

CHAPTER 4

PROTECTION OF ECONOMIC AND SOCIAL RIGHTS OF INTERNALLY DISPLACED WOMEN AND CHILDREN UNDER DIFFERENT NATIONAL LAWS

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A. An Overview

In the previous chapter an effort has been made to point out the conceptual and political position of the internally displaced women and children in India. In India, displacement due to Development is quite historical. Since, colonial period there has been enormous segment of displaced people. The most attractive zones for developmental projects have always been the forest resources, river systems and mineral base and have displaced many parts of the Indian society. Moreover, most of the developmental projects are located in the most backward areas and populated of the tribals. The Indian tribes are believed to be the primitive settlers in India. They are usually called as adivasis implying original inhabitants. The constitution of India has documented these tribal groups as Scheduled Tribes (STs). They constitute approximately 8.2 per cent of India's more than one billion population and remain largely a neglected group. Although the tribal population only makes up eight per cent of the total population, more than 40 per cent of the developments induced for displaced are tribal peoples in India.

In the present chapter the researcher is going to discuss about the role of national laws on internally displaced women and children in India. Justice is an attribute of human conduct. Law, as a Social Engineering, is the remedy of 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 for 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 nature and dynamics of events leading to internal displacement has been varying from state to state depending upon the composition of the population and the related context of conflict. For instance, Gujarat and Kashmir have seen waves of religious intolerance in the post-independence period. The manifestations have included Hindu- Muslim violence, retaliation attack by Muslims, and Hindu Nationalist groups' attack on Christian communities and so on.

The context in north east India shows a different aspect. Once sparsely populated, in recent decades it has swelled with the arrival of millions of ethnic Bengali Hindus and Muslims from Bangladesh and from India's West Bengal state. Population growth has led to competition for land, jobs; culminating in tensions among ethnic minority groups as well as between migrants and ethnic groups. These tensions gave rise to ethnic and politically based insurgencies that have battled the Indian Armed Forces, have attacked each other and turned on civilian populations belonging to rival ethnic groups. Thousands of people have been displaced due to this violence. The plight of indigenous people vis-à-vis displacement in India is basically a matter of policy failure and unaddressed alienation in the name of national interest.

Tribal /Indigenous people in India constitute approximately seven percent of the population. The major threat to their livelihood is because of large scale alienation of their lands by state machinery for mega projects such as mining, large dams, industries, highways, army firing ranges, military cantonments etc. With the increasing privatization of resources mining has become a double edged sword- lucrative for the government but destructive for the marginalized people of the region. Most minerals like Bauxite, Uranium, Chromite and Coal are in tribal areas

of Orissa, Madhya Pradesh, Bihar and Maharashtra. Uranium mining in Jharkhand and Meghalaya has not only led to the destruction of vegetation, water resource, fish etc. but has caused serious damage to the health of Tribals. Narmada Valley project is yet another case in point which raises many valid questions on social justice, common property resource management and conditional foreign aid.

These and many more un-highlighted cases bring out the issue of Internal Displacement as a major development concern in India. This concern in turn is related to certain vulnerable communities, whose life and existence are endangered.

Development-induced displacement and its impact on the social, cultural and economic lives of the affected people is a huge discourse in contemporary India. Dislocation due to displacement has an irreversible impact on the lives of those displaced. Review of the existing literature shows that impacts are more severe on the most vulnerable groups such as the landless, tribal, women and children. In resettlement planning and policies it becomes imperative to understand the differential impacts on men and women as gender blind programmes and policies can unintentionally reinforce gender disparities that already exist in society. Also, inherent societal biases in planning and policies may preclude women from benefiting from opportunities provided through the projects.

The paradigm of development that has found favour with planners makes displacement of large number of people, even whole communities, and an unavoidable event. It is recognition that displacement, and the related concerns of R and R, are not familiar to vast areas of the law which affect the rights and lives of the displaced person. But 'public purpose' emerges as the justification, the doctrine of eminent domain gives to the state an enormity of control overland and related resources, and so over the lives of the people; acquisition provides the process; and compensation is the limited replacement of the rights of the displaced person.

The law has been constructed on the acknowledgement of the individual dislocated person; experience has revealed the inadequacy and inequity, inherent in this approach. It does not accommodate the implication it has for displaced

communities, and in circumstances of mass displacement. Thus, may be presumed that it gives 'development' a priority which is denied to the large scale and often traumatic displacement that it entails.¹

Human being and human agencies constitute typical social aberrations. The mechanism of judicial justice is devised in all civilised societies to remedy the wrongs that may be perpetrated through individual, executive, legislative system itself. If rule of law is to prevail regulation of conduct violative of human rights becomes an essential aspect of governance of the country. The right to access to justice as contained in the relevant international human rights instruments forms an important basis for strengthening the rule of law through the administration of justice. The office of the High Commissioner for Human Rights has done commendable work on development of human rights which include the promotion and protection of human rights in the field of administration of justice within the framework of the United Nations Decade for Human Rights Education, 1995-2004.

Looking to the Indian context of Statute law in which the substantive right of the affected person- often in the form of money compensation is derived. The statute has a profound influence on judicial understanding of the problem of displacement.

The statute is seen insidiously but definitely determines judicial interpretation of constitutional mandates. It is to this that the lack of empathy may partially be attributed, when a court finds that 'preferential' treatment of displaced families would be against the equality promised in the Constitution- even while accepting the poverty of the displaced.

Judicial hands off on matter of policy have given power to the state beyond legitimate challenge. The relevant concerns in the context of displacement would then be justiciability, the nature of legal imagination the finality which is an integral

¹ Usha Ramanathan, "*Displacement and the law*," Economic and Political Weekly, June 15, 1996, p.1486.

part of the character of justicing, and the development of a relationship between law and justice.²

Following more other forms of displacement, one another important displacements in India is the form of disaster. It has had some of the world's most severe droughts, famines, cyclones, earthquakes, chemical disasters, mid-air head-on air collisions, rail accidents, and road accidents. India is also one of the most terrorist prone countries.

India was, until recently, reactive and only responded to disasters and provided relief from calamity. It was a relief driven disaster management system. India also has world's oldest famine relief codes. In recent times, there has been a paradigm shift and India has become or is becoming more proactive with emphasis on disaster prevention, mitigation and preparedness.

India traditionally accepted international help in responding to disasters. However, after the 2004 Indian Ocean tsunami, India refused to accept international response of assistance from foreign governments. Not only that, India deployed its defence personnel, medical teams, disaster experts, ships, helicopters, and other type of human, material, and equipment resources to help Sri Lanka, Mauritius, and Indonesia. It may be noted that India itself suffered from the tsunami and was internally responding at the same time. India is also lower income group country, while Indonesia is middle-income group country.

As the tsunami experience illustrates, disasters do not recognize or respect national geographic boundaries. In the increasingly globalized world, more disasters will be spread over many countries and will be regional in nature. India has set up an example of responding internally and simultaneously in neighboring countries for the other countries to follow.

² *Ibid*, Pg. 1486.

Some of the catastrophic disasters in recent times have led to changes in disaster policy and creation of new organizations. Policy changes include the enactment of Disaster Management Act, 2005 and development of the national disaster management response framework. The National Disaster Management Authority was established to spearhead in creation of culture of disaster resilience. The National Institute of Disaster Management itself and along with Disaster Management Cells in the states is providing training opportunities in disaster management.

B. Human Rights To Adequate Housing And Land For The Displaced Person Under The Agency Of International Development

The adoption of the Universal Declaration of Human Rights (UDHR) in 1948, the right to adequate housing for the displaced person has been recognised as an important component of the right to an adequate standard of living. Thus, the right to adequate housing has come to be widely recognised as a basic human rights awarded to all human beings through several international instrument.

On the basis of the provision established in the UDHR, the right to adequate housing was elaborate and reaffirmed in 1996 by the International Covenant on Economic, Social and Cultural Rights (ICESR): “The State Parties to the present covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to continuous improvement of living conditions” (Art. 11.1).

Through General Comment 4 on “the right to adequate housing” the committee of Economic, social and Cultural Rights (CESCR) has given a holistic understanding to the issue of housing for every people who have been displaced.

In the Committee’s view, the right to housing should not be interpreted in a narrow or restrictive sense, which equates it with, for example the shelter provided

by merely having a roof over one's head. Rather it should be seen as the right to live somewhere in security, peace and dignity... while adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the committee believes that is nevertheless possible to identify certain aspect of the right that must be taken into account for this purpose in any particular context. They include the following 7 core elements;³

- Legal security of tenure, including legal protection against forced displacement.
- Availability of services, materials, facilities and infrastructure.
- Affordability
- Accessibility for disadvantaged groups.
- Location
- Cultural Adequacy.”

It is important to recognize that the human right to adequate housing is not limited exclusively to a physical structure, a house. It is conceived in a much broader sense that integrates housing, shelter and habited environment as a whole. This includes the cultural, historic, social, economic, political and legal environment as well as physical and territorial dimensions.

Though the human right to land is not articulated specifically as a separate human right in international law, the human right to adequate housing has increasingly been interpreted as including the human right to land as is evident in reports of the UN Special Rapporteur on adequate housing.⁴ It is also an integral part of the human right to livelihood and food, as expounded in recent reports of the UN Special Rapporteur on the right to food.⁵ The right to land is also encompassed in the right to work as the right to productive land. Given the indivisibility of human

³ General Comment No. 4. “*The Right to Adequate Housing*” (Art. 11(1) of the Covenant), Committee on Economic, Social and Cultural Rights, 1991, 6th Session, Paras 7 and 8.

⁴ Report of Miloon Kothari, UN Special Rapporteur on Adequate Housing, Including His Recommendation to the Former Commission on Human Rights to Recognize Right to Land as a Human Right, website-http://ap.ohchr.org/documents/dpage_e.aspx?m=98, visited on 28.06.14.

⁵ Report of the Special Rapporteur on the right of food, Jean Ziegler, E/CN.4/2006/44/Add.2, 20 March 2006.

right, the right to land cannot be treated in isolation, neither can it be accorded status other than that of a human right that must be defended and upheld.

C. Human Rights To Adequate Housing And Land For The Displaced Person And Its Relation To Other Rights Under The UDHR

As with all the human right, the right to adequate housing and land must be understood in the context of indivisibility of rights, which includes within it the physical and material aspect of space as well as the emotional, mental and spiritual dimensions.

The human right to adequate housing for every displaced person cannot be viewed in isolation. The full enjoyment of other rights, such as the right to freedom of expression, the right to freedom of association, right to freedom of residence, right to information and prior informed consent, and right to participate in public decision making, is indispensable, if the right to adequate housing and land is to be realized and maintained by all group in society. Similarly the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining human right to adequate home and land (Art. 17 of ICCPR 1966).

The human right to adequate housing and land is closely and intrinsically linked to other rights which are guaranteed by the body of human right instruments. The categories of right embodied in the two International Covenant on Economic, social and Cultural Rights (ICESCR), and on civil and Political Rights (ICCPR). The denial or fulfilment of the human right to information (Art. 19 in ICCPR), as in specific cases related to programmes, building materials, condition of resettlement or compensation, could thus affect the adequate housing. Certain types of housing rights violations, such as forced displacement, could be so severe that various United

Nations human rights bodies have declared the practice of forced displacement to constitute a “gross violation of human rights in particular to adequate housing.”⁶

The conflict between statist and metastatic claims to rights is especially manifest in the political practice of groups and movements championing the cause of displaced persons, and translates more specifically into two kinds of issues: first, the conflict between a right to development versus the right not to be displaced; second, the apparent inconsistency of appealing to universal codified conventions disregarding state sovereignty, even while opposing ecological and human rights conditionality on development assistance from a nationalist perspective.

The first is an intra-state issue, and popularly translates into the conflict between the so called national interests of some sections of the citizenry. The second speaks to the problem of political obligation seeking to balance the state’s call on the loyalty of its citizens with the right of citizens to resist the state, if necessary by appeal to international organisations.

A right to development belongs to the so called third generation of rights, and has received much support, particularly from African nation-states, in international fora. In India it has been projected less as a right and more as a part of the national consensus on the centralising, nation-building model of economic and political development. The right of the nation to development is balanced against the right not to be displaced, and a utilitarian calculus of number prevails to suggest that the development of all cannot be held ransom by the emotional attachments to ‘backwardness’ of a few. This conflict is negotiated very much on the terrain and the terms of the state, even if backed by international lending agencies.

The second conflict is that between claims made upon the state, and those made against the state by appeal to meta-state organisations. Here, the question of national sovereignty is as central as it is, for instance, on the question of a country going to war on its oppressive regime. Indeed, it is not uncommon to find in aid

⁶ *Supra Note 3, Paras 7 and 8.*

should not be withdrawn from authoritarian regimes, because, that is tantamount to punishing further the already punished citizens of that society and denying them development assistance because of the objectionable politics of their rules. A similar argument underlies the insistence, by lending agencies, on human rights and ecological conditionality in practical recognition of its membership of a global order of interdependence. As supporters of human rights or even ecological causes, these social movements cannot expect at the risk of inconsistency or doublespeak- resist the project of human rights or of sustainable development. They can, however, resist directives to this effect from lending agencies. In a sense, this too is a non sequitur, because these social movements generally favour indigenous initiatives in development, and resist foreign borrowings for development, on the grounds that these commit us to a model of development that is unacceptable, because unsustainable and iniquitous.⁷

The indivisibility of human rights based on legal sources and global experiences, the Housing and Land Rights Network has further developed the seven core elements of adequacy mentioned above from General Comment No. 4.

The following elements constitute congruent human rights conditions already recognised in binding international treaties:

- Right to life
- Right to health
- Right to a safe and healthy environment.
- Right to property
- Right to gender equality/ women's rights
- Right to livelihood
- Right to culture
- Right to privacy and family life
- Right to development
- Right to information
- Right to movement

⁷ Niraja Gopal Jayal, "*Displaced Persons and Discourse of Rights*", *Economic and Political Weekly*, Vol. 33 (Jan-Mar 1998), Pg.33.

-Freedom from torture, in human or degrading treatment or punishment including freedom from violence.

Scheduled castes and tribes suffer most from hunger and malnutrition, making up 25 per cent of the rural population but 42 per cent of the poor. As a result of discrimination, many low-caste Dalits are expected to work as agricultural labourers without being paid, many held in debt bondage by their higher-caste employers. Although debt bondage is illegal, NGOs estimate that there are between 20 to 60 million bonded labourers in India, 85 percent of them belonging to scheduled castes and scheduled tribes. Widespread discrimination prevents Dalits from owning land, as they are seen as the “worker class”, and even if they receive land, such land is frequently taken by force by higher caste people in the area. Tribal peoples, particularly those living in forest and hill areas, are extremely marginalized, many having lost access to traditional forest livelihoods and food resources through the creation of Forest Reserves, and many remain without food ration cards or access to government services. Tribal peoples also suffer disproportionately from displacement because of development projects such as dams, power plants, coal mines and mineral industries. The land and agrarian reform should be implemented to strengthen smallholder agricultural livelihoods. Existing agrarian reform legislation should not be undermined to serve the interests of large landholdings of landlords and agribusiness; Dams, mining and infrastructure projects must not be implemented if this entails displacement and irreversible destruction of people’s livelihoods. Such projects should only be carried out with the consent of communities and on the condition that due legal process, proper resettlement and rehabilitation with compensation to all victims is guaranteed. The UN experts and special rapporteurs, including those on the right to health, indigenous peoples, human rights defenders, and violence against women, have also clearly brought out the interlinkages of other human rights with the right to land and adequate housing, using the indivisibility of rights approach in their reports and joint statements.⁸

⁸ Rodolfo Stavenhagen, “On Concerns over Raising the Height of the Sardar Sarovar Dam”, 13 April 2006, website <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/EEBEC520B4FA19D5C125714F0055336C?opendocument>, visited on 28.06.14.

A Resolution adopted by the General Assembly in the fifty-fifth session on Agenda item 60(b) it was resolved to strengthen the capacity of all the member countries to implement the principles and practices of democracy and respect for human rights, including practices of democracy and respect for human rights, including minority rights and “to eliminate the increasing acts of racism and xenophobia in many societies and to promote greater harmony and tolerance in all societies”. No effort should be spared domestically or internationally to ensure that all civilian populations that suffer disproportionately the consequences of neob violence, natural disaster and other humanitarian emergencies are rendered every assistance and protection so that they can resume normal life as soon as possible. The Judicial institutions have a major role to play in this direction.

D. National Legal Obligations Regarding The Violation Of Human Rights For Displaced Women And Children

Justice, social, economic, and political is the constitutional aim proclaimed in the preamble of the constitutional of India which contains the requisite guidelines and provides for the infrastructure for attaining it. Acquisition and Displacement with their constitutional implications, have inevitably reached the courts. The petitioners have invariably been affected by projects- dams, reservoirs, industry, urbanisation and their assets and their capacity for subsistence, leaving them to an uncertain future, which were promises of executive largesse to sustain them. Different national laws have come up to take measures to protect, promote and guarantee the right enshrined in law to all citizens.

