endorsement reiterated by the General Assembly on several occasions.⁸³ At the regional level, the *Pact on Security, Stability and Development in the Great Lakes Region of Africa 2006* includes a protocol obliging signatory states to enact national legislation to incorporate the Guiding Principles in their legal framework.⁸⁴ Other regional organization including the African Union, the Organization of American States and the Council of Europe have called upon their member states to use the Guiding Principles and incorporate them into their domestic laws and policies.⁸⁵

Issues around internal displacement have steadily been incorporated into the International Policy agenda. A growing body of UN resolutions and documents refer to the Principles. These range from reports on the protection of children affected by armed conflict to reports of the Secretary- General on the implementation of the *United Nation Millennium Declaration to the Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance*. The Principles have become the accepted international standard for IDPs.

83. World Summit Outcome 2005.A/RES/62/153(2007);A/HRC/RES/6/32(2007)

84. International Conference of the Greater Lakes Region, Protocol on Protection and Assistance to Internally Displaced Persons, 30th November 2006 www.icgir.org. Visited on 23.7.08

85. In 1999 the Commission of the Organization of African Unity (OAU), now reconstituted as the African Union (AU), formally acknowledged and expressed appreciation for the Guiding Principles. The AU is presently (in 2008) in the process of drafting a binding convention on internal displacement

The Guiding Principles have played a major role in shaping UNHCR's operational responses for IDPs. Their use in programming and advocacy has arguably helped bolster their credibility and influence as a relevant international legal instrument. UNHCR views the Guiding Principles as more than a simple compilation and restatement of legal rules. UNHCR's IDP Policy Framework and Implementation Strategy 2007 affirm their relevance, stating that they will be incorporated into the offices of protection and human rights activities for IDPs.

The Guiding Principles on Internal Displacement has been well received by multilateral organizations at the regional level. They have been welcomed in resolutions, declarations and statements by organs of the Organization of African Unity (OAU) (now known as African Union), Economic Community of Development (IGAD), Organization of American States (OAS), Organization for Security and Cooperation in Europe (CoE) and Commonwealth.

Most importantly the Guiding Principles have started to make its presence felt in National Legislation. A number of Governments, including Angola, Burundi, Colombia and Liberia have incorporated them in their domestic laws and policies on internal displacement. Sri Lanka has relied upon the Principles in the formulation of its National Framework for Relief, Rehabilitation and Reconciliation

The *Oslo Conference* reaffirmed the Guiding Principles as an important framework for upholding the rights of IDPs. The main aim of the conference was to assess the accomplishment and shortcomings of the Guiding Principles on Internal Displacement over the last 10 years, and to chart a way forward for national and international decision-makers. The conference emphasized that increased political and financial commitment is needed to ensure the full protection of IDPs. States are encouraged to develop or strengthen their policies to include:

- *preventive measures to avert displacement*

- *crisis-mitigation procedures, to be activated once displacement has occurred, and*
- *Durable solution frameworks.*

Apart from this the Conference made recommendations which could help in improving the applicability of Guiding Principles⁸⁶.

86. High Level Conference on “ Ten Years of the Guiding Principles on Internal Displacement-Achievement and future Challenges”; “ Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development”, Report of the Representative of the Secretary – General, Walter Kalin, on Human Rights of Internally Displaced Persons. A/HRC/10/13/Add.3, 11th February 2009. The recommendations of the Conference was-

- 1) *The Guiding Principles should be incorporated into national legislation so as to promote their implementation and accountability for the protection of IDPs. The publication of the Manual for Law and Policymakers on Protecting IDPs will be useful resource to Governments as it provides a guide for policy makers to bring relevant domestic laws in line with the Guiding Principles in a practical way. National authorities not only have a responsibility to develop legislative framework, but also to ensure that laws and policies are implemented.*
- 2) *Effective partnerships are required to meet the twin challenges of preventing displacement and of fending displacement. These partnerships should be developed amongst States; between States and civil society; between States and financial institutions; between States, civil society and international protection and assistance agencies; and between international humanitarian agencies and development agencies.*
- 3) *More efforts need to be made to prevent displacement , through effective disaster – risk reduction and emergency preparedness, and through conflict prevention*
- 4) *Planning for durable solution must start soon after displacement occurs so as to facilitate the transition from humanitarian assistance to development through effective early recovery strategies*
- 5) *Political dialogue, including peace negotiations, needs to ensure that IDPs voices are represented and heard on all issues which affect them. Experience shows that early and sustained dialogue on issues relating to access to land, housing and property is essential to the identification of durable solutions.*
- 6) *In disaster prone countries, the Guiding Principles should be used to build closer partnerships between Governments, aid providers and civil society, as part of the disaster prevention framework. At the onset of a disaster, the Guiding Principles should be used as a checklist to develop a response strategy to ensure that all proper planning and response are carried out.*
- 7) *With an increasing number of IDPs residing in urban centre, States and protection agencies must seek new, appropriate means of providing them with adequate protection and assistance, as their requirements are different from those of people in camp settings or in rural areas.*
- 8) *Finally, it is important to develop mechanisms to ensure the participation of IDPs in political processes, in decisions affecting their lives during displacement, and in developing and implementing solutions to bring an end to their displacement. Their participation is a precondition to the implementation of the Guiding Principles.*

Participants in the conference emphasized that the Guiding Principles have become a key point of reference for the development of normative framework for the protection of IDPs in domestic laws and policies; and the essential role of the judicial system and civil society organizations in promoting the Guiding Principles.

Apart from underlining the achievement the conference highlighted the challenges to the realization of rights of IDPs remain. The number of people who have forcibly displaced from their homes is estimated at 1% of the world population. Moreover, the number of IDPs continues to increase, primarily as a result of the growth in disaster-induced displacement related to climate change but also because of protracted situations of displacement. These usually occur as a result of unresolved conflicts, lack of political will amongst national governments, or insufficient support by international actors. In many countries, significant gaps between policies and practice are observed, especially in relation to durable solution.⁸⁷

It is certainly difficult to assess the direct impact of the Principles on IDPs. It is fairly certain that they have encouraged governments to adopt laws and policies on internal displacement as a tool to advocate for their rights and have provided a legal framework for UN agencies and human rights organizations to promote the human rights of IDPs. What is much less certain is the extent to which the Principles have prevented arbitrary displacement of persons or have contributed to the ability of IDPs to find sustainable solutions to their displacement.

6. SUM-UP

- 1) As discussed, internal displacement has become a monumental crisis in both scope and intensity. Among its causes are internal conflicts, ethnic

87. *Ibid.* Para. 11 at p. 4

strife, and forced relocation. While the crisis is global, there are significant regional variations.

- 2) In recent year, there has been an increase in the United Nation agencies, special or generalized, to respond to the needs of the internally displaced. The agencies like UNHCR and ICRC have substantially increased their involvement with the displaced population. The collaborative approaches have enhanced assistance for IDPs. However, international efforts are mostly ad-hoc and often do not reach a large number of IDPs at risk.
- 3) Discussion reveals that the challenge for the IDPs is for providing material assistance to the needy and of ensuring their protection and respect for their fundamental human rights. It is also felt that the international agencies' focus is more often on relief than on protection.
- 4) The appointment of RSG introduced a mandate in the U.N. to deal with the problem of internal displacement and to focus on the rights of the IDPs. But it is felt that the capacity of the mandate is restricted. Restricted in the sense that RSG lacks operational authority, has no direct finance and has very limited staff support.
- 5) Strengthening the capacities of Government to deal with the problem of internal displacement could prove an important step towards finding solutions in certain cases. In fact it would be proper if the United Nations development and relief agencies begin to focus on assisting government.
- 6) The Guiding Principles on Internal Displacement clearly spell out the rights of IDPs and also the corresponding obligations of national authorities. These Principles have become the international standards for IDPs. States have incorporated them into national legislations.
- 7) The purpose of the Guiding Principles is to address the specific needs of IDPs worldwide by identifying rights and guarantees relevant to their protection. The principles reflect and are consistent with international human rights law and international humanitarian law. They state the

principle which would be applicable to internally displaced persons at the different phases of displacement, providing protection during displacement and guarantees resettlement and reintegration.

- 8) Discussion reveals that the Guiding Principles should be incorporated into national legislation as to promote their implementation and improve accountability for the protection of IDPs. It is the duty of national authorities to not only develop legislative framework but also to ensure that such laws and policies are implemented.
- 9) What is felt from the discussion is an urgent necessity of having a legal framework more specific to the needs of the IDPs. Apart from the Guiding Principles (which is non-binding) there is, at present, no clear formulation of the legal principles applicable to internally displaced persons and no instrument particularly focused on their particular needs. The formulation of legal principles will be helpful in dialogues and discussions with governments and other actors in the affected countries.
- 10) Questions have been raised with regard to UNHCR's involvement for the protection of IDPs. Some feel that where UNHCR assumes responsibility for protection of IDPs, its involvement is comprehensive, comprising both protection and assistance. As UNHCR has achieved great impetus in situation of internal displacement, its role in the area of protection has also expanded. However, some feel that UNHCR's involvement with IDPs has serious implication. They doubt that its greater involvement with IDPs will change the character of the agency and detract from its primary responsibility of helping refugees.
- 11) There is dispute about whether existing international legal instrument provide sufficient protection for the internally displaced and whether a mere legal prescription or simply a better implementation of existing law is sufficient. It cannot but be said that the problem of IDPs is so severe and particular that they cannot be adequately remedied by the general law

applicable to human rights protection. For e.g. the protection derived from the Geneva Conventions of 12 August 1949 and the additional Protocols concerns persons displaced by armed conflicts and only applies to the contracting state parties.

Chapter III

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

CHAPTER - III

**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. CONSTITUTIONAL 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 14¹ 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 Justice³.

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.

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 21⁹ 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 Arunachal 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 Arunachal 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 from 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 Arunachal 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 natural 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 rights¹⁶. 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 secureto 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 from 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 Constitution²³. 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 298²⁴ 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

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 bypass 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 upliftment 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 I 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-A³⁴ 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.”

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 Ramanathan, "*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 stopped⁴³.

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

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

-
- 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 very 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 led 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 11th April 2007 and finally came into force on 7th 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 camouflage 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 than 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 opportunities⁶⁵.

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-ins 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 of 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 Sabha 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 alternative 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 Draft 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 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 NPPR 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 and 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 an 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.

Chapter IV

Role of Executive and the Judiciary in Protecting the Rights of Internally Displaced Persons.

CHAPTER - IV

ROLE OF EXECUTIVE AND THE JUDICIARY IN PROTECTING THE RIGHTS OF INTERNALLY DISPLACED PERSONS.

1. OVERVIEW

In the previous chapter those laws and policies were discussed which though not specifically applicable to the IDPs can however be made applicable to the IDPs because of the dynamic response of the judiciary in ameliorating the conditions of the vulnerable section of the society. The chapter discussed the constitutional provisions which are fundamental for their existence and subsistence. Further the Chapter discussed certain central and state legislations which have an impact on the rights of the IDPs. The Chapter also discussed the Resettlement and Rehabilitation Policy which provides guidelines for the displaced family. The Policy underlies circumstances which have to be fulfilled for the displaced family before the resettlement and rehabilitation of families can take place. The Constitution has demarcated legislative, executive and judicial powers to the three wings of the state; in particular the President/Governor of the state is to exercise the executive power in their individual discretion. Having discussed the role of legislative and executive authorities in the previous chapter, the present Chapter would concentrate on the role of judiciary, that is to say, what role has the judiciary played in the implementation of the rights of the displaced family.

In the present Chapter an attempt would be made to study the role of Executive and the Judiciary in the protection of the rights of IDPs. The IDPs are directly under the protection of the state government and hence the state government needs to protect their right. If the state government fail to protect their right after they get displaced then they would be forced to live in abject poverty. The State Government has the authority to formulate its policies and whenever it does so it should direct it towards protecting the rights of IDPs, that is to say it needs a wholesome approach and not a half hearted approach because India has a large number of displaced populations but there is no law to look after them. The State Government has also failed to provide them

appropriate rehabilitation be it in cases of ethnic conflict, communal strife or for that matter development. The executive needs to give a serious thought to all these consideration as India is marked as Welfare State in which the welfare of individual needs to be looked after.

Judiciary has played a dynamic role in the protection of the rights of vulnerable group. The Judiciary has come in the forefront to protect the right of the displaced family. Justice is an attribute of human conduct. As said in the previous chapter, "law" as a social engineering is to remedy existing imbalances, as a vehicle to establish an egalitarian social order in a socialist, secular Indian Republic.

The issue of 'displacement' has no doubt reached the Courts. The petitioners have been those who have been affected by scourge of war, ethnic cleansing, riots, natural calamities, development projects, such as; dams, reservoirs, industry, urbanization, wildlife parks and sanctuaries and mining.

Whenever there is an excess exercise of power by the executive, the judiciary steps in, to neutralize the power. Judiciary has enabled the filing of Public Interest Litigation (PIL) for easy access to courts and also to acknowledge the existence of a group interest.

The reasoning of the court is influenced by the statute. The displaced persons, whose rights have been represented but marginally in the law, have had to resort to the assurances of policy; and policy has no more than persuasive effect. Also, courts are reluctant to adjudicate on the exigencies of policy implementation.¹

2. ROLE OF EXECUTIVE IN THE PROTECTION OF INTERNALLY DISPLACED PERSONS

The basic framework of our Constitution is to eliminate inequality in income and status and standards of life. The Preamble directs the centers of power. Legislature, Executive, and Judiciary- to strive to a vibrant, throbbing

1. Usha Ramanathan, "*Displacement and the Law*", Economic and Political Weekly, Vol. 31(24), June, 1996, Pp. 1486-1491 at p. 1490

socialist welfare society under Rule of Law though it is a long march but during the journey to the fulfillment of goal every State action including interpretation whenever taken, must be directed and must be so interpreted to take the society towards establishing egalitarian socialist State, the goal.

Under Part VI of the Constitution titled 'the States', *Article 152*² defines 'States'. For the interpretation of the Constitution, by operation of *Article 367*, unless the context otherwise requires or modifies, the *General Clauses Act* shall apply. *Section 3 (23)*³ of the *General Clauses Act* thereof defines 'Government' to include both the Central Government and State Government. *Section 3 (8) (b)*⁴ of the *General Clause Act 1897* defines 'Central Government' and *Section 3(60)*⁵ of the *General Clauses Act, 1897* defines 'State Government', which reads, "State Government, as regards

2. Article 152 of the Constitution reads as under, "In this Part, unless the context otherwise requires, the expression, "State" means a State specified in part A of the First Schedule".

3. Section 3(23) of the General Clauses Act 1897 reads as under, "Government" or the "the Government" shall include both the Central Government and any State Government.

4. Section 3(8)(b) of the General Clauses Act 1897, reads as, " In relation to anything done or to be done after commencement of the Constitution, mean the President; and include-

- i) In relation to functions entrusted under Clause (1) of Article 258 of the Constitution to the Government of a State, the State Government acting within the scope of authority given to it under that clause;
- ii) In relation to the administration of a Part C State before the commencement of the Constitution (Seventh Amendment) Act, 1956, the Chief Commissioner or the Lieutenant Governor or the Government of a neighboring State or other authority acting the scope of the authority given to him or it under Article 239 or Article 243 of the Constitution, as the case may be; and
- iii) In relation to the administration of a union Territory, the administration thereof acting within the scope of the authority given to him under Article 239 of the Constitution;

5. Section 3(60) of the General Clause Act 1897, reads-

- a) As respects anything done before the commencement of the Constitution shall mean, in Part A State, the Provincial Government of the corresponding Province in Part B State, the authority or person authorized at the relevant date to exercise authority or person authorized at the relevant date to exercise executive government in the corresponding acceding State, and in a Part C State, the Central Government;
- b) As respects anything done after the commencement of the Constitution and before the commencement of the Constitution (Seventh Amendment) Act, 1956 shall mean , in a Part A State the Governor, in a Part B State, the Rajpramukh and in a Part C the Central Government;
- c) As respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall man, in a State, the Governor and in Union Territory, the Central Government;

And shall, in relation to function entrusted under Article 258-A of the Constitution to the Government of India, include the Central Government acting within the scope of the authority given to it under that Article;

anything done or to be done, shall mean the Governor.” The Governor of each State is its Executive head and the Executive power of the State shall be exercised by the Governor either directly or through officers subordinate to him in accordance with the Constitution as envisaged under Article 154.

The executive power of the state is co-extensive with that of the legislative power of the state. The Governor shall appoint the Chief Minister and on his advice, he appoint Council of Ministers, who shall aid and advice the Governor in the exercise of his function except, in so far as he is, by or under the Constitution, required to exercise his functions or any of them, in his discretion. The Council of Ministers, headed by the Chief Ministers shall be collectively and individually responsible to the legislature and people in the matter of the governance of the state. All executive actions of the Government of the State shall be expressed to be taken in the name of the Governor.

In *Shamsher Singh v. State of Punjab*,⁶ a Bench of seven Judges of Supreme Court, keeping in mind the structure of our country, has held; *“Under the cabinet system of government as enshrined in our Constitution, the Governor is the formal head of the state. The Governor exercises all power and functions conferred on him by or under the Constitution, on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his function in his discretion. The satisfaction of Governor is not the personal satisfaction of the Governor but is satisfaction under the cabinet system of government. The executive is required to act subject to the control of the legislature. The real executive power is vested in the Ministers of the cabinet. The Council of Ministers with the Chief Minister as its head, aid and advice the Governor, in the exercise of his executive functions.”*

We find that in a democratic setup Rule of Law is in the center of governance. The administration is run by a constitutional mechanism. Bureaucracy forms another essential arm of governance—an arm of the political executive. Bureaucracy assumes an integral part of the administrative mechanism. The bureaucrats are considered to shape social, economic and

6. AIR 1974 SC 2192

administrative policies, which are to further the goal set down in the Constitution to establish the egalitarian social order in which socio-economic justice can be rendered to the poor and weaker sections of the society. It is also no doubt true that the Minister is responsible not only for his actions, but also for the job of the bureaucrats who work or have worked under him.

Having considered the basic structure of executive organization, an attempt is made to study the role of the executive in protecting the civil rights of the IDPs. The role of executive can be studied under the following heads:

A. Role of Executive in Protection of IDPs Displaced due to Ethnic Conflict, Communal Violence etc.

India has a large number of IDPS who are unassisted and in need of protection. Several states in our country are directly under the target of militant groups. No matter what may be the cause of their displacement, its consequence is one and same. It causes a large number of families and persons to be displaced. And having discussed the definition of IDPs they are totally at the mercy of the state authorities and controlling agencies.

India is a home to large number of IDPs caused by communal violence, ethnic cleansing, secessionist movement etc. From the late 1980s, ethnic movements and counter-insurgency operations to oppose movements of greater autonomy or secession generated hundreds of thousands of IDPs in India. The states which have been affected by insurgency are north-eastern area of Assam, Tripura, Manipur, Arunachal Pradesh and Mizoram, and in the Northern states of Jammu and Kashmir. Together with these few states, in the past few years, violence has surged due to Maoist insurgent groups in the eastern states, especially Chhattisgarh, which has forced tens of thousands to flee.

The most common figure for the total number of IDPs in India is 6,00,000. This figure comprises:

At least 2, 50,000 people displaced from Kashmir (government figure).

45,000 people who are still displaced along the Indian side of the Line of Control between India and Pakistan and cannot return despite the ceasefire.

2,30,000 displaced in Assam due to the conflict between Santhals and Bodos during the 1990s.

31,000 Reang displaced from Mizoram to Tripura.

45,000 displaced in the state of Chhattisgarh due to insurgency.

It is important to mention here that the figure presents only a partial picture. This figure represents those displaced population who are presently spending their lives in camps. This figure does not represent those displaced IDPs who largely live unassisted with friends or relatives or blend with other slum residents on the outskirts of the urban areas.⁷

Kashmir has been at heart of controversy between India and Pakistan. This controversy has caused conflict and displacement of population. The displacement of border villagers has been a common phenomenon since 1947 due to shelling and military build up along the Line of Control (LOC) and in the border areas, the displaced population belong to different communities Muslims, Hindus and Sikhs. Of the latest conflict, the Kargil War caused displacement especially in Akhnoor District due to which, the displaced population was huddled in school building or government complexes in Akhnoor town with no relief in terms of food or health care. Six months later, the camps came up at several places on the outskirts of Akhnoor – few people went back to their villages in phases, some in 2004 and others in the summer of 2005. But the return was not totally voluntary. An element of coercion and the unfulfilled promise of demining their agriculture lands and providing compensation for the damaged houses by the civil administration has been a major reason for the return. The people were finally forced to return after the

7. *India: Large Number of IDPs are Unassisted and in Need of Protection; A Profile of the Internal Displacement Situation*, 3rd May 2007. Cited from, www.internal-displacement.org, visited on 4-8-2007

government forcefully shifted the schools and primary health centre and dispensaries from the camps to the villages.⁸

With regard to the role played by the centre, it announced a package of Rs. 78 crores for the border people from just 78 villages out of which Rs 22 crores was released. Much of the money was spent on the construction of permanent safe shelters for the villagers on the reconstruction of their houses (an amount which has already been disbursed but found inadequate), schools and medical health care infrastructure. After few months, the Government announced extension of free rations for a period of another year, ending September 2005. Most villagers, both those living on the camps and in the villages, had grievances that they were not receiving ration and some had received it only for two months. Not only this, in most cases, some people regretted the level of corruption involved or the disregard for the latest census, depriving some of these people of any funds. The health facilities provided were poor and educational facilities, barring a few villages are totally dependant on the army for their needs and it all depends on the whims of the unit officers posted there to help them with medical health- care or educational facilities.⁹

There has always been an apprehension with regard to the relation between India and Pakistan. The attack on Indian Parliament on December 2001 gave indication of war between the two nations. Numerous events ultimately led to a ceasefire between India and Pakistan in November 2004, which made the displaced population feel that their problems would come to an end and they could return safely. The displaced population having been displaced for so many years found that their life has changed so much that the question of return did not come as an immediate decision. The camp life was a compulsion for them but the return too was not easy. Amidst this confusion many returned but many continued to live in the camps.¹⁰

8. Mahanirban Calcutta Research Group(MCRG), *"Voices of the Internally Displaced in South Asia"*, December 2006, pp 10-11

9. *Ibid.*

10. Shekwat, Mahapatra, *"Kargil Displaced of Akhnoor in Jammu and Kashmir: Enduring Ordeal and Bleak Future"*, A report on the Border Displacement and Return in Akhnoor,

Of the most talked displacement in Kashmir is that of Kashmiri Pundit. The Kashmiri Pundit had to leave behind their houses due to well founded fear of persecution of genocide and selective killing, the policy of the government in respect of these Kashmiri migrants is based on the premise that they would return to the valley as soon as conditions are reasonably conducive for their return are created.