Internal displacement of persons may be caused due to various reasons. It may be caused by natural calamities like earthquakes, submergence or mass exodus from one locality or area to the other, due to violence or other compulsions. The guiding principles on Internal Displacement set out the rights and guarantees under the international law which is relevant to the protection of internally displaced persons in all phases of displacement. The principles affirm that the responsibilities for ensuring the protection of internally displaced persons rest primarily with the

national authorities. Proper information about internally displaced persons can help in providing emergency relief promptly and to speed up efforts to assist and protect them. The internally displaced persons have to be rehabilitated. Rehabilitation is not mere providing of shelter. The real purpose of rehabilitation can be achieved only if those who are sought to be rehabilitated are provided with shelter, food and other necessary amenities of life. Thus allotment of land to provide a hospital for the disabled and for the crippled children of displaced persons was held by the Supreme Court of India to squarely come within the concept of the idea of 'rehabilitation' and consequently settlement of the refugees, in *Collector of 24 Paragnas V. Lalit Mohan Mullick*.⁹

The constitutional laws of India make it obligatory for the state to provide the right to adequate settlement to all its citizens. There have been several important judgements that have clearly established the relation between the right to housing and right to life as guaranteed by Article 21 [Constitution of India states no person shall be deprived of his life or personal liberty except according to procedure established by law]. The Supreme Court of India has held that the right to shelter or adequate housing is a fundamental human rights emanating from this provisions. This has been established in numerous Supreme Court decisions, including *U.P. Anas Evam Vikas Parishad Vs. Friend Coop. Housing Society Ltd.*¹⁰ Where the Court held that:

The right to shelter is fundamental right, which springs from the right to residence under Article 19(1) (e) and the right to life under Article 21.

In 1981 in *Fancis Coralie Vs. Union Teritory of Delhi*,¹¹ the Supreme Court held "We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bade necessities of such as adequate nutrition, clothing and shelter over the head and facilities for reading; writing and

⁹ (1986)2 SCC 138.

¹⁰ AIR 1996 SC 114: 1995 Supp (3) SCC 456.

¹¹ AIR 1981 SC 746 at 753.

expression oneself in diverse forms, freely moving about and mixing and commingling with fellow beings.”

The Supreme Court in *Peoples Union for Democratic Rights Vs. U.O.I.*¹² held that non-payment of minimum wages to the workers employed in various Asiad Projects in Delhi was a denial to them of their right to live with basic human dignity and violation of Article 21 of the Constitution.

The court provided further interpretation of the right to life in *Chameli Singh and others Vs. State of U.P.*¹³

“In any organised society, the right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured from restriction inhabiting his growth. All human rights are designed to achieve this object. Right to life guaranteed in any civilized society implies the right to food, water, decent, environment, education, medical care and shelter. These are the basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Constitution or under the constitution of India cannot be exercised without these basic human rights.”¹⁴

The right to housing is one of the most troubled rights in the Indian jurisprudence; for the simple reason that though the right is well established in theory, the reality is far removed from it. Or perhaps, it may be more appropriate to say that there is a right to housing for some, it is non-existent for most. The dwelling units of about half of India’s population would be described unsuitable if assessed from the parameters set out by the Supreme Court.¹⁵

¹² AIR 1982 SC 1473.

¹³ (1996) 2 SCC 549.

¹⁴ Dr. J.N. Pandey, “Constitutional Law of India”, Central law Agency 4th Edition 2003, Pg.218.

¹⁵ Kalpana Kannibiran, “Monitoring the Human Rights of Persons with Disabilities: Laws, Policies and Programs in India”, Disability Rights Promotion International, Published 2009, Printed in Canada, Pg. 14, Website- <http://www.yorku.ca/drpi/files/IndiaLawsRep.pdf>.

It was further expanded that: 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, 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 roads 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 them to live and develop and develop as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental rights... Want to decent residence therefore frustrates the very object of the constitutional animation to right to equality, economic justice, fundamental right to residence, dignity of persons and right to live itself.

The Supreme Court in the case *Shantistor Builders vs. Narayan Khimalal Totame*¹⁶ held that: The right to life would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.

In another case *Chairman, Railway Board Vs. Chandrima Das*,¹⁷ It has been held that right to life guaranteed under Article 21 of our Constitution is not confined to the citizen of this country alone, it is available to "a person" who also has right to live with human dignity irrespective of his nationally.

In *Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan and others*,¹⁸ the S.C observed that, Article 19(1) (e) accords right to residence and settlement in any part of India as a fundamental right.

The court has also stressed special protection for tribal people who are displaced. The state and consequentially the local authorities are charged with constitutional duty to provide these weaker sections with socio-economic and

¹⁶ (1990) 1 SCC 520.

¹⁷ AIR 2000 SC 988.

¹⁸ AIR 1997 SC 152: 1997 (II) SCC 121.

political justice and to prevent their exploitation and to prevent them from injustice. The Union of India has evolved Indira Avas Yojna Scheme exclusively to provide housing accommodation to the Tribals and separate annual budgets are being allotted on that behalf of Parliament and the appropriate legislature in allied matters.

In *Olga Tellis Vs. Bombay Municipal Corporation*,¹⁹ the Supreme Court held that Article 21 of the constitution also encompassed the right to livelihood and that this right was indivisible from the right to shelter:

Eviction of the petitioners from their dwellings would result in the deprivation of their livelihood and so if the deprivation of livelihood were not affected by a reasonable procedure established by law, the same would be violence of Article 21. The right under Art.21 is the right to livelihood, because no person can live without the means of living i.e. the means of livelihood.²⁰

In *Consumer Education & Research Centre and Others vs Union of India and Others*²¹ the Supreme Court of India has held, 'The expression 'life' assured in article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions in work place and leisure.' The Court has interpreted the right to health as 'an integral facet of meaningful right to life to have not only a meaningful existence but also robust health and vigour.'

The Supreme Court in *Madhu Kishwar Vs. State of Bihar*²² affirmed this :

Article 13, 14, 15 and 16 of the constitution of India and other related articles... aims at elimination of obstacles to enjoy social, economic, political and cultural rights on equal footing legislative and executive actions must be conformable to, and effectuation of the fundamental rights guaranteed in Part II and the directive principles enshrined in part IV and the preamble of Constitution.

¹⁹ (1985) 3SCC 545.

²⁰ Report of the Special Rapporteur on the right of food, Jean Ziegler, E/CN.4/2006/44/Add.2, 20 March 2006.

²¹ (1995) 2 SCC 42.

²² (1996) 5 SCC 125.

Covenants of the United Nations add impetus and urgency.... Legislative action should be devised unsuitably.... Article(s) 51 of the Constitution of India is a Mandate for the state to do these acts held in, *PUCL .v. U.O.I*,²³ and *CERC.v. U.O.I*.²⁴

Land under the Indian Constitution is a State subject; thus every state has its own land laws. The land Reforms (Fixation of Ceiling on land) Acts were enacted in different States during the 1960s to further the Directive Principles of State Policy, provided under Part IV of the Constitution of India. Article 39 provides that the State should, in particular, direct its policy towards securing that ownership and control of material resources of the community are so distributed as best to sub serve the common good and that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment.

According to Article 300-A of the constitution states that no man or woman shall be deprived of their right to property by the State except by authority of law.²⁵

a. Children's Rights and Housing and Land Rights

The human right to adequate housing is integral to the realisation of other basic rights of children. Adequate housing is of particular importance for children as the environment in which they grow up and the living conditions they have to confront, greatly impact their physical, emotional and psychological development. A child's self-confidence and identity depends significantly on her/his access to a secure place to live in peace and dignity.

The absence of a secure environment may lead to deprivation of many basic rights of children, including their right to health, education, and protection from economic exploitation and abuse, and even the right to a legal identity.

²³ (1997) 3 SCC 433.

²⁴ (1995) 3 SCC 42.

²⁵ Miloon Kothari, Sabrina Karmali & Shivani Chaudhry, "The Human Right to Adequate Housing and Land", National Human Rights Commission, 2006, Pg. 32.

During the National Consultation on Children and Habitat, home was described by children as a place where there is warmth, where they can eat, laugh, play, cry and which is a stable place providing them with opportunities to grow and develop.

While children's need for adequate housing is critical, apart from the number of inadequate dwelling units in which children across India live, is the rapidly escalating number of street children in the country.²⁶

According to UNICEF, street children are defined as those children for whom the street (in the widest sense of the word, i.e. unoccupied dwellings, wasteland, etc.), more than their family has become their real home, a situation in which there is no protection, supervision, or direction from responsible adults.²⁴ Further, it identifies three operational categories:²⁷

1. *Children on the Street*: Forming the largest category, these are children who have homes; most return to their families at the end of the day but work on the streets to augment family income.
2. *Children of the Street*: These children are a group who has chosen the street as their home and it is there that they seek shelter, livelihood, and companionship. They have occasional contacts with their families.
3. *Abandoned Children*: These children have no ties with their families. They are entirely on their own, not only for material survival but also psychologically.

In both international and national law, children's right to adequate housing has been upheld.

²⁶ National Consultation on Children and Habitat: A Statement, Plan International, UNICEF and YUVA, New Delhi, 1995.

²⁷ *Police Abuse and Killings of Street Children in India*, Human Rights Watch Children's Rights Project, Human Rights Watch, November 1996, website-<http://www.hrw.org/reports/1996/India4.htm>, visited on 29.06.14.

The Supreme Court of India in *Shantistar Builders v. Narayan Khimalal Totame*²⁸ affirmed children's right to adequate housing by declaring that:

The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home.

International human rights treaties, declarations and resolutions that specifically guarantee and protect children's right to housing, among others, include:

- Convention on the Rights of the Child: Article 16 (1), 16(2), Article 27.
- Declaration of the Rights of the Child 1959.²⁹
- Resolution 1994/8, Children and the Right to Adequate Housing, 1994.³⁰
- Commission on Human Rights resolution 1994/93, The plight of street children, 1993.
- General Assembly resolution 50/ 153, The rights of the child, 1995.
- General Assembly resolution 54/ 148, The girl child, 2000.
- General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), Committee on the Rights of the Child, 2003.
- General Comment No. 17: Article 24 (Rights of the child), Human Rights Committee, 1989.
- World Declaration on the Survival, Protection and Development of Children, 1990, World Summit for Children, 1990.
- Declaration on Social Progress and Development 1969.³¹
- Vancouver Declaration on Human Settlements 1976.³²
- Istanbul Declaration and Habitat Agenda.³³

²⁸ [(1990) 1 SCC 520: AIR 1990 SC 630

²⁹ Proclaimed by United Nations General Assembly in resolution 1386 (XIV), 29 November 1959.

³⁰ Adopted on 19 August 1994 by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its forty-sixth session. 1994/8. Children and the right to adequate housing.

³¹ Proclaimed by United Nations General Assembly in resolution 2542 (XXIV) on 11 December 1969.

³² Adopted by United Nations Conference on Human Settlements, Vancouver, 1976.

³³ The Istanbul Declaration and Habitat Agenda, United Nations Conference on Human Settlements (Habitat II), Istanbul, 3-14 June 1996.

b. Women's Rights and Housing and Land Rights

Women's right to adequate housing and land, as an inalienable, integral and indivisible component of all human rights, has been recognized, implicitly and explicitly in a range of international and regional human rights instruments.

Women's human right to adequate housing and land needs to be understood in terms of its entitlements. This means that women enjoy the inalienable and equal right to own, access, use, manage, and control land, housing and property. This includes the right to legal security of tenure, which is the right to own, lease, rent, mortgage or dwell on land, housing and property, and the right not to be forcibly evicted. Furthermore, it holds that women have a right to take decisions on how housing and land resources should be used, including whether it can be leased out, mortgaged, or sold.³⁴

Several studies, including a comprehensive one by the UN Special Rapporteur on adequate housing, confirm that women's right to adequate housing and land is being violated across the world. While there are many social, economic and political situations that render people insecure, homeless, and without a sustainable source of livelihood, women are particularly vulnerable given the low socio-economic status accorded to them in most societies.

Some specific situations that result in denial or violation of the right to adequate housing include:³⁵

- Intra-household and familial disputes leading to breakdown of personal relationships recognised in law and by the society;
- Forced evictions by authorities;
- Slum demolitions;
- Displacement due to development projects;

³⁴ Miloon Kothari, Sabrina Karmali & Shivani Chaudhry, "*The Human Right to Adequate Housing and Land*", National Human Rights Commission, 2006, Pg. 24.

³⁵ *Ibid.*

- Displacement due to natural disasters;
- Displacement due to civil and political wars;
- Displacement due to changes in tenancy laws;
- Forced evictions arising out of violence from the dominant community or the ruling class and caste;
- Environment protection measures taken up by the state that uproot people from their habitat or deprive them of access to forest produce and other natural resources on which they depend for sustenance.

While these circumstances apply to both women and men, there are others that relate specifically to women. These include:³⁶

- Change in marital status — due to death of a partner, separation or divorce — as a result of which women are denied the right to access and own housing, land and other property;
- Customs and traditions that outcast women from the social system, e.g. a widow is often forced to leave or is thrown out of her family and regarded as an outcast, thereby depriving her of her basic right to life, which includes housing;
- Gender-neutral laws, which are interpreted and implemented in ways that discriminate and disadvantage women;
- Stigmas attached to status of women as single women, which exclude them from accessing their equal rights to housing, land and other property;
- Customs and traditions that do not recognise women's contributions as productive;
- Customs and traditions that prevent women from inheriting or owning property;
- Absence of gender-sensitive laws, policies and programmes, including on resettlement and rehabilitation;

³⁶ Miloon Kothari, Sabrina Karmali & Shivani Chaudhry, *"The Human Right to Adequate Housing and Land"*, National Human Rights Commission, 2006, Pg. 25.

- Lack or absence of institutional support in times of distress and homelessness, for example, lack of adequate shelters and temporary housing spaces for women;
- Laws that deny women legal security of tenure;
- Credit facilities that discriminate against women.

Lack of access to and control over land, housing and property constitutes a violation of human rights and contributes significantly to women's increasing poverty and marginalisation.

Certain groups of women may be more vulnerable than others, and face a greater risk of becoming homeless, facing violence or suffering from the consequences of inadequate housing and living conditions and lack of land rights. Such groups generally face greater discrimination and often include victims of domestic violence, widowed, elderly, divorced or separated women, female-headed households, women forcibly separated from their children, women victims of forced evictions, indigenous and tribal women, women with disabilities and women in conflict/post-conflict situations, women from ethnic and national minorities, including refugees, migrant women workers, women from descendant work-based communities, domestic women workers, sex workers, and lesbian and transgender women.³⁷ Many women are subjected to multiple layers of discrimination within the community and by the State on the grounds of them being women, as well as member of a minority group.

Domestic violence can greatly increase women's vulnerability to homelessness, especially when there is a lack of protection by law enforcement officials, or by the legal system itself. Certain cultural norms and traditions also tend to deprive women of their rights to land, inheritance and property, which in turn to prevent them from accessing their right to adequate housing and land. Of particular concern is the reflection of discriminatory cultural and social norms in family or

³⁷ Report of UN Special Rapporteur on Adequate Housing, Miloon Kothari, on women and housing, Commission on Human Rights, E/CN.4/2006/118, 27 February 2006.

personal laws. The UN Special Rapporteur on the right to adequate housing in his report on women and adequate housing clearly brings out the direct relation between inadequate housing and violence against women, where the lack of adequate housing can make women more vulnerable to various forms of violence and, conversely, violence against women can lead to the violation of women's rights to adequate housing.³⁸

In urban areas, women living in slums and on the streets are greatly impacted due to the absence of proper shelter, adequate water, health, sanitation and hygiene. Women are adversely affected by evictions owing to, for example, urban slum demolitions, or as a result of large-scale development projects. Women suffer not just from loss of home, but also livelihoods, relationships and support systems, physical and psychological trauma and even increased morbidity and mortality. Women particularly suffer where forced evictions are accompanied by violence.³⁹ Different forms of gender discrimination also give rise to threat of forced evictions for women. For instance, domestic women workers, sex workers, and women migrant workers are vulnerable to being evicted from accommodation provided with their work; women who are married are vulnerable to eviction due to dowry-related issues; women who are living with HIV/AIDS are vulnerable to eviction and women living with their husband's family are vulnerable to being evicted as widows or due to domestic violence or divorce.⁴⁰

c. Women's Land Rights

Land, apart from being a productive resource also provides a great degree of socio-economic security and stability. The control and ownership of land by women also serves as an empowering resource and helps to balance gender dynamics,

³⁸ Report of UN Special Rapporteur on adequate housing, Miloon Kothari, on women and housing, E/CN.4/2005/43, 25 February 2005.

³⁹ Report of UN Special Rapporteur on adequate housing, Miloon Kothari, on women and housing, Commission on Human Rights, E/CN.4/2005/43, 25 February 2005.

⁴⁰ Report of UN Special Rapporteur on adequate housing, Miloon Kothari, on women and housing, Commission on Human Rights, E/CN.4/2006/118, 27 February 2006.

especially in historically patriarchal societies. In India, however, few women own arable land and even fewer effectively control it.

With the growing migration of men to urban areas in search of employment, it is mainly women who continue to farm in rural areas. In India, for instance, 58 percent of all male workers but 78 percent of all female workers, and 86 percent of all rural female workers, are in agriculture. This rising trend of “feminization of agriculture” means that women are more dependent on land, thereby highlighting the importance of recognizing and guaranteeing their rights over it.

Land rights could take the form of ownership or usufruct (rights of use), and could encompass differing degrees of freedom to lease, mortgage, bequeath, or sell. Rights over land and property typically consist of a bundle of overlapping rights that could include both individual and collective systems of ownership, management and control of resources. The legal recognition of land rights for women – in the form of both individual and collective systems of tenure security – apart from balancing historic inequities in power relations, providing security against violence, improving women’s socio-economic status, also enhances productive efficiency.

Despite the existence of strong movements for land reform and struggles for land rights, women’s rights to land are still not universally guaranteed or respected.

In policy too, patriarchal biases persist and women are not necessarily considered equal holders and owners of land. In the recent past, however, certain initiatives have been undertaken to reverse this. For instance, in September 2005, an amendment to the 1956 Hindu Succession Act removed gender inequalities in the inheritance of agricultural land, and made Hindu women’s land rights legally equal to men’s across states by making daughters, especially married daughters, coparceners in joint family property.⁴¹ The New Protection of Women from Domestic Violence Act 2005, though not without loopholes, also contains provisions

⁴¹ Bina Agarwal “*Landmark Step to Gender Equality*”, *The Hindu*, 25 September, 2005.

for a woman not to be evicted from her home while upholding her right of residence and right to housing and property.

E. Right To Property: A Survey Of Constitutional Evolution

The Indian Constitution does not recognize property right as a fundamental right. In the year 1977, the 44th amendment eliminated the right to **acquire, hold and dispose of property** as a fundamental right. However, in another part of the Constitution, Article 300 (A) was inserted to affirm that no person shall be deprived of his property save by authority of law. The result is that the right to property as a fundamental right is now substituted as a statutory right. The amendment expanded the power of the state to appropriate property for social welfare purposes. In other words, the amendment bestowed upon the Indian socialist state a license to indulge in what Fredric Bastiat termed legal plunder. This is one of the classic examples when the law has been perverted in order to make plunder look just and sacred to many consciences.

Indian experiences and conception of property and wealth have a very different historical basis than that of western countries. The fact the present system of property as we know arises out of the peculiar developments in Europe in the 17th to 18th century and therefore its experiences were universally not applicable. A still more economic area in which the answer is both difficult and important is the definition of property rights. The notion of property as it has developed over centuries and it has embodied in our legal codes, has become so much a part of us that we tend to take it for granted, and fail to recognize the extent to which just what constitutes property and what rights the ownership of property confers are complex social creations rather than self-evident propositions.⁴² This also seems to be the hidden reason why the right to property is suddenly much contested throughout India today and why the state is coming up unexpectedly against huge resistance from unexpected quarters in attempting to acquire land in India. The action of the

⁴² Milton Friedman and Rose D. Friedman, “*Capitalism and Freedom*”, 15th Edition, 2002, Chicago: University of Chicago Press.

state to assert the Eminent Domain over subsidiary claims on property and the clash which resulted there from Singur, Nandigram and other parts of India is precisely a manifestation of a clash of cultures. To put in Samuel Huntingtons words, the ideas of the west of development and liberalization propagated by the present ruling elite and the old Indic ideas which shape the views of the majority of the people.⁴³

The right to property under the Indian constitution tried to approach the question of how to handle property and pressures relating to it by trying to **balance the right to property with the right to compensation for its acquisition through an absolute fundamental right to property and then balancing the same with reasonable restrictions and adding a further fundamental right o compensation in case the properties are acquired by the state.** This was exemplified by Article 19(1)(f) balanced by Article 19(5) and the compensation article in Article 31. This was an interesting development influenced by the British on/about the idea Eminent Domain but overall it struck an interesting balance whereby it recognized the power of the state to acquire property, but for the first time in the history of India for a thousand years or more, it recognized the individual's right to property against the state.

However, when the state realized that an absolute property and the aspirations of the people were not the same the legislature was subsequently forced to make the said right to property subject to social welfare amid amendments to the constitution. Articles 31-A, 31-B and 31-C are the indicators of the change and the counter pressure of the state when it realized the inherent problems in granting a clear western style absolute fundamental right to property (even though it was balanced by reasonable restrictions in the interest of the public), specially Article 31-C, which for the first time brought out the social nature of property. It is another matter that the said provisions were misused, and what we are discussing today, but the abuse of the socialist state in India is not the scope of the present article and the articles are considered on their face value only.

⁴³ Samuel P. Huntington, "*The Clash of Civilizations and the Remarking of World Order*", Foreign Affairs, Vol. 73, No 3, Summer 1993.

a) Use Of Eminent Domain Power And Acquisition Of Land- The Indian Experience

To acquire land by virtue of the power of eminent domain, the government must satisfy that the acquisition is for public purpose and there shall be compensation. The statutory design is that, if and only if the acquisition is for public purpose the government can acquire the lands. Therefore public purpose question is an important aspect as it is this crucial phrase which would determine the validity of acquisition of land in question.⁴⁴ If land is to be acquired for industrial development resorting to eminent domain and consider it as public purpose, then a broader interpretation of the term public purpose is necessary. If a broader interpretation is given to public purpose one has to be sure about drawing the line between the public purposes and the non-public purposes.

b) Defining Public Purpose

According to Black's Law Dictionary defines the word 'public purpose' as synonymous with governmental purpose. A public purpose or public business has for its objective the promotion of public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division, for example, a state, the sovereign powers of which are exercised to promote such public purpose or public businesses.⁴⁵

The most important principle underlying the LAA and related acts is the doctrine of eminent domain, according to which the state enjoys ultimate power over all land within its territory. It follows that the state has the right to invoke this right for the 'public good', and the consequent compulsory acquisition of land cannot be legally challenged or resisted by any person or community.

⁴⁴ Golak Bihari Nath, *Review of the Land Acquisition Act 1894: A Critique*, in edited book of Siby Tharakan, "The Nowhere People Responses To Internally Displaced Persons", 1st ed., Bangalore: Books for Change 2002, Pg. 122, 123.

⁴⁵ *Black's Law Dictionary*, 1245 (Special Deluxe 7th ed., 1999).

What constitutes 'public purpose' is deliberately left open in the law, and the power to determine its definition rests essentially with the state. It is significant that subsequent amendments to the LAA, and the new draft of the Land Acquisition (Amendment) Bill 1998, currently under consideration by the Government of India, do not undermine either the eminent domain of the state nor the unassailable power of the state to determine what constitutes in any specific instance a 'public purpose'.

The power of eminent domain conflicts most obviously with Constitutional imperatives contained in Part XVI of the Constitution of India, designed to protect Scheduled Tribes. Most state legislatures have passed elaborate statutes to protect tribal land owners from alienation of their lands, but paradoxically no protection is extended to tribals for loss of lands to the single most important source of their expropriation, namely the state itself.

Section 3 (f) of the Land Acquisition Act, 1894 gives an inclusive definition of public purpose. Public purpose thus includes provision for village sites, provision for land for town planning, planned development of land from public funds for further development, land for a corporation owned or controlled by state, residential purpose of certain class of people, carrying out certain schemes of government like education, health, housing, slum clearance, any other scheme of development sponsored by government or for locating any public office.⁸ But land for companies would not come under the purview of public purpose in section 3 (f) of the Act. Section 3 (f), after the 1984 amendment, expressly provides that the land for companies would not be a public purpose. A close scrutiny of this clause would reveal that except the provision for land for corporations owned or controlled by state, all the remaining broad classifications are truly welfare functions of the state. Section 3 (f) of the Land Acquisition Act, 1894, after the 1984 amendment Act reads:

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 in lease, assignment or outright sale worth 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;

(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, or, with the prior approval of the appropriate Government, by a local authority or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(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*.

In spite of the rider at the end of acquisition of land for companies in the aforementioned section 3(f), it was felt by scholars that the Act has not defined 'public purpose' properly. For example, R.S. Rao concludes the application of whole Act as arbitrary.⁴⁶ Inadequate definition and its potential and real misuse seem to have induced him to take such a position. He is also sceptical about the undisputable assumptions regarding public purpose.⁴⁷

c) Justiciability of Public Purpose

⁴⁶ *Supra Note 44, Pg. 125.*

⁴⁷ *Ibid.*

The right of the government to acquire land for public purpose under the power of eminent domain is undisputed. What is public purpose but is the moot question. This has as many answers as issues involved in the acquisition. The government is said to have sole and absolute discretion with respect to the question of justiciability of the public purpose. In *Ezra v. Secretary of State for India-in-Council*⁴⁸, the Privy Council held that it is only the government which would be the sole judge as to the question of public purpose. The necessary qualification in this respect is that of the existence of a paramount reason and such reason must be shown before acquisition. The general interest of the community is said to be the 'touchstone' of public purpose.

According to the Privy Council, 'public purpose' means, the interest of the community as a whole or part as opposed to particular interest of the individual who is directly and vitally concerned.⁴⁹ In *Ram Kumar v. State of West Bengal*,⁵⁰ the Supreme Court held that public purpose in section 3 (f) would include a purpose in which the general welfare of the community as opposed to the particular interest of the individuals is directly and vitally involved. In *Ratilal Shankarabai v. State of Gujarat*,⁵¹ the Supreme Court held that, as per section 6 (3) of the Land Acquisition Act, 1894, the declaration under section 6 by the appropriate government shall be the conclusive proof as to the purpose of the proposed acquisition of any land. In the absence of the restrictive definition, the government is required to be satisfied in its best judgement about the purpose of acquisition. In *State of Bombay v. R.S. Nanji*,⁵² the Supreme Court held that, though the government is generally considered to be the sole judge of justiciability of public purpose, jurisdiction is still available to the courts and they are duty bound under Article 226 of the Constitution to determine whether or not there exists any public purpose in an acquisition.⁵³ The circumstances in which the courts can interfere in the question of public purpose are disputed and

⁴⁸ (1905) 32 IA 93 (PC); 1 CLJ 227; 9 CWN 454 (PC).

⁴⁹ *Hemabai Framzi v. Secretary of State*, AIR 1914, PC 20.

⁵⁰ AIR 1963 Cal. 534; 67 CAL. W.N. 387.

⁵¹ AIR 1970 SC 984.

⁵² AIR 1956 SC 294.

⁵³ *Jilubhai Nanabhai Khachar v. State of Gujarat*, AIR 1995 SC 14.

limited in nature. Even as the statute gives power to the executive to declare and determine the purpose of the acquisition, the jurisdiction of courts is not barred.⁵⁴ But this has not been applied uniformly. In certain cases it has been held that ‘the court has to accept the legislative decisions as public purpose’.⁵⁵ The question whether there can be a compulsory acquisition for private purpose will have to be answered in the negative. If the public benefit resulting from an action of a person or of a company is not direct but is incidental to personal gain of an individual or of a company, then it is not considered as public purpose. Justiciability as to the purpose of acquisition may be challenged before the courts, if *prima-facie* evidence is available on the grounds⁵⁶ *inter alia*, that –

1. Acquisition is *mala-fide*, since the purpose as disclosed in the section 4 notification is not really a public purpose.
2. The power exercised by the Government in acquisition of a land is colourable in nature.
3. The intended acquisition is to benefit a particular individual, firm or a company.
4. The notification is vague and does not either disclose the purpose or is not clear about the purpose of acquisition
5. Provisions of part VII are not complied with as per the Act.
6. The activities of the agency on whose behalf the acquisition is sought are not really related to public purpose.
7. Delegates excessive and improper powers on the Collector.
8. Deprives the petitioner of the means of livelihood.

Many of the above mentioned grounds are based on the procedural irregularities and only few grounds like deprivation of livelihood or the stated purpose not being public purpose are substantial in nature. In respect of the deprivation of livelihood of the petitioner, the cases decided by the judiciary more often rely on compensation, citing the developmental concerns. On the ground that the stated purpose not being a public purpose, in case of acquisition for companies,

⁵⁴ *Mohammed Noohu v. State of Travancore and others*, AIR 1952 TC 522; *W.B. S.K. Co-op Cr. Society v. Mrs. Bella Banerjee*, AIR 1952 Cal. 554.

⁵⁵ *Roop Chand vs State Of Punjab* AIR 1959 Punj 544, 549.

⁵⁶ P. K. Sarkar, “*Law Of Acquisition Of Land In India Including Requisition & Acquisition Of Immovable Property*”, 2nd Edition, Eastern Law House, Lucknow, 2007, Pg. 111.

the courts have expressed different opinions and at times in conflict with one another.

Section 39 requires for previous consent of the government for an agreement to be executed between the government and the company. Section 40 of the Act elaborates 'previous consent' while, 'agreement' in question is being dealt within section 41. As per section 41, firstly, the appropriate government must satisfy itself regarding the purpose for which the acquisition is made, and secondly, the company has to enter into an agreement for the matters including,

1. the payment to the appropriate government of the cost of the acquisition
2. the transfer, on such payment, of the land to the company and
3. the terms on which the land shall be held by the company.

According to section 42 of the Act, the agreement so entered must be published as soon as possible after its execution. In case of acquisition for companies it is necessary to follow the special procedure enunciated in part VII as explained above. However the provisions of this part were never followed in letter and spirit thus necessitating judicial interventions. In the first *R. L. Arora's* case, sections 40 and 41 came before the Supreme Court for interpretation. The court held that the work must be useful or likely to prove useful to the public directly and an agreement between the appropriate government and the company is a must for a valid acquisition under part VII.⁵⁷ Under section 40 (1) (b) two conditions must be fulfilled. The work must be useful for public. Secondly, the term(s) on which the public is entitled to use it as a right also has to clearly find a place in the said agreement. In the absence of fulfillment of these two conditions, the acquisition is not legally valid.⁵⁸ In *Somavanti v. State of Punjab*,⁵⁹ the Court concluded that the construction of factory for manufacturing the refrigerator machine parts to be a public purpose on the ground that a part of compensation has come from public revenue.⁶⁰ In *Pratibha Nema and others v. State of Madhya Pradesh and others*,⁶¹

⁵⁷ AIR 1965 SC 995, 2002.

⁵⁸ ILR (1967) Guj 145 (450).

⁵⁹ (1963) 2 SCR 774; *Raja Anand v. State of Uttar Pradesh*, (1967) 1 SCR 373, 377.

⁶⁰ *H. Anraj v. Government of Tamil Nadu* (1963) 2 SCR 774, 804-805.

⁶¹ (2003) 10 SCC 626.

the Supreme Court held that the 'establishment of Diamond Park' as public purpose, since part of the compensation is paid from the public revenue and the contention of *mala-fide* intention on the part of government was rejected by the court.

Since part VII provisions are not followed in their true spirit, the accusation of *mala-fides* intention of government becomes relevant. For example, it was observed in *Somavanti v. State of Punjab*,⁶² that the *mala-fide* intention on the part of the government is an important test on which the purpose of acquisition has to be tested for its validity. This is one amongst the very few exceptions to the general rule that the declaration by government as to the acquisition of land for public purpose is conclusive and final. It is interesting to note that the researcher could not locate even a single case where the governments' *mala-fide* intention is proved in relation to acquisition of land for companies.

d) Widening the scope of Public Purpose

In India, it is constantly alleged that the purchase of land by industrial corporations is done by illegal means so as to claim that the local population is interested in industrial development. The proposed definition of public purpose under the Land Acquisition (Amendment) Bill, 2007 may boost this speculation further to a great level. Unless the companies show that seventy percent of the required land is being purchased they will not be allowed to acquire the rest. In such a situation it is highly possible for them to indulge many sorts of practices to show the necessary minimum level of purchased land. Once they reach the seventy percent level they could rely on the land acquisition proceedings. If such is the situation, the landowners have to ensure that they will sell their lands before the seventy percent cut off is reached, if their land should not be acquired by the government. Landowners would be under constant pressure of the acquisition of land if it is not sold already.⁶³

⁶² (1963) 2 SCR 774, 804-805.

⁶³ M L Shankar Kaarmukilan (Mukil), "Use Of Eminent Domain Power And Acquisition Of Land For Industrial Development – The Indian Experience", Working Paper 03/2011. Pg. 15-16.