Despite State Government's assurance from time to time that all the IDPs in Jammu and Kashmir will be given relief by the Government; most of the displaced people from Doda district are still not receiving any monetary relief from the administration. Most of the displaced people said that this is despite the fact that the state government assured them many times that they will be provided relief.¹¹

However, later reports reveal the facts that nearly 1,700 Hindu minority community displaced families are struggling for their rights in Jammu province. Though the state authorities here, on the one hand, have recognized their displacement but they are not treated at par with the other displaced population. Consequently they get either less relief or no relief from the administration. Their issue was raised in the State Assembly by a number of members and the minister in charge assured full support to them. Unfortunately these assurances have never transformed into reality leaving these hapless people to live in difficult and pitiable condition.¹²

To meet the objective of encouraging the return of Kashmiri Pundit to the valley, a conference on that issue was organized in the year 2003 in New Delhi. The Conference recommended a country-wise census of the displaced Kashmiri Pundit population to assess the magnitude of displacement and socio-economic conditions.

However, the fact remain that after so many years, thousands of internally displaced from border areas along the Line of Control are still

www.internal-displacement.org/8025708F004BE3B/ (http Info Files), visited on 5th March 2008

11. Global Human Rights Defense (GHRD), "*Despite court orders Doda migrants find disparities in relief*" 4th February 2000

12. Global Human Rights Defense (GHRD), "*Jammu displaced people craving for relief and rehabilitation*". 4th February 2000

waiting for rehabilitation assistance. The state government has on several occasions tried to take up the issue of the violation of the human right of the IDPs but they failed to accomplish their task of providing relief and rehabilitation. The situation for the displaced Kashmiri Pundit is not better because even if they desire to return home, they are threatened by militant groups. Security is felt as the main obstacle to return for the displaced Kashmiri Pundit.

Further east, over recent decades, violence has broken out in the states of Assam, Manipur, Nagaland, Tripura and Arunachal Pradesh, involving different ethnic groups and communities. Moreover, no official estimate of the numbers exists. Most information is found in local newspapers, while objective research in terms of assessing the magnitude of conflict-induced displacement in the region has yet to be carried out by either government or non-government agencies.¹³

Compared to the gravity of the problem, attempts to map the internal wars in terms of impact of militancy, inter-ethnic clashes on the livelihood aspect of people remain limited. The state governments display a tendency to shy away from projecting figures as it will reflect their shortcoming to handle the situation. No estimate is available on the recent flight of the Hindi-speaking people from the northeast, particularly from Assam. Even years after the Bodo-Santhal clashes in the districts of lower Assam, neither the government nor the private agencies possess accurate data on the number of people displaced from their original villages.¹⁴

The lack of effort on the part of the government has also been a reason for the circulation of seemingly inaccurate displacement figures. The information on IDP by the Norwegian Refugee Council, made available through its database on the 'Global Displacement' Figures: 2000-2003 is a useful source that lists IDP figures under two special categories, i.e., lowest and the highest estimates of IDPs found in sources. According to the database, in the year 2003, the lowest estimate of displaced in Assam is 87,000 Santhals,

13. Institute of Peace and Conflict Studies (IPCS), 17 January 2004, Case for an IDP Database in India's Northeast, <http://www.ipcs.org/Northeast> visited on 5th March 2008

14. *Ibid.*

whereas the highest estimate touches the 200,000 mark. Separately, for the same year, the lowest estimate of displaced Bengali population in Tripura is 28, 000 (State government data) whereas the highest estimate is to the tune of 1, 50,000, a figure that circulates among the local media.

No matter what may be the cause of internal displacement in the region, it is understood from the studies that the nature, frequency and extent of the cause of internal displacement is too diverse to be monitored systematically. However, a database on internal displacement is to be maintained and prepared which is very important for understanding the gravity of the situation.

Having discussed the plight of 'Chakmas' in Arunanchal Pradesh, in the previous chapter, report reveals that the government of Arunanchal Pradesh has systematically denied the Chakmas and Hajongs access to social, economic and political rights to which they are entitled under Indian and international law. It has conducted a three-pronged strategy of discrimination against them denying political rights, economic opportunity and access to basic social infrastructure. Additionally, the state government has not checked the intimidation and threats issued by the AAPSU activities. The Chakmas have been suffering forcible eviction at the hands of the State Government for decades. One particular village in the district of Changlang Vijoypur, was reportedly destroyed on three occasions, in 1989, 1994 and 1995.¹⁵

The State Government dismantled basic social infrastructure in Chakmas and Hajongs settlements, rendering these people even more vulnerable. The state government discontinued issuance of ration cards. School built by Chakmas using local community resources were closed down or destroyed. Also health facilities in Chakmas and Hajongs areas are all but nonexistent.

We find that the state has never much cared for the sufferings of the IDPs. India Government, in fact has never evolved a mechanism, leave apart a law for the protection of 'human rights' of the conflict-induced displaced

15. South Asian Human Rights Documentation Centre (SAHRDC), Human Rights Features, "*Chakmas and Hajongs Denied their Rightful Place in Arunanchal Pradesh*", 6th August 2001, www.hrdoc.net/sahrdc/hrfeature/HRF42 visited on 21st March 2008

population. It is said that Draft Policy exists only for land/development induced displacement. As of in the present year a new Resettlement and rehabilitation policy is passed which has made an initiative to take into consideration displacement caused due to any reason.

The primary responsibility for providing assistance to IDPs is said to lie with the Ministry of Home Affairs. However, the overall responsibility rests with the state concerned which is considered to be ad-hoc and inconsistent. In fact, India has no national IDP policy which can guide the state for the displaced population.

The displaced populations feel that there is a bias response of the government to the internally displaced population. It is said to favour one group as opposed to others. For example, the government response to displaced Kashmiri Pundits has been much more generous than the response to the displaced elsewhere in the country, especially compared to the IDPs of tribal origin. According to a local rights group, while a displaced Kashmiri Pundit from J&K receives 750 rupees per month per person, an adult BRU receives only 80 rupees. Also while the Indian Government has allocated funding to improve conditions in relief camps for Kashmiri Pundits in Jammu, it has not funded such activities elsewhere in the country.¹⁶

In the North-East where most of the displaced are from indigenous groups, the Central Government largely delegated the protection and assistance responsibility to State and local authorities. The low priority accorded to the plight of IDPs and the limited resources provided by the Central Government for them has largely resulted in substandard condition for these populations. The internally displaced Santhals, Bodos, and Reang in relief camps in Assam and Tripura receive some food and medical aid through funding from the Ministry of Home Affairs, although the level of assistance is reported to be far from sufficient. There have been reports of starvation and disease in relief camps, and there is no information on efforts to resettle and

16. National Network for Human Rights Treaty Monitoring in India, "*Dimensions of Discrimination in India*" - A shadow report to the UNCERD Committee, 19th February 2007, <http://www.ohchr.org/english/bodies/cerd/docs/ngos/shadow> visited on 21st March 2008

provide land to those who can return to their home areas. The internally displaced in Assam have been given some cash rehabilitation assistance in order to be able to move out of the relief camps, but the amount is insufficient in most cases, thus the beneficiaries tend to remain internally displaced.¹⁷

B. Role of Executive in Protecting the Rights of IDPs due to Development Projects and Natural Disasters etc.

Reports indicate that more than 21 million people are internally displaced due to development projects in India. Although the tribal population only makes up 8% of the total population, more than 50% victims of the development induced displacements are tribal people.¹⁸

It is also known that floods and other natural disaster also tend to displace millions every year. The Indian Ocean Tsunami which hit Southern India in December 2004 devastated the Andaman and Nicobar Islands and a 2,260 stretch of the mainland coastline in Andhra Pradesh, Kerala, Tamil Nadu and Pondicherry.

The major problem in the executive response is that of the resettlement and rehabilitation of the large number of persons displaced by development project. It constitutes a major reluctance on the part of the government to adopt a clear policy. There is no clear “land for land” policy which is coupled with insufficient cash compensation or poorly designed non-land based project has many destitute.

Having discussed the various kinds of development induced displacement in the previous chapter, studies reveal that among development, dams have so far been the major cause of displacement. The executive has handled development projects disastrously. The state is also actively involved in undertaking development project in the name of nation building.

17. Roberta Cohen, *Tough Nuts to Crack: Dealing with Difficult situations of Internal Displacement*, www.brookingsinstitution.org/fp/projects/idp/conference/1990128wp.htm visited on 21st March 2008

18. Human Rights Watch (HRW), *Human Rights Overview, India (2006)*, <http://www.org/english/docs/2006/01/18/india12272.htm> visited on 21st March 2009

What is at the centre to this development project is the Land Acquisition Act. Acquisition of land displaces people not only physically from their livelihood, but also from their culture and community life. The State takes land 'in the name of public interest' from ordinary masses and majority from the innocent tribal people. The Administrative authority under the garb of so called 'public purpose' acquires land for private investors for development project. The State has disempowered these vulnerable sections to a large extent. With the advent of globalization, the situation has worsened which may go worse in the absence of intervention of the state, civil society and the people. The State needs to reformulate its Land Acquisition Act by adding a touch of morality that adequately cares for justice and rights of the people.

In the recent past, the Government of India has become visibly concerned about the imperative to develop the Northeast; this was reflected in approving and funding about 168 mega dams in Northeast. The State should have taken the concerned people into confidence before going in for such a huge number of dams, most of which are mega dams, in an ecologically fragile region. In view of mounting criticism against the construction of mega dams both in India and all over the globe, the state should have gone in for a serious introspection and an objective review of the whole gamut of questions involving dams and development.¹⁹

The acquiring of land for private sector companies has started to create more alarm among the affected people. The agencies who acquire land are not governed by any policy for providing relief and rehabilitation to the displaced population. They tend to adopt unethical and coercive measures to take possession of land and the government machinery is part of such undertaking. The State turns out to be repressive, a mute spectator and a willing party to such forcible displacement.

The intervention of the Government against this multi-disciplinary dimensionality of ill effects is one of indifference and neglect. This is evident

19. Monirul Hussain, *Interrogating Development – State Displacement and Popular Resistance in North East India*, Sage Publication, New Delhi, 110044 at p. 153

from the dismal record of R&R. By the government's own estimates, around 25% of the displaced have been covered by any rehabilitation measures. The authenticity of even this claim has never been verified and the quality of this rehabilitation is hardly reassuring to those facing displacement. This implies that around 3/4th displaced persons are left to fend for themselves. They become invisible after the acquisition of land and disappear into the destitute urban labour market for survival. No official reports have been prepared about the social and economic status of such people. Studies carried out by NGOs and research agencies are the only sources of information. This lack of concern in the government speaks volume and makes it evident that the displaced are powerless person.²⁰

The process involved in land acquisition reveal the picture that state machinery act in collusion with the officials in tribal areas to by-pass restrictions on alienation of tribal land for a yet to be defined 'public purpose' and later to abandon the purpose and transfer the land for private purpose.

The state machinery has a reckless approach in providing enhanced compensation to all eligible persons where it is revised. The land acquisition officials do not convey exact information or necessary information in time to the displaced family.

The role of executive has been such that it facilitates displacement. It is not denied that 'development paradigm' is essential but displacement needs to be curbed if development in its real sense is to take place. Development cannot take place at the cost of people. The state government has to shed its bias approach.

It should be made incumbent upon the government before launching of the project to justify that in the light of various technical and location option, this the least displacing alternative available. For example, small reduction in height of a large dam may dramatically reduce displacement, with a proportionately much smaller fall in benefit.²¹

20. K.B.Saxena, "*Development Displacement and Resistance: The Law and the Policy on Land Acquisition*" Social Change, Vol. 38 No. 3 September 2008 at p 361-362

21. www.dams.org, visited on 21st March 2009

The government officials have never involved those who would be affected by development projects. Their participation is not essential when such decisions are undertaken. They are not given information about the costs involved in such project and what ultimately would be gained from the change that acquisition would bring.

The experience with Sardar Sarovar Project has also been controversial. The rehabilitation and resettlement policy of Sardar Sarovar Project also lacks necessary linkages that make such policy implementable. The Policy does not spell out how cultural losses, social losses, and economic integration with the mainstream would be taken care of. There was clear lack of institutional arrangements and inclination for their implementation. The land for land policy is also not satisfactory. Issues like the size of the allotted agricultural land, whether any canal, road exists on the allotted land and whether the land is free of encumbrances on it. The government also does not specify as to where from it would purchase such land when there is already a shortage of land.

Human rights of displaced for one reason or other have been disregarded by Indian State. Unfortunately this has brought untold misery upon the displaced person. The displaced people are at the mercy of the state and the state has not played any active role in the protection of the rights of IDPs.

3. ROLE OF JUDICIARY

Justice is not synonymous with equality: equality is one facet of it. Justice is not something which can be captured in a formula once and for all. It is a process, a complex and shifting balance between many factors including equality, Justice is never given; it is always task to be achieved. Justice is just allocation of advantages and disadvantages, preventing the abuse of power preventing the abuse of liberty by providing facilities and opportunities to the

poor and disadvantaged and deprived social segments for a just decision of disputes adapting to change.²²

Role of judiciary in different causes of displacement is not exhaustive. Very few cases have come up before the courts. The reason may be that they are satisfied with the approach of the government in providing them relief and rehabilitation or because they are not known of the fact that they have rights after their displacement has taken place.

A. Displacement due to Ethnic Cleansing

Here, we are concerned only with the proactive role of the judiciary in protecting the rights of displaced person due to ethnic cleansing. Ethnic cleansing has taken place in India's northeast which is as ethnically diverse as compared to the rest of the country. India's northeast has witnessed seven major cases of ethnic cleansing in recent years;

- *Displacement of Bengali Hindus and Muslims from and within Assam.*
- *Displacement of Adivasis (also called Tea Tribes on account of their representation in the workforce of the plantation industry) and Bodos within and from western Assam;*
- *Displacement of the Bengalis from Meghalaya, particularly from Shillong;*
- *Displacement of the Bengalis from and within Tripura;*
- *Displacement of the Nagas, Kukis and Paites in Manipur;*
- *Displacement of the Reangs from Mizoram;*
- *Displacement of the Chakmas from Arunachal Pradesh and Mizoram;*²³

The judiciary has, however, not been directly involved in the protection of the rights of those injured in violence as well as those displaced. Though the matter which is going to be discussed hereinafter does not exclusively deal with the IDPs but still it is important since it seems to indirectly deal in the protection of the right of the IDPs. The case which

22. Dias, Jurisprudence "*Distributive Justice*", 5th Edition, at p. 66

23. Subir Bhaumik, "*India's Northeast: Nobody's People in No Man's Land*", in Paula Banerjee, Sabyaschi Basu Ray Chaudhury, Samir Kumar Das (Eds.), "*Internal displacement in South Asia*", Sage Publication, New Delhi, at p. 149

requires special mention here is of *National Human Rights Commission v State of Arunanchal Pradesh*.²⁴ This public interest petition, being a writ petition under Article 32 of the Constitution, had been filed by the National Human Rights Commission and seeks to enforce the right under Article 21 of the Constitution, of about 65,000 Chakmas/Hajongs tribal. It is alleged that these Chakmas, settled mainly in the State of Arunanchal Pradesh, are being persecuted by sections of the citizens of Arunanchal Pradesh. But the factual matrix of the case was also referred to large number of Chakmas from erstwhile East Pakistan, now Bangladesh, who was displaced by the Kaptai Hydel Power Project in 1964. They had taken shelter in Assam and Tripura. Most of them were settled in these States and claimed to be Indian Citizens in due course of time. Since, a large number of refugees (displaced persons) had taken shelter in Assam, the State Government had expressed its inability to rehabilitate all of them and requested assistance in this regards from certain other states. Thereafter, in consultation with the erstwhile NEFA administration (North-East Frontier Agency—now Arunanchal Pradesh), about 4012 Chakmas were settled in parts of NEFA. They were also allotted some land in consultation with local tribals. The Government of India had also sanctioned rehabilitation assistance at the rate of Rs 4200/- per family.

However, after certain year, relations between the citizens of Arunanchal Pradesh and Chakmas deteriorated, and the latter complained that they are being subjected to repressive measures with a view to forcibly expel them from the state of Arunanchal Pradesh. Faced with such kinds of threats, the Chakmas group approached the NHRC, which, finding it impossible to extend protection to them moved the Supreme Court for solving the issue. *Ahmed C.J.* held;

"We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus, the state is bound to protect

24. (1996) 1 SCC 742

the life and liberty of every human being, be he a citizen or otherwise and it cannot permit any body or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the state, failing which they would be forced to do so. 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.”²⁵

Further, the Court issued various directions, directing the state that The life and personal liberty of each and every Chakmas residing within the state shall be protected and any attempt to forcibly evict or drive them out of the state shall be repelled, if necessary, by seeking the services of paramilitary or police force. Thus, the Court spelt out that “except in accordance with law, the Chakmas shall not be evicted from their homes and shall not be denied domestic life and comfort therein.”²⁶

Displacement due to ethnic cleansing takes place due to difference of feeling from the rest of India and from each other. Apart from this religious difference is often known to aggravate ethnic cleansing in India.

B. Displacement due to Natural Calamities

Calamity is a leveler of rich and poor, strong and weak, all are suffering alike. The fallout of natural calamity is considered to be the flow of generosity for help to the victims from the country and all over the world. At times, so much of relief material and money is received that its management and distribution pose an uphill task to the government. No doubt, a natural calamity causes devastation and destruction of life and property of the people. It renders numerous homeless and displaced.

Mention can be made of Gujarat High Court direction in *Bipin Chandra J. Diwan v State of Gujarat*.²⁷ This case is founded on newspapers and media reports that the Government has failed to meet the situation arising

25. *Ibid.* at p. 751

26. *Ibid.* at p. 752

27. AIR 2002 Guj. 99

from the calamity and has no adequate infrastructure to satisfactorily perform the stupendous task of providing relief to the displaced family.

In the petition, apprehensions have been raised and doubts have been expressed that the tremendous quantity of relief material and money received as contribution from different bodies, organization and persons for the quake victims and which is likely to be received in future may not be properly utilized leaving the victims high and dry.

The main reliefs claimed were issuance of direction to government to set up independent committee or commission manned by experts in different fields who may be found competent in quake relief management operations. Such committee/commission of experts should be entrusted the relief fund and the relief material to ensure their proper utilization for the victims and to avoid their diversion, misappropriation and loss.

The respondents on their part contended that the allegations of slackness and inefficiency leveled against the Government in the petition are baseless. The contributions received in cash and kind constitute the Government fund and the Government, through duly formed Committees for management of quake relief, is committed to utilize them for quake victims. In the instant case, the Court acknowledged the need of legislation to address to such kind of disaster and held;

*“The duties of the Government or the Court on occurrence of a disaster or natural calamity of this magnitude are not statutorily regulated. In fact, there is a complete lack of any legislation in this field. ... When there is a natural calamity like earthquakes, flood, fires, cyclones, and similar natural hazards, the State as guardian of the people, is obliged to provide help, assistance and support to the victims of such natural calamities to help them to save their lives.”*²⁸

This case leads us to one conclusion that an immediate legislation to look after this affair is essential instead of filing writ petition or for that matter a PIL. A law in this respect can solve this problem.

28. *Ibid.* at p. 103

Further, in this case the Court applied the 'doctrine of *parens patriae*'. It said as in the case of *Charanlal Sahu v Union of India*,²⁹ the doctrine of *parens patriae* can be much appropriately applied to the case of victims of earthquake like the present one which occurred in Gujarat. The court held;

*"The concept in jurisprudence of doctrine of parens patriae is that the State has the inherent power and authority to provide protection to the person and property of persons non-sui-juris, such as minor, insane and incompetent person like those rendered helpless due to earthquake disaster. 'Parens patriae' jurisdiction, it has been explained, is the right of sovereign and imposes a duty on sovereign, in public interest, to protect persons under disability who have rightful protection. Conceptually, the parens patriae is theory of obligation of the state to protect and take into custody the rights and privileges of its citizens for discharging its obligations, 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 states can be activated and approached to effectively come up on the scene and protect the human rights of victims of disaster. The Supreme Court has held that the Preamble of the Constitution read with the Directive Principles of State Policy in Article 38, 39, and 39-A enjoins upon the State to take up this responsibility. It is the protective measure to which the social welfare State is committed."*³⁰

The Court commenting on the role of governmental functionaries held;

"The allegation of failure and incapacity of the Government machinery show a prejudice and distrust in the elected Government. The paradox in a democratic society is that people expect too much from the elected Government and its executive and at the same time show utmost distrust in it and its functionaries. It is too early to attribute any failure to the Government machinery and show distrust in its capability to meet the situation which has arisen out of the disaster. The petitioners could have been careful enough not to take any stand as would have a demoralizing effect on host of officers,

29. AIR 1990 SC 1480

30. *Supra*. note 27 at p. 104

members of staff and workers in the Government machinery who are actively involved in the relief and resettlement operations. Obviously, the country was totally unprepared for a calamity of this dimension but there is no cause to distrust capabilities of Government machinery to handle the situation."³¹

The functions of the State, governed by the Constitution and Rule of Law, are to take necessary remedial measures as parent and guardian of the citizens of the country to help and support helpless victims of a massive disaster. This is the obligation of the state which is enforceable by the victims or public spirited organizations on their behalf by way of collective action.

C. Displacement by Development Projects

Each year ten million people across the globe are affected by forced displacement due to development projects such as dams, mines, urbanization, parks and sanctuaries, slum demolition. Millions have to leave their homes in search of new livelihoods or to avoid conflict and hardships in their original place of habitation. The judiciary has contributed in protecting the rights of the displaced person due to development project. The role of judiciary in addressing to the issue of Development Induced Displacement may be studied under the following heads:

a) Displacement by Mining Activity

The tribal/advansi regions of India are prominently located in forest areas which are rich in biodiversity. These areas have vast reserves of flora, fauna and minerals. Since, these areas are rich in biodiversity they are prone to exploitation for just and unjust causes. Due to this reason, the Constitution of India has provided safeguards and legislations which protect these people as well as the country's natural resources.

*Rural Litigation and Entitlement Kendra v State of U.P.*³² is the first case where the Supreme Court made an attempt to explore the adverse

31. *Ibid.*

32. AIR 1988 SC 2187

effects of mining. In this case, the petitioners, a voluntary organization, feared that mining activities of the lessees caused ecological disturbance. According to a committee of experts appointed by the Court, mining of limestone in certain areas was found dangerous and damaging ecological balances. The Supreme Court ordered to close the mining operations in these areas, though it permitted mining operations in certain other cases. The court further laid down;

“Indisputably displacement has been suffered by these lessees and the sudden displacement must have up-set their activities and brought about substantial inconvenience to them. The court has no other option but to close down the activity in the broad interests of the community. This however, does not mean that the displaced mine owners should not be provided with alternative occupation. What is necessary is a time frame functioning if rehabilitation is to be made effective. It may be that all the displaced mine owners may not find suitable mining sites within the State of UP. It is therefore necessary to associate some other states in the programme while effecting rehabilitation by giving alternate mining sites, ecology and environment will have to be considered.”³³

In this case the court directed that a Committee should be set up to oversee the rehabilitation of the displaced of the displaced mine owners. This rehabilitation task was to be carried out in consultation with other State as the State of U.P. may not be able to meet the requirements of the situation. Hence the court was zealous in protecting the right of the mine owners as well as protection of the environment.