The fear of future acquisition will play a major role in the entire process. It is likely that the companies misrepresent the facts to individual landowners so as to induce them to sell their holdings on the belief that considerable amount of land owners have consented for the project, hence land acquisition is inevitable in near future, therefore it is better to sell now than to wait for compensation. The landowners then will not be in a position to bargain freely. Ultimately the companies will get the lands at the cost of the land owners with the help of middle men. This is not just a hypothetical situation. Because it happened in Orissa that revenue officials threatening the people to notify their lands for acquisition and claiming bribe to avoid the same. Keeping aside all the above mentioned possibilities, let us assume that the seventy percent of the lands were purchased legally and legitimately. Even in that case, the rights of those people who hold thirty per cent of the required land and who do not wish to sell out must be respected and their fundamental right to life and livelihood, profession and economic justice must be acknowledged. In light of the above mentioned thoughts, let us proceed to see whether industrial development is within the definition of public purpose.⁶⁴

e) *Land Acquisition (Amendment) Act, 1933 with special reference to the latest Amendment Act*

The Land Acquisition (Amendment) Act, 1933 changed the definition of public purpose so as to include the purpose of construction of dwelling houses for workmen of a company. This inclusion of construction of dwelling houses for workmen was the result of the recommendations of the Royal Commission on Labour in India, 1929.⁶⁵ This was the first time the phrase public purpose was widened to include a purpose relating to company but not being a public work within the earlier mentioned category of public works.

After the independence, the Land Acquisition Act, 1894 continued to be in force under Article 372 of the Constitution with necessary modifications according

⁶⁴ *Ibid.*

⁶⁵ The Report of the Royal Commission on Labour in India, 1929 (Chapter XV: Housing of the Industrial Worker), website- <http://www.indialabourarchives.org>. visited on 25.07.2014.

to the provisions of the Constitution. The original Article 31(2) of the Constitution was clear in the context that it stipulated when and how private property could be acquired. It provided:

“No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any Court on the ground that the compensation provided by the law is not adequate.”⁶⁶

Though Article 31 of the Constitution of India has been repealed, the public purpose limitation has been read in by the Supreme Court as part of the right to property under Article 300A.

Around this period, at least in three instances, the state enactments have introduced new meaning to the term ‘public purpose’. In 1949, Central Provinces and Berar was the first province to substitute a new clause for ‘public purpose’, namely:-

3(f) the expression ‘public purpose’ includes the provision of land for agriculture or for residential, business or industrial purpose or for any purpose incidental to any of these with a view to resettlement and rehabilitation of *displacement persons*.⁶⁷

In 1953, State of Bombay added a new sub-clause after renumbering the original clause (f) of section 3 as sub-clause (1). It read thus:

⁶⁶ M.P.Singh, “*The Problem of Interpretation and the Concept of Compensation under Article 31(2) of the Indian Constitution*”, Eastern Book Company, Lucknow, 1998-2005, website- <http://www.ebcindia.com/lawyer/articles/70v2a6.htm>, visited on 12.07.14.

⁶⁷ Section 3 read with para. 1 to the schedule of the Central Provinces and Berar Act XX of 1949.

(2) the acquisition of land for purposes of development of areas from public revenues or some fund controlled or managed by a local authority and subsequent disposal thereof in whole or in part of lease, assignment or sale, with the object of securing further development.⁶⁸

Uttar Pradesh joined this foray by the introduction of section 2 and Schedule; Paragraph 1 of the Uttar Pradesh Act XXII of 1954, read:

(f) the expression ‘public purpose’ includes provision for or in connection with-

- (i) sanitary improvements of any kind, including reclamation;
- (ii) the laying out of village sites, townships or the extension, planned development or improvement of existing village sites or townships;
- (iii) the settlements of land for agriculture with the other sections of the people.⁶⁹

Bihar substituted the public purpose clause with a new clause in 1959. It was identical to the first two sub-clauses of the above mentioned U.P. definition.⁷⁰ 1960s witnessed a shift in the approach towards the meaning of public purpose requirement under part II of the Act, as discussed in the earlier chapter. Followed by the 1962 Amendment, the Land Acquisition (Companies) Rules, 1963 was notified by the government.

f) The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, 2013

The Government of India believed there was a heightened public concern on land acquisition issues in India. Of particular concern was that despite many amendments, over the years, to India’s Land Acquisition Act of 1894, there was an absence of a cohesive national law that addressed fair compensation when private

⁶⁸ Section 2(2) of the Bombay Act XXXV of 1953.

⁶⁹ Section 2 read with para. 1 of the Schedule of the Uttar Pradesh Act XXII of 1954.

⁷⁰ Section 2 (ii) of the Bihar Act XXXIV of 1959.

land is acquired for public use, and fair rehabilitation of land owners and those directly affected from loss of livelihoods. The Government of India believed that a combined law was necessary, one that legally requires rehabilitation and resettlement necessarily and simultaneously follow government acquisition of land for public purposes.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is a legislation that regulates land acquisition and provides laid down rules for granting compensation, rehabilitation and resettlement to the affected persons in India. The Act has provisions to provide fair compensation to those whose land is taken away, brings transparency to the process of acquisition of land to set up factories or buildings, infrastructural projects and assures rehabilitation of those affected. The Act will replace the Land Acquisition Act, 1894, a nearly 120-year-old law enacted during British rule.

i. Aims and objectives:

The aims and objectives of the Act include:

- To ensure, in consultation with institutions of local self-government and Gram Sabhas a humane, participative, informed and transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization with the least disturbance to the owners of the land and other affected families
- Provide just and fair compensation to the affected families whose land has been acquired or are affected by such acquisition
- Make adequate provisions for such affected persons for their rehabilitation and resettlement
- Ensure that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto.

ii. Purpose and scope of the said Act:

The Act aims to establish the law on land acquisition, as well as the rehabilitation and resettlement of those directly affected by the land acquisition in India. The scope of the Act includes all land acquisition whether it is done by the Central Government of India, or any State Government of India, except the state of Jammu & Kashmir.

The Act is applicable when:

- Government acquires land for its own use, hold and control, including land for Public sector undertakings.
- Government acquires land with the ultimate purpose to transfer it for the use of private companies for stated public purpose. The purpose of LARR 2013 includes public-private-partnership projects, but excludes land acquired for state or national highway projects.
- Government acquires land for immediate and declared use by private companies for public purpose.

The provisions of the Act does not apply to acquisitions under 16 existing legislations including the Special Economic Zones Act, 2005, the Atomic Energy Act, 1962, the Railways Act, 1989, etc.

iii. Preliminary Notification

The process of acquisition begins with the issuance of preliminary notification, as envisaged under **Section 11** of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Whenever, it appears to the appropriate Government that land in any area is required or likely to be required for any public purpose, a preliminary notification under Section 11 in rural or urban areas shall be published.

- **Publication of Notification:**

The Preliminary Notification shall be published in the following manner:-

- (a) in the Official Gazette;
- (b) in two daily newspapers circulating in the locality of required area of which one shall be in the regional language;
- (c) in the local language in the Panchayat, Municipality or Municipal Corporation, and in the offices of the District Collector, the Sub-divisional Magistrate and the Tehsil;
- (d) uploaded on the website of the appropriate Government;

Immediately after issuance of the notification, the concerned Gram Sabha or municipalities shall be informed of the contents of the notification issued in all cases of land acquisition at a meeting called especially for this purpose.

The notification to be issued shall contain details of the land to be acquired, a statement on the nature of the public purpose involved, reasons necessitating the displacement of affected persons, summary of the Social Impact Assessment Report and particulars of the Administrator appointed for the purposes of rehabilitation and resettlement.

In *Khub Chand vs. State of Rajasthan*,⁷¹ the Court has held that, the words of Section 4(1) of the Land Acquisition Act, 1984 clearly suggest that the requirement is a mandatory one. Publication of the notification in the manner prescribed in Section 4(1) of the Act, it appears from the subsequent scheme of the Act, is an indispensable condition for a valid acquisition.

In *Habib Ahmed v. State of Uttar Pradesh*,⁷² the Court has held that neither the notification nor the declaration can be quashed on the ground that there was no necessity for acquiring the land for a public purpose. Whether the land is required for a public purpose or not has to be decided solely by the State Government.

⁷¹ (1967)1 SCR 120.

⁷² AIR 1965 All. 344 at p. 345.

In *K.Madhava Rao vs. State of A.P.*,⁷³ that Court observed that it is duty of Court to determine whenever question is raised whether acquisition is or not for public purpose. However, prima facie Government is the best judge as to whether acquisition is for public purpose. But it is not sole judge.

Although the above cases were dealt under the old law of Land Acquisition Act, 1984, but the provisions of the new Act and the old law are somewhat similar. Therefore, the rules laid down in the landmark judgments under the old law will hold well under the new Act also.

- **Restriction on Transaction:**

No person shall make any transaction or cause any transaction of land specified in the preliminary notification from the date of publication of such notification till such time as the proceedings of acquisition are completed.

Provided that the Collector may, on the application made by the owner of the land so notified, exempt in special circumstances to be recorded in writing, such owner from the operation of this restriction.

But any loss or injury suffered by any person due to his willful violation of this provision shall not be made up by the Collector.

- **Lapse of SIA Report:**

Section 14 provides that where a preliminary notification under section 11 is not issued within 12 months from the date of appraisal of the **Social Impact Assessment (SIA) report** submitted by the Expert Group under section 7, then, such report shall be deemed to have lapsed and a fresh Social Impact Assessment shall be required to be undertaken prior to acquisition proceedings.

⁷³ 2006 NOC 589 (A.P.)195.

The appropriate Government shall have the power to extend the period of twelve months, if in its opinion circumstances exist justifying the same but such decision shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

iv. Survey Of Land

Section 12 provides for the preliminary survey of land and power of officers to carry out such survey.

For the purposes of enabling the appropriate Government to determine the extent of land to be acquired, it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen,—

- (a) to enter upon and survey and take levels of any land in such locality;
- (b) to dig or bore into the sub-soil;
- (c) to do all other acts necessary to ascertain whether the land is adapted for such purpose;
- (d) to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon; and
- (e) to mark such levels, boundaries and line by placing marks and cutting trenches and where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle.

- **Restriction:**

No act under clauses (a) to (e) in respect of land shall be conducted in the absence of the owner of the land or in the absence of any person authorised in writing by the owner. Such survey may be undertaken in the absence of the owner, if the owner has been afforded a reasonable opportunity to be present during the survey, by giving a notice of at least sixty days prior to the survey.

In *Satnam Singh vs. State of Punjab*,⁷⁴ the Court held that a notice is necessary condition precedent for the exercise of the power of the entry, and non-compliance with these conditions make the entry of the officer or his servants unlawful.

- **Payment for Damages:**

Section 13 provides that the officer shall at the time of entry under section 12 pay for any damage caused. It is payment for the intended damage.

Damage means any harm done to land during the course of surveying it and other acts necessary to ascertain whether it is capable of being adapted for public purpose.

In case of dispute as to the sufficiency of the amount so paid the officer shall at once refer the dispute to the decision of the Collector or other chief revenue officer of the district, and such decision shall be final.

- **Hearing Objections**

Section 15 is consistent with the basic principle that no man's property shall be acquired unless he has been given an opportunity of being heard. The main objective of issuing preliminary notification is to call for objections, if any, against such acquisitions from the owners or others who are having certain interest over the property; giving them an opportunity to raise their claims against the move of the government for acquiring their lands.

Section 15(1) provides that any person interested in any land which has been notified as being required or likely to be required for a public purpose, may within 60 days from the date of the publication of the preliminary notification, object to—
(a) the area and suitability of land proposed to be acquired;

⁷⁴ (1969)9 Cur. L. J. 75 at p. 79 (P&H).

- (b) justification offered for public purpose;
- (c) the findings of the Social Impact Assessment report.

- **Report on the Objections:**

Every objection shall be made to the Collector in writing. The Collector shall give the objector an opportunity of being heard in person or by any person authorised by him or by an Advocate and shall, make a report to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him along with a separate report giving therein the approximate cost of land acquisition, particulars as to the number of affected families likely to be resettled, for the decision of that Government.

If objections are made, the Collector will consider those objections and make his recommendation thereon in his report to government. If no objections are made, the Collector has got to make a report. It is thereafter that the Government is empowered to proceed further.

Section 15(3) provides that the decision of the appropriate Government on the objections shall be final.

v. ***Rehabilitation & Resettlement Scheme***

Section 16 provides for the preparation of Rehabilitation and Resettlement Scheme by the Administrator.

Upon the publication of the preliminary notification by the Collector, the Administrator for Rehabilitation and Resettlement shall conduct a survey and undertake a census of the affected families, in such manner, which shall include–

- (a) particulars of lands and immovable properties being acquired of each affected family;
- (b) livelihoods lost in respect of landless who are primarily dependent on the lands being acquired;

(c) a list of public utilities Government buildings, amenities and infrastructural facilities which are affected or likely to be affected, where resettlement of affected families is involved;

(d) details of any common property resources being acquired.

- **Drafting the Scheme:**

The Administrator shall, based on the survey and census before, prepare a draft Rehabilitation and Resettlement Scheme, which shall include-

(i) particulars of the rehabilitation and resettlement entitlements of each land owner and landless whose livelihoods are primarily dependent on the lands being acquired and where resettlement of affected families is involved;

(ii) details of Government buildings, public amenities and infrastructural facilities which are to be provided in the Resettlement Area;

The draft shall include time limit for implementing Rehabilitation and Resettlement Scheme. It shall be made known locally by public hearing in the affected area and discussed in the concerned Gram Sabhas or Municipalities.

The Administrator shall, on completion of public hearing submit the draft Scheme for Rehabilitation and Resettlement along with a specific report on the claims and objections raised in the public hearing to the Collector.

- **Review & Approval of Scheme:**

Under **Section17** the Collector shall review the draft Scheme submitted by the Administrator with the Rehabilitation and Resettlement Committee at the project level constituted under section 45.

The Collector shall submit the draft Rehabilitation and Resettlement Scheme with his suggestions to the Commissioner Rehabilitation and Resettlement for approval of the Scheme.

If the scheme is approved then the Commissioner shall under **Section 18** cause the approved Rehabilitation and Resettlement Scheme to be made public in the following way:

- (i) in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil;
- (ii) in the affected areas;
- (iii) uploaded on the website of the appropriate Government.

vi. Declaration

After receipt of objections, the concerned authority shall consider those objections, and if found unsatisfactory, then a final declaration rejecting the claims will be issued. **Section 19** of the new Act provides that the final declaration shall be published by the authority within a period of 12 months from the date of issuance of preliminary notification under section 11 of the Act.

When the appropriate Government is satisfied, that any particular land is needed for a public purpose, a declaration shall be made to that effect, along with a declaration of an area identified as the “resettlement area” for the purposes of rehabilitation and resettlement of the affected families, under the hand and seal of a Secretary to such Government or of any other officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same preliminary notification.

- **Publication of Declaration:**

Every declaration shall be published in the following manner:-

- (a) in the Official Gazette;
- (b) in two daily newspapers being circulated in the locality, of which one shall be in the regional language;

(c) in the local language in the Panchayat, Municipality or Municipal Corporation, as the case may be, and in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil;

(d) uploaded on the website of the appropriate Government.

- **Summary of Scheme:**

The Collector shall publish a summary of the Rehabilitation and Resettlement Scheme along with declaration. But no declaration under this shall be made unless the summary of the Rehabilitation and Resettlement Scheme is published along with it.

Also, the '**Requiring Body**' must deposit an amount, in full or part, as may be prescribed by the appropriate Government towards the cost of acquisition of the land.

Requiring Body as defined under **Section 3(zb)** means a company, a body corporate, an institution, or any other organisation or person for whom land is to be acquired by the appropriate Government, and includes the appropriate Government, if the acquisition of land is for such Government either for its own use or for subsequent transfer of such land is for public purpose to a company, body corporate, an institution, or any other organisation.

In *Habib Ahmed v. State of Uttar Pradesh*,⁷⁵ the Court has held that neither the notification nor the declaration can be quashed on the ground that there was no necessity for acquiring the land for a public purpose. Whether the land is required for a public purpose or not has to be decided solely by the State Government.

- **Lapse of Notification:**

Where no declaration is made within 12 months from the date of preliminary notification, then such notification shall be deemed to have been rescinded. Provided

⁷⁵ AIR 1965 All. 344 at p. 345.

that in computing the time of 12 months any period during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded. The appropriate Government may decide to extend the period of 12 months, if in its opinion circumstances exist justifying the same, which shall be recorded in writing and notified and be uploaded on the website of the authority concerned.