In yet another judgment of *Samantha v State of Andhra Pradesh*.³⁴ The Supreme Court upheld and protected the lives and livelihood of the adivasis. This judgment is important in the context of increasing mining activities and the growing involvement of the private section in the displacement process of tribal/adivasis who are residing in nature-rich Tribal/ Scheduled Areas.

33. *Ibid.* at p 2209,2210

34. AIR 1997 SC 3297

The Samantha judgment was delivered on 11 July 1997 after four years' legal battle by a three-judge bench of the Supreme Court. The Court upheld that private mining industries must be seen as a 'non-tribal person' and hence, all mining leases to private industries in the tribal lands of Scheduled Areas are null and void. The judgment also highlighted that every Gram Sabha should prevent alienation of land in the Scheduled Areas and that the mineral wealth of these areas should be exploited by tribals themselves.

The Samantha judgment took up the legal battle against mining in the Scheduled Area on a constitutional point; there were many other issues to be discussed. These included the far-reaching socio-economic and cultural impacts of the mining industries on adivasi population. The judgment also took into consideration the overarching 'development' agenda being forced upon the adivasis. The majority judgment ruled that-

*"When two competing public purposes claim preferential policy decision, option to the State should normally be to elongate and achieve constitutional goal. Secondly the constitutional priority yields place to private purpose, though it is hedged by executive policy. As facet of interpretation, the Court too adopts purposive interpretation tool to effectuate the goals set down in the Constitution. Equally, the executive Government in its policy options requires keeping them in the backdrop and regulating disposal of their land – property in accordance with the constitutional policy, executive decision backed by public policy and, at the same time preserve paramount Tribal interest in the Schedule Areas"*³⁵

This can be explained with the view that the founding fathers were conscious 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

35. *Ibid.* at p. 3333, as per K.Ramaswamy J

land is a valuable endowment and a source of economic empowerment, social status and dignity of persons.³⁶

It was further contented that the rich mineral wealth being a national asset cannot be kept unexploited which is detrimental to the national development, is devoid of force. Instead of getting the minerals exploited through non-tribals, by exploitation of tribals, the minerals could be exploited through an appropriate scheme, without disturbing ecology and forest, by the tribals themselves, either individually or through Co-operative Societies composed solely of the tribes with the financial assistance of the State or its instrumentalities.³⁷

Justice S. Saghir Ahmad who concurred with the majority opinion ruled that-

*"If the government was allowed to transfer or dispose of its own land in favor of non-tribals, it would completely destroy the legal and constitutional fabric made to protect the Scheduled Tribes. The prohibition, so to say, disqualifies non-tribals as a class from acquiring or getting property on transfer."*³⁸

This means that the State government cannot transfer, assign or sell to a "person" of its choice but has to transfer, assign or sell to a member of the Scheduled tribe or a Co-operative Society of the Scheduled Tribes.

The minority view as per *Justice Pattanaik* was that-

*The Constitution in our considered opinion does not in any manner suggest that alienation of Government land within the Scheduled area was intended to be prohibited in favour of a non-tribal person."*³⁹

Though the case concerned only the State of Andhra Pradesh, it was proactively made applicable to the Schedule Areas in Haryana, Gujarat, Madhya Pradesh, Bihar, Orissa, Rajasthan, and Maharashtra, as well, since the problem faced by tribals in Schedule Areas is common to all these States. An extremely important ruling in this regard was that the mining entrepreneur should set aside 20% of his profits to improve the living conditions of tribals

36. *Ibid.* at p. 3336

37. *Ibid.* at p. 3342

38. *Ibid.* at p. 3363

39. *Ibid.* at p. 3371

by establishing schools, hospitals, and sanitation and transport facilities by laying roads etc.

*'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 profits earned by the lessees should be spent for ameliorating the living conditions of the tribals by the lessees themselves. The state may also consider the question of incorporating some provision in the leases itself for achieving the aforesaid objectives.'*⁴⁰

The court has always taken into consideration the fact that India is a welfare state and all the state policy should be taken on and for the welfare of the people. The state cannot escape its liability and hence answerable to the people when ever it does or commits any wrong towards its people.

b) Displacement Due to National Parks and Wildlife Sanctuaries

On the promulgation of the Constitution the right to safeguard forests and wildlife has received constitutional sanction. Under Article 48A of the Constitution, it is provided that the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country. *Article 51A (g) of the Constitution* says that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife. In furtherance of these objectives, the Wildlife Protection Act, 1972, was promulgated. It provides, inter-alia, for declaration of sanctuaries, national parks, game reserves and closed areas.

Forest has always helped in maintaining the ecological balance. They are home for various kinds of wild animals and with this they are home to tribal/adivasi people. However, over a certain period of time forests are no more considered as a significant factor of eco-balance but as a source of revenue and raw materials.

40. *Ibid.* at p. 3380

The first case which relates to displacement due to declaration of forest as 'reserve forest' is *Banwasi Seva Ashram v State of U.P.*⁴¹ In this case, grievance was made on several scores relating to the claims of the Adivasis living within the Districts of Mirzapur in Uttar Pradesh. The State Government declared a part of these jungle lands in the two Tehsils as reserved forest. The Adivasis and other backward people living within the jungle used the forest areas as their habitat. They had raised several villages within these two Tehsils and for generations had been using the jungles around for collecting the requirements for their livelihood, fruits, vegetables, fodder, flowers, timber, animals by way of sports and fuel wood. The Supreme Court in this case laid down;

*"Indisputably, forests are a much wanted national asset. On account of the depletion thereof ecology has been disturbed; climate has undergone a major change and rains have become scanty. These have long term adverse effects on national economy as also on the living process. At the same time, we cannot lose sight of the fact that for industrial growth as also for the provision of improved living facilities there is great demand in this country for energy such as electricity. In fact, for quite some time the country in general and specific parts thereof in particular, have suffered a tremendous set back in industrial activity for want of energy".*⁴²

In this case the court ruled in favour of development project and at the same time directed that the NTPC is to provide facilities to the land oustees who are dispossessed of their land.

In yet another case of *Animal and Environment Legal Defense Fund v Union of India*,⁴³ the petitioner and other persons who were concerned with protection of the environment filed the present petition in public interest challenging the order of the Chief Wildlife Warden, Forest Department, Government of Madhya Pradesh granting 305 fishing permits to the tribals formerly residing within the Pench National Park area for fishing in the

41. AIR 1987 SC 374

42. *Ibid.* at p. 376

43. AIR 1997 SC 1071

Totladoh reservoir situated in the heart of the Pench National Park Tiger Reserve.

The Court called for urgent steps and keeping in mind the decision of *Pradeep Krishen*,⁴⁴ stressed on more continuous and vigilant measures and observed;

*“While every attempt must be made to preserve the fragile ecology of the forest area, and protect the Tiger Reserve, the rights of the tribals formerly living in the area to keep body and soul together must also receive proper consideration. Undoubtedly, every effort should be made to ensure that the tribals when resettled are in a position to earn their livelihood. In the present case it would have been far more desirable, had the tribals been provided with other suitable fishing areas outside the National Park or had been provided land for cultivation.”*⁴⁵

Emphasizing stricter vigilance on the exercise of fishing rights and allied matters, the Court insisted on photo identity for access of permit holders, check posts to bar transgress into other parts, daily record of fish, prohibition of tribal fisherman for lighting fires on the banks of reservoir and sanction of more monitoring facilities.⁴⁶

c) Displacement by Urbanization

In town and country planning involving land development of the cities which are sought to be achieved through the process of land use, zoning plan and regulating building activities must receive due attention of all concerned. Such planning of highly complex cities depends on scientific research study and experience and thus, deserves due reverence. There are two competing interests viz., the interest of the state vis-à-vis the general public and to have better living conditions and the right of property of individual which, although is not a fundamental right, but is a constitutional and human right.

44. AIR 1996 SC 2040

45. *Supra*, note 43, at p. 1073

46. *Ibid.* at p. 1074

At times the question arises as to whether acquisition of land which was made for one purpose was utilized for construction of residential houses. Whether such kind of acquisition was proper or not? The Apex Court, noticing such issue in *Gulam Mustafa v State of Maharashtra*,⁴⁷ held that the excess land out of the land, which was acquired for a country fair was utilized for carving out plots for the housing colony, did not invalidate the acquisition. The Court observed;

*“Apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has been vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose, other than the one stated.”*⁴⁸

The question which survives for consideration is whether in view of public purpose declared in the notification under Section 4 of the Land Acquisition Act, the land can be utilized for any other public purpose. In *Union of India V. Jaswant Rai Kochar*,⁴⁹ land which had been acquired for public purpose of housing scheme were sought to be utilized for a commercial purpose, namely, for locating a district centre. It was contended before the Court that since the acquisition was for a housing scheme, the land cannot be used for commercial purposes. The submission was rejected on the following words;

“We find no force in the contention. It is conceded that the construction of the District Centre for commercial purpose itself is a public purpose. No doubt it was sought to be contended in the High Court that in a housing scheme, providing facilities for commercial purpose is also one of the composite purposes and that, therefore, acquisition was valid in law. ... When the notification has mentioned that the land is sought to be acquired for housing scheme but it is sought to be used for District Centre, the public purpose does not cease to be public purpose and the nomenclature mentioned in the

47. (1976) 1 SCC 800

48. *Ibid.* at p. 802

49. (1996) 3 SCC 491

*notification under Section 4(1) as housing scheme cannot be construed to be a colorable one. It is obvious that the lands acquired for a public purpose should serve only the public purpose of providing facilities of commercial purpose, namely, District Centre as conceded by the learned counsel in fairness to be a public purpose.”*⁵⁰

In this regard the judiciary also feels that the court cannot be oblivious to the fact that the owners who are subject to the embargos placed under the Statute are deprived of their valuable rightful use of the property for a long time. Although ordinarily when a public authority is asked to perform statutory duties within the time stipulated it is directory in nature but when it involves valuable right of the citizens and provides for the consequences therefore it would be construed to be mandatory in nature

Considering the above criteria, in *T.Vijaylakshmi V. Town Planning Member*,⁵¹ the Court has held;

*“Right of a person to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute but unless there exists a clear provision, the same cannot be taken away. Town planning legislation is regulatory in nature. The right to property of a person would include a right to construct a building. Such a right, however, can be restricted by reason of legislation. The rights of the parties cannot be intermeddled with, so long as an appropriate amendment in the legislation is not brought into force.”*⁵²

In considering the two competing interests viz. one, the interest of the State vis a' vis the general public and, two, to have better living conditions and the right of property of an individual which though not a fundamental right but is a constitutional and human right the court in *Chairman, Indore Vikas Pradhikaran V. Pure Industrial Coke and Chemical Ltd*,⁵³ analyzed this concept. In this case, the respondents obtained permission for development from the competent authority for diversion of land use as far back as on

50. *Ibid.* at p. 492

51. (2006) 8 SCC 502

52. *Ibid.* at p. 506

53. (2007) 8 SCC 705

12.01.1989. They had applied for and were granted sanction of building plan by the Gram Panchayats in the year 1991. No step was taken by the statutory authorities or the appellant Authority to notify a draft development plan. It was not notified till 2003. No further step was taken pursuant thereto or in furtherance thereof. The respondents filed an application before the Director for grant of permission on 02.12.2004 which was erroneously rejected by reason of an order dated 14.12.2004 purported to be for reason that the land in question had been included in the proposed development scheme in question of Indore Development Authority. The Court observed;

*“Where, a scheme, comes into force, although it may cause hardship to the individual owners as they may be prevented from making the most profitable use of their rights over property, having regard to the drastic consequences envisaged thereunder, the statute should be considered in such a manner, as a result whereof, greater hardship is not caused to the citizens than actually contemplated thereby, whereas an attempt should be made to prevent unplanned and haphazard development but the same would not mean that the Court would close its eyes to the blatant illegalities committed by the state and/or the statutory authorities in implementation thereof.”*⁵⁴

The Court further held that-

*“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”*⁵⁵

The court does not deny the fact there is need for urbanization with the increasing population. However this does not give the state the authority to act on its own whims and caprice. It is to be guided by certain defined set of rules and procedure else it would be hampering the process of development.

54. *Ibid.* at p. 729,730

55. *Ibid.* at p. 731

d) Displacement by Dams

Dams play a vital role in providing irrigation for food security, domestic and industrial water supply, hydro electric power and keeping flood waters back. When the allegation with regard to the Sardar Sarovar Project arose,⁵⁶ the court held;

“The allegation that the Sardar Sarovar Project was not in national or public interest is not correct seeing to the need of the water for burgeoning population which is most critical and important. The population of India, which is now one billion, is expected to reach a figure between 1.5 billion and 1.8 billion in the year 2050, would necessitate the need of 2788 billion cubic meter of water annually in India to be above water stress zone and 1650 billion cubic meter to avoid being water scarce country. The main source of water in India is rainfall which occurs in about 4 months in a year and the temporal contribution of rainfall is so uneven that the annual averages have very little significance for all practical purposes. One-third of the country is always under threat of drought not necessarily due to deficient rainfall but many times due to its uneven occurrence. To feed the increasing population more food grain is required and effort has to be made to provide safe drinking water, which, at present is a distant reality for most of the population especially in the rural areas. Keeping in view the need to augment water it is necessary that water storage capacities have to be increased adequately in order to ward off difficulties in the event of monsoon failure as well as to meet the demand during dry season. On full development, the Narmada has potential of irrigating over 6 million hectares of land and generating 3000 mw of power.”⁵⁷

The Narmada project, in principle, was cleared more than 25 years ago when the foundation stone was laid by late Pt. Jawaharlal Nehru. Thereafter, there was an agreement of the four Chief Ministers in 1974, namely, the Chief Ministers of Madhya Pradesh, Gujarat, Maharashtra and Rajasthan for the

⁵⁶ Narmada Bachao Andolan V Union of India, AIR 2000 SC 3751

⁵⁷. *Ibid.* at p. 3786

project to be undertaken. Then dispute arose with regard to the height of the dam which was settled with the award of the Tribunal being given in 1978. For a number of years, thereafter, final clearance was still not given. In the meantime, some environmental studies were conducted. The final clearance was not given because of the environment concern. The Government, in 1987 finally gave environmental clearance. It is thereafter that the construction of the dam was undertaken and hundreds of crores have been invested before the petitioner chose to file a writ petition in 1994 challenging the decision to construct the dam and the clearance as was given. The Court was of the opinion that, the petitioner which had been agitating against the dam since 1986 was guilty of laches in not approaching the Court at an earlier point of time.

The Court had entertained the petition with a view to satisfy itself that there is proper implementation of the relief and rehabilitation measures to the extent they have been ordered by the Tribunal Award. In short, it was only the concern of the Court for the protection of the fundamental rights of the oustees under Article 21 of the Constitution of India which led to the entertaining of the petition. The Court in majority ruled;

“When such projects are undertaken and hundreds of crores of public money is spent, individual organizations in the garb of PIL cannot be permitted to challenge the policy decision taken after a lapse of time it is against the national spirit and contrary to the established principles of law that decisions to undertake developmental projects are permitted to be challenged after a number of years during which period public money has been spent in the execution of the project.”⁵⁸

The Court further laid down;

“In matters of policy the Court will not interfere. When there is a valid law requiring the Government to act in a particular manner the court ought not to without striking down the law, give any direction which is not in accordance with law. In other words, the court itself is not above the law. In respect of public projects and policies which are initiated by the government the courts

58. *Ibid.* at p. 3782. (Justice B.N.Kirpal for himself and on behalf of Dr. A.S. Anand, CJI)

should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large and not merely of a small section of the society has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala-fide, it will not be in Public Interest to require the Court to go into and investigate those areas which areas are the function of the executive.”⁵⁹

The court while considering the pleas relating to height of the dam and the extent of submergence, environment studies and clearance, hydrology, seismicity and other issues laid down;

“It was known at that time that people will be displaced and will have to be rehabilitated. There is no material to enable the Court to come to the conclusion that the decision was mala-fide. A hard decision need not necessarily be a bad decision. Displacement of people living on the proposed project sites and the areas to be submerged is an important issue. Most of the hydrology projects are located in remote and inaccessible areas, where local population is, like in the present case, either illiterate or having marginal means of employment and the per capita income of the families is low. It is a fact that people are displaced by projects from their ancestral homes. Displacement of these people would undoubtedly disconnect them from their past culture, custom and traditions, but then it becomes necessary to harvest a river for larger good.”⁶⁰

The Court said so far a number of such river valley projects have been undertaken in all parts of India. The petitioners have not been able to point out a single instance where the construction of a Dam, on the whole, has an adverse environmental impact.

In *N.D.Jayal v Union of India*,⁶¹ the petitioner brought about a second round of legal action connected to the safety and environmental aspects of the Tehri Dam before the Supreme Court. The observation of *Dharmadhikari, J.*, though dissenting is more favorable for the present purpose:

59. *Ibid.* at p. 3827

60. *Ibid.* at p. 3829

61. (2004) 9 SCC 362

“When natural resources are exploited in a big way for big projects by state with all sincerity and good intentions for general common benefit, social conflict arise between those who are better off, rich or affluent and who desire to undertake agriculture and industry. When river projects for dams are undertaken to generate electricity and improve irrigation facilities, conflict arise between people living upstream who have to necessarily lose their source of living and habitat and those living downstream who need water and electricity for their homes, industries and agriculture fields. When such social conflicts between different social groups arise, what should be the duty and priorities of the state and its authorities who have undertaken these projects? When such social conflicts arise between the poor and needier on one side and rich or affluent or less needy on the other, prior attention has to be paid to the former group which is both financially and politically weak. Such less-advantaged group is expected to be given prior attention by a welfare state like ours which is committed and obliged by the Constitution, particularly by its provisions contained in the preamble, fundamental rights, fundamental duties and directive principles, to take care of such deprived sections of people who are likely to loose their home and source of livelihood.”⁶²

The Honorable Judge went on to observe that the large dam projects are, therefore, required to be taken care of by the government with utmost concern for the poor and the deprived sections of the society who are necessarily to be displaced from their habitat and shifted to totally new environment and way of life. The poor and the marginalized group in carrying out of a dam project suffer the most because the natural resources-base of their survival are eroded and cash compensation or land at different location many times does not fully rehabilitate them. The dams are built by public funds with aim to satisfy the energy and water needs but what benefit ultimately it would give to the displaced family should also be taken care of. The conflicts over natural resources which frequently come to court are, therefore, conflicts over rights between the haves and the have-nots⁶³.

62. *Ibid.* at p. 418

63. *Ibid.* at p 410

Another set of controversy arose with respect to the Sardar Sarovar Project in the year 2005.⁶⁴ In this second round of writ petition the petitioner alleged that the directions of the Court were not implemented *in-toto*. The case made attempt to discuss the relief and rehabilitation aspect of the oustees. The Court expressly provided thus;

*"The oustees are to be relocated as a community. The question of rehabilitation inevitably would arise."*⁶⁵

In the third series of Narmada case⁶⁶ the petitioner, an organization, working for the legal rights of the oustees family affected by the large dam in the Narmada Valley, filed this public interest ligation for direction for rehabilitation and resettlement of the oustees' families of the Omkareshwar Project in the State of Madhya Pradesh. The Court in this case held;

*"The Omkareshwar Multi-purpose project was to be constructed out of the resources of the State Government as well as the resources of the Central Government and the Narmada Hydro-Electric Development Corporation is an agency of the Central Government and State Government. Hence, both the State Government and the Central Government were under a constitutional obligation under Article 21 of the Constitution to work out a Resettlement and Rehabilitation Policy for rehabilitation and resettlement of the displaced persons of the Omkareshwar Multipurpose Project which would ensure that the persons displaced by the Project were better off after their displacement and were not deprived of their very livelihood by the project."*⁶⁷

A number of river valley projects have been undertaken in all parts of India. In all these cases the petitioners have not been able to prove where the construction of Dam has, on the whole, had an adverse impact. On the contrary the environment has improved. Being so, there is no reason to suspect, with all the experience gained so far, that position here will be different. Dams have also been at the centre of controversy there. The only reason for this hue and cry is the fact that they tend to bring out displacement

64. Narmada Bachao Andolan v Union of India, AIR 2005 SC 2994

65. *Ibid.* at p. 3010

66. Narmada Bachao Andolan v The State of M.P. & Another, AIR 2008 M.P. 142

67. *Ibid.* at p. 157

and the incompetency on the part of the government to carry out in organized manner the required relief and rehabilitation of the displaced family. The judiciary too seems to be divided in establishing the actual role being played on construction of such dams.

D. Judicial Interpretation of the Concept of Development and Sustainable Development

The right to development cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. The right to development encompasses much more than economic well being, and includes within its definition of guarantee of fundamental human rights. The pattern of development and the structure of socio-economic relations should be so planned that they result not only in appreciable increase in national income and employment but also in greater equality in incomes and wealth. The benefits of economic development must accrue more and more to the less privileged classes of society, and there should be progressive reduction of the concentration of incomes, wealth and economic power.

In *Vellore Citizen's Welfare Forum v Union of India*,⁶⁸ the Supreme Court, acknowledged that the traditional concept that development and ecology are opposed to each other is no longer acceptable. Sustainable development is the answer. While speaking out for Sustainable Development, held;

"Sustainable development consists in preservation of the person without compromising the ability of the future generation to meet their needs. Sustainable development is a balancing concept between ecological development and industrialization. Therefore, with a view to improve the quality of human life, while living within the carrying capacity of the subordinate ecology system, sustainable development should be maintained by

68. (1996) 5 SCC 647

*the industry and the state should ensure environmental protection and prevent degradation thereof*⁶⁹

In *Rural Litigation and Entitlement Kendra v State of UP*,⁷⁰ and *State of H.P. V Ganesh Wood Products*,⁷¹ the Court has held that the application of sustainable development requires that appropriate assessment should be made of the forest wealth and the establishment of industries based on forest produce; other working should also monitor closely to maintain the required ecological balance.

The Declaration of '*Right to Development*' adopted by the United Nations and ratified by Indian doubt casts a responsibility on the State to promote and protect social and economic order for development of all people and it has become a State's responsibility to create conditions favorable to the realization of the right to development. It is the states' responsibility to ensure development and eliminate the obstacles to the State development. It is the State's responsibility to see the upliftment of the tribals within the Scheduled Areas. There possibly cannot be any dispute with the proposition that the State should formulate its policies and laws so that the neglected tribals within the Scheduled Areas get equal opportunity with their counterparts in the other sophisticated parts of the State and should be empowered to make laws for protection of these tribals from being exploited by the non tribals. State should take effective steps so as to eradicate inequalities.

In *Narmada Bachao Andolan v Union of India*,⁷² the Court while dealing with development and sustainable development held;

"Merely because there will be a change is not a reason to presume that there will be ecological disaster. It is when the effect of the project is known then the principle of sustainable development would come into play which will ensure that mitigative steps are and can be taken to preserve ecological balance. Sustainable development means what type of extent of development can be taken with or without mitigation. In the instant case what is being constructed

69. *Ibid.* at p. 658

70. 1989 Supp. (1) SCC 537

71. (1995) 6 SCC 363

72. *Supra.* note 56

is a large dam. The dam is neither a nuclear establishment nor a polluting industry. The construction of a dam undoubtedly would result in the change of environment but it will not be correct to presume that the construction of a large dam like the Sardar Sarovar will result in ecological disaster. India has an experience of over 40 years in the construction of a large dam. The experience does not show that the construction of a large dam is not cost effective or leads to ecological or environmental degradation. On the contrary, there has been ecological up gradation with the construction of large dams.”⁷³

Further, the Court observed that the change in environment does not per se violate any right under Article 21 of the Constitution of India especially when ameliorative steps are taken not only to preserve but to improve ecology and environment and in case of displacement, prior relief and rehabilitation measures take place pari-passu with the construction of the dam.