The declaration shall be conclusive evidence that the land is required for a public purpose and after making such declaration, the appropriate Government may acquire the land in such manner as specified under this Act.

vii. Notice To Persons Interested

Section 3(x) defines 'person interested' as-

- (i) all persons claiming an interest in compensation to be made on account of the acquisition of land;
- (ii) the Scheduled Tribes and other traditional forest dwellers, who have lost any forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006;
- (iii) a person interested in an easement affecting the land;
- (iv) persons having tenancy rights under the relevant State laws including share-croppers; and
- (v) any person whose primary source of livelihood is likely to be adversely affected;

- **Public Notice:**

Under **Section 21** the Collector shall publish the public notice on his website and cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensations and rehabilitation and resettlement for all interests in such land may be made to him.

The public notice shall state the particulars of the land so needed, and require all persons interested in the land to appear personally or by agent or advocate before the Collector at a time and place mentioned in the public notice to state their claims to compensation rehabilitation and resettlement along with their objections which may be in writing.

The time period should not be less than 30 days and not more than 6 months after the date of publication of the notice.

In case any person interested resides elsewhere, and has no agent, the Collector shall ensure that the notice shall be sent to him by post in letter addressed to him at his last known residence, address of business and also publish the same in at least two national daily newspapers and also on his website.

In *State of Madras Vs. B.V. Subramania Iyer*,⁷⁶ the Court held that the word “Dispute” includes any controversy with regard to the title of a single claimant. It is obvious that when the government exercises its power of eminent domain and acquires property, public funds have to be utilized for the payment of compensation to the true owner, and not merely to any claimant who cares to appear on the scene. The government has a special responsibility in this regard, and cannot later take refuge behind the pretext that the compensation was paid to the claimant who actually appeared while others did not appear.

- **Statement to Collector:**

Under **Section 22** the Collector may also require any interested person to make or deliver to him a statement within 30 days containing the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits, if any, received or receivable on account thereof for three years next preceding the date of the statement.

⁷⁶ AIR 1962 Mad. 313.

Every person required to make or deliver a statement to the Collector shall be deemed to be legally bound to do so within the meaning of **Section 175** (Omission to produce document to public servant by person legally bound to produce it) and **Section 176** (Omission to give notice or information to public servant by person legally bound to give it) of the **Indian Penal Code 1860**.

viii. Acquisition Award

The new Act stipulates that the minimum compensation is to be a multiple of the total of the ascertained market value, plus value of the assets attached to the property, plus a solatium equal to 100% of the market value of the property including value of assets.

Under **Section 23** the Collector shall proceed to enquire into the objections which any person interested has stated pursuant to a notice given under Section 21 and into the respective interests of the persons claiming the compensation and rehabilitation and resettlement, shall make an award under his hand of—

- (a) the true area of the land;
- (b) the compensation as determined under Section 27 along with Rehabilitation and Resettlement Award as determined under Section 31 and which in his opinion should be allowed for the land; and
- (c) the apportionment of the compensation among all the persons known or believed to be interested in the land, or of whose claims, he has information, whether or not they have respectively appeared before him.

- **Period for Award:**

Under **Section 25** the Collector shall make an award within a period of 12 months from the date of publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse.

Provided that the appropriate Government may take the decision to extend the period of 12 months if in its opinion, circumstances exist justifying the same but such decision shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

- **Determining Market Value:**

The claimant will be entitled to the compensation which is determined on the basis of the market value of the land determined as on the date of preliminary notification. The market value of the proposed land under **Section 26** to be acquired shall be set as the higher of:

- the minimum land value, if any, specified in the Indian Stamp Act, 1899 for the registration of sale deeds in the area, where the land is situated; or
- the average of the sale price for similar type of land being acquired, ascertained from the highest fifty per cent of the sale deeds registered during the preceding three years in the nearest village or nearest vicinity of the land being acquired.; or
- the consented amount in case the land is acquired for private companies or public-private partnership projects.

The market value would be multiplied by a factor of, at least one to two times the market value for land acquired in rural areas and at least one times the market value for land acquired in urban areas.

- **Example:**

The **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013** mandates compensation and entitlements without limit to number of claimants. Thus, for clarity and as an example, if 1000 acres of rural land is to be acquired for a project, with market price of Rs.2,25,000 per acre, 100 families claim to be land owners, and 5 families per acre claim their rights as livelihood losers under the new Act, the total cost to acquire the 1000 acre would be

Land compensation = Rs.90,00,00,000

Land owner entitlements = Rs.6,30,00,000 + 100 replacement homes

Livelihood loser entitlements = Rs.365,00,00,000 + 5000 replacement homes

The average effective cost of land, in the above example will be at least Rs.41,00,000 per acre plus replacement homes and additional services.

The new Act of 2013 proposes the above benchmarks as minimum. The state governments of India, or private companies, may choose to set and implement a policy that pays more than the minimum proposed.

- **Value of Things Attached:**

The Collector in determining the market value of the building and other immovable property or assets attached to the land or building which are to be acquired, under **Section 29** will use the services of a competent engineer or any other specialist in the relevant field, as may be considered necessary by him.

The Collector for the purpose of determining the value of trees and plants attached to the land acquired, use the services of experienced persons in the field of agriculture, forestry, horticulture, sericulture, or any other field, as may be considered necessary by him.

The Collector for the purpose of assessing the value of the standing crops damaged during the process of land acquisition may use the services of experienced persons in the field of agriculture as may be considered necessary by him.

- **Determination of Compensation:**

The Collector having determined the market value of the land to be acquired shall under **Section 27** calculate the total amount of compensation to be paid to the land owner whose land has been acquired by including all assets attached to the land.

In determining the amount of compensation to be awarded for land acquired under this Act, the Collector shall under **Section 28** take into consideration–

- the market value as determined under section 26 and the award amount in accordance with the First and Second Schedules;
- the damage sustained by the person interested, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector’s taking possession thereof;
- the damage sustained by the person interested, at the time of the Collector’s taking possession of the land, by reason of severing such land from his other land;
- the damage sustained by the person interested, at the time of the Collector’s taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;
- in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses incidental to such change;
- the damage bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 19 and the time of the Collector’s taking possession of the land: and
- any other ground which may be in the interest of equity, justice and beneficial to the affected families.
- Award of Solatium.

The Collector after having determined the total compensation to be paid shall, to arrive at the final award, under **Section 30** impose a “**Solatium**” which is the amount equivalent to 100% of the compensation amount.

This solatium amount shall be in **addition to the compensation** payable to any person whose land has been acquired. The Collector shall issue individual awards detailing the particulars of compensation payable and the details of payment of the compensation as specified in the First Schedule.

In addition to the market value of the land provided under section 26, the Collector shall, award an amount calculated at the rate of 12% per annum on such market value for the period commencing from the date of the publication of the notification of the Social Impact Assessment study under section 4(2), till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

g) Protection of Right to Property

Property right is defined as “a claim to a benefit stream that the state will agree to protect through the assignment of duty to others who may covet, or somehow interfere with, the benefit stream.”⁷⁷

The Constitution of India had right to property as a fundamental right as Articles 19 (1) (f) and 31. Jawaharlal Nehru had observed that Article 31 is amongst few articles which witnessed so much discussion in the Constituent Assembly.⁷⁸ But the same was repealed by sections 2 and 4 of the Constitution (Forty-fourth Amendment) Act, 1978. This amendment was introduced by the parliament to take away the status of right to property as fundamental right and now it remains as a constitutional right.

Justice A.M. Bhattacharjee observed, “in a society of mixed economy that we live in, some sort of property, even if small, is the foundation of many, if not all, of our fundamental rights”.⁷⁹ Justice Gajendragatkar, the then Chief Justice of India observed, “to the large class of citizens, who suffer from stark poverty and its inevitable accompaniments, notions of individual freedom and liberty are apt to

⁷⁷ Daniel W. Bromley, “*Environment and Economy: Property Rights and Public Policy*”, Blackwell, Cambridge, MA and Oxford, U.K., 1991, Pg. 15-17.

⁷⁸ Constituent Assembly Debates (of India), Vol. IX, p. 1995.

⁷⁹ A.M. Bhattacharjee, “*Equality, Liberty and Property under the Constitution of India*”, Eastern Law House, Calcutta, (1997), Pg. 124.

sound as empty words which obtain popular currency only in the drawing rooms of the rich and well-to-do class of citizens.”⁸⁰

The potential of land rights has been identified by a varied array of scholars and activists. For instance, the gender and land rights activists have documented case studies which show a positive correlation between land holdings and women empowerment. There is evidence to show that the absence of land rights paves way for continuous suppression, harassment (both physical and sexual) and leads to poverty. The Committee on the Status of Women in India had recommended, *inter alia*, for land reforms. The relation between property and political participation of women has been highlighted as the real participation is also a matter of property relations. Without resources at disposal, the women’s political participation was perceived as a formal one as the magnitude of the women’s economic dependence cannot be ignored.⁸¹

The Supreme Court in the case of *Karnataka State Financial Corporation v. N. Narasimhaiah and others*⁸² has reiterated the right to property as a constitutional right. The right as a human right was also a point of discussion in this case. The court emphasised that the “right of property, although no longer a fundamental right, is still a constitutional right. It is also human right. In absence of any provision either expressly or by necessary implication, depriving a person therefrom, the court shall not construe a provision leaning in favour of such deprivation.” The court approvingly quoted from *P.T. Munichikkanna Reddy and others v. Revamma and others*,⁸³ dealing with adverse possession:

Human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment etc. but now human rights are gaining a multifaceted dimension. Right to property is

⁸⁰ M L Shankar Kaarmukilan (Mukil), “Use Of Eminent Domain Power And Acquisition Of Land For Industrial Development – The Indian Experience”, Working Paper 03/2011. Pg 32.

⁸¹ *Ibid*, Pg. 32-33.

⁸² Judgment dated 13.03.2008 in Appeal (Civil) Nos. 610-612 of 2004.

⁸³ (2007) 6 SCC 59.

also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context.⁸⁴

The court also has pointed out that the dimension of human rights has widened so much that now property dispute issues are also being raised within the contours of human rights. In this regard, the judgments of *Beaulane Properties Ltd. v. Palmer*⁸⁵ and *JA Pye (Oxford) Ltd v. The United Kingdom*⁸⁶ wherein the European Courts have tried to read human rights in the context of adverse possession, were used by the Supreme Court.⁸⁷

F. Progress In India: New Legislation To Protect Persons Internally Displaced By Development Projects

Since 1947 India has deprived an estimated 60 million persons of their sustenance in the name of national development but its first rehabilitation policy was finalised only in 2003 (NPRR 2003) and promulgated in February 2004. The Researcher had criticised for its lack of sensitivity to persons displaced (DP) for development and the other people who are deprived of sustenance without physical relocation (PAP or project affected persons). Due to such criticism, the National Advisory Council (NAC) of the Government that came to power in May 2004 appointed a committee to revise it. The Ministry of Rural Development (MRD) prepared another draft (NRP 2006). The former dealt with the issues that made NPRR 2003 unacceptable. But the latter that did not deal with them was promulgated on 31st October 2007.

A Rehabilitation Act and the *Land Acquisition (Amendment) Bill 2007* based on NRP 2006 were passed in the 14th Lok Sabha but it was defeated in the Rajya Sabha. Therefore it will be presented to the 15th Lok Sabha. The NPRR 2006 will be the subject for criticism on the basis of the principles that emerged in the 1990s from

⁸⁴ M L Shankar Kaarmukilan (Mukil), "Use Of Eminent Domain Power And Acquisition Of Land For Industrial Development – The Indian Experience", Working Paper 03/2011. Pg. 34.

⁸⁵ 2005 (3) WLR 554; 2005 EWHC 817 (Ch.).

⁸⁶ [2005] ECHR 921.

⁸⁷ *P.T. Munichikkanna Reddy and others v. Revamma and others* (2007) 6 SCC 59.

a civil society alliance that analysed the 1994 draft policy of MRD and prepared alternatives to it as well as to the *Land Acquisition Act 1894* (LAQ). More than half of the alternative was accepted by the 1998 draft i.e., NPRR 1998. The NAC draft of 2006 accepts much more of it. But the 2004 and 2007 policies have gone back even on NPRR 1998.

a. Legal Changes Of The Recent Bill

The Bills have also to be situated in the context of the legal changes, which is made in the last two decades of liberalisation that was formalised in the economic policy of July 1991. The draft rehabilitation policy of 1994 the Government of India declared its intention to acquire more land than in the past in order to encourage foreign and Indian private investment: “It is expected that there will be large scale investments, both on account of internal generation of capital and increased inflow of foreign investments, thereby creating an enhanced demand for land to be provided within a shorter time span in an increasingly competitive market ruled economic structure. Majority of our mineral resources are located in the remote and backward areas mostly inhabited by tribals”.⁸⁸

A series of legal changes taken all over India, which shows both the Central and State Governments, took seriously. In the terms of the Centre, the Highways Act was passed in 1995. The Special Economic Zone policy and *The Special Economic Zone Act 2005* (SEZ 2005) followed it as successors of the Export Promotion Zones six of which were set up between 1973 and 1984. The Centre had accounted for only 5 percent of exports and 1 percent of jobs in 2004-05 was given as a justification for simplifying land acquisition procedures for the SEZ through this act.

The objective of this zone is to generate economic activity and create jobs but the possibility of real estate speculation was added to them by providing for “an integrated township with fully developed infrastructure. It includes restaurants,

⁸⁸ Draft National Policy for Rehabilitation of Persons Displaced As A Consequence of Acquisition of Land. New Delhi: Ministry of Rural Development, Government of India. (Second draft), 1994, Para, 1.1-2.

housing and apartments, gymnasiums, clubs, multiplexes, shopping malls, schools, business centres and swimming pools”.⁸⁹ SEZ 2005 put no limit on land to be used by an SEZ and stipulated that 25 percent of their area should be used for productive purposes. Because of agitation at Singur, Nandigram, Navi Mumbai and elsewhere, it was amended in 2006 to put a limit of 5,000 hectares (12,350 acres) on the area a company can own and to raise the area of productive use to 50 percent.⁹⁰

b. The Background Of The Policies

The legal measures have two components. On one side is the effort to acquire more land than in the past and simplify its procedures. On the other hand, resistance forces the state to modify its policy without abandoning its thrust of acquiring more land. The rehabilitation policies and the Bills that are before the Parliament are to be situated in that context because a legal measure grows in a socio-historical environment.

Both the legal measures and the struggles have their origin in planned development which is based on the ideology of nation building that was integral to the freedom struggle. It meant that the benefits of development would eventually reach every citizen though initially some would have to pay its price. While using it as the basis of the post-independence effort, most decision-makers took the western type of capital and technology intensive development as the norm for India too. They attributed western progress to technology alone and assumed that through it India could achieve in a few decades what the West had taken a century to do. So they accepted the “Bombay Plan 1945” prepared by the private sector, mainly the Tatas and Birlas that left long-gestation infrastructure building to the public sector and allotted the profitable consumer industries to the private sector.⁹¹ Thus it came to be called mixed economy.

⁸⁹ Arun Kumar Nayak, “SEZs and Displacement,” *Social Action* Vol 58 no. 3, (July-Sept),2008, Pg. 259.

⁹⁰ *The Statesman*, Nov. 9, 2006.

⁹¹ Vinod Vyasulu, “*The South Asian Model*” *Paper Presented at the International Conference Colonialism to*

In the terms of like Jawaharlal Nehru who knew that exploitation of the colonies abroad and of the working class at home was basic to western progress. But he as well as P. C. Mahalanobis, the father of the mixed economy considered technology the main solution to India's problems. They assumed that the country could ensure social equity while modernising itself by taking control of the heights of the economy through the public sector provided it was done within a democratic structure without the capitalist exploitation of the working class or socialist dictatorship. This thinking was expressed in the five-year plans whose declared objective was to move India away from the colonial profit motive to a welfare State. That was to be achieved through modernisation which the Second Plan called a movement towards equality. The third plan added that to achieve it India had to move away from its "traditional society", free itself from its superstitions and introduce "Far reaching changes in social customs and institutions to build up a technically advanced society which offers more equal opportunities and accords priority to economic growth over social justice".⁹²

An effort to keep a balance between economic growth and social justice based on this post-independence idealism also created a contradiction because thousands of persons lost their sustenance to the development projects but the benefits did not reach all categories. India's caste and class-based unequal society was the main obstacle to equity. Modernisation requires formal and technical education and cultural change while equity demands transformation of this unequal society. But focus was on freeing the country from what was called superstition with little effort made to ensure access of the subalterns to education and other services. Institutions were built i.e. made available but were not made accessible by creating a social environment in favour of the poor. As a result, the already powerful gained

Globalisation: Five Centuries After Vasco da Gama", New Delhi: Indian Social Institute, 1998, February. 2-6.