In N.D.Jayal v Union of India,⁷⁴ as per majority, the Court laid down; “Development strategy should be such, which caters not only to the needs of today without negotiating the ability of upcoming generations to satisfy their needs. Strict observance of sustainable development means a path that ensures development while protecting the environment, a path that works for all people and for all generations. It is a guarantee to the present generation and bequeath to the future. All environments related developmental activities should benefit more people while maintaining the environmental balance. This should be ensured only by strict adherence to sustainable development without which life of the coming generations will be in jeopardy.”

Therefore, the adherence to sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to ‘sustainable development’ cannot be singled out. Therefore, the concept of ‘sustainable development’ is to be treated as an integral part of ‘life’ under

73. *Ibid.* at p. 3804

74. *Supra.* note 61

Article 21. Weighty concept like intergenerational equity, public trust doctrine, and precautionary principle, which we declare as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development."⁷⁵

In the classic work, "*Development as Freedom*", the Nobel Prize Winner *Amartya Sen* pointed out;

*"The issue of development cannot be separated from the conceptual framework of human right"*⁷⁶

It is undeniable that execution of river valley projects is an important element of growth and development strategy. The dams have become a symbol of national development. The dams too have the potential of solving many economic problems. Control of floods, famines, food shortages, unemployment, urban water shortage and power shortages are all possible with the help of execution of such dams. There are two conflicting claims and aspects which needs court's intervention for a balanced approach and consequential remedial action. The problem before the country with more and more dam projects being undertaken is how to make use of natural resources for improving human health, welfare and comfort without depleting or damaging them over a foreseeable period of time. A strategy for conserving or resource-effective use of non-renewable resource is the imperative demand of modern times, whereas, minimum sustainable development must not endanger the natural system that supports life on earth, constant technological efforts are demanded for resource-effective production so that sacrifice of one ecosystem is counter-balanced or compensated by recreating another system.

In *Karnataka Industrial Areas Development Board v. C. Kenchappa*,⁷⁷ the Supreme Court observed;

"Sustainable use of natural resources should essentially be based on maintaining a balance between development and the ecosystem. Coordination

75. *Ibid.* at p. 382

76. Quoted in *N.D.Jayal v Union of India*, (2004) 9 SCC 362 at p. 382

77. (2006) 6 SCC 371

efforts of all concerned would be required to solve the problem of ecological crisis and pollution.”⁷⁸

The government can utilize the natural resources for common good but cannot be allowed to exploit or virtually plunder it in a manner to deprive those presently sustaining their lives on those natural resources and deprive the coming generations who also have a right of living on those resources. On these fundamental issues there is a cleavage between technological experts, environmentalists and human rights activists. The Court is faced with an issue not easy to decide as to which section of experts and environmentalist is right in its approach.

E. Judicial Introspection of Rehabilitation and Resettlement of Internally Displaced Persons

When displacement takes place, rehabilitation and resettlement necessarily arises. The State Government and Central Government are under a constitutional obligation to ensure that whoever are displaced are rehabilitated by the concerned authorities. The judiciary has in a plethora of cases, dealt at length, with the policy of resettlement and rehabilitation.

The first case which dealt with oustees' right of Resettlement and Rehabilitation is *Rural Litigation and Entitlement Kendra v State of U.P.*⁷⁹ where the Apex Court has categorically held;

“The mine owners who had been displaced should be rehabilitated. There is no material on record if any alternate provision has been made either by the state Government (UP) or the Union of India. Ongoing leases have been terminated under orders of this Court without provisions for compensation. It is therefore, necessary that a Committee should be set up to oversee the rehabilitation of the displaced mine owners. The Uttar Pradesh Government, as apprehended by many of these mine owners, by itself may not be able to meet the requirements of the situation. Unless a High Powered Committee is

78. *Ibid.* at p. 391

79. AIR 1988 SC 2187 at p. 2209

set up wherein Union of India is also represented, the Committee to be constituted may not be effective and there may be lack of coordination. There is material that lime quarries are available in Rajasthan and Gujarat. It is, therefore, necessary that representatives of these State Governments are also on the committee. While effecting rehabilitation by giving alternate mining sites, ecology and environment will have to be considered.”

In *Narmada Bachao Andolan v Union of India*,⁸⁰ the Supreme Court has, at length, dealt with the concept of resettlement and rehabilitation. As per the majority view on the issue of R&R it was held;

- *Displacement of the tribals and other persons would not perse result in violation of their fundamental or other rights;*
- *On their rehabilitation at new locations they would be better off than what they were;*
- *At the rehabilitation sites they will have more and better amenities than those they enjoyed in their tribal hamlets; and*
- *The gradual assimilation in the mainstream of the society would lead to betterment and progress.*

In the instant case, the Tribunal had also passed an order on certain aspect of the dam. The final award contained directions regarding submergence, land acquisition and rehabilitation of the displaced persons. The Gujarat government was to pay to Madhya Pradesh and Maharashtra, all costs including compensation, charges, expenses incurred by them for and in respect of compulsory acquisition of land. The award also provided that if the State of Gujarat was unable to re-settle the oustees or the oustees being unwilling to occupy the area offered by the States, then the oustees will be resettled by home state and all expenses for this were to be borne by Gujarat. An important mandatory provision regarding rehabilitation was the one contained in Clause XI, sub-clause IV (6) (ii), which stated that no submergence of any area would take place unless the oustees were rehabilitated.

80. *Supra.* note 56

The petitioners in this case submitted that there were major lacunae in the said policy, like; the three states having dissimilar policy for R&R. this difference in rehabilitation package of different states, with the package of Gujarat being more favorable, is adding to a situation where the oustees are forced to shift to Gujarat. The other lacunae which were stated to have many serious problems were alleged to be non-provision for fuel wood and grazing land with fodder; No provision for rehabilitation of people involved in non-agricultural occupation; The petitioners contended that the number of affected people by submergence has been underestimated; The policy regime governing them has many serious lacunae; etc.

Resettlement and Rehabilitation packages in the three States were different due to different geographical conditions. Each State had its own package and the oustees had an option to select the one which was most attractive to them. A PAF may, for instance, chose to leave its home State of M.P. in order to avail the benefits of more generous package of the State of Gujarat while others PAFs similarly situated may opt to remain at home and take advantage of the less liberal package of the State of M.P.

The underlined principle in forming the R&R policy was not merely of providing land for PAFs but there was a conscious effort to improve the living conditions of the PAFs and to bring them into the mainstream. If one compares the living conditions of the PAFs in their submerging villages with the rehabilitation packages first provided by the Tribunal Award and then liberalized by the States, it is obvious that the PAFs had gained substantially after their resettlement.⁸¹

A natural river is not only meant for the people close by but it should be for the benefit of those who can make use of it, being away from it or nearby. Realizing the fact that displacement of these people would disconnect them from their past culture, custom and traditions, the moment any village is earmarked for take-over for dam or any other developmental activity, the project implementing authorities have to implement R&R programmes. The

81. *Ibid.* at p. 3815

R&R plans are required to be specially drafted and implemented to mitigate problems whatsoever relating to all, whether rich or poor, land owner or encroacher, farmer or tenant, employer or employee, tribal or non-tribal. A properly drafted R&R plan would improve living standards of displaced persons after displacement.

The Award of the Tribunal is binding on the States concerned. The said Award also envisages the relief and rehabilitation measures which are to be undertaken. If for any reason, any of the State Government involved, lag behind in providing adequate relief and rehabilitation then the proper course, for a Court to take would be to direct the Award's implementation and not to stop the execution of the project. The Court has to ensure that the binding Award is implemented. In this regard, the Court would have the jurisdiction to issue necessary directions to the state which, though bound, chooses not to carry out its obligations under the Award. If there is a shortfall in carrying out the R&R measures a time bound direction can and should be given in order to ensure the implementation of the Award. Putting the project to a halt is no solution. It only encourages recalcitrant state to flout and not implement the award with impunity.⁸²

The Court while issuing directions and disposing off the instant case, laid out two conditions;

- i) The completion of project at the earliest; and
- ii) Ensuring compliance with conditions on which clearance of the project was given including completion of relief and rehabilitation work and taking of ameliorative and compensatory measures.

The petitioners, however, being aggrieved of the attitude of the State, because they had failed to implement the directions of the Court, filed another writ petition,⁸³ where the Court observed;

"The applicants herein became affected with raising of the dam at 90 meters and remained affected by further raising thereof up to 100 meters and thus, in time of the directions contained in the award as also the judgment of this

82. *Ibid.* at p. 3830

83. *Supra.* note 64

Court, it is beyond any cavil that the applicants herein, irrespective of the fact as to whether they are permanently affected or temporarily affected, were entitled to the benefits of the rehabilitation package.”⁸⁴

Further, the Court observed;

“In a case of this nature we do not accept the contention raised on behalf of the applicants herein that the oustees are entitled to opt for land of their choices and the state is bound to acquire or purchase lands for the said purpose. The state has constituted a land bank. Normally, those lands which are available from the land bank should be allotted and in relation thereto the parties may have a choice. But they cannot reject such land only unless it is shown that the land are not irrigable or cultivable or otherwise unsuitable. In view of the dicta of this Court that the oustees would be better off at the rehabilitated place, they should be offered lands which are really cultivable or irrigable. They are also entitled to the basic amenities and benefits as specified in the Award.”⁸⁵

The Court, in the main judgment, did not say that the oustees are to be relocated as a community. The question of rehabilitation would arise as and when they become entitled thereto.

In *Bipin Chandra J. Diwan v State of Gujarat*⁸⁶, the High Court of Gujarat while dealing with the relief and rehabilitation of 26th January 2001, held

“All those donors and contributors who have extended help in cash and kind to the victims have enforceable right, in a representative capacity to seek directions to the government to ensure that the relief and rehabilitation material meant for quake victims reaches them in time and hour of need. For the same purpose they can claim a right to demand account of receipt and expenditure of such relief and rehabilitation material in cash and kind.”⁸⁷

The Court further observed that the donors and contributors as also the quake victims in a collective action through public spirited citizens have a

84. *Ibid.* at p. 3008

85. *Ibid.* at p. 3009-3010

86. *Supra.* note 27

87. *Ibid.* at p. 105

right to claim participation in the utilization of the funds for the relief and rehabilitation operation. The participation of the people representing the donor and the quake victims should, therefore, be welcomed by the two governments instead of opposing it.

In order to help and co-operate the government agencies for ensuring timely relief through relief material, cash and compensation money, the Court considered it fit to associate District Legal Services Authority constituted under the Legal Services Authority Act, as Ombudsman in the district. Ombudsman would thus work as institution for rectifying complaints made by individuals and organization and to advise the government and its agencies against the maladministration. In work of such nature of providing relief and rehabilitation to quake victims administrative lapse or lapses are likely to happen and they may not constitute an illegal behaviour but such lapses require immediate attention and are worthy of rectification.

In *N.D.Jayal v Union of India* case,⁸⁸ the Court highlighting on the concept of relief and rehabilitation as per majority held-

*“Rehabilitation is not only about providing just food, clothes and shelter. It is also about extending support to rebuild livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is a logical corollary of Article 21. The oustees should be in a better position to lead a decent life and earn livelihood on the rehabilitated locations. The overarching project benefits from the dam should not be counted as an alibi to deprive the fundamental rights of oustees. They should be rehabilitated as soon as they are uprooted. And none of them should be allowed to wait for rehabilitation. Rehabilitation should take place before six months of submergence. Such a time limit was fixed by the Supreme Court in *B.D.Sharma v Union of India* and this was reiterated in *Narmada Bachao Andolan v Union of India*.⁸⁹”*

It is to be noted that this prior rehabilitation will create a sense of confidence among the oustees and they will be in a better position to start their life by acclimatizing themselves with the new environment.

88. *Supra.* note 61

89. *Ibid.* at p. 394

Mistakes in resettlement and rehabilitation of people ousted by other similar projects committed in the past have to be avoided. The construction of dam cannot be allowed to proceed and be completed leaving the oustees high and dry. The oustees of the Tehri dam Project who are used to valley life in the Himalayas are proposed to be resettled and rehabilitated in the newly built Tehri town and those depending on forest and agriculture are proposed to be given cash compensation or land downstream near Dehra Dun city.⁹⁰

Lastly, in yet another *Narmada Bachao Andolan* case,⁹¹ the High court of M.P. dealing with the rehabilitation and resettlement of oustees held-

“The rehabilitation programme should be extended to landless laborers and people affected due to canal construction by identifying and allocating suitable land as permissible. The state government appears to have adopted a policy of R&R under which they are paid Rs 49,300 to buy some productive employment-creating asset and of teaching them new skills to ensure their occupational rehabilitation so as to ensure that their fundamental right under Article 21 is not violated and it is not for the Court to interfere with such a policy decision of the State Government and to direct the respondent to allot agricultural land to landless agricultural laborers.”⁹²

In the instant case, the Court categorically held;

“The law is thus, that submergence cannot take place until rehabilitation of the oustees is complete as otherwise their fundamental right under Article 21 of the Constitution would be affected and their trust and confidence on the authorities will be shaken but at the same time the court must ensure early completion of project. We have taken a view that the displaced families and encroachers are entitled to allotment of agricultural land. Following the law laid down by the Supreme Court, we hold that till rehabilitation is complete, no further submergence can be allowed of the remaining 25 villages.”⁹³

90. *Ibid.* at p. 418-419, as per Dharmadhikari, J. (dissenting)

91. AIR 2008 MP 142

92. *Ibid.* at p. 162

93 *Ibid.* at p. 167

F. Judicial Interpretation of Land Acquisition Act, 1894

Acquisition of land, which is compulsory in nature, the owner may be deprived of land, the means of his livelihood, but the state's exercise of the power is for the public purpose, the individual's right as the owner of the land must yield place to a larger public purpose and a plea of deprivation of right to livelihood under Article 21 of the Constitution in such cases is unsustainable. Whenever, issues relating to Land Acquisition arise it revolves around two concepts, one of 'eminent domain' and the other 'public purpose'. The two concepts have been dealt with in the previous chapter and it is found that they can be judged in the light and circumstances of different cases.

In *State of Bombay v R.S. Nanji*,⁹⁴ the Supreme Court observed that it is impossible to precisely define the expression "public purpose". In each case, all the facts and circumstances will require to be closely examined in order to determine whether a public purpose has been established. The Court in the instant case held;

"Prima facie, the Government is the best judge as to whether public purpose is served by issuing a requisition order, but it is not the sole judge. The courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised whether acquisition order is or is not for a public purpose."

In the said case, the Court observed that the phrase "public purpose" includes a purpose, that is, and object or aim, in which the general interest of the community, as opposed to the particular interest of individuals is directly and vitally concerned, it is impossible to define precisely the expression "public purpose". In each case all the facts and circumstances will require to be closely examined to determine whether a public purpose has been established

The Constitution Bench of the Supreme Court, in *Satya Narain Singh v District Engineer, PWD*,⁹⁵ observed;

94. AIR 1956 SC 294

95. AIR 1962 SC 1161

“It is undoubtedly not easy to define what is ‘public service’ and each activity has to be considered by itself for deciding whether it is to be regarded as public services, as for instance, those undertaken in the exercise of the sovereign power of the state or of governmental functions. About these there can be no doubt. Similarly, a pure business undertaking though run by the government cannot be classified as public service. But where a particular activity concerns a public utility, a question may arise whether it falls in the first or the second category. The mere fact that activity may be useful to the public would not necessarily render it a public service. An activity, however beneficial to the people and however useful cannot, in our opinion, be reasonably regarded as public service if it is of a type which may be carried out by government with a distinct profit motive. It may be that plying stage carriage buses even though for hire is an activity undertaken by the government for ensuring the people a cheap, regular and reliable mode of transport and is in that sense beneficial to the public.”

In *Somavanti v State of Punjab*,⁹⁶ the Supreme Court observed that public purpose must include an object in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned. Public purpose is bound to change with the times and the prevailing conditions in a given area and therefore, it would not be a practical proposition even to attempt an extensive definition of it. It is because of this that the legislature has left it to the government to say what a public purpose is and also to declare the need of a given land for a public purpose. The Constitution Bench of the Court observed thus;

“Whether in a particular case the purpose for which land was needed was a public purpose or not was for the government to be satisfied about and the declaration of the government would be final subject to one exception, namely, that where there was a colorable exercise of the power, the declaration would be open to challenge at the instance of the aggrieved party.”

96. AIR 1963 SC 151

It is because of this that the Legislature has left it to the Government to say what public purpose is and also to declare the need of a given land for a public purpose.

In *Arnold Rodricks v State of Maharashtra*⁹⁷ while Justice Wanchoo and Justice Shah dissenting from judgment, observed that there can be no doubt that the phrase “public purpose” has not a static connotation, which is fixed for all times. There can also be no doubt that it is not possible to lay down a definition of what public purpose is, particularly as the concept of public purpose may change from time to time. There is no doubt, however the public purpose involves in it an element of general interest of the community and whatever furthers the general interest, must be regarded as a public purpose.

Broadly speaking, the expression ‘public purpose’ would, however, include a purpose in which the general interest of the community as opposed to the particular interest of the individuals is directly and virtually concerned.

A seven Judge Bench of the Supreme Court, in *State of Karnataka V Raganatha Reddy*,⁹⁸ explained the expression ‘public purpose’ in the following words;

“It is indisputable and beyond the pole of any controversy now as held by this Court in several decisions including the decision in the case of Keshavananda Bharti v State of Kerala⁹⁹, popularly known as fundamental right case, that any law providing for acquisition of property must be for a public purpose. Whether the law of acquisition is for public purpose or not is a justifiable issue. But the decision in regard is not to be given by any detailed inquiry or investigation of facts. The intention of the legislature has to be gathered mainly from the statement of objects and reasons of the Act and its Preamble. The matter has to be examined with reference to the various provisions of the Act, its context and setup, the purpose of acquisition has to be culled out there from and then it has to be judged whether the acquisition is

97. AIR 1966 SC 1788

98. (1977) 4 SCC 471

99. (1973) 4 SCC 225

for a public purpose within the meaning of Article 31(2) and the law providing for such acquisition... ”¹⁰⁰

Though not directly in point, the observations of the Supreme Court in *State of Maharashtra v Mahadeo Deoman Rai*,¹⁰¹ are significant to determine the approach of courts in such matters. In this case a notification under Section 4 of the Land Acquisition Act was issued for the purpose of establishing a ‘Tonga’ stand. The respondent applied for permission to raise a construction which was denied on the ground that the land was reserved for road widening under a town planning scheme which was being implemented. Since, the respondent was prevented from continuing with construction work undertaken by him, he initially filed a writ petition before the High Court which was withdrawn and subsequently filed a suit claiming damages, etc. The Municipal Council took a decision to accord permission to the respondent as asked for, and the suit was withdrawn. When the State Government came to know about it, it asked the Municipal Council to explain the circumstances under which such permission had been granted. A resolution of the Municipal Council granting permission to the respondent was rescinded. Another application filed by the respondent was kept in abeyance which compelled the respondent to file another writ petition which was allowed by the High Court. The plea of the Municipal Council was that it had passed a fresh resolution inter-alia, deciding to re-plan the scheme with respect to the area in question in the light of the recommendations made by the Committee. Consequently, the matter was reopened and the objections from the affected persons were invited. Even the respondent filed his objections. This fact was not brought to the notice of the High Court which allowed the writ petition. The Court set aside the judgment and order of the High Court and observed;

“Besides the question as to whether a particular scheme framed in exercise of statutory provisions is in the public interest or not has to be determined according to the need of the time and a final decision for all purpose has to be taken at a given point of time but due to change of circumstances it may

100. *Supra. note, 98 at p. 503-504*

101. (1990) 3 SCC 579

*become essential to modify or substitute it by another scheme. The requirements of the community do not remain static; they indeed go on varying with the evolving process of social life. Accordingly, there must be creative response from the public authority, and the public scheme must be varied to meet the changing needs of the public.”*¹⁰²

Similarly in *Chameli Singh and Others v State of U.P. & Others*,¹⁰³ land to the extent of 5 bighas, 6 biswas and 14 biswas in village Bauam Nagar, Pargana Nahtaur, Tahsil Dhampur, District Bijnore, were notified for acquisition for providing houses to Scheduled Castes and the acquisition was challenged inter-alia, on the ground that it is violative of the right to livelihood under Article 21 of the Constitution of the owner of the land, but the Supreme Court repelled the challenge holding;

*“The state exercises its power of eminent domain for public purpose and acquires the land and so long as the exercise of power is for public purpose, the individual’s right as an owner must yield place to the larger public purpose.”*¹⁰⁴

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 *Scindia Employees Union v State of Maharashtra*,¹⁰⁵ the Supreme Court observed as under;

“The very object of compulsory acquisition is in excess of the power of eminent domain by the State against the wishes or willingness of the owner or person interested in the land. Therefore, so long as the public purpose subsists, the exercise of the power of eminent domain cannot be questioned. Publication of declaration under section 6 is conclusive evidence of public

102. *Ibid.* at p. 583

103. AIR 1996 SC 1051

104. *Ibid.*

105. (1996) 10 SCC 150

*purpose. In view of the finding that it is a question of expansion of dockyard for defense purpose it is a public purpose.”*¹⁰⁶

The right of eminent domain is the right of the State to reassert either temporarily or permanently its domain over any piece of land on account of public exigency and for public good. Similarly, in *Laxamanrao Bapurao Jadhav v State of Maharashtra*,¹⁰⁷ the Apex Court observed;

*“It is for the State Government to decide whether the land is needed or is likely to be needed for a public purpose and whether it is suitable or adaptable for the purpose for which the acquisition was sought to be made. The mere fact that the authorized officer was empowered to inspect and find out whether the land would be adaptable for the public purpose, it is needed or is likely to be needed, does not take away the power of the Government to take a decision ultimately.”*¹⁰⁸

In *Bhagat Singh v State of U.P.*,¹⁰⁹ the Supreme Court upheld an acquisition even when the public purpose to which the land was put was contrary to the permitted user under the master plan. The Court held that the acquisition was valid but it was for the beneficiary of acquisition to move the competent authority and obtain the sanction of the said authority for change of user. That it could do only after it got possession of the land on question.

In *Balco Employees union (Regd.) v Union of India & Others*,¹¹⁰ the Supreme Court has held;

“It is neither within the domain of the courts nor within the scope of judicial review to embark upon an enquiry whether a particular public policy is wise, or whether a better public policy can be evoked and the courts would not be inclined to strike down a policy at the behest of the petitioner, merely because it has been urged that another policy would have been fairer or wiser or more scientific or more logical.”

106. *Ibid.* at p 152

107. (1997) 3 SCC 493

108. *Ibid.* at p.495

109. (1999) 2 SCC 384

110. AIR 2002 SC 350

In yet another case of *Pratibha Nema v State of M.P.*,¹¹¹ the Supreme Court observed;

*“A public purpose is involved in acquisition of land for setting up an industry in the private sector as it would ultimately benefit the people. However, any and every industry need not necessarily promote public purpose and there could be exceptions which negate the public purpose. But the satisfaction of the Government as to the existence of public purpose cannot be lightly faulted and it must remain uppermost in the mind of the court.”*¹¹²

Similarly, in *Daulat Singh Surana and others v First Land Acquisition Collector*¹¹³ and others, the Supreme Court observed;

*“In the Constitution of India, some guidelines can be traced as far as public purpose is concerned, in Article 37. According to Article 39 of the Constitution, the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. The laws made for the purpose of securing the constitutional intention and spirits have to be for public purpose. The provisions contained in this Part (Directive Principles of the State Policy) shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country. It shall be the duty of the state to apply these Principles in making law.”*¹¹⁴

In the instant case, the Court further observed that Public purpose is not static. It also changes with the passage of time, needs and requirements of the community. Public purpose is bound to vary with times and prevailing conditions in the community or locality and, therefore, the legislature has left it to the state government to decide what public purpose is and also to declare the need of a given land for the purpose. The legislature has left the discretion

111. (2003) 10 SCC 626

112. *Ibid.* at p.640

113. (2007) 1 SCC 641

114. *Ibid.* at p. 656

on the government regarding public purpose. The government has the sole and absolute discretion in the matter.¹¹⁵

What I conclude is Land Acquisition is a bag of mixed feeling. Nothing is certain as to what constitutes public purpose. The power of compulsory acquisition as described by the term 'eminent domain' can be exercised only in the interest and for the people. The concept of public purpose should include matter such as, safety, security, health, welfare and prosperity, welfare and prosperity of the community or public at large.

4. SUM-UP

- 1) No law actually exists for the protection of the rights of IDPs. In fact no executive decision has been taken to protect the rights of IDPs. The government has failed to provide them relief and rehabilitation. This response of the government is evident from the situation prevailing in the north region of India or in the northeastern region of India. Million of people have and are still being displaced. The reasons for displacement may be diverse but the consequences of it are one, i.e. displacement and loss of livelihood. The States have failed in their front of looking after the affected persons and the displaced populations are made to spend their live in camps which are lacking in basic facilities.
- 2) The internally displaced persons who are basically under the care and protection of the State authorities are totally dependent upon the authorities in providing relief and resettlement which is one of the basic obligation of the State after the displacement has taken place. The State needs to have a humanitarian approach towards them simultaneously providing them with access to food and potable water, basic shelter and housing, appropriate clothing and essential medical facilities.
- 3) The State authorities have to involve itself with Non Governmental Organizations to initiate the task of collecting information of internally displaced person. The reason for this is that the Indian Government does not

115. *Ibid.* at p. 662

have any figure for the population which makes the job of providing them with rehabilitation and resettlement more cumbersome. The involvement with NGOs is more necessary to study the situation of internal displacement in the area concerned as making the return of the affected persons possible.

- 4) The court in exercise of its enormous powers should not be called upon or guided to undertake governmental duties or functions. The essence of judicial review is within a constitutional basic structure doctrine. The role of higher judiciary under the constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by the Supreme Court that in matters of policy the court will not interfere.
- 5) The decisions of the courts reveal that the courts, in the exercise of their jurisdiction will not transgress into the field of policy decision. Whether to have an infrastructural project or not; what is the type of project to be undertaken and how it is to be executed, are part of policy making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution.
- 6) It can be said here that any challenge to government policy for projects must be before the execution of the project is undertaken. Any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced, should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the court at that time. Just because a petition is termed as PIL does not mean that ordinary principles applicable to litigation will not apply.
- 7) There are three stages with regard to the undertaking of infrastructural projects. One is conception or planning, second is decision to undertake the project and the third is the execution of the project. The conception and the

decision to undertake a project is to be regarded as a policy decision while there is always a need for such projects not being unduly delayed, it is at the same time expected that a thorough study as is possible will be undertaken before a decision is taken to start a project. Once such a considered decision is undertaken, the proper execution of the same should be taken expeditiously. It is for the government to decide how to do its job. When it has put a system in place for the execution of a project and such a system cannot be said to be arbitrary.

- 8) In respect of public projects and policies which are initiated by the government the courts should not become an approval authority. Normally, such decisions are taken by the government after due care and consideration. If a considered policy decision has been taken, which is not in conflict with any law or is not mala-fide, it will not be in public interest to require the court to go into and investigate those areas which are the functions of the executive. For any project which is approved after due deliberation, the court should refrain from being asked to review the decision just because a petitioner filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the government is possible.
- 9) The courts also feel that putting mere allegations of failures and lapses on the part of the government in providing relief measures to the displaced victims is not a ground for substitution of the government machinery. At times, the government is unprepared for disasters but this does not mean that we attribute failure to the government machinery. In work of such nature of providing relief and rehabilitation, administrative lapses are likely to happen, such lapses are likely to happen but such lapses require immediate attention and are worthy of rectification.
- 10) The need of the hour is sustainable development, which is to strike a balance between developments on the one hand and hazards which such development tend to cause. Various judgments of the courts also reveal the fact that there is a need to create harmony between the two, since, neither one can be sacrificed at the altar of the other. Peace, security, stability and respect for human rights

and fundamental freedoms, including the right to development, as well as respect for cultural diversity, are essential for achieving sustainable development and ensuring the sustainable development for all.

- 11) Public purpose cannot and should not be precisely defined and its scope and ambit be limited as far as acquisition of land for the public purpose is concerned. Broadly speaking 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 possible in respect of acquisition of land is concerned.

Chapter V

**Victims of Displacement vis-a-vis Civil
Rights of Internally Displaced Persons
in Sikkim**

CHAPTER - V

VICTIMS OF DISPLACEMENT VIS-À-VIS CIVIL RIGHTS OF INTERNALLY DISPLACED PERSONS IN SIKKIM

1. OVERVIEW

In the previous chapters an attempt was made to discuss the genesis of internal displacement, both in the international and national perspective. An attempt was also made to study various international instruments available for the protection of the human right of IDPs and also to study various national laws to protect the rights of this vulnerable group. A chapter has also been devoted to study the role played by the executive and judiciary to protect the human rights of the IDPs. The present chapter makes an effort to study the scenario of IDPs in Sikkim, i.e. whether there are any IDPs in Sikkim and if yes, what is the role played by the Government in protecting them.

To study the situation of displacement in Sikkim, the attitude of the people to the issue of displacement and their knowledge towards this growing problem, an opinion survey has been undertaken. The opinion survey, as a matter of fact, is also conducted to examine the 'legal awareness regarding internal displacement' in the four districts of the State of Sikkim, namely, East District (Gangtok), West District (Gyalshing), North District (Mangan) and South District (Namchi).

2. DISPLACEMENT SCENARIO IN SIKKIM

Sikkim is a land of dramatic contours with rugged mountains, deep valleys and dense forests consorting with glaciers, raging rivers and lakes and biodiversity hotspot. Located on the flanks of Eastern Himalayas, Sikkim was a hereditary monarchy till 1975, when it merged with India to become 22nd State of the Country. The State comprises of people who are, by nature, simple and God-fearing.

The State has not seen any major displacement. Apart from some stray incidents of displacement due to natural calamity (land slides), the term

'displacement' was almost non-existent in the State. But, of late, realizing its hydro-electricity potentials, the state has geared up to harness this potential. With this, the people have started voicing their fear of displacement, loss of livelihood as well as ecology and environment concerns.

Apart from power projects, large chunks of land along the river valley region are also being acquired by different industrial units, especially by the pharmaceutical companies. This has also created a fear psychosis amongst the people who fear getting exploited at the hands of these large companies. But in spite of this, the area of greater concern is, nevertheless, the power projects that are booming up, posing a great fear and threat of displacement.

The arguments used to justify large projects in Sikkim are the exploitation of the State's perennial water system to produce cheap, plentiful power for the nation; economic benefits through power export; employment generation; flood control; and little direct displacement of the local communities. However, several unique features of the State – the geological fragility and seismic activity; the unique tribal communities and their cultural and spiritual association with the river systems; their traditional natural resource-based livelihood; and biodiversity richness of the area pose a challenge to the conventional dam-building wisdom.¹

But before running into any conclusion, one has to analyze the social cost – benefit, that is to say, at what cost the benefit is accrued to the society. A project has to be acceptable only if the 'benefit side' is heavier than the 'cost side'. With this view in mind, when the researcher approached the Sikkim Power Development Corporation (SPDC in short), the researcher was told that the Government of Sikkim has allotted numerous hydro-electricity projects to private power developers. Most of these projects are located in the remotest corners of the State, where there is hardly any population/habitation. Further, all the projects being

1. Tsheten Lepcha, "Affected Citizens of Teesta – Teesta Hydro-electric Power Projects, Sikkim: Peoples' Perspective." Unpublished.

developed in the State are Run-of-the-River (RoR) type, i.e., there is no huge impounding of water. Only small dams are constructed to direct the water into tunnel. Since there is no huge storage of water, the submergence due to construction of the dam is minimal. As such, there is minimum impact to the surrounding environment as well as to habitation.

So far as Resettlement and Rehabilitation (R&R) is concerned, Sikkim does not have its own R&R policy. The R&R plan is generally prepared by the consultants of the project developers in consultation with the State Forest Department, in few cases, the R&R plan, which is a part of the Environment Management Plan (EMP) has been totally prepared by the State Forest Department. The EMP so prepared is then forwarded to the MoEF, Government of India for concurrence. Once the R&R plan including the EMP is approved by the MoEF, the developer of projects are required to provide fund to the Forest Department for implementation of the scheme as laid out in the EMP. The R&R Plan is also taken up by the State Government as per the details approved by the MoEF. The project developer has to provide the requisite fund for the same. The R&R plan varies from project to project based on project size, number of affected families, number of project oustees, location of the project, etc.

It is also claimed that in almost all of the projects being executed in Sikkim, there is nil displacement of people. To some extent, this may also be true, considering the habitation pattern of the people of this region. Normally, people reside only in the higher reaches in the hilly areas and there is hardly any habitation near the banks of river where the dams are constructed, as a result of which there is minimal displacement. When we look into the issue with this perspective the benefit accrued is definitely heavier than the cost paid. Especially so, when we compare the projects of this region with the projects that are being carried out elsewhere in the Country. Against this backdrop, an opinion survey was conducted in the form of structured questionnaire which has been analyzed in the foregoing pages.

3. SAMPLING UNIVERSE

An opinion survey has been conducted with the proposed sampling universe fixed at 200. Taking 50 people, from each district wherein representation of both females and males of different age group from each district has been taken into account. Survey has been conducted on the basis of structured interview method as well as by supplying structured questionnaire. The sampling design has, hence, been designated as Stratified Random Sampling Method. It is to be noted here that only literate/educated people are sample population who are taken into account for distribution of questionnaire. The questionnaire was distributed to four districts equally. The opinion survey in its final form has been presented in four tables; Table 5.1 to Table 5.5. While Table 5.1 to 5.4 represent East, West, South and North Districts respectively, Table 5.5 presents the scenario in Sikkim as a whole.

4. SAMPLE DESIGN

As mentioned above, the universe has been fixed at 200, with each district being fixed at 50 each. A comparative observation of the entire district is made which would make evident the situation prevalent in Sikkim as a whole.

The first question that was put to the respondents was “*Do you know what internal displacement is?*” The positive response to the question was East District - 92%, West District - 92%, South District - 72%, North District - 92% and the average for the whole State comes to 87%, that is to say, 87% of the respondents are acquainted with the term ‘internal displacement’. The negative response to the question was - East District - 8%, West District - 8%, South District - 28%, North District - 8% and similarly, average for the State comes to 13%.

The second question that was put was ‘*Have you ever been subjected to internal displacement?*’ The positive response to this question can be put as such,

East District – 34%, West District – 28%, South District – 20%, North District – 56% and average being around 35%. The negative response to this question in the East District was 66%, West District – 72%, South District – 80%, North District – 44% and in Sikkim as a whole, it was a little more than 65%.

The third question that was put was, “*Do you have the knowledge of any law/laws which protect IDPs?*” The percentage of respondents who said they had knowledge of such laws were-East District – 8%, West District – 12%, South District – 44%, North District – 0%. The percentage of persons who had no knowledge of such law was East District- 92%, West District - 88% South District - 96% and North District – 100%

What the opinion survey reveals is that though the respondents have a bit of knowledge about internal displacement, they do not know the existence of any law which protects the right of Internally Displaced Persons. Only 8% of the respondents residing in the East District have answered in the positive whereas no respondents in the North District have knowledge of any such law/laws. However, 12% of respondents residing in West District and 44% in South District have knowledge of law/laws that protect IDPs. In total only 16% of the respondents are aware of such law/laws.

The fourth question that was put to the respondent was, “*What is the major cause of displacement in Sikkim?*” To this question, four options were made available to the respondents, namely; *Natural Calamity; Armed Conflict; Communal Violence; Development Project.*

To this question 12% of the respondent in the *East district* feel that ‘natural calamity’ is the reason for displacement. On the other hand, 88% of the respondent in the same district are of the opinion that the cause of displacement is ‘development project’.

Similarly, in the *West District*, 12% of the respondents are of the opinion that 'natural calamity' is the reason for displacement. On the other hand, 4% of the respondents are of the opinion that communal violence is the reason for displacement and 84% of the respondents are of the opinion that 'development project' is the reason for displacement.

In the *South District*, 16% of the respondents are of the opinion that 'natural calamity' is the cause of displacement. On the other hand 84% of the respondents feel that 'development project' is the cause of displacement in Sikkim.

Again, in the *North District* 44% of the respondents are of the opinion that natural calamity is the cause of displacement and 56 % percent are of the opinion that 'development project' is the cause of displacement.

The fifth question that was put to the respondent was, "*Are you happy with the method by which land is acquired by the Government?*" The positive response to this question was; East District – 60%, West District – 48%, South District – 56%, North District –32% and the average being 44%. Similarly the total number of negative response to this question was, East District – 40%, West District –52%, South District –44%, North District –68% and the average is 56%.

The sixth question that was put to the respondent was, "*Do you agree with the view that rapid growth of development projects in Sikkim has helped people lead a better life than what was before?*" The response to this question in negative can be put up as; East District – 88%, West District – 76%, South District – 80% and North District – 64% and overall being 77%. Likewise, respondents who responded in positive were; East District – 12%, West District – 24%, South District – 20%, North District – 32% and average 23%.

The seventh question that was put to the respondent was "*Are you satisfied with the quantum of compensation that is being given to IDPs?*" The positive response to this question was; East District –56%, West District – 52%, South

District – 56%, North District- 32% and the average of which comes out to be 49%. The respondents who are not satisfied with the quantum of compensation can be tabled as; East District – 44%, West District – 48%, South District – 44%, North District- 68%, thereby averaging at 51%.

The next question that was put to the respondent was “*Is the Rehabilitation and Resettlement policy adapted by the government sufficient for the purpose?*” The positive response to this question can be put as; East District – 40%, West District – 48%, South District - 36%, North District –44% and overall – 42% .The total number of negative response to this question was; East District – 60%, West District – 52%, South District –64%, North District – 56% and overall – 58%.

The ninth question that was put to the respondent was, “*Are you happy with the employment that is being provided to the displaced persons*”. The negative response to this question was – East District – 68%, West District – 68%, South District – 68%, North District – 52% thereby averaging at 64%. Likewise, the percentage of positive response to this question was; East District – 32%, West District –32%, South District –32%, North District – 48%, average being 36%.

The tenth question that was put to the respondent was, “*Who is responsible for providing employment to the displaced persons?*” Three options were made available to the respondents, namely; *Government; Project Developers; Both*.

64% of the respondents in the East district feel that Government is responsible in providing job to the displaced family, 28% in the district feel that project developers are responsible for providing job and the rest of 8% believe that both government and project developers are responsible for providing job to displaced population.

In the West district, 52% of the respondents believe that government is responsible for providing job, 36% of the respondent believe that project developer

are responsible for providing job and the rest 12% believe that both government and project developers are responsible for providing jobs.

In the South District, 76% of the respondents believe that government is responsible in providing jobs to the displaced people, 20% of the respondents believe that project developers are under an obligation of providing job and only 4% of the respondents are of the opinion that both government and project developers are responsible in providing jobs.

Likewise, in the North District, the response went in this manner; 28% believe that Government is responsible for providing job, 36% of the respondents believe that Project developers should provide job to the displaced persons and the rest of 36% believe that both State Government and project developers should provide jobs to displaced persons.

The next question that was put to the respondent was, "*Which is a better alternative for rehabilitation of the displaced persons?*" Four alternatives available to the respondents were; *Monetary Compensation; Land Compensation; Employment; and All of the above.*

In the East District, 4% believe that monetary compensation is a better alternative, 4% believe that land compensation is a better alternative, 20% believe that providing employment is a better alternative and the remaining 52% believe that all the above option are a better alternative for rehabilitation of the displaced family.

Similarly, in West District, 12% of the respondents believe that land compensation is a better alternative for rehabilitation of the displaced persons; the next 16% believe that employment is a better alternative and the last 72% believe that a combination of the entire above alternative was best for the rehabilitation of the displaced persons.

Likewise, in the South District, 12% of the respondents were of the opinion that land compensation was the best alternative for rehabilitation, another 12% were of the opinion that employment was a better alternative and last 76% believe that a package of all the above option would be a better alternative.

Lastly, in the North District, 36% feel that land compensation is a better alternative, 16% believe that providing employment is a better alternative and the rest of 48% believe that a combination of all the three components would provide for a better alternative.

As such, the average response to the instant question is 1% monetary compensation; 16% land compensation; 21% employment; and majority 62% of the respondents feel that a package of all the above options is a better alternative.

The twelfth question that was put was, *“The Government’s duty is absolved once it gives away the amount of compensation to the victims. Do you agree with this view?”* The positive response to this question was, East District – 48%, West District – 32%, South District – 40%, North District-28% and overall – 37%. Likewise, the total number of negative response to this question was; East District – 52%, West District – 68%, South District – 60%, North District –72% thereby averaging at 63%.

The thirteenth question that was put to the respondent was, *“The ancestral land which the displaced persons part with cannot be adequately compensated in terms of money. Do you agree?”* The negative response to this question in the respective district was as follows: East District – 76%, West District – 48%, South District – 68%, North District –64% and average 64%. Similarly, the total number of positive response to this question was, East District – 24%, West District –52%, South District –32%, North District –36% and overall 36%.

The fourteenth question that was put to the respondent was, *“Do you think the State Government is successful in protecting the rights of IDPs?”* The negative

response to this question is East District was 76%, West District – 64 % South District – 68%, North District –80% and overall – 72%. Likewise, the total number of positive response to this question was, East District – 24%, West District –36%, South District –32%, North District – 20% and overall – 28%.

The last question that was put to the respondent was, “*If any injustice is being done to you, what do you do?*” Three options were made available to this question, namely; *go to court of law; go to political leaders; and arrive at a settlement on your own.*

In the *East District* 68% of the respondent feel that they would prefer to go to court for redressal of their grievances, 16% said that they would go to political leaders and last 16% preferred to arrive at settlement on their own.

In the *West District*, 80% of the respondent said that they would go to court for settlement of dispute, 4% of the respondent said that they would go to political leaders and the rest of 16% said that they would arrive at a settlement on their own.

In the *South District*, 84% of the respondent said that they would go to court, 8% said they would go to political leaders and the rest of 8% said that they would arrive at a settlement on their own.

Lastly in the *North District* the opinion was that 88% said that they would go to court, 4% said that they would go to political leaders and the rest 8% said that they would arrive at a settlement on their own.

Likewise, the State average was, 80% of the respondents preferred to go to court of law; 8% preferred to go to political leaders and rest 12% preferred to arrive at a settlement on their own.

The scenario discussed above has been reflected on the tables given in the foregoing pages.

Table 5.1: Opinion survey among the residents of East District

Q. No.	Questions to the Respondents	Yes	Yes %	No	No %
1.	Do you know what Internal Displacement is?	46	92	4	8
2.	Have you ever been subjected to internal displacement?	17	34	33	66
3.	Do you have the knowledge of any law/laws which protect the IDPs?	4	8	46	92
4.	What is the major cause of displacement in Sikkim?				
a)	Natural Calamity	6	12	-	-
b)	Armed Conflict	0	0	-	-
c)	Communal Violence	0	0	-	-
d)	Development Projects	44	88	-	-
5.	Are you happy with the method by which the land is acquired by the Government?	20	40	30	60
6.	Do you agree with the view that the rapid growth of development projects in Sikkim has helped people to lead a better life?	44	88	6	12
7.	Are you satisfied with the quantum of compensation that is being given to the IDPs?	28	56	22	44
8.	Is the Rehabilitation and Resettlement policy adopted by the Government sufficient for the purpose?	20	40	30	60
9.	Are you happy with the employment that is being provided to the displaced persons?	16	32	34	68
10.	In your opinion who is responsible for providing employment to the displaced persons?				
a)	Government	32	64	-	-
b)	Project Developers	14	28	-	-
c)	Both	4	8	-	-
11.	Which of the following is better alternative for rehabilitation of the displaced persons?				
a)	Monetary compensation	2	4	-	-
b)	Land compensation	2	4	-	-
c)	Employment	20	40	-	-
d)	All of the above	26	52	-	-
12.	The Government's duty is absolved once it gives away the amount of compensation to the victims. Do you agree with the view?	24	48	26	52
13.	The ancestral land which the displaced persons part with can not be adequately compensated in terms of money. Do you agree?	12	24	38	76
14.	Do you think that the State Government is successful in protecting the rights of IDPs?	12	24	38	76
15.	If any injustice is being done to you what do you do?				
a)	Go to court of law	34	68	-	-
b)	Go to political leaders	8	16	-	-
c)	Arrive at a settlement on your own	8	16	-	-

Male = 24, Female = 26, Total =50.