⁹² Walter Fernandes, "Displacement, Legal Measures and the Rehabilitation Policy", website - onlineministries.creighton.edu/.../NESRC/Walter/REHABANDLAA.doc. visited on 19.06.14.

access to these institutions and services and improved themselves further and left the poor behind. The latter belonged mainly to the subaltern castes and classes.⁹³

Some administrators who realised the fact already in the 1960s felt that land acquisition was a major cause of growing inequalities and that the five-year plans had intensified them through displacement. So the Ministry of Food, Agriculture, Community Development and Cooperation (predecessor of the Ministry of Rural Development) concluded that they should introduce major changes in the approach to land acquisition. So they appointed a 17-member group of experts to study laws and procedures. In its report presented in 1967 the group agreed with this stand, identified most problems and suggested overhauling of the law and procedures of land acquisition.⁹⁴

It was formulated that no further steps were taken after it. Till the promulgation of NPRR 2003 in February 2004, it was stipulated that a job be given to each family displaced by public sector mines and industries was the only central measure having a semblance of a policy. But thereafter it was not linked to the report. A major shortcoming was its assumption that the DP/PAPs could be given only unskilled jobs. So no new skills were imparted to them. When the number of unskilled jobs declined in the 1980s with the move towards liberalisation to which mechanisation is intrinsic, the Standing Committee of Public Enterprises (SCOPE) abandoned the scheme in 1986.⁹⁵ Most public sector enterprises stopped giving jobs to the displaced and that resulted in greater poverty. The middle class got its benefits and the poor paid the price.

A major social change occurred in the 1980s in the form of dilution of middle class social concern. That made it relatively easy for the economic decision-makers to implement the measures that went against the DP/PAPs. Planned development increased inequalities but also created a middle class of 25 to 30

⁹³ C.T. Kurien, "Globalisation: What Is It About?", *Integral Liberation*, vol. 1 No. 3, September, 1997, Pg. 134-135.

⁹⁴ Abhijit Guha, "Good policy, Bad Politicians and the Ugly Law," *Frontier*, January 2007, 14-21.

⁹⁵ MRD. 1993. *The Draft National Policy for Rehabilitation of Persons Displaced as a Consequence of Acquisition of Land*. New Delhi: Ministry of Rural Development, Government of India (first draft).

percent of the Indian population⁹⁶ but the private sector failed to produce the goods that this class wanted. By the 1980s this class began to demand more and better goods but paid no attention to the impact of this legitimate demand on the powerless. The poor require middle class support to translate their aspirations into social change but middle class selfishness weakened the supportive social environment that could have led to a good law and policy in favour of the DP/PAPs. Instead, economic growth and profit prevailed over social imperatives⁹⁷ and went against demands such as minimisation of displacement and mandatory rehabilitation.

c. The Policy Drafts of the 1990s

The splurge of policies in the 1990s has to be situated in this context and the international funding imperatives. Nearly two decades after MRD (Ministry of Rural Development) shelved the 1967 report, the Department of Welfare appointed a Committee to study the rehabilitation of tribal DPs because the Commission for the Scheduled Castes and Scheduled Tribes had found that 40 percent of all the DP/PAPs were tribal. This Committee accepted the need for a rehabilitation policy but added that it should apply to all the DPs not tribal alone and that it should be legally binding on the requiring body.⁹⁸ That report too was shelved but in the wake of the withdrawal of the World Bank from *Sardar Sarovar* the MRD drafted a policy in 1993⁹⁹ and revised it in 1994.¹⁰⁰

There are major differences between these two drafts. MRD 1993 that was drafted within the Ministry said that at least 185 lakh persons had been displaced since the first five-year plan, acknowledged the injustice done to lakhs of DPs who have not been rehabilitated and mentioned with regret the 1986 SCOPE decision to

⁹⁶ John Desrochers, "Complementary Insights on Colonialism," *Integral Liberation* Vol. 1 No. 3, September, 1997, Pg.142.

⁹⁷ Jaya Ghosh, "Gender and Macro-Economic Policy in India since 1991", *Women's Link*, Vol. 3 No. 4, Oct.-Dec., 1997, Pg. 7.

⁹⁸ Govt. of India, *Report of the Committee on Rehabilitation of Displaced Tribals due to Development Projects*. New Delhi: Ministry of Home Affairs, 1985.

⁹⁹ MRD. 1993. *The Draft National Policy for Rehabilitation of Persons Displaced as a Consequence of Acquisition of Land*. New Delhi: Ministry of Rural Development, Government of India (first draft).

¹⁰⁰ MRD. 1994. *Draft National Policy for Rehabilitation of Persons Displaced As A Consequence of Acquisition of Land*. New Delhi: Ministry of Rural Development, Government of India. (Second draft).

abandon the T. N. Singh Formula. It added that justice demanded a policy. Thus it showed some concern for the DP/PAPs. MRD 1994 was drafted based on the reaction of 16 Ministries and Departments of the Central Government, as such represents the views of the Government as a whole. It deletes all references to past failures and begins by stating that with the new economic policy more land than in the past will be required for private investors, much of it in the tribal areas. That shows the need for a policy.¹⁰¹ Thus, its motivating force is liberalisation and more land acquisition, not the good of the DP/PAPs.

A civil society alliance of more than 1,000 voluntary agencies, social and legal activists, researchers and thousands of DP/PAPs was formed to analyse the draft and prepare an alternative to it. Through a process that lasted more than a year in 1994 and 1995 this alliance evolved a set of principles, prepared alternatives to MRD 1994 and to the LAQ based on them and presented them to the Secretary, Rural Development, Government of India in October 1995. In 1998 the Ministry of Rural Area and Employment formulated another draft as well as amendments to the LAQ. The civil society alliance found much of the policy acceptable but felt that LAB 1998 deviated from its principles and could not be accepted. But they decided to converse with the Ministry on possible alternatives. During the process they were assured that a policy would be prepared in consultation with civil society groups and that a law would then be drafted based on its principles. However, NPRR 2003 was finalised and promulgated with no consultation.¹⁰²

d. The Principles Evolved from the Process

In the view of the Researcher there is common to all the documents which is limited perspective of taking displacement for granted. The administrators of the Ministries are concerned about the ill effects of the DP/PAPs which tried to bring them some relief through the policies. However, more powerful Ministries with

¹⁰¹ MRD. 1994. *Draft National Policy for Rehabilitation of Persons Displaced As A Consequence of Acquisition of Land*. New Delhi: Ministry of Rural Development, Government of India. (Second draft), Para 1.1-1.4.

¹⁰² Walter Fernandes, "Displacement, Legal Measures and the Rehabilitation Policy", website - onlineministries.creighton.edu/.../NESRC/Walter/REHABANDLAA.doc. visited on 19.06.14.

which the business interests interacted, undercut their effort. Amid these dynamics, the civil society attempted to make the voice of the voiceless heard. This interaction resulted in some improvement in the drafts. The civil society based its interaction on six main principles that evolved during the process.

Minimising displacement: Based on the eminent domain and the public purpose one school holds that that displacement without the consent of the land loser is sad but inevitable. Those who want to minimise displacement feel that one should abandon eminent domain, the public purpose, the norms for compensation and other laws founded on it and take public interest as the norm. To achieve it one has to identify non-displacing and least displacing alternatives as norms for sanctioning people-displacing projects.¹⁰³

A transparent decision-making process: A democratic process demands participation of the affected persons. The state cannot deprive people of their sustenance even for public interest without their prior informed consent (PIC). There requires the project authorities to give proper information on it in a language and manner that the people to be affected by it can understand. People's involvement should continue in the identification of the DP/PAPs and of the assets to be acquired and in fixing the norms for compensation.

Recognising the assets acquired as people's livelihood: The LAQ treats land only as a commodity. Land understood as people's sustenance should be the basis of decisions on its alienation. Sustenance includes both individually owned land and common property resources (CPRs). It is the sustenance not only of those who cultivate it directly but also of those who render services to the village as a community and as such are deprived of their livelihood when it is alienated.¹⁰⁴ DP/PAPs would thus include all the male and female adult dependants of private

¹⁰³ Usha Ramanathan, "Public Purpose: Points for Discussion," in Walter Fernandes (ed). *The Land Acquisition (Amendment) Bill 1998: For Liberalisation or for the Poor?* New Delhi: Indian Social Institute, 1999, Pg. 19-21.

¹⁰⁴ Vasudha Dhagamwar, "Rehabilitation: Policy and Institutional Changes Required," in Walter Fernandes and Enakshi Ganguly Thukral (eds). "Development, Displacement and Rehabilitation: Issues for a National Debate," New Delhi: Indian Social Institute, 1989, Pg.175.

land, of the CPRs, nomadic tribes, tenants, sub-tenants, share croppers and those who sustain themselves by rendering services to the village as a community. This view of land also leads to questions on the cost-benefit analysis of the project that is based only on the formal economy and marketable commodities. Alternatives to it have to be evolved to ensure that it includes all the losses that the people suffer in the formal and informal economy. Moreover, no project that disrupts irreversibly the culture of a community would be permitted.

Lastly the Researcher may conclude that compensation should be based on the principle of “replacement value”, not the “market value” or “present depreciated value” of assets. It includes economic components such as land and intangibles like the social and psychological trauma of dislocation, the cultural and social systems lost, the cost of psychological, cultural, social and technical preparation to deal with the new system, replacing the CPRs and other community cultural and social support systems.

Project benefits should reach the biggest possible number, beginning with those who pay its price. The DP/PAPs, especially CPR dependants should be its first beneficiaries. They should be better off after the project because they pay its price. The benefits to be worked out locally may take the form of jobs, income from lease, as shareholders or others. Their basis is the principle is Article 21 of the Constitution that the Supreme Court has interpreted it as every citizen’s right to a life with dignity.¹⁰⁵

A policy is not judiciable, so *there should be a law* that recognises the assets lost as people’s livelihood, takes the LAQ away from the eminent domain and recognises rehabilitation as a right of the DP/PAPs.

In India the Land Acquisition Act lays down that among the factors that are not to prevail with any court of law is "any disinclination of the person interested to

¹⁰⁵ Vaswani, Kalpana. 1992. “Rehabilitation Laws and Policies: A Critical Look”, in Enakshi Ganguly Thukral (ed). “*Big Dams, Displaced People: Rivers of Sorrow Rivers of Change*”, New Delhi: Sage Publications, Pg. 158.

part with the land". There is no need for the State/Owner to demonstrate to the people to be displaced that the project is indeed in the public interest.¹⁰⁶

e. Looking through a Gender lens

The appearances and objectives of the Rehabilitation and Resettlement Bill, 2007 of India look high on principles by recognising the need to reduce large-scale displacement and where displacement is inevitable, the need to handle the resettlement process with utmost care for the 'Affected Families' (AFs). The bill also states that displacement while causing the deprivation of land, livelihood and shelter also has, "...traumatic, psychological and socio-cultural consequences on the displaced population which calls for protecting their rights, in particular of the weaker sections of the society like the Scheduled Castes, the Scheduled Tribes, marginal farmers and their families." It refers to the identification of vulnerable people which includes disabled, destitute, orphans, widows, unmarried girls, abandoned women, or those above fifty years of age. Though, it can be said that it does recognize certain sections of people in need of affirmative actions for the protection of their rights, in contrast, a close study of the various R & R provisions under the bill, however, does not say the same.¹⁰⁷

The proposed bill includes a new provision, Social Impact Assessment (SIA) of Projects, under which a multi-disciplinary expert group would be formed and given responsibility for examining both SIA and EIA (Environmental Impact Assessment) reports and accord clearance as per the procedure. Very interesting that, this group would consist of social science and rehabilitation experts and secretary/ secretaries of the departments concerned with the welfare of SCs/STs but nowhere is the recognition of the need to include gender experts or

¹⁰⁶ Leopoldo Jose Bartolome, Chris de Wet, Harsh Mander and Vijay Kumar Nagraj, "*Displacement, Resettlement, Rehabilitation, Reparation, and Development*", WCD Thematic Review Social Issues 1 No.3, November 2000, Pg 9.

¹⁰⁷ Ayesha Pervez, "*Gendering the National Rehabilitation Policy of India*", Social Change, Vol. 38 No. 1, March 2008, Pg. 54-55.

secretary/secretaries from the departments concerned with women like the National Commission for Women or Department of Women and Child Development.¹⁰⁸

Assuming women as a nonentity and outright exclusion of them to be included in R & R process is quite evident from the basis on which eligibility criteria for compensation are decided. The bill, takes 'family' as the basis for deciding the resettlement and rehabilitation benefits. It has been proved that taking 'household' or 'family' as a unit in sociological analysis undermines the specific needs and rights of vulnerable groups, especially women, within the households.

The bill further defines 'displaced family' as 'a person, his or her spouse, minor sons, unmarried daughters, minor brothers or unmarried sisters, father, mother and other members residing with him/her and dependent on him/her for their livelihood'. Thus, the provision is clearly for adult sons and adult brothers to be treated as separate families but not for adult females. This explicitly means that major unmarried daughters and sisters, widows, deserted and divorced women living in the same household are not liable for compensation.

In the case of landholding families, land would be allotted to those having a legal title. In India lands are transferred from male head to male heir, women have rights over the land and the forest but are rarely allowed to inherit the land. Land and property are mainly registered under the name of the male members, women are excluded from receiving compensation. The bill states that, the land allotted may be in the joint names of wife and husbands of Affected Families (AFs). As names are joint optional is intrinsically gender-biased as this gives male members the opportunity to get the land allotted in their names. The cash compensation is given to the male members in most of the cases. Women are existing social structure in society but, very often they may access any kind of compensation which is provided to the family. Overlooking the unequal distribution of resources in the household, by giving compensation only to the household head would make the women and children more dependent and vulnerable.

¹⁰⁸ *Ibid*, Pg. 55.

The bill has specified that every baseline survey and census for the purpose of identifying the persons and families likely to be affected must include vulnerable persons who are not otherwise covered as part of a family. Apart from Scheduled Tribes and Scheduled Castes, includes widows, unmarried girls, abandoned women and those above fifty years of age. If one looks at the rehabilitation benefits section, the policy has, very conveniently, ignored this and provides no affirmative actions for these vulnerable groups.

The proposed bill specifically fails to address the gender question and enunciated the rights of women. A blatant denial of women's citizenship rights can be seen in the Land Acquisition Act, 1894, which forms the basis of all R & R policies in India.

Following to some cases regarding to the R & R policies of Orissa, Gujarat and Maharashtra are a step ahead of this proposed bill as far as gender is concerned. The Orissa Resettlement and Rehabilitation of Projects Affected Persons Policy considers divorcees with dependent child/ children and divorcees without children but having no sources of livelihoods a separate family for R & R benefits. Widows having no sources of livelihood and unmarried women above 30 years are treated as separate units for R & R benefits. In the case of Sardar Sarovar, the Maharashtra government considers major unmarried daughters as project-affected persons entitled to R & R benefits. The Gujarat government has included all women widowed after 1980 as a separate family to benefit from the rehabilitation package in the Sardar Sarovar Project. In the case of Orissa policy considers unmarried men above 18 as separate families for R & R benefits but fails to provide the same to major unmarried daughters. In case of Gujarat, the women widowed before 1980 will continue to be 'dependents' on the family. The policy also leaves out major unmarried daughters just as in the case of Orissa. It is very unfortunate that, none of the state policies had considered gender dimensions of displacement in its true sense. The national policy, which was expected to have considered the rights of the marginalized, especially women, sadly, has taken a retrograde step too in this

context, by not adopting even the few provisions given for women in the state policies.¹⁰⁹

Regarding basic amenities and infrastructure it has no mention of separate provision of basic services for women such as sanitation facilities and had overlooked the security issue for women. Lack of appropriate and adequate sanitation facilities affect women more than men. According to Francis Deng, United Nations Special Representative on Internally Displaced Persons, says, ‘Internally displaced women are particularly vulnerable to gender-specific violence as the protection afforded to them by their homes and communities disappeared and the stress of displacement becomes manifest in the family unit. Such abuses include physical and sexual attacks, rape, domestic violence and sexual harassment, increased spousal battering and marital rape... Displaced persons, in particular women, are frequently coerced into providing sexual favours in return for essential food, shelter, security, documentation, or other forms of assistance’.¹¹⁰

Leaving out a large number of women in compensation, breaking of social networks, losing access to important resources and services, not getting attention to their specific needs, non- inclusion in employment opportunities, increase in the burden of collecting fuel, fodder and water and losing out on many advantages they enjoyed in their original place of residence will make women apprehensive of the new situation.

The Resettlement and Rehabilitation Bill, 2007 of India has indeed failed to recognize gender as an important factor to be considered except for a mention in its definition of vulnerable groups as quoted above. It fails to address the issues of gender equity and provisions for empowerment of women. It did not recognize the extent to which women’s need are the result of gender-specific vulnerabilities, grounded in unequal gender relations, nor does it take into account the social roles

¹⁰⁹ Ayesha Pervez, “*Gendering the National Rehabilitation Policy of India*”, Social Change, Vol. 38 No. 1, March 2008, Pg. 57.