Table 5.2: Opinion survey among the residents of West District

Q. No.	Questions to the Respondents	Yes	Yes %	No	No %
1.	Do you know what Internal Displacement is?	46	92	4	8
2.	Have you ever been subjected to internal displacement?	14	28	36	72
3.	Do you have the knowledge of any law/laws which protect the IDPs?	6	12	44	88
4.	What is the major cause of displacement in Sikkim?				
	a) Natural Calamity	6	12	-	-
	b) Armed Conflict	0	0	-	-
	c) Communal Violence	2	4	-	-
	d) Development Projects	42	84	-	-
5.	Are you happy with the method by which the land is acquired by the Government?	24	48	26	52
6.	Do you agree with the view that the rapid growth of development projects in Sikkim has helped people to lead a better life?	38	76	12	24
7.	Are you satisfied with the quantum of compensation that is being given to the IDPs?	26	52	24	48
8.	Is the Rehabilitation and Resettlement policy adopted by the Government sufficient for the purpose?	24	48	26	52
9.	Are you happy with the employment that is being provided to the displaced persons?	16	32	34	68
10.	In your opinion who is responsible for providing employment to the displaced persons?	-	-	-	-
	a) Government	26	52	-	-
	b) Project Developers	18	36	-	-
	c) Both	6	12	-	-
11.	Which of the following is better alternative for rehabilitation of the displaced persons?				
	a) Monetary compensation	0	0	-	-
	b) Land compensation	6	12	-	-
	Employment	8	16	-	-
	d) All of the above	36	72	-	-
12.	The Government's duty is absolved once it gives away the amount of compensation to the victims. Do you agree with the view?	16	32	34	68
13.	The ancestral land which the displaced persons part with can not be adequately compensated in terms of money. Do you agree?	26	52	24	48
14.	Do you think the State Government is successful in protecting the rights of IDPs?	18	36	32	64
15.	If any injustice is being done to you what do you do?				
	a) Go to court of law	40	80	-	-
	b) Go to political leaders	2	4	-	-
	c) Arrive at a settlement on your own	8	16	-	-

Female=22, Male=28, Total=50

Table 5.3: Opinion survey among the residents of South District

Q. No.	Questions to the Respondents	Yes	Yes %	No	No %
1.	Do you know what Internal Displacement is?	36	72	14	28
2.	Have you ever been subjected to internal displacement?	10	20	40	80
3.	Do you have the knowledge of any law/laws which protect the IDPs?	22	44	28	56
4.	What is the major cause of displacement in Sikkim?				
a)	Natural Calamity	8	16	-	-
b)	Armed Conflict	0	0	-	-
c)	Communal Violence	0	0	-	-
d)	Development Projects	42	84	-	-
5.	Are you happy with the method by which the land is acquired by the Government?	28	56	22	44
6.	Do you agree with the view that the rapid growth of development projects in Sikkim has helped people to lead a better life?	40	80	10	20
7.	Are you satisfied with the quantum of compensation that is being given to the IDPs?	28	56	22	44
8.	Is the Rehabilitation and Resettlement policy adopted by the Government sufficient for the purpose?	18	36	32	64
9.	Are you happy with the employment that is being provided to the displaced persons?	16	32	34	68
10.	In your opinion who is responsible for providing employment to the displaced persons?			-	
a)	Government	38	76	-	-
b)	Project Developers	10	20	-	-
c)	Both	2	4	-	-
11.	Which of the following is better alternative for rehabilitation of the displaced persons?				
a)	Monetary compensation	0	0	-	-
b)	Land compensation	6	12	-	-
c)	Employment	6	12	-	-
d)	All of the above	38	76	-	-
12.	The Government's duty is absolved once it gives away the amount of compensation to the victims. Do you agree with the view?	20	40	30	60
13.	The ancestral land which the displaced persons part with can not be adequately compensated in terms of money. Do you agree?	16	32	34	68
14.	Do you think that the State Government is successful in protecting the rights of IDPs?	16	32	34	68
15.	If any injustice is being done to you what do you do?				
a)	Go to court of law	42	84	-	-
b)	Go to political leaders	4	8	-	-
c)	Arrive at a settlement on your own	4	8	-	-

Female=30, Male=20, Total=50.

Table 5.4: Opinion survey among the residents of North District

Q. No.	Questions to the Respondents	Yes	Yes %	No	No %
1.	Do you know what Internal Displacement is?	46	92	4	8
2.	Have you ever been subjected to internal displacement?	28	56	22	44
3.	Do you have the knowledge of any law/laws which protect the IDPs?	0	0	50	100
4.	What is the major cause of displacement in Sikkim?				
a)	Natural Calamity	22	44	-	-
b)	Armed Conflict	0	0	-	-
c)	Communal Violence	0	0	-	-
d)	Development Projects	28	56	-	-
5.	Are you happy with the method by which the land is acquired by the Government?	16	32	34	68
6.	Do you agree with the view that the rapid growth of development projects in Sikkim has helped people to lead a better life?	32	64	18	36
7.	Are you satisfied with the quantum of compensation that is being given to the IDPs?	16	32	34	68
8.	Is the Rehabilitation and Resettlement policy adopted by the Government sufficient for the purpose?	22	44	28	56
9.	Are you happy with the employment that is being provided to the displaced persons?	24	48	26	52
10.	In your opinion who is responsible for providing employment to the displaced persons?				
a)	Government	14	28	-	-
b)	Project Developers	18	36	-	-
c)	Both	18	36	-	-
11.	Which of the following is better alternative for rehabilitation of the displaced persons?				
a)	Monetary compensation	0	0	-	-
b)	Land compensation	18	36	-	-
c)	Employment	8	16	-	-
d)	All of the above	24	48	-	-
12.	The Government's duty is absolved once it gives away the amount of compensation to the victims. Do you agree with the view?	14	28	36	72
13.	The ancestral land which the displaced persons part with can not be adequately compensated in terms of money. Do you agree?	18	36	32	64
14.	Do you think that the State Government is successful in protecting the rights of IDPs?	10	20	40	80
15.	If any injustice is being done to you what do you do?				
a)	Go to court of law	44	88	-	-
b)	Go to political leaders	2	4	-	-
c)	Arrive at a settlement on your own	4	8	-	-

Female=18, Male=32, Total=50

Table 5.5: Overall response of persons in Sikkim

Q. No.	Questions to the Respondents	Ye s	Yes %	No	No %
1.	Do you know what Internal Displacement is?	174	87	26	13
2.	Have you ever been subjected to internal displacement?	69	34.5	131	65.5
3.	Do you have the knowledge of any law/laws which protect the IDPs?	32	16	168	84
4.	What is the major cause of displacement in Sikkim?				
a)	Natural Calamity	42	21	-	-
b)	Armed Conflict	0	0	-	-
c)	Communal Violence	2	1	-	-
d)	Development Projects	156	78	-	-
5.	Are you happy with the method by which the land is acquired by the Government?	88	44	112	56
6.	Do you agree with the view that the rapid growth of development projects in Sikkim has helped people to lead a better life?	154	77	46	23
7.	Are you satisfied with the quantum of compensation that is being given to the IDPs?	98	49	102	51
8.	Is the Rehabilitation and Resettlement policy adopted by the Government sufficient for the purpose?	84	42	116	58
9.	Are you happy with the employment that is being provided to the displaced persons?	72	36	128	64
10.	In your opinion who is responsible for providing employment to the displaced persons?				
a)	Government	110	55	-	-
b)	Project Developers	60	30	-	-
c)	Both	30	15	-	-
11.	Which of the following is better alternative for rehabilitation of the displaced persons?				
a)	Monetary compensation	2	1	-	-
b)	Land compensation	32	16	-	-
c)	Employment	42	21	-	-
d)	All of the above	124	62	-	-
12.	The Government's duty is absolved once it gives away the amount of compensation to the victims. Do you agree with the view?	74	37	126	63
13.	The ancestral land which the displaced persons part with can not be adequately compensated in terms of money. Do you agree?	72	36	128	64
14.	Do you think that the State Government is successful in protecting the rights of IDPs?	56	28	144	72
15.	If any injustice is being done to you what do you do?				
a)	Go to court of law	160	80	-	-
b)	Go to political leaders	16	8	-	-
c)	Arrive at a settlement on your own	24	12	-	-

Male = 104, Female = 96, Total =200.

5. DATA ANALYSIS

On perusal of the above questionnaire, the scenario in Sikkim can be summed up as follows:

1. The term 'Internal Displacement' is no more stranger to the people of Sikkim. In response to the first question, the respondents from the three district of East, West and North have given an overwhelming response; forty-six out of fifty respondents in each of these three Districts have come across the term 'internal displacement'. The response in the South District is a little shaky; however, on the whole, it is for sure that people are aware of what internal displacement is.

2. The opinion survey reveals that out of 200, around 70 respondents are found to have born the burnt of displacement. In response to the second question, it was surprising to discover that out of 50, 28 respondents in the North District answered in the positive. Further, it is to note that most of the respondents who answered in the positive stated that they were affected by power projects. However, it must also be stated that all of these respondents were not unhappy with this. Actually, those who responded in the positive are not 'displaced' in the real sense of the term; rather they can be categorized as 'Project Affected Families', who have given away a portion of their land. The researcher further tried to ascertain the correct position from an official who is part of machinery which undertakes and determines the feasibility of development projects, who told;

"Normally, land owners whose 100% land is taken away for the projects are considered as 'project oustees' or 'displaced', however, in Sikkim there is hardly any family whose 100% land has been taken away for the projects. But for the benefit of the people, project

authorities have included those families in the list of 'project oustees' whose 70% land has been taken away for the project."

3. The response to the third question shows that people in South District followed by West District are aware of law that protect IDPs. Those who have knowledge of law related to internal displacement enumerate the Land Acquisitions Act as protecting their rights. In view of the researcher, of late, in Sikkim also, the Government is using the provisions of Land Acquisition Act to make the land available for project developers. This is the reason why people are acquainted with this legislation. Further, the problem of internal displacement is not as serious as it exists in other States. Hence, there is every possibility of people being unaware of such laws and policies and moreover, there is no such national legislation that exists for their protection.
4. Regarding the causes of displacement in Sikkim, it is quite clear that there is no displacement at all due to armed conflict. Except 4% of the respondents from the West District, none of the respondents are of the view that communal violence is also responsible for displacement in Sikkim. Unlike other Border States, there is indeed no problem of armed conflict in Sikkim. Similarly, it is heartening to note that in spite of its being a state inhabited by people of different communities, communal violence is non-existent in Sikkim.

When we look into the overall figure, we find that only 21% of the respondents have opined that natural calamity is also responsible for displacement in Sikkim. Displacement due to natural calamity is a matter of concern, especially in the North District because land slide is a common phenomenon during the months of July to September. However, development induced displacement is, now a days, becoming a matter of growing concern, which, over a period of time, may become a problem. What the personal observation of the

researcher is that in Sikkim development projects have been undertaken but in comparison to other States, displacement is negligible, but in due course, this situation can change, because Sikkim is in a developing process and this momentum of development can no doubt cause displacement.

5. Regarding fifth question, when the researcher interacted with the respondents, it was discovered that the respondents who are not satisfied with the method of land acquisition feel that proper transparency is not maintained and the quantum of compensation is very less. They also feel the existing laws determining the quantum of compensation are undemocratic and not people-friendly.

In this regard, it may be observed that in Sikkim also, the ever controversial 'public purpose' which has a brooding presence in the Land Acquisition Act, is sometimes proved to be detrimental to the 'public' who are made to part away from their land. Mainly because, the Government often acts as an agent of the project developers to whom the land is made available by the Government. On a number of occasions it may also happen that the provisions of Land Acquisition Act is used to do indirectly, what can not be done directly.

6. The response to question number six reflects the fact that development has not caused the people to lead a better life. The reasons for this are numerous, which include; people are left with less land to continue with cultivation where mass of people are dependent on agriculture; the projects do not provide them with employment that helps raise their standard of living; these projects are the cause of natural calamities like landslide; etc. But in view of the researcher, the most crucial reason for this scenario is the fact that people often end up misutilizing the money they get by way of land compensation. There are number of instances of people buying second hand vehicle,

gambling, drinking and enjoying with the compensation money. There are instances of people going to the extent of buying a two-wheeler and keeping a salaried driver to drive it! The genesis of the problem lies in the fact that the people do not know how to utilize the money in order to uplift themselves.

7. Further the response to seventh question reveals that the respondents from the North District are not satisfied with the quantum of compensation, however in rest of the Districts, majority of the respondents are satisfied. But if we see on the whole the respondents are almost equally divided in their opinion, though mathematically the dissatisfied lot is in majority. Thus, from the response it can be concluded that the people have a mixed opinion regarding the quantum of compensation. One possible reason for this may be that people, who had unproductive, mountainous terrain, are satisfied with the compensation, but those, who had to part away with their productive land, are not satisfied.
8. The respondents who felt that R&R policy adopted by the Government is not sufficient, testified that the effected families have finished with compensation money because they had not the slightest idea of spending it. The fertile lands have been lost and are left with no alternative means of livelihood. Indeed, in some instances it was found that those who used to be the owner of the land earlier are working for the project developers as a daily wage laborer on the same land.

To ascertain the actual position the researcher approached the office of a project developer and was told that most of the projects that have been undertaken in Sikkim are smaller ones involving lesser acquisition. As far as possible, they try to avoid cultivable land and as such, there is minimal displacement. In the event of any displacement they go by the instructions received from the State Government.

9. When we look into the average response to the ninth question, we find that 55% of the respondents believe that it is the responsibility of the Government to provide employment to the displaced persons. 30% of the respondents fix this responsibility to the project developers and 15%, to both. The survey reveals a general opinion that people are basically not satisfied with the nature of employment that is being provided. They opine that the criterion of job to one member of the affected family is not sufficient. Since the land had the capacity to fulfill the need of the whole family, the job so provided does not seem to work out their problem. They also feel that such jobs are not of a permanent nature. They get employment only till the commissioning of the project. Realizing this situation, the Government, of late, has initiated a massive need based capacity building campaign to create skilled man power, so that people get permanent and better employment.
10. Similarly, majority of the respondents feel that Government is responsible for providing job to the displaced family. The reason cited for this was simple; since it is the Government who takes away the land for projects, Government should provide them with jobs.
11. In response to eleventh question, only 1% of the respondents have preferred monetary compensation as a better alternative for rehabilitation of the displaced persons. However, it must be noted that the least preferred mode of compensation, i.e. monetary compensation is the most prevalent mode of compensation. This speaks volume about how far policies of the authorities have been people centric. The opinion survey reveals the fact that monetary compensation has not been suitable for rehabilitating and resettling the displaced family, in fact majority of respondents support the view that a combination of the entire package would be suitable for resettling them.

Therefore, in view of the researcher monetary compensation should not only be the basis of rehabilitating them because the displaced families tend to utilize this amount in monetary pleasure without thinking of their future. Counseling session should be conducted for them and a combination of the above mentioned alternative be made available for them.

12. It may be noted here that in response to the twelfth question most of the educated respondents who responded in the negative were of the view that the Government should also conduct the counseling session to guide the people regarding judicious utilization of the amount of compensation. In addition to this, the Government should also keep a track on how people are spending the money. Some of the respondents also suggested that the Government should invest the money in favour of the beneficiaries in such a way that they get regular income out of it.
13. 63% of the total respondents responding to thirteenth question, who felt that the ancestral land cannot be compensated in terms of money, opined that land has always been scarce to them. Since agriculture has been their main occupation from time immemorial; it has been their means of subsistence and hence, it cannot be compensated in terms of money. In fact, one of the respondents inquired the researcher, "*Can you help us to decide the price of remaining hungry for life?*"
14. The response to the fourteenth question reveals the fact that majority of respondents are not satisfied with the approach of the government in protecting the rights of internally displaced persons. Some were of the view that the people so affected should be in a better position than where they were earlier, then only it can be said that the Government has been successful in protecting their rights. Indeed, there are many instances where the condition of people has worsened.

15. The last question was, in fact, put to ascertain the degree of legal awareness among the respondents. It is heartening to note that the degree of legal awareness among the respondents is as high as 80%, but still some did not hesitate to say that they would go to political leaders for redressing the wrongs done to them.

6. SUM – UP

The people in Sikkim, though they are aware of the problem of displacement, cannot be compared with the displaced population of West Bengal, Madhya Pradesh, Gujarat and Kashmir. The displaced populations of Sikkim are in a much better position than their counterparts. The degree of violations they are subjected to is much less than that compared to other State. But in days to come the situation will surely change and create problem, not only for the people, but also for the Government and project authorities. Things might change and the story may go otherwise.

After having perused the entire opinion survey it may be concluded that the people are very much aware of the issue of internal displacement and the term 'displacement' is no more a stranger for the people but the frequency is less as compared to other States in India. This does not mean that we are in a better situation than other States. The only thing which can be predicted is the fact that in near future the situation can be worse. As the State witnesses more of such developmental projects, the ratio of displacement is bound to rise proportionately. Though the authorities claim that there has been minimal displacement in Sikkim but the situation may not remain same in future. Specially so in view of the mushroom growth of developmental projects in the State.

The opinion survey has revealed that development induced displacement has a largest share of responsibility in causing internal displacement in the State.

This share is bound to become even larger as more and more of such developmental projects come up. This situation is going to become a major challenge for the policy makers in a very near future.

It is a fact that people in Sikkim are very simple and basically their main avocation is agriculture. They have not known about power project or for that matter, development projects which are of very recent origin in the State. The politicians and project developers have caused the simple people to believe that such development projects will uplift their way of living and improve their standard, which, on a number of occasions, has not been true. Slowly, the project developers are encroaching upon land situated in notified protected areas which basically belong to the tribals. Further, there is no fixed or uniform criteria and procedure in acquisition of land. Different procedures are adopted for different areas and different kind of land which largely depends on the policies of individual project developer. The irony is the fact that no private person can directly acquire land from the people nor negotiate with him. But ultimately the Department / agency of the State acquire the land and hand over the land to the concerned project developer. In fact, the State acts as a middleman and ultimately helps a private person. That is to say, what cannot be done directly is being done indirectly.

Further, it is pertinent to note that the people are not happy with mode and quantum of compensation which is provided to them on acquisition of their land. They say that they are not provided with real value of the land while on the other hand, they are rapidly loosing their means of subsistence.

The major lacuna in such development induced displacement is that there is no Rehabilitation and Resettlement policy though the State tends to assert that it has the Central Policy of R&R. The State also does not talk about any situation where due to any circumstances the project fails or the project cannot be completed due to any reasons. In such situation there should be clear provision to

the effect that the land so acquired shall, as far as practicable, be returned to its original owners.

Therefore, in the light of the above study, the following points may be highlighted for consideration:

- i) The State, if it is fair enough, needs to formulate an R&R plan/policy which must not only be in consonance with the Centre Policy but it must keep in mind the peculiar position availing in the State of Sikkim. The State needs to spell out its policy first and then the project developers need to do their task accordingly because the State should always be committed towards its people even when the project developers are not committed towards their task of R&R.
- ii) The criterion of job / employment must also be made clear. It should also be made clear whether the employment would be till the completion of the project or even afterwards. Accordingly, the female members should also be given importance in the matter of employment.
- iii) The Government should direct the project developers to make public their yearly progress. The authority should also make it incumbent for the project developers to lay down in their memorandum and publish in the newspaper their ways and means of developing the project and as to how they would develop the particular place and area where rehabilitation of the displaced person is taking place. The bottom line would be that the entire process has to be made more transparent.
- iv) The private developers should also be made accountable to the people directly. The Government should also make provisions of inquiring into the ultimate utilization of the land because the project developer might be having excess land with them which can be returned to the original land owners.

- v) The Rehabilitation and Resettlement policies formulated should also provide for the indirect impact or the collateral damage that the project might be causing in the vicinity.
- vi) The State should also endeavor not to encroach upon tribal areas and grab their land, to which they have not only emotional attachment but also religious and spiritual attachments.

Chapter VI

Conclusion and Suggestions

CHAPTER –VI

CONCLUSION AND SUGGESTIONS

In this globalised world, addressing the human right issues for the IDPs remains an immense challenge. The need to respect for the rights of uprooted population is essential if prevention and protection efforts are to be effective. Overwhelmingly, they live under the adverse conditions of a hostile domestic environment where the access to protection and assistance is constrained by national sovereignty.

The issue of Internal Displacement has become a monumental crisis, both in national and international scenario. It is often said that though the crisis has a global impact, it carries with it significant variations. For every person internally displaced there are 25 million different stories for their displacement. In reality, displacement is an act of sudden dissolution of sustenance or source of living of a person and a challenge to re-establish' his environment to regain his means of livelihood. Due to displacement, the displaced population tends to take refuge with family or friends or in camps with the hope to find safety, food and shelter.

The main reason for forced relocation has been armed conflict, communal violence, natural and ecological disasters, systematic violations of human rights and persecution. The response of the international fraternity to the problems faced by IDPs is viewed from the post-cold war era in which long suppressed ethnic and religious conflicts had been unleashed in many parts of the world. This caused greater willingness on the part of the international community to address these problems and try to evolve for the IDPs standards and mechanism on similar basis to those that arrest and protect refugees.

As time passed by, it was felt necessary to identify the IDPs and hence, arose a necessity to define and differentiate IDPs from refugees. Many times there has been confusion with respect to defining IDPs as the authorities were not clear as to what should be included in the definition. For example, some oppose the

definition for including “natural disaster” as the cause of displacement. There are those who would like to see the definition broadened to include ‘development projects’ that cause displacement. All these matters were discussed and a final working definition finalized. The Guiding Principles on Internal Displacement finally set to rest the controversy which had existed in the definition and produced a refined working definition. This definition is descriptive and not indicative of any legal status.

Apart from the necessity of defining IDPs there also arose a necessity to distinguish between IDPs and refugees without denying the fact that they, at times, are similar. The distinction that is proposed is crossing an international border turn IDPs into refugees. To some, this is an arbitrary distinction which tries to limit the applicability of refugee law to IDPs. It is of enormous consequence as a displaced person’s presence in a country other than his or her own implicates a well established protective regime, and affords the persons, rights recognized under international law. Generally speaking, the protection derived from refugee law, in so far as IDPs are concerned, is limited in its application because, the IDPs, unlike refugees, are within the borders of their own countries and the causes of their displacement are not always identical to those of refugees. Hence, we find that not only international legal standards but also national legal regime are critically important to remedy the gross violations of human rights that emanate from different forms of displacement.

While every effort is being undertaken to enhance the effectiveness of the normative framework for Internally Displaced Persons, efforts to develop an effective and comprehensive institutional framework has yet to be achieved and built up. Meanwhile, the study of institutional arrangement within international, regional and non-governmental framework is said to be going on, which forms a key component of the reports of the RSG and the General Assembly. In reality, internal displacement has become a monumental crisis in both scope and intensity. With this, the response of United Nations agencies, special or

generalized has started to increase. The agencies like UNHCR and ICRC have substantially increased their involvement with displaced population. The collaborative approach has enhanced assistance for IDPs; however, their approach is ad-hoc and bound to certain limitations. The real challenge before the authorities is for providing material assistance to the displaced population and simultaneously ensuring their protection and respect for their fundamental human rights. It is also felt that the international agencies focus is more often on relief than on protection.

To deal more effectively with the cause of internal displacement, the United Nations Secretary General introduced the appointment of the Representative of Secretary General. Since the appointment of the Representative of Secretary General, his role, as defined by the various resolutions of the Commission on Human Rights and the General Assembly, as well as the guidance of the Secretary General himself, has evolved into one of a catalyst, a liaison and an advocate for the displaced. During intervening period the RSG has compiled and analyzed legal norms relevant to the protection of IDPs from arbitrary displacement. Not only this, the RSG has undertaken field study in different part of the country. The RSG undertook the task of formulating the Guiding Principles of Internal Displacement. Accordingly and in collaboration with the team of experts that had prepared the *Compilation and Analysis of Legal Norms*, the drafting of Guiding Principles was undertaken. The first part put emphasis on the need for better implementation of the relevant norms and of identifying the grey areas with a view to ensuring a more comprehensive normative framework for the protection and assistance of the IDPs. The second part of the *Compilation and Analysis* concluded that the legal basis for providing protection prior to displacement could be strengthened significantly by articulating a right not to be arbitrarily displaced.