¹¹⁰ Asian Development Bank, “*Gender Checklist Resettlement*”, website- www.Adb.org/Documents/Manuals/Gender_Checklist/Resettlement/resettlement.pdf. assessed on 20.06.14.

of men and women, which are determined by gender, or the societal capacities which are at least partly determined by gender. Women's interests are ignored in the resettlement processes specified in the proposed bill because transactions are invariably undertaken with male members. Compensation packages ignore women and women's needs around water, fuel, and fodder. Women also suffer because of severance of links with their paternal homes and the neglect of socio-cultural links with common property. Women's special needs regarding reproductive health services, security and sanitation have also been overlooked. Further, negation of the women's contribution to the household income will result in women being pushed into relationships of dependence, which would contribute to their further marginalization.¹¹¹

The 2007 bill for R & R fails to deliver even as much as the state policies do as far as women are concerned. Thus, there is a pressing need for incorporating gender concerns in R & R policy to ensure just and equitable rehabilitation and resettlement for both men and women.

India has invested in industrial projects, dams, roads, mines, power plants and new cities to achieve rapid economic growth. This has been made possible through massive acquisition of land and subsequent displacement of people. Development Displacement Population is the single largest category among all Internally Displaced Populations (IDPs). In India around 50 million people have been displaced due to development projects in over 50 years. Around 21.3 million development-induced IDPs include those displaced by dams (16.4 million), mines (2.55 million), industrial development (1.25 million) and wild life sanctuaries and national parks (0.6 million).¹¹²

¹¹¹ Ayesha Pervez, "Gendering the National Rehabilitation Policy of India", *Social Change*, Vol. 38 No. 1, March 2008, Pg. 59.

¹¹² "Displacement And Rehabilitation Of People Due To Developmental Projects", Lok Sabha Secretariat Parliament Library And Reference, Research, Documentation And Information Service (Larrdis), Members' Reference Service, No.30/Rn/Ref./December/2013, Pg. 1.

Numbers of DP/PAPs (Displaced Persons/ Project Affected Persons) of some States where studies have been done are given below under (Table 3.1).¹¹³

Table 4.1 Number of DP/PAPs (Displaced Persons/Project Affected Persons)

State/Type	1951-95		1947-2000		1947-2004		1965-95		Total
	Andhra Pradesh	Jharkhand	Kerala	Orissa	Assam	Bengal	Gujarat	Goa	
Water	1,865,471	232,968	133,846	800,000	448,812	1,723,990	2,378,553	6,473	7,590,113
Industry	539,877	87,896	222,814	158,069	57,732	403,980	140,924	1,470	1,612,762
Mines	100,541	402,882	78	300,000	41,200	418,061	4,128	0	1,266,890
Power	87,387	0	2556	0	7,400	146,300	11,344	0	254,987
Defence	33,512	264,353	1,800	0	50,420	119,009	2,471	285	471,850
Environment	135,754	509,918	14,888	107,840	265,409	784,952	26,201	60	1,845,022
Transport	46,671	0	151,623	0	168,805	1,164,200	1,356,076	43,164	2,930,539
Refugee	0	0	0	0	283,500	500,000	646	Nil	784,146
Farms	0	0	6,161	0	113,889	110,000	7,142	155	237,347
HR development	0	0	14,649	0	90,970	220,000	16,343	1,677	343,639
Health	0	0	0	0	23,292	84,000	0	3,716	111,008
Administration	0	0	0	0	322,906	150,000	7,441	1,453	481,800
Welfare	37,560	0	2,472	0	25,253	720,000	20,470	NA	805,755
Tourism	0	0	343	0	0	0	2,646	640	3,629
Urban	103,310	0	1,003	0	1,241	400,000	85,213	1,270	592,037
Others	265,537	50,000	0	100,000	18,045	0	15,453	550	449,585
Total	3,215,620	1,584,017	552,233	1,465,909	1,918,874	6,944,492	4,075,051	60,913	19,781,109

Source: *Displacement and Rehabilitation of people Due to Development Projects*, Lok Sabha Secretariat, Reference Note No. 30/ RN/ Ref./ December/ 2013, Pg 2. Website-<http://164.100.47.134/intranet/DisplacementandRehabilitation.pdf>. Visited on 17.07.14.

The State-wise breakup of Resettlement and Rehabilitation (R/R) Plans cleared by Tribal Affairs Ministry and Persons affected due to Development Projects since 1999 is given below (Table 3.2):

Table 4.2 The State-wise breakup of Resettlement and Rehabilitation (R/R) and Persons affected

Sl. No.	State	No. of Projects cleared	Total No. affected Persons	Total No. affected ST population
1	Andhra Pradesh	15	316242	123946

¹¹³ Lancy Lobo, "Land Acquisition, Displacement and Resettlement in Gujarat 1947-2004", New Delhi, 2009, Pg 7.

Internally Displaced Women and Children Under Different National Laws

2	Arunachal	1	Nil	Nil
3	Jharkhand	1	70820	21000
4	Chhattisgarh	2	455	155
5	Himachal Pradesh	1	836	9
6	Kerala	1	20	20
7	Maharashtra	11	151408	20534
8	Madhya Pradesh	4	195081	12261
9	Orissa	11	64670	42036
10	Rajasthan	11	34452	4258
11	Uttrakhand	2	6716	1489
	Total	60	665131	225708

Source: Displacement and Rehabilitation of people Due to Development Projects, Lok Sabha Secretariat, Reference Note No. 30/ RN/ Ref./ December/ 2013, Pg 2. Website-<http://164.100.47.134/intranet/DisplacementandRehabilitation.pdf>. Visited on 17.07.14.

It is very often that, development caused displacement generates varied responses from different sections of society and it also creates a differential impact on the lives of people. These large projects generally believed that development efforts, which does not leave majority of its people worse off and promotes health, education and income could be regarded as participatory. But oftenly, most of the development projects operate in totally opposite direction where majority of the project affected families are left to fend for themselves with poorly planned, badly executed, inappropriate and inadequate rehabilitation plans. The resettlement and rehabilitation for them becomes almost difficult in the absence of state level policy and legislative mechanisms. This is the case of India where compulsory acquisition of land for public purpose particularly for infrastructural and industrial projects in public and private sector has aggravated the already existing inequalities and is instrumental in uprooting people from their natural habitats both in the pre and post-colonial periods.

With the globalization and trade liberalization, there increased demand for land which has provided further boost to the miseries of displaced persons evicting them from their homes and forcing them to give away their assets and means of livelihood. Women are the worst affected among the displaced people. Thus, development process has brought forward the biggest challenge of resettlement and

rehabilitation of the persons displaced by the development projects. With a long history of displacement complemented by a poor record of rehabilitation; a conservative estimate reveals that from 1951 to 1991, around 21 million people have been displaced from their locations for the purpose of dams, mines, industries and wildlife sanctuaries. Land Acquisition in India is done under the Land Acquisition Act (LAA), 1894. This Act does not have any provision for rehabilitation. Since then until 1985, any state government or Central Government enacted no legislation or a policy for resettlement and rehabilitation.

In the 1980s, Maharashtra, Madhya Pradesh and Karnataka in enacted laws on the rehabilitation of irrigation-displaced persons. In the 1990s, Orissa in and Rajasthan formulated policies for persons displaced by irrigation projects. Coal India Limited in 1994 and the National Thermal Power Corporation in 1993 promulgated their own sectoral resettlement policies. NTPC revised it in 2005 and the National Hydro-Power Corporation (NHPC) finalized its policy in 2006.¹¹⁴

In 1985 The Central government began the policy drafting process only when the National Commission for Scheduled Castes and Scheduled Tribes indicated that about 40 per cent of the displaced or affected persons had been tribals. The Central Ministry of Welfare appointed a committee to prepare a rehabilitation policy for displaced tribal. The committee correctly said that the policy should cover all the displaced, not tribals alone; that rehabilitation should be integral to every project above a certain size in the public as well as private sectors, and that undertaking rehabilitation must be binding on the state and the implementing agencies.

Policy formulation took a new turn in 1993. When they obtained the 1993 draft, the civil society leaders launched an 18-month process with over 1,500 social activist groups, lawyers and thousands of DP/PAP. They identified the principles on which legislation should be based, drafted alternatives to the policy and the *Land Acquisition Act 1894* (LAQ) and presented them to the Secretary, Ministry of Rural

¹¹⁴ Status of the National Resettlement and Rehabilitation Policy, website-www.socialissuesindia.wordpress.com, visited on 11.06.14.

Development, in October 1995. The 1998 draft accepted many of its sections though it omitted some crucial elements.

The 1998 draft was given officially for discussion by the public. Civil society members used other means to secure copies of the remaining drafts and circulated them to social and legal activists and researchers with a request to summarise, translate and circulate them among the DP/PAP. Thus began an alliance and a process of reflection on the policies and on displacement itself. At some stage or the other of the process more than 1,500 social activist groups and 100,000 past or future DP/PAP were involved in it. From it emerged the following principles.¹¹⁵

1. “Minimising displacement”: Most planners consider displacement sad but inevitable and make no effort to minimise it. There can be no displacement without a search for non-displacing and least displacing alternatives.
2. The eminent domain on which the laws enabling displacement are based is unacceptable, so are the public purpose, compensation and other norms emanating from it. People’s livelihood should become the basis of all decisions on its alienation.
3. The public purpose should be defined in a restrictive manner as “public interest” or the good of the biggest possible number, beginning with the people affected by it.
4. No democratic society can accept a decision without the participation of the affected persons. The DP/PAP should have a share in deciding whether a project is in public interest. Deprivation even for a public interest requires their prior informed consent, based on proper information given in a language and manner they can understand.

¹¹⁵ Walter Fernandes, “*Rehabilitation as a Right: Where is the Policy?*”, *Social Action*, Vol.55, No. 2, April- June, Pg. 123-137.

5. The policy should recognise “the historically established rights of the tribal and rural communities” over the natural resources, their sustenance. Full compensation and prior consent apply also to the Common Property Resources (CPR).
6. Alternatives should be found to the cost-benefit analysis that depends only on the formal economy and marketable commodities.
7. The principle of compensation should be “replacement value”, not the “market value” or “present depreciated value” of assets. Replacement includes the economic cost, social and psychological trauma and dislocation, psychological cultural and social preparation to deal with the new system, training them for jobs in the project, preparing the host community to receive them, replacing the environmental, human and social infrastructure like the CPRs, cultural and community support systems.
8. Even after accepting the principle that the DP/PAP should be its first beneficiaries, monetary compensation is not adequate for the CPR dependents since they are not sufficiently in contact with the monetary economy. A possible alternative is to ensure them a permanent income from the project even if it were to mean their communities becoming shareholders in it. They can be trained to manage it or may get others to manage it on their behalf but they have a right to its permanent benefits.
9. A policy has to have a tribal/Dalit/gender bias and ensure that it meets their special needs and prevents their marginalisation. Equal justice to all the DP/PAP requires that that no project that disrupts irreversibly the culture of a community to be implemented.
10. Regional planning is required to avoid multiple displacements.
11. Rehabilitation is a right of the DPs and a duty of the project which may delegate its implementation to someone else. It may take the form of “land

for land” or some other but their right is sacred and there can be no compromise on it.

12. A policy is not legally binding. So there should be a new law based on its principles.

These principles were the basis of the alternatives to the policy and the *Land Acquisition Act 1894* (LAQ) presented to the Secretary, Rural Development, Government of India, in October 1995. Silence followed till NPRR 1998 that used the alternative extensively so the alliance found about half of it acceptable. However, the Ministry that drafted it also prepared amendments to the LAQ. The above civil society alliance thought that they rejected all the principles that the policy enunciated. So they came together again to dialogue with the Ministry but reports were received that on October 31, 1998 the Central cabinet had accepted the amendments to the LAQ but had rejected the policy because the private sector that wanted more land than in the past¹¹⁶ found rehabilitation too expensive. When the alliance protested against it the Minister for Rural Development convened a meeting on 19th January 1999. It ended with an implicit understanding that a policy would be prepared first and that the new LAQ would be based on the principles it enunciated.

f. The Government Policy of Resettlement and Rehabilitation

These policies were, however, alleged to be formulated under the pressure from the World Bank. It is very unfortunate that, during this period the World Bank had withdrawn its support from the Sardar Sarovar project on the Narmada, the Ministry of Rural Development prepared a draft, which was revised in 1994 and 1998. It was finalized in 2003 and published in 2004. That policy was intended to apply to projects displacing 500 or more families en masse in the plains and 250 or more in the hills or tribal areas known as Schedule V and Schedule VI in the Constitution.

¹¹⁶ MRD. 1994. *The Draft National Policy for Rehabilitation of Persons Displaced as a Consequence of Acquisition of Land*. New Delhi: Ministry of Rural Development, Government of India, Para1.1.

i. NPRR (National Policy of Resettlement and Rehabilitation) vis-a-vis Vulnerable Communities

NPRR in its preamble says, ‘the Policy essentially addresses the need to provide succour to the asset less rural poor, support the rehabilitation efforts of the resource poor sections, namely, small and marginal farmers, SCs/STs and women who have been displaced.

The provisions mentioned regarding women; the NPRR defines a family as PAFs (Project Affected Families) consisting of such persons, his or her spouse, minor sons, unmarried daughters, minor brothers or unmarried sisters, father, mother and other members residing with him and dependent on him for their livelihood. It makes provisions for adult sons to get compensation but not for adult females.

This has been more or less same in previous drafts of NPRR and also in awards made by Narmada Waters Dispute Tribunal (NWDT) Award¹¹⁷ of 1979, a landmark in R & R policy innovation, which has recognised the male as the head and sole deciding factor for compensation and rehabilitation but, remained completely ‘gender blind’.¹¹⁸ There has been demand that the policy must address itself specifically to the gender question and enunciate the rights of women. The absence of such a provision has meant that the women headed households, unmarried-daughters, widows, and deserted or divorced women are not liable for compensation.

The World Bank, one of the first in developing and initiating wide ranging socio-economic studies on the cases of displacement and rehabilitation, also did not include any special provision for land allotment to women in studies conducted in the early nineties.¹¹⁹ In the study of TISS merely about 1993 it was pointed out that, there was absence of employment opportunities and an adverse conditions of the

¹¹⁷ It was mandated by article 262 of the Indian Constitution and Section 5(3) of the interstate Water Disputes Act of 1956.

¹¹⁸ Roopee Sahaee, “*National Rehabilitation Policy: Many Loopholes*”, Economic and Political Weekly, Vol. 38 No. 6, February 08, 2003.

¹¹⁹ Renu Modi, “*Sardar Sarovar Oustees : Coping with Displacement*”, Economic and Political Weekly, Vol 39, Issue 11, March 2004, Pg. 1123-1126.

rehabilitation sites in Gujarat where PAFs of SSP were resettled forced women to join casual labour market to earn and supplement family income, mainly in the sugar plantation, where they were paid less than male workers. Further in most of the tribal communities are not familiar with the monetary economy more often than not their money is wasted on buying consumer goods or liquor which increases the burden on women.

NPRR has special provisions for PAFs of **Scheduled Tribes**, but treats **Schedule Castes** families with general PAFs. The policy merely reiterates the fact that the PAFs of Scheduled Caste category enjoying reservation benefits in the affected zone shall be entitled to get the reservation benefits at the resettlement zone. For STs the policy says each Project Affected Family of ST category shall be given preference in allotment of land and will be re-settled close to their natural habitat in a compact block so that they can retain their ethnic, linguistic and cultural identity and very generously mentions free of cost land for community and religious gathering.¹²⁰

The policy of the government very categorically mentioned that, the rehabilitation grants and other monetary benefits proposed would be minimum and applicable to all project affected families whether belonging to BPL (Below Poverty Line) or non-BPL category. The States where R & R packages are higher than proposed in the Policy are free to adopt their own packages. It is well known regarding the fact that, the states would always prefer to choose where their obligation is minimal.

The government's sincerity and the cash component of the policy are further visible in the provisions. It says that, any PAF owning house and whose house has been acquired may be allotted free of cost house site to the extent of actual loss of area of the acquired house but not more than 150 sq. mts of land in rural areas and 75 sq. meter of land in urban areas. However, only PAF of BPL category shall get a one-time financial assistance of Rs. 25000/- for house construction and Non-BPL families shall not be entitled to receive this assistance (emphasis added). There is no

¹²⁰The Government Policy of Resettlement and Rehabilitation. Website-www.mcrg.ac.in/globalisation/3%20R%20%20policy.doc, visited on 08.06.14.

compensation for loss of the house except for the fact that government would provide one-time financial assistance of Rs. 5000/- as transportation cost for shifting of building materials, belongings and cattle etc. from the affected zone to the resettlement zone.¹²¹

It is a commonly known fact that BPL families are generally landless, casual labourers, and sharecroppers and still the policy makes provision for a one-time financial assistance equivalent to 625 days- of the minimum agricultural wages. In case of displacement a Displaced PAF shall get a monthly subsistence allowance equivalent to 20 days of minimum agricultural wages per month for a period of one year up to 250 days of MAW. There is no attempt on part of the government, visible from these policy guidelines at making the life of DPs or PAFs sustainable, except for increasing their risk of impoverishment and disempowerment. The past experience has been that many a time the small-scale farmers, sharecroppers, and casual labourers in absence of any employment, adequate land, credit facilities, technology, seeds, etc. fail to adapt to the new conditions at the resettlement zones and are forced to marginalisation and become casual labourers at the project itself, if nearer, or further migrate to any other place.