The purpose of the Guiding Principles is to address the specific needs of IDPs worldwide by identifying rights and guarantees relevant for their protection.

The principles reflect and are consistent with International Human Rights Law and International Humanitarian Law. They state the principles which would apply to the displaced population at the different phases of displacement, providing protection at different phases of displacement.

However, what we conclude is that the existing international legal instruments do not provide sufficient protection to these vulnerable groups and there is also a dispute that whether a mere legal protection or simply a better implementation of existing law is sufficient for protecting the human rights of IDPs. Doubts have been raised about the binding nature of the Guiding Principles because they exist only in the form of guidance to the countries and do not have the force of a treaty or a convention. The main drawback of the non-binding nature of the Guiding Principle is that the States cannot be held accountable if they disregard them and the Guiding Principles cannot be invoked in legal proceeding at both at the international and domestic level.

We find in the international field, much initiative is being taken to protect the rights of IDPS. Discussions, working visits, deliberations are taking place to formulate new laws and policies to protect their rights. For example, the London Declaration, wherein the International Law Association drafted the "*Declaration of International Law Principles on Internally Displaced Persons*" which was held on 29th July 2000. The Declaration urged all States, de-facto authorities, the United Nations and other international organizations – both governmental (including regional) and non-governmental, "*to systematically review their existing roles vis-à-vis refugees to that the rights and interests of internally displaced persons are properly safeguarded and integrated therein.*"

But when we look in the Indian Scenario it is difficult to say, but the fact remains that not much endeavor has been made in this field.

India is a house to a million of displaced people from Kashmir, North East, Gujarat, Madhya Pradesh, to name a few. We have no appropriate

legislation, policy and framework which could help these groups of people, who suffer discrimination and inequality at the hands of authorities. The causes of displacement in India range from ethnic cleansing, political cause and development projects. Development projects have been the vital cause of displacement. In fact there are many people displaced by development projects than there are refugees and they do not have an adequate protection regime. All development projects are undertaken at the cost of people and in the name and process of nation building.

No doubt, development is very essential for state's progress but a state's approach should be sustainable development. To meet the future demand, it is very essential that development should be wholesome development. By wholesome development we would mean development that looks not after economic well being but includes the guarantee of protecting human rights of people. There has to be a harmony between development on the one hand and the need to protect the right of people on the other.

No doubt, our Constitution has always been the mother of necessity. The jurists and judges have always taken the refuge of Article 21 in protecting the rights of vulnerable people by expanding the scope and horizon of Article 21. Hence, Article 21, no doubt, can be made applicable for protecting the rights of IDPs when no law/ legislation exist for their protection. The IDPs too have a 'right to life' and forceful eviction constitutes violation of this right. Other rights are attached to 'right to life' that is 'right to movement', 'right to shelter' and 'right to food' which are the necessary and basic constituent of Article 21 and also rights without which a human being cannot survive. The rights are fundamental for a displace person's existent and once the IDPs are displaced, these rights should be taken care of by the authorities, because the moment they are taken off their place, their life is at peril, and hence, it is necessary to protect the rights of displaced persons.

In recent time, development projects have caused maximum displacement of people and the most controversial among development projects has been 'dams' which affects not only the people but also leads to submergence of whole town/village. The dams pose threat to the ecology and may also be the cause of natural calamity. There are economic costs as well as social costs and environmental costs involved in a project of construction of a large dam. The social cost is also too heavy. It results in massive displacement of local habitation from their ancestral habitat and loss of common property resource and also traditional occupation like farming. The displacement of economically weaker sections of the society and tribals is the most serious aspect of displacement from the point of view of uprooting them from their natural surroundings. Absence of these surroundings in the new settlement colonies shatters their social, cultural and physical links. These matters have never been looked after by the policy and decision makers.

Whenever we talk about development, a necessary corollary which is attached to it is acquisition of land which is inevitable. Acquisition of land has caused controversy in the recent past. This controversy is not because of the fact that land is acquired but also because of the reason that such acquisition tends to displace people who were dependent on such land. To this is attached the question of R&R which the State Governments never considers important in the course of development. Hence, the method by which land is acquired and rehabilitation is carried out have been the issues around which the agitation and dissatisfaction rest. But it is a resounding fact that such development cannot be at the cost of people. The Land Acquisition Act does not speak of those cases where the development project gets abandoned. This is exactly what happened in Singur. What happened to the land – the law is silent on this aspect. Or there may be cases where land is acquired in excess, and later, sold with hefty profits. Thus, there are various ways in which acquired land is mis-utilized or not utilized at all. The Act

should make certain provisions for such kind of situation. The Act needs a major overhaul in the light of this criticism.

Further, in the Land Acquisition Act, two concepts, one of 'public purpose' and the other of 'eminent domain' need to be looked after. These two matters lie within the executive domain, thus, making the executive the sole master to decide what actual public purpose is involved in the acquisition. The Act only speaks about public purpose and does not provide the right to challenge the public purpose in a court of law. It is also said that 'public purpose' is bound to vary with times and prevailing condition in the community or locality and therefore, the legislature has left it to the State Government to decide what is public purpose and also to declare the need of a given land for the purpose. The legislation has left the discretion to the Government regarding public purpose. The State Government has the sole discretion in the matter.

Since, the Government is the sole repository of land; it is not interested in the rehabilitation and resettlement of the people. Its duty is providing compensation to the people and this does away with its obligation towards the people. This attitude of the Government is nothing but clear negation of the fundamental rights of the people. The State should assume a responsibility when it forces people to leave their land. It should relocate the ones it has displaced and employ method to help these people to get back on their feet and benefit from the development.

The amendment proposed to the Land Acquisition Act and also the introduction to National Policy on Resettlement and Rehabilitation may have put to rest certain controversies but there still much to be done. The Land Acquisition Amendment Act 2007 has on one hand talked about providing relief and resettlement as per the new Policy to those whose land is acquired for development project but neither the Act nor the policy whether the active participation of the displaced person is incumbent upon the authorities or not.

There are various queries to which we still are looking for satisfactory answers and these queries need to be addressed if the nation is to progress.

The *Panchayats Extension to Scheduled Areas Act, 1996* prohibits the State to make any law, which would not be in consonance with the customary law, social and religious practices and traditional practices of community resources. The Act also provides for consultation with the Gram Sabha before going for the acquisition of land in such Scheduled Area. On the other hand, the provisions of the Constitution also provide protection to the tribal people. *Article 244, read conjointly with Schedule V*, of the Constitution regulates the allotment of land to members of Schedule Tribes in Scheduled Areas. This provision must be read as a whole to ensure regulation of the land only to and among the members of the Scheduled Tribes in the Scheduled Area. In the light of the provisions contained in clause (a) of sub-para (2) of para 5, tribals in the Scheduled Area. When so read, there is no incompatibility and inconsistency between the power of the Executive Government and the Constitution and conjoint operation would elongate the good governance of the Scheduled Areas. But the question arises here is that whether the Land Acquisition Act is in conformity with the PESA Act,

The Act and the provisions of the Constitution reflect the idea that the tribal communities have never reaped the benefit of development since independence hence some special protection should be accorded to them. Hence, restriction is placed on purchasing land from tribal people. But the picture is not beautiful as it seems to be, because, tribal lands are now being taken over in constant violation of these norms. Tribal lands are being taken over by business corporate for development. The government should regulate disposal of their landed property in accordance with the Constitutional policy, executive decisions, and legislative enactment, backed by public policy and at the same time, preserve paramount tribal holdings in Scheduled Areas.

For tribals, displacement means a loss of livelihood and common property resource which has sustained their livelihood before displacement. It brings total chaos and disruption to their social institution on which they were dependent. The fruit of development is not shared by them for which they sacrificed their land.

The *Forest Act and Wildlife Protection Act* have also failed to take cognizance of the issue of displacement. The creation of wildlife parks, sanctuaries and reserve forest has cause displacement of forest dwellers that are dependent on forest. A law exists for the protection and welfare of the forest and wildlife and legislation has been enacted recently, even for the protection of forest dwellers, but ironically, we have no law which can look after the displaced population in general. The State cannot deprive its citizens, of the year long benefit which they derive from their lands, without rehabilitating them.

The most pertinent issue which arises once displacement has taken place is Rehabilitation and Resettlement of the displaced family. Whenever displacement takes place, there arises a question of how the displaced population would be taken care of by the Government. The Government and its agencies have never been promising in rehabilitation of the displaced people. The Government though has taken initiative in planning and implementing Rehabilitation and Resettlement Policy but these policies have their own shortcomings and lacunae which make it difficult to rely upon them for Resettlement and Rehabilitation. The wants of a displaced person due to ethnic conflict may vary from those displaced by development project. Hence, this needs to be meticulously examined by the Executive and also the legislators. And the basic that matters is why Rehabilitation and Resettlement cannot be backed by an Act instead of a policy which can too make a huge difference in the implementation of Rehabilitation and Resettlement.

The Courts in India have suo-motto taken cognizance of protecting the right of vulnerable and exploited section of the society and the role of the

judiciary under the Constitution casts on it a greater obligation as the sentinel to defend the values of the Constitution and the fundamental rights of its people. The court, in the case of Internally Displaced Persons, should take suo-motto cognizance within their judicially permissible limitation to uphold the rule of law and harness their power in public interest. The courts act within their jurisdiction when it comes to protecting the fundamental rights (of IDPs) the court come forward to provide justice but when it comes to decide policy matter, the courts restrain themselves and do not interfere. The courts specifically lay that whenever development project, which would displace people, is being undertaken, any challenge to such decision to undertake projects must be before the execution of the project. Once such a decision is undertaken, the proper execution of the same should be taken expeditiously. The court, has always given a benefit of doubt to the government to undertake large scale projects, the courts feel that decision are taken by the government after due care and consideration. And once such decision has been taken, which is not in conflict with any law or is not mala-fide, it will not be in public interest to require the court to go into and investigate those areas which are the functions of the executive. For any project which is approved after due deliberation, the court refrains itself from reviewing its decision.

The courts also feel that putting mere allegation of failure and lapses on the part of the government in providing relief measures to the displaced family/victims is not a ground for substitution of the government machinery. At times, the government is unprepared for disasters but this does not mean that we attribute failure to the government machinery. In work of such nature of providing relief and rehabilitation, administrative lapses are likely to happen, but such lapses require immediate attention and are worthy of rectification.

In Sikkim, the State has not witnessed displacement in massive scale and the cause of displacement here can largely be attributed to development projects in general and power projects in particular. We have seen, the opinion survey has suggested that apart from displacement due to development projects and some

instances of displacement due to natural calamity, other causes of displacement are almost non-existent in the State. But it must be mentioned that we are a tiny State with just 7096 Sq. Km of area and population around seven lacs. If we see from this perspective, though the situation might just be under control at present, but considering the slew of projects that are on the cards, in days to come the situation might go out of our hands and we might become leaders in so far as the ration of displacement is concerned.

The major lacuna in undertaking of such development projects is the fact that the projects are not governed by any R&R plan. It is only when the need arises then R&R may take place. The State tends to assert its stand that it is bound by Central Policy of R&R but how it will be implemented is not known.

Hence, what is revealed is the fact that the position of Internally Displaced Persons is very grim and painful and it requires immediate attention in this regard. The displaced families and population have to bear not only the miseries of displacement, but also the consequences of displacement. No matter what may be the cause of displacement, they are exploited and discriminated by the government, because, ultimately the question of the role of government arises, since, they are still within the borders of the State.

Therefore, in view of the present study and findings derived from this work, conclusion can be safely drawn as follows:

- I. International Legal Instrument has to be developed which has more force than the Guiding Principle because internal displacement has become a global crisis which needs more persuasive attention.
- II. There is no 'institutional mechanism' which is wholly dedicated to the cause of displacement. Therefore, an institutional mechanism to deal with this crisis needs to be evolved at the earliest.

- III. The international instrument should also specifically deal with different situation of displacement specifically because the need and desire of displaced population may vary from one cause to another.
- IV. The question of return for displaced community must be guided by some agencies because the question of home and homeland is very important for a displaced person and as far knowledge of the researcher goes, we would always love to return to our homeland.
- V. In India, the position is more pathetic. The IDPs are a neglected lot and they do not have a proper redressal forum from which they can seek redressal of their grievances.
- VI. The major cause of displacement in India has been development projects because India sees no other alternative in the process of nation development.
- VII. Industrial projects, urbanization, mining , natural and man-made calamities, internal strife and multi-purpose mega projects have been the causes of displacement in India and the most important among them being dam projects which not only displace people but might result in submerge of a large area thereby causing irreparable loss to the ecosystem.
- VIII. Controversial projects like Tehri, Narmada have caused huge loss to the people but what benefit it has done to the displaced family is not known and whether they will be there to enjoy the benefits accrued out of such projects or not, is a big question.
- IX. The displaced people in India who, like any other citizen, derive their strength and rights from the Constitution, are literally left with the only option to have recourse to constitutional remedies, since there is no legislation to address to their needs.
- X. There is a need to recognize displaced persons as a class in itself and formulate law which could look after the rights of this class of citizen in the same way as we have law for protecting the rights of women, child and disabled persons. But the irony is that there is a law instead, in the form of

Land Acquisition Act, which takes away the land of people in the name of 'eminent domain' and 'public purpose'.

- XI. The only thing which the displaced persons get from the Land Acquisition Act is monetary compensation which is judged by the State itself. This is the only form of rehabilitation which was provided by the State but recent amendments to the Land Acquisition Act have brought changes to this situation, which talk of rehabilitation also, but it will be too early to comment on how potent the provision is or has been.
- XII. Similarly, there is the Forest Act and the Wildlife Act which too takes away the right of tribal and forest dwellers. The tribals too are bearing the consequences of displacement. The Constitutional Law is also not respected when taking up projects in the Scheduled Areas and tribal areas.
- XIII. The Judiciary, which is respected, needs to play a proactive role in protecting the rights of displaced people. It is not expected that development project should not be taken up but this aspect needs to be judged from the perspective of the displaced people who suffer due to such projects.
- XIV. The question of Rehabilitation and Resettlement needs to be looked after by the Government, Legislature and of course, by the Judiciary also. It is also necessary that R&R be judged before the project is undertaken, during the project period and also after the project is commissioned.

Displacement of people has caused international and nation wide concerns and issues arise as to how the displaced population can be better looked after by the institution of the Government as well as the International Institutions. The displacement of large number of people has raised issues like protection, reintegration and rehabilitation. The movement is not just about rehabilitating the displaced population but also substantial improvement in the quality of life of all people in the new rehabilitation site as compared with the erstwhile habitat.

Therefore, taking into consideration the findings as mentioned above, the following points of suggestions may be put forth:

- i. There is an immediate need for formulation of an international standard under the auspices of United Nations, which is applicable to all nation-states and which can effectively address the needs and requirements of Internally Displaced Persons world wide. A comprehensive, holistic and rights-based approach at the international level, which can effectively address the cause of displacement, is the need of the hour.
- ii. Since the task of signing and fulfilling the obligation of treaty is a cumbersome process an effective International Human Rights Instrument which can cater to the need of IDPs should be undertaken which would have a binding force upon the State parties.
- iii. There is an immediate need to designate an institution like UNHCR which can dedicate itself solely to the cause and consequences of IDPs, because, the role of UNHCR and other specialized agencies have their own shortcomings and limitations.
- iv. India too is a home to million of IDPs who have displaced due to ethnic conflict, communal violence, natural calamity and development projects. From the days of partition, displacement is prevalent in India, but till date we have no law, which can address the situation of displacement. Hence, the legislature in accordance with the Guiding Principles on Internal Displacement can formulate law and policies which can cater to the needs of IDPs.
- v. When the legislature undertakes the task of formulating laws then the causes of displacement should be separately examined because the needs persons displaced due to one cause may vary from the needs of those displaced due to other cause.
- vi. The Government should not only promulgate a legislation, but also ensure its enforcement mechanism which in consultation with NGOs guide the

IDPs to another rehabilitation site and takes up the responsibility of resettling and rehabilitating them wherever necessary.

vii. In cases of development induced displacement, what is essential is that all such projects should be scrutinized and analyzed in respect of place, amount of people to be displaced and the social cost-benefit involved; then and then only discussion about R&R should start. The question as to how to negotiate resettlement package would arise given the unequal power relation between the people to be displaced, the authorities and the project developers. Hence, when laws and policies are formulated, a touch of social standard is to be undertaken in displacement and resettlement which could help in negotiating in favour of the displaced.

viii. It is known that construction of large dams cause environmental damage. The project induced displacement exposes the displaced population to a set of risks that are typical for such projects. These risks need to be addressed when rehabilitation takes place.

ix. As said, land is a necessary corollary for displacement but in this regard the Land Acquisition Act needs to be rectified to enable it to address to the following issues:

- a) The Land Acquisition Act needs to define the term 'public purpose'. this definition should be a exclusive and inclusive definition.
- b) When it comes to award of compensation, land Acquisition Act should also endeavor to quantify the cost of losses, whether direct or incidental, of all resources which could be destroyed or put to alternative use- land, air, water, forest, wasteland, even individual trees. The compensation so calculated should be awarded and then only it can be termed as 'just compensation'. This will also deter the government from mindless, wasteful acquisition.
- c) The legislators should also make it incumbent upon the project developers to pay compensation at the rate which is prevailing in the market or even

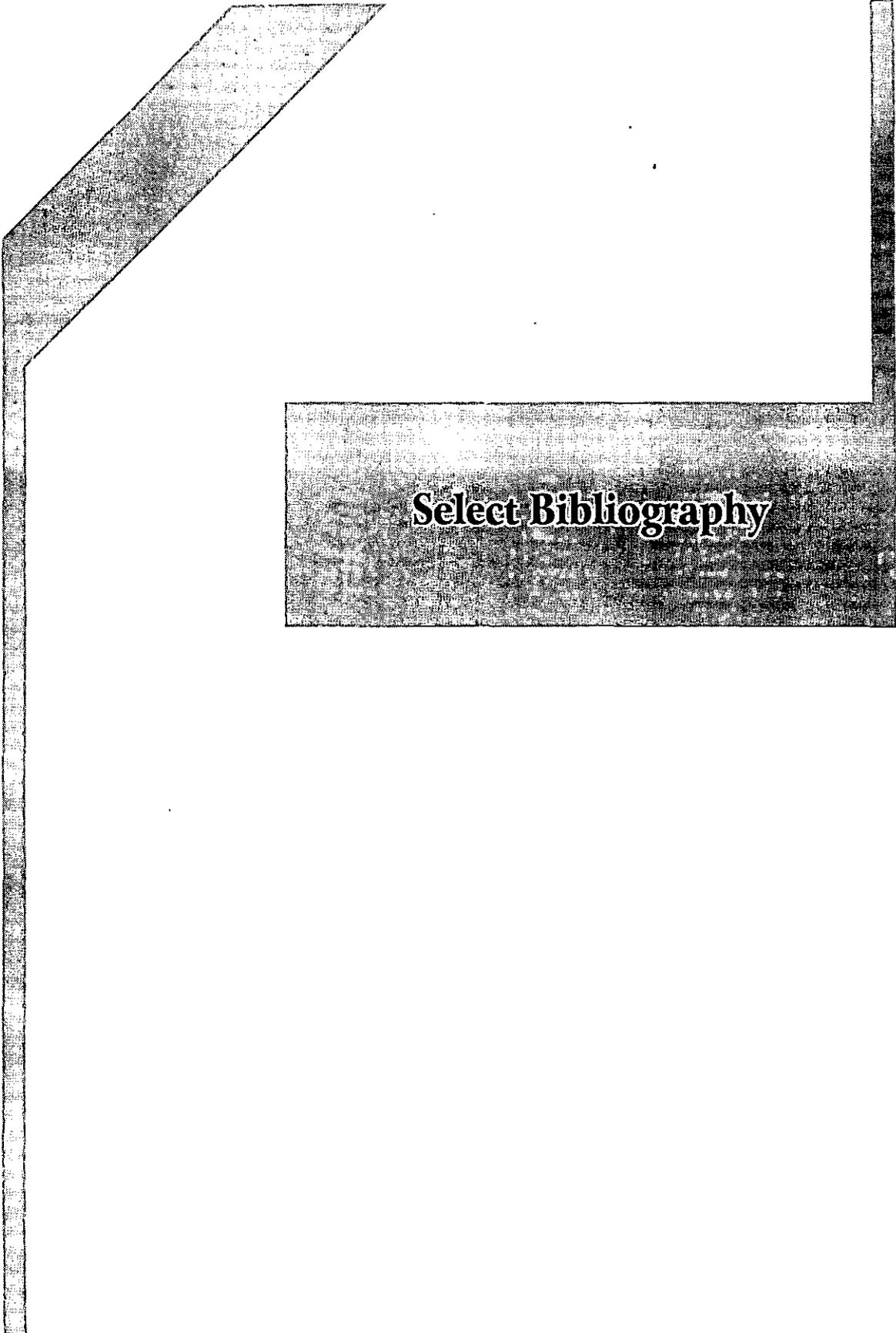
higher, as this will also curtail the useless acquisition of the land and put a curb on the government who hurry with the task of acquisition.

- d) There should be a provision in the Act to the effect that while determining the valuation of land the State Government should involve representatives of affected families, NGOs in the locality as well as agencies having special expertise in this area.
- e) Consultation with Gram Sabha should be made compulsory/ mandatory before acquisition of land.
- f) The Act itself make it incumbent upon the acquiring bodies to provide for R&R. the process of R&R should finish first before actual acquisition starts. R&R should be in consultation with the affected persons.
- g) The Act should also make penal provision in cases where projects cannot be completed or have been left incomplete for unknown reasons or for acquiring land in excess of the actual requirement. Further, there should also be a provision to return the land to the original owner where it has been acquired in excess.
- x. The stereotyped Rehabilitation and Resettlement Policy needs to be changed and hence, the following suggestions are recommended in this regard:
 - a) There is an immediate and urgent need to prepare a comprehensive Rehabilitation and Resettlement Act for the Internally Displaced Persons and when the legislature does its job, the need of women and children should be taken care of.
 - b) There is a need to evolve a wide and comprehensive definition of 'Displaced Persons' and 'Displaced Family'.
 - c) As has been stated earlier, the need of a person displaced due to one cause may vary from the need of the person displaced due to another cause, as such; the Rehabilitation and Resettlement Policy should also take care of this.

- d) The concept of Common Property Resource, to which affected population have had access prior to the project, must be substituted by similar resources. Each resettlement site should be provided with reasonable and adequate community facilities, such as;
- Drinking Water Supply;
 - Water supply for cattle and livestock;
 - Grazing land and fodder;
 - Proper schooling facilities;
 - Road Connectivity;
 - Electricity connection to each house;
 - Health care facilities;
 - Facilities for communication, etc.
- e) When it comes to providing jobs to the displaced persons, it has been noticed that persons who have been provided jobs at the project cite find them jobless as soon as the project is commissioned. The reason for this is that, most of the persons so employed are employed as unskilled laborers. Therefore, the jobs so provided should be— permanent jobs; jobs according to qualification, training and experience; jobs which provide fair minimum wages. To ensure this, sufficient training and capacity building programmes have to be undertaken. In short, the policy should be, not to borrow skilled man-power from other places, but to train the man-power available in the locality.
- f) The Rehabilitation and Resettlement Policy should cater to need of women and children, because they are often left out and are the worst sufferer in all cases of displacement.
- g) The Rehabilitation and Resettlement Policy should also make provision of not only to rehabilitate and resettle the displaced persons but also make provision of reintegrating and returning them to their original habitation if that is possible.

- h) Since R&R is a cumbersome task, apprehension exists in the mind of displaced family with regard to their new place of resettlement. There are instances of discord between the host and the resettlers. Hence, during social rehabilitation, family, caste, religion, neighborhood and community should be given due importance and a healthy relationship be developed between the host and displaced persons.
- i) The rehabilitation and resettlement plan should be made known to the public at large. The help of dislocated person should be taken while setting up areas as it would be according to their need and convenience. The NGOs and local activists should be involved in carrying out rehabilitation task.
- xi) The suggestions made above in regard to Rehabilitation and Resettlement equally apply to the State of Sikkim, as it too can incorporate these suggestions while it may formulate policies in regard to R&R.

Nothing is impossible if we have the will to improve the plight and misery of these groups of people if we want to make a difference in their life. These humble suggestions too can make a difference if those can be taken seriously for the benefit of these people.



Select Bibliography

SELECT BIBLIOGRAPHY

I) BOOKS

- 1) Banarjee Paula, Chaudhury Basu Ray Sabyasachi, Das Samir Kumar, "*Internal Displacement in South Asia, the Relevance of the UN's Guiding Principles*", Sage Publication, New Delhi, 2005.
- 2) Baxi Upendra, "The Future of Human Rights", Oxford University Press, New Delhi-01, 2nd Edition, 2006.
- 3) Basu Durga Das, "Constitutional Law of India", Lexis Nexis Butterworth Wadhwa Nagpur, New Delhi-20, 8th Edition, 2008
- 4) Brownlie Ian and Goodwin-Gill Guy S. (Eds.), "*Basic Documents on Human Rights*", Oxford University Press, New York, Fourth Edition, 2002.
- 5) Chaudhury R. Alwar, Mahindra P. Lama Ed. "*Displaced Within Homeland*", Refugee & Migratory Movements Research Unit, 2003, at p. 154.
- 6) Das Samir Kumar (Ed.), "*Blisters on their Feet – Tales of Internally Displaced Persons in India's North East*", Sage Publications, New Delhi, First Edition, 2008.
- 7) Diven, Rosencranz, "*Environmental Law and Policy in India*", Oxford University Press, New Delhi, 2nd Edition, 2001.
- 8) Diwan Paras, Diwan Peeyush, "*Human Rights and the Law, Universal and Indian*", Deep and Deep Publication, New Delhi, 1998.
- 9) Feller Erika, Turk Volker and Nicholson Francis (Eds.), "*Refugee Protection in International Law, UNHCR'S Global Consultation on International Protection*", Cambridge University Press, 2003.
- 10) Walter Fernandez, Enakshi Ganguly Thukral, (Edition), "*Development, Displacement and Rehabilitation*", Indian Social Institute, New Delhi-03, 1988.

- 11) Hussain Monirul, *"Interrogating Development, State, Displacement and Popular Resistance in North East India"*, Sage Publication, New Delhi, 2008.
- 12) *"Internally Displaced People: A Global Survey"*, Norwegian Refugee Council, 2nd Edition, Earthscan Publications Ltd, 2002, U.K and U.S.A 2002.
- 13) Jain M.P., *"Indian Constitutional Law"*, Wadhwa & Co. Nagpur, 4th Edition.
- 14) Krishna Iyer, V.R. *"Human Rights and the Law"*, Vedpal Law House, Indore, 1984.
- 15) Mehta Llya, *"Displaced by Development, Confronting Marginalization and Gender Injustice"*, Sage Publication, New Delhi, 2009.
- 16) Nirmal J. Chiranjivi, *"Human Rights in India, Historical, Social and Political Perspective"*, Oxford University Press, New Delhi 2000.
- 17) Reddy I.U.B., *"Displacement and Rehabilitation"*, Mittal Publications, New Delhi (1992)
- 18) Singh B.P. *"Human Rights in India: Problems and Perspectives"*, Deep and Deep Publications, New Delhi (1996).
- 19) Subramanya Dr. N *"Human Rights and Refugees"*, APH Publishing Corporation, New Delhi.
- 20) The State of The World's Refugees, Oxford University Press Inc. New York, UNHCR 2000
- 21) Wallace Rebecca M.M., *"International Human Rights"*, Sweet & Maxwell, London, 2nd Edition, 2001.

II) ARTICLES

A) ARTICLES IN JOURNAL

- 1) .Martin Stein, "*The Tree Gorges: The Unexamined Toll of Development-Induced Displacement*", Forced Migration Review, January –April, 1998 Pp. 6-10.
- 2) Afroz Ahmad "*Rehabilitation for the Displaced – A Comprehensive Policy Approach*", The Administrator, Vol. XLIII April – June 1998, Pp. 47-64.
- 4) Bagshaw Simon and Paul Diane "*Protect or Neglect: Towards a More Effective United Nations Approach to the Protection of Internally Displaced Persons*", The Brooking-SAIS Project on Internal Displacement and OCHA, November 2004, at p. 10.
- 5) Barnabans A.P. "*Development, Disasters and Displacement: An Appraisal of Policy for Resettlement*" The Indian Journal of Social Work, vol. 63, Issue 1, January 2002, Pp. 67-79.
- 6) Bose Ashish, "*Are Natural Disasters Manmade?*" Economic and Political Weekly, Volume 35 (36), October 28, 2000, Pp 3793-3794
- 7) C. Nayak Ramesh "*Development and Displacement in Kalinga Nagar, Orissa*", Social Action, vol. 58, January-March 2008, Pp. 19-30.
- 8) Cerenea Michael, "*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.
- 9) Cohen Roberta and Deng Francis M, "*The Genesis and the Challenges*" in "*Ten years of the Guiding Principles*", GP 10, Forced Migration Review, December 2008, at p. 4.
- 10) Cohen Roberta, "*Strengthening Protection of IDPs: The UN's Role*", Georgetown Journal of International Affairs, Winter/Spring 2006, Pp. 101-109.

- 11) Das Sukumar , "*Acquisition, Compensation and Rehabilitation*", The Administrator, Vol. XLIII, April- June 1998 Pp 37-45.
- 12) Dhagamwar Vasudha, "*The Impact of Land Acquisition Act on our Rehabilitation Policies*" The Administrator, Vol XLIII, April-June 1998, pp 29-35.
- 13) Egeland J, "*Towards a Stronger Humanitarian Response System*", Forced Migration Review, Vol. 4, Pp. 4-5.
- 14) Francis P, "*Field Report: Involuntary Resettlement in Urban Development Plan, Performance and Outcome in the World Bank-funded Antarctica Plain Project, Madagascar*", Journal of Refugee Studies, 1999, Vol. 12 (2) 1999, Pp. 180-202.
- 15) Geissler Nils, "*The International Protection of Internally Displaced Persons*", International Journal of Refugee law, Vol.11, No. 3, (1999), Pp. 451-478.
- 16) Ghazala Shahabuddin, Shah Amita, "*Relocation of People from Wildlife Areas, Socio-Economic Issues*". Economic and Political Weekly, Vol.38 (43); November 2003; Pp. 4945-4946.
- 17) Ghazala Shahabuddin, Shrivastava Ravi Kumar, Shrivastava Manish, "*Policy and Process from Conservation Areas: The Case of the Sariska Tiger Reserve Rajasthan*". Social Change, Vol.36. No. 1, March 2006, Pp130-140.
- 18) Gill Sucha Singh , "*Special Economic Zones and Displacement, Need for Alternative model*", Man and Development, December 2007, Pp. 95-106.
- 19) Gillard E, "*The role of International Humanitarian Law in the Protection of Internally Displaced Persons*", Refugee Survey Quarterly, Volume 24 (3), Pp. 38-39.
- 20) Hale Aaron, "*Internal Displacement in Guatemala*", International Third World Studies Journal and Review. Vol. XV, 2004, Pp. 1-9.
- 21) Kalin Walter, "*The Guiding Principles on Internal Displacement*", International Journal of Refugee Law, Vol. 10, Pp. 557-560.

- 22) Kumar Pankaj, "*Displacement and Rehabilitation in Jaduguda Region of Jharkhand*", Third Concept, February 2006, Pp 25-27.
- 23) Mathew Areeparampil, "*Industries, Mines and Dispossession of Indigenous People: The Case of Chotanagpur*", Social Action Vol. 38 July –September 1998, Pp. 231-251.
- 24) Mathur Hari Mohan, "*Resettling People Displaced by Development Projects: Some Critical Managements Issues*" Social Change, Vol. 36 No 1, March 2006, Pp 36-86.
- 25) Peter Smith Macalister, "*Refugees and Displaced Persons in a Troubled World: Human Needs, Human Rights and the Role of the United Nations High Commissioner for Refugees*"; Indian Journal of International Law, vol. 37, 1997, Pp. 633-657.
- 26) Phillippe Lavoyer Jean, "*Guiding Principles on Internal Displacement*", International Review of the Red Cross, No 324, September 1998, Pp. 467-480.
- 27) Ramanathan Usha, "*Displacement and the Law*", Economic and Political Weekly, vol. XXI, 15 June 2006, Pp 1486-1491.
- 28) Rizvi Sumbul, "*International Dimensions of Refugee Law*", ISIL Yearbook of Internal Humanitarian and Refugee Law, Volume 4, 2004, Pp. 103-115.
- 29) Sahay Ashok Kumar, Shetty Prabira, "*Tribal Displacement and Resettlement : Effective Safeguard*", Social Action, Vol. 58, January-March 2008, Pp. 1-6.
- 30) Sampat Preeti, "*Special Economic Zones in India*", Economic and Political Weekly, Vol. 43. No. 3, July 12, 2008, Pp. 25-29.
- 31) Saxena K.B, "*Development, Displacement, and Résistance: The law and the policy on land Acquisition*", Social change, Vol.38, No. 3, September 2008, Pp. 351-410 at. 353
- 32) Sen Sumit. "*Exiled at home: The International Regime of Internally Displaced Persons*"; Indian Journal of International Law, Volume 38; 1998, Pp 182-220.

- 33) Sharma R.N, "*Involuntary Displacement: A Few Encounters*", Economic and Political Weekly, Vol. 38. (9); March 2003, Pp 907-912
- 34) Singh Shekhar, "*Displacement and Rehabilitation: A Comparison of Two Policy Drafts*", Economic and Political Weekly, Vol. 41 (52), December 2006, Pp. 5307-5309.
- 35) Sinha, B.K. Pushpendra, "*Development and Displacement: Select Issues*", Administrator Vol. XLIII April-June 1998, Pp. 13-28.
- 36) Somayaji Sakarama, Khawas Vimal "*Capacity Building for Resettlement Management: A Note on the CSD Programme*", Social Change, Vol.36. No. 1, March 20, Pp. 191-196
- 37) Stavropolou Maria, "*Displacement and Human rights: Reflections on UN Practice*", Human Rights Quarterly, Vol. 20, No. 3, 1998, Pp 514-554
- 38) Sucha Singh Gill, "*Special Economic Zones and Displacement, Need for Alternative Model*", Man and Development, December 2007, Pp. 95-106.

B) ARTICLES IN BOOKS

- 1) Fisher David, "*Epilogue: International Law on the Internally Displaced Persons*", Paula Banarjee, Sabyasachi Basu Ray Chaudhury, Samir Kumar Das (Eds). "*Internal Displacement in South Asia; The relevance of the UN Guiding Principles*". Sage Publication, New Delhi, 2005, at p. 326.
- 2) Singh Gurcharan, "*Human Rights and J & K Refugees of 1947 Partition*", in "*Human Rights in India: Problems and Perspectives*", B.P.Singh Edition, Deep and Deep Publications, New Delhi (1996), Pp. 566-581 at p. 568.
- 3) Annan Kofi, "*Preface*", in Roberta Cohen and Francis M. Deng, "*Masses in Flight: the Global Crisis of Internal Displacement*", Washington DC: The Brooking Institution 1998, at p. xix.

- 4) Lama Mahendra P. "*IDPs in India: Causes, Protection and Management Dilemma*", in Chowdhury R. Alwar, Mahindra P. Lama Ed. "*Displaced Within Homeland*", Refugee & Migratory Movements Research Unit, 2003, at p. 154.
- 5) Cerena Michael, "*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.
- 6) Das Samir Kumar, "*India: Homelessness at Home*", in Paula Banarjee, Sabyasachi Basu Ray Chaudhury, Samir Kumar Das (Eds). "*Internal Displacement in South Asia; The relevance of the UN Guiding Principles*". Sage Publication, New Delhi, 2005 at p. 121.
- 7) Bhaumik Subhir, "*India's Northeast: Nobody's People in No-Man's Land*", Paula Banarjee, Sabyasachi Basu Ray Chaudhury, Samir Kumar Das (Eds). "*Internal Displacement in South Asia; The relevance of the UN Guiding Principles*". Sage Publication, New Delhi, 2005 at p. 161.
- 8) Baxi Upendra, "*Notes on Constitutional and Legal Aspects of Rehabilitation and Displacement*", in Walter Fernandez, Enakshi Ganguly Thukral, "*Development, Displacement and Rehabilitation*", Indian Social Institute, New Delhi-03, 1988 at p. 169.
- 9) 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.
- 10) Vijaykumar V, "*Refugees and Human Rights, International and National Experiences*" in "*Human Rights in India*", C.J. Nirmal Edition, Oxford University Press, 1999.
- 11) Singh Gurcharan, "*Human Rights and J & K Refugees of 1947 Partition*" in Human Rights in India: Problems and Perspectives, B.P.SINGH Edition, Deep and Deep Publications, New Delhi (1996)

- 12) Fernandes Walter, Enakshi Ganguly, "Displacement and Rehabilitation, An Estimate of Extent and Prospects" in Walter Fernandez, Enakshi Ganguly Thukral, *"Development, Displacement and Rehabilitation"*, Indian Social Institute, New Delhi-03, 1988.

C) ARTICLES ON WEBSITE

- 1) *Case for an IDP Database in India's Northeast*", Institute of Peace and Conflict Studies (IPCS), 17 January 2004, <http://www.ipcs.org/Northeast> visited on 5th March 2008.
- 2) *Current Dynamics of Displacement*" in *"The State of World Refugees: Human Displacement in The New Millennium"*, Oxford University Press, www.unhcr.org/cgi-bin/texts, visited on 6-8-2007.
- 3) Francis Deng, *"Annual Report to the United Nations General Assembly"*, World News, 24th August 2001, cited from <http://www.unhcr.ch>, visited on 15th May 2008.
- 4) Francis Deng, *"Annual Report to the United Nations General Assembly"*, World News, 24th August 2001, cited from <http://www.unhcr.ch>, visited on 15th Dec 2008
- 5) Hand Book for preparing a Resettlement Action Plan, www.ifc.org/ifcext/enviro.nsf, visited on 26.06.2008.
- 6) Human Rights Watch (HRW), Human Rights Overview, India (2006), [http:// www.org/english/docs/2006/01/18/india12272.htm](http://www.org/english/docs/2006/01/18/india12272.htm) visited on 21st March 2009.
- 7) *India, Large Number of IDPs are Unassisted and in Need of Protection, A Profile of the Internal Displacement Situation*", 3rd May 2007, at p. 16. www.internal-displacement.org. Visited on 4-8-2007.

- 8) *Internally Displaced Persons: The Role of the United Nations High Commissioner for Refugees*, at p. 1, www.unhcr.org. Visited on 15th Feb 2009.
- 9) *International Conference of the Greater Lakes Region, Protocol on Protection and Assistance to Internally Displaced Persons*, 30th November 2006, www.icgir.org, visited on 23.7.08.
- 10) National Network for Human Rights Treaty Monitoring in India, *"Dimensions of Discrimination in India"* - A shadow report to the UNCERD Committee, 19th February 2007, <http://www.ohchr.org/english/bodies/cerd/docs/ngos/shadow>, visited on 21st March 2008.
- 11) *Protecting Internally Displaced Persons: Manual for Law and Policy Makers* www.brooklin.edu/projects/idps/Policies.index.aspx, visited on 15.12. 2008.
- 12) Ravi Hemadri, Harsh Mander, Vijay Nagraj, *"Dams, Displacement, Policy and Law in India"*, www.dams.org visited on 05.08.2008.
- 13) Roberta Cohen, *"Tough Nuts to Crack: Dealing with Difficult situations of Internal Displacement"*, www.brookingsinstitution.org/fp/projects/idp/conference/1990128wp.htm, visited on 21st March 2008.
- 14) S.P. Banerjee, *"Social Dimension of Mining sector"*, IE (I) Journal – MN, vol. 85, August 2004, at p. 5, cited from, www.ieindia.org/publish/mm, visited on 22.04.09.
- 15) *SEZ and Land Acquisition – Fact Sheet for an Unconstitutional Economic Policy* www.sacw.net/nation/sezland.eng.pdf, visited on 22.04.09.
- 16) Shekwat, Mahapatra, *"Kargil Displaced of Akhnoor in Jammu and Kashmir: Enduring Ordeal and Bleak Future"*, A report on the Border Displacement and Return in Akhnoor, www.internal-displacement.org/8025708F004BE3B/ (http Info Files), visited on 5th March 2008.
- 17) South Asian Human Rights Documentation Centre (SAHRDC), Human Rights Features, *"Chakmas and Hajongs Denied their Rightful Place in*

Arunanchal Pradesh”, 6th August 2001,
www.hrdc.net/sahrdc/hrfeature/HRF42, visited on 21st March 2008.

- 18) The Brookings–SAIS Project on Internal Displacement, Summary Report of the Conference on Development Induced Displacement, Washington D.C. December 2002, www.brookings.edu/fp/projects/idp/gp-page.htm visited on 19.12.08.
- 19) W. Courtland Robinson, “*Risk, Rights, the Causes , Consequences, and Challenges of Development Induced Displacement*”, The Brookings Institution-SAIS Project on Internal Displacement, at p. 5, www.brooking.edu/research visited on 31-12-07 .
- 20) Walter Kalin “*Protection of Internally Displaced Persons in Situations of Natural Disaster*”, A Working Visit to Asia by the Representative of the United Nations Secretary – General on the Human Rights of Internally Displaced Persons. 27th February - 5th March 2005, at p. 7. www.ohchr.org/English/issues/idp/index.htm visited on 15.12.2007
- 21) Walter Kalin, “*Guiding Principles on Internal Displacement – Annotations*”, American Society of International Law, Studies in Transnational Legal Policy, No. 32 (1998) at p. 9, cited from <http://www.asil.org/study-32.pdf>.

III) JOURNALS, PERIODICALS, DAILIES

i) JOURNALS

- 1) Administrator
- 2) All India reporter
- 3) Annual Survey of India
- 4) Central India law Quarterly
- 5) Delhi Law Review
- 6) Gauhati Law Times

- 7) Halsbury's Law of India
- 8) Indian Bar Review
- 9) Indian Journal of International Law
- 10) Indian Journal of Social Work
- 11) ISIL Year Book of International Humanitarian and Refugee Law
- 12) Journal of Constitutional and Parliamentary Studies
- 13) Journal of Indian Law Institute
- 14) Journal of the Institute of Human Rights
- 15) Kashmir University Law Review
- 16) Lawyers Collective
- 17) Madhya Pradesh Journal of Social Sciences
- 18) Mainstream
- 19) Nyaya Deep
- 20) Social Action
- 21) Supreme Court Cases
- 22) Supreme Court Cases Journal

ii) **PERIODICALS:**

- i) Down to Earth
- ii) Economic and Political Weekly.
- iii) India Today
- iv) Outlook
- v) Talk Sikkim

iii) **DAILIES**

- 1) Hamro Prajashakti
- 2) Now
- 3) Sikkim Express

- 4) Statesmen
- 5) The Hindu
- 6) The Telegraph
- 7) The Times of India

IV) REPORT

- 1) Boutros Ghali, “Analytical report of the Secretary General on Internally Displaced Persons”, E/CN.4/1992/23 (United Nations, 1992).
- 2) Commission on Human Rights, Analytical Report of the Secretary General on Internally Displaced Persons (E/CN.4/1992/23).
- 3) High Level Conference on “ Ten Years of the Guiding Principles on Internal Displacement- Achievement and Future Challenges”, “Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development”, Report of the Representative of the Secretary – General, Walter Kalin, on Human Rights of Internally Displaced Persons. A/HRC/10/13/Add.3, 11th February 2009.
- 4) Human Rights questions: Human Rights situations and Reports of Special Rapporteur and Representatives. 29th September 1999.
- 5) Report by Francis M. Deng, Representative of the Secretary General, 1998, “Internally Displaced Persons, Compilation and Analysis of Legal Norms: Legal Aspects Relating to the Protection Against Arbitrary Displacement”, submitted pursuant to Commission on Human Rights Resolution 1997/39, E/CN.4/1998/53/Add.1, February 11, 1998.
- 6) Report of the Committee on Internally Displaced Persons of the International Law Association (London Conference 2000) www.unhcr.org/refworld/docid/42808f3b.html, visited on 24/5/2009
- 7) Report of the Representative of the Secretary General Mr. Francis M Deng on Internally Displaced Person, UN. Doc. E/CN.4/2002/95.16 January 2002.

- 8) Report of the Representative of the Secretary General on Internally Displaced Persons, Mr. Francis M Deng which reports on the results of four major studies on the collaborative approach,U.N.Doc.E.CN.4/2004/77.
- 9) Report of the Representative of the Secretary General, Francis M. Deng, submitted pursuant to the commission on Human Rights Resolutions 1993/95 and 1994/68, Commission on Human rights, Fifty-First Session. E/CN.4/1995/50.
- 10) Report of the Representative of the Secretary General, Mr. Francis M. Deng, Submitted pursuant to Commission on Human Rights resolutions 1993/95 and 1994/68.E/CN.4/1995/50.
- 11) Report of the Representative of the Secretary General, Mr. Francis M Deng, submitted pursuant to the Commission on Human Rights Resolution 1995/57, Compilation and Analysis of Legal Norms, UN.Doc E/CN.4/1996/52 Add. 25 December 1995.
- 12) Report on refugees, Displaced persons and Returnees, Prepared by Mr. Jacques Cuenod, Consultant, U.N. ESCOR, 2D. Session. Annex, Provisional Agenda Item 12, UN. Doc. E/109/Add.1 (1991).
- 13) World Summit Outcome2005.A/RES/62/153(2007); A/HRC/RES/6/32(2007).

V)

WEBSITES

- 1) [www.//ochaonline.un.org](http://ochaonline.un.org).
- 2) www.brook.edu./fp/project/idp/conferences.
- 3) www.cambridge.org.
- 4) www.dams.org
- 5) www.internal-displacement.org
- 6) www.sikkim.gov.in
- 7) www.sikkimexpress.com.
- 8) www.thehindu.com
- 9) www.unhcr.org