The policy provides no safeguard against double or triple displacement which has happened in the past due to poor planning of resettlement process and project assessment, especially in the Dam related submergence and displacement. This is one of its major lacunae, in absence of such a safeguard chances are that these communities can be displaced again and again over a period of time.

There is an absence of any provision of penalisation for R & R officials in the policy is another serious lacunae and it is clearly visible where it says, that, an expectation from the appropriate Government and Administrator for R&R that, it shall implement this Policy in letter and spirit in order to ensure that the benefits envisaged under the Policy reaches the Project Affected Families, especially resource poor sections including SCs/STs.

¹²¹ *Ibid.*

The Land Acquisition Act, 1894 categorically mentions that ‘any person or agency obstructing the process of acquisition on conviction before a magistrate is liable to imprisonment, for any term not exceeding one month, or to fine not exceeding five hundred rupees or both. What are we supposed to make of this? Simply interpreted, it means the government can displace its citizens whenever it wants on the pretext of ‘development’ or ‘public interest,’ but is not accountable for their resettlement.

ii. NPRR vis-a-vis Development (rural and urban)

Displacement in India has been caused by various kinds of development projects, ethnic conflicts, and natural disasters such as earthquake, cyclone, flood, riverbank erosion, drought, landslide, desertification, etc. The displacement by dams is only one kind which contributes around 50% of the total DPs and IDPs population. But the provisions of the National Rehabilitation Policy drafted by the ministry of rural development are in no way appropriate to address all kinds of displacement and subtle differential impacts of displacement in each of the cases.

The policy of NPRR draws policies for water resources PAFs of Gujarat, Orissa, Rajasthan, Maharashtra, MP and Karnataka and covers only development projects and leaves others. The policy privileges the displacement by dams and fails to address the issues arising out of other kinds of displacement-related cases. Unfortunately, dam related displacement has been mistaken to be coterminous with all development-related displacement and this error has influenced the provisions for rehabilitation.¹²² The policy makes no provisions for dealing with urbanisation and semi-urban situation arising out of projects such as railways, highways, mines, industrial townships etc. The policy gives no guidelines of calculating the cost or damage to a family but arbitrarily fixes an amount which given the past experience would ultimately harm the interests of the affected family.

¹²² Vasudha Dhagamwar, Subrata De, and Nikhil Verma, “*Industrial Development & Displacement: The People of Korba*”, New Delhi: Sage Publications, 2003.

The PAFs (Project Affected Families), especially vulnerable groups in absence of any social security measures in general and in R & R provisions are left to themselves and are directly exposed to the market-like situations. The fact that most DPs and PAFs, especially vulnerable groups of SCs and STs, are CPR dependent and are service providers to the villages and exist precariously in a semi-monetised informal economy, sudden overnight change to a monetised economy often makes them vulnerable to outsiders influence spending their money on cheap trinkets and forces them in to dominant economy as cheap labour in mines, household, market, construction work, etc. leading to further disempowerment and impoverishment.¹²³

It has further been observed that even though projects like NTPC and CIL (Coal India Limited) did allot land for houses for PAFs around its own township. Many a time tribals refused to settle themselves there. An example would be the resettlement colonies of the Mayurakshi dam project in Dumka district of Jharkhand (erstwhile Bihar), which was completed in the 1950s. Whereas one finds DPs from other social groups residing in the Mayurakshi resettlement colonies, not a single tribal family is to be found there, though more than half of the displaced were tribals.¹²⁴ A suggestion may be given for greater thinking, on requirement in dealing with displacement of different kinds and socio-economic aspects of DPs and PAFs. Further it also needs to assess the differential changes brought by projects other than the dams in the region which sometimes raises the standards of living of the DPs and provides new opportunities of social mobility but also brings in to associated evils of development.

iii. NPRR vis-a-vis Economic Liberalisation

¹²³ Renu Modi, “Sardar Sarovar Oustees : Coping with Displacement”, Economic and Political Weekly, Vol 39, Issue 11, March 2004, Pg. 1123-1126.

¹²⁴ Amit Mitra and Nitya Rao, “Displacing Gender from Displacement: A view from the Santhal Parganas, Jharkhand”, in edited book of Lyla Mehta, forwarded by Medha Patkar, “Displaced By Development: Confronting Marginalisation and Gender Injustices”, Sage Publication India Pvt. Ltd, 2009, Pg. 40.

There are indications that the previous draft policies in 1985, 1993 and 1994 formulated by the Centre and other state policies and Acts, except the one by Maharashtra, were prepared only under pressure of World Bank.¹²⁵ In 1980, the World Bank became the first development agency to adopt an explicit policy concerning involuntary resettlement, through a policy formulated by social scientists and grounded in social research.¹²⁶

In 1999, a loan given by the Asian Development Bank to the Madhya Pradesh government in order to enable private sector takeover of public infrastructure required that the state government first frame a rehabilitation policy. There is no doubt that the National Rehabilitation Policy is also the consequence of a conditionality of the World Bank or some other multilateral institution, in order to facilitate the same processes of the corporate takeover of our resources.¹²⁷ The very fact that the Indian government refused to discuss the report of the World Commission on Dams, Supreme Court judgement on the Narmada and the proposed interlinking of rivers all go in the same direction.¹²⁸

It is very often that, the policy doesn't guarantee 'land-for-land' to PAFs and remains ambiguous by including guidelines such as, "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 un-irrigated land/cultivable waste land *subject to availability* of Government land in the districts",¹²⁹ it is easier for government to displace people and complete R & R by paying cash compensation. This is no hidden fact, land being a fixed commodity, that ultimately all the DPs and PAFs can't be provided land because of unavailability of land.

¹²⁵ Walter Fernandes, "*Rehabilitation Policy for the Displaced*", Economic and Political Weekly, Vol 39, Issue 12, March 2004, Pg. 1191-1193.

¹²⁶ *Supra Note 118*.

¹²⁷ Chittaroopa Palit, "*Short-changing the Displaced: National Rehabilitation Policy*", Economic and Political Weekly, Vol. 39, No. 27, July 3 2004, Pg. 2961-2963.

¹²⁸ *Supra Note 118, Pg. 1123-1126*.

¹²⁹ Government of India, '*National policy on resettlement and rehabilitation for project affected families-2003*'. Published in the Gazette of India, Extraordinary Part-I, Section 1, No- 46, dated 17th February, 2004, Appendix 6.3.

The provision of this policy will be applicable to projects displacing 500 families or more in plain areas and 250 families in hilly areas, Desert Development Programme (DDP) blocks, areas mentioned in Schedule V and Schedule VI of the Constitution of India is also of grave concern. No draft has ever mentioned the minimum number of families for the policy to apply. It is ironic because MP and Maharashtra state Acts make rehabilitation applicable to projects that displace 50 families or a full village with fewer families than that. So, it is for the first time that the government introduces a ceiling to the number of project affected persons. This is not without attributed motives, in recent years many large projects have been acquiring only land that is the people's livelihood but leaving their houses untouched. Others focus on the CPRs that are crucial to people's sustenance. It has happened in the Kashipur mines in Orissa. By official count the Lower Subansiri dam in Arunachal Pradesh will displace only 38 families but several thousand will lose their CPRs to it. The policy will not apply to them. Many large projects like the Golden Quadrangle and huge mines to be owned by private companies have been splitting land acquisition into small bits, each of them displacing fewer than 500 families. Each of them can be called a project and deprive the affected families of the benefits of this policy.¹³⁰

The 1998 policy draft had made land for land mandatory for tribals and had applied it to non-tribals "as far as possible". The final policy, however, ignores the tribals and finds a bigger escape route by saying that those who lose their land will get some if it is available with the government in that district. This is important to note because as the projects are now penetrating hitherto untouched areas for exploitation of its natural resources it becomes essential for the government to remove obstacles in the way because most of these regions are covered by the Schedule 5 or 6 of the Constitution. So, the policy with a greater cash component will facilitate quick displacement and act as a tool to legitimise resource alienation

¹³⁰ Renu Modi, "*Sardar Sarovar Oustees: Coping with Displacement*", Economic and Political Weekly, Vol 39, Issue 11, March 2004, Pg. 1123-1126.

and to strengthen corporate control over land, without offering any protection to the affected communities.¹³¹

The complicity of the government and international financial institutions is also visible in promoting the globalisation agenda by the fact that the World Bank has, meanwhile, announced its intention to dilute its own rehabilitation norms, and as a precursor to renewed large-scale lending to middle income countries such as India, it has stated that it would replace its policies, which have come into being as a result of struggles all over the world, with the national safeguard policies of the respective countries. Therefore with no doubt of this vacuous and damaging rehabilitation policy of the Indian government would count as a national safeguard for the World Bank. It may even be the reason why the policy was designed in the first place.¹³² Following to the Omkareshwar project through National Hydroelectric Power Corporation (NHPC), whose role concerning human rights violations in R & R is far from desirable. The Bank seems to gloss over the human rights record and is considering granting loan to the company even by neglecting its own corporate social responsibility clause.

iv. NPRR and Human Rights

Displacement from one's habitual residence and the loss of property without fair compensation can, in itself constitute a violation of human rights. In addition to violating economic and social rights, arbitrary displacement can also lead to violations of civil and political rights, including arbitrary arrest, degrading treatment or punishment, temporary or permanent disenfranchisement and the loss of one's political voice. Finally, displacement carries not only the risk of human rights violations at the hands of state authorities and security forces but also the risk of communal violence when new settlers move in amongst existing populations.¹³³

¹³¹The Government Policy of Resettlement and Rehabilitation, Website-www.mcrg.ac.in/globalisation/3%20R%20&%20R%20policy.doc, visited on 08.06.14.

¹³² *Supra Note 127, Pg 2961-2963.*

¹³³ W Courtland Robinson, "*Risks and Rights : The Causes, Consequences, and Challenges of Development-Induced Displacement*", Washington DC : The Brookings Institution-SAIS Project on Internal Displacement, May 2003, Pg. 13.

Fortunately, NPRR makes no attempt at addressing various rights violations¹³⁴, which are common in these circumstances especially that of vulnerable groups whose vulnerability increases manifold in these situations. NPRR is just silent on these issues. It uses the word rights in two instances, once to give cash compensation to tribals in lieu of loss of their customary rights over forest produce and secondly to grant them fishing rights in the reservoir. This shows the true nature of NPRR and the respect shown by the government to fundamental rights of its citizens.

Balakrishnan Rajagopala of Massachusetts Institute of Technology has noted five 'human rights challenges', a) Right to Development and Self Determination, b) Right to Participation, c) Right to Life and Livelihood, d) Right of vulnerable groups, and e) Right to Remedy, that arise in relation to development induced displacement. Indian Constitution also mentions some of these rights explicitly or implicitly within fundamental rights (Art. 19, 21, 29, 31), guiding principles of state policy (38, 41, 46, 47, 48A), special provisions relating to certain classes (Art. 330, 342), and right to Constitutional Remedies (Art. 32). So, if the government is serious to address the problems of R & R process, it has to introduce a rights-based approach to NPRR.¹³⁵

v. Epilogue

In the concluding remark the comparison above clearly shows the inadequacies of the policy in its current form to deal with the impoverishment risks, and socio-cultural and politico-economic needs of the DPs and IDPs. What is needed, as suggested by the World Commission on Dams, is that "an approach based on 'recognition of rights' and 'assessment of risks'...be developed as a tool

¹³⁴ The various rights violations of IDPs within the context of international legal framework and guidelines available in Guiding Principles for IDPs, UDHR, ICCPR, ICESCR, ILO has been well documented in W Courtland Robinson, "*Risks and Rights : The Causes, Consequences, and Challenges of Development-Induced Displacement*", Washington DC : The Brookings Institution-SAIS Project on Internal Displacement, May 2003, Pg. 14-15.

¹³⁵ *Supra Note 133, Pg. 14.*

for future planning and decision making”.¹³⁶ Secondly, in line with the point emphasized in the guiding principles for IDPs that “the *Primary duty* and *responsibility* for providing humanitarian assistance to internally displaced persons lies with national authorities”, and project authorities (MNCs and private companies) as is the case in era of economic reforms. Finally, there is also a need, as suggested by Medha Patkar of Narmada Bachao Andolan, to link development with displacement policy which assumes greater importance in view of the onslaught of national and international capital in the age of so-called liberalisation, globalisation and privatisation”¹³⁷ to protect the rights of vulnerable communities to be an equal partner in developmental process.

G. Impact And Causes Of Disaster Upon The Internally Displaced Women And Children

Looking to the last ten years back it is crystal clear that, there exists a set of inter-related normative texts for the protection of the environment and for the prevention and reduction of disasters, as well as for ensuring respect for human rights in all circumstances. Taken together these standards constitute an effective legal and operational framework and should not be interpreted independently or in isolation. The researcher on regard to take inevitable challenges and to experience the implementation of the Disaster Management Act, also it is significant strides to take with regard to the successful implementation and operationalization of the Disaster Management legislation.

It is evident to mention here that the traditional perception has been limited to the idea of “calamity relief”, which is seen essentially as a non-plan item of expenditure. The impact of major disasters cannot be mitigated by the provision of immediate relief alone, which is the primary focus of calamity relief efforts.

¹³⁶ W Courtland Robinson, “*Risks and Rights : The Causes, Consequences, and Challenges of Development-Induced Displacement*”, Washington DC : The Brookings Institution-SAIS Project on Internal Displacement, May 2003, Pg. 55.

¹³⁷ M Bharathi and R S Rao, “*Linking Development to Displacement*”, Economic and Political Weekly, Issue July 10-16 1999.

Disasters can have devastating effects on the economy they cause huge human and economic losses, and can significantly set back development efforts of a region or a State.

a. The global overview of disaster management

In the year 2012, natural disasters once again had a devastating impact on human society. Worldwide, 357 reported natural disasters caused the death of more than 9,655 people, made 122.9 million victims and caused a record amount of US\$ 157.3 billion of damages. A total of 120 countries were hit by these disasters. The five countries that were most often hit, China, the United States, the Philippines, Indonesia and Afghanistan accounted for 38.1% of total disaster occurrence in 2012. Year after year, these countries appear prominently in the list of countries experiencing the highest number of disaster events.¹³⁸

b. The Indian View Regarding The Disaster Management

India has been traditionally vulnerable to natural disasters on account of its unique geo-climatic conditions. Floods, droughts, cyclones, earthquakes and landslides have been a recurrent phenomenon. About 60% of the landmass is prone to earthquakes of various intensities; over 40 million hectares is prone to floods; about 8% of the total area is prone to cyclones and 68% of the area is susceptible to drought. In the decade 1990-2000, an average of about 4344 people lost their lives and about 30 million people were affected by disasters every year. The loss in terms of private, community and public assets has been astronomical.¹³⁹

The year 2012 witnessed more disasters in Himalayan region, mainly in the states of Assam, Uttarakhand and Himachal Pradesh. Assam had to face natural

¹³⁸ Debarati Guha-Sapir, Philippe Hoyois And Regina Below, “Annual Disaster Statistical Report Review 2012- The numbers and trends”, Centre for Research on the Epidemiology of Disasters (CRED) , Institute of Health and Society (IRSS) , website-http://reliefweb.int/sites/reliefweb.int/files/resources/ADSR_2012.pdf, visited on 30.05.14, Pg. 13.

¹³⁹ Disaster Management in India- A Status Report, Government of India, Ministry of Home Affairs, National Disaster Management Division, August 2004, Pg. 3.

disasters such as flood, which hits the state almost every year, forcing the people to adapt to “living with the floods”. This year the floods of Assam claimed 149 precious lives apart from the damages to property and infrastructure. Main issue of floods in Assam is that it also takes a toll on erosion, eroding away agriculture land. Assam also had to face human induced disasters during this year i.e. boat tragedy, which is covered in this report. The south west monsoon showed its fury in the northern part of the country, especially in the Himalayan region this year. Thus, the heavy rains and flash floods of Himachal Pradesh and heavy rains of Uttarkashi district of Uttarakhand also find place in this report. The heavy rains resulting in flash floods in Himachal Pradesh, claimed 29 precious lives apart from damages to roads blocking the traffic. The heavy rains in Uttarkashi especially during the peak pilgrimage time also caused havoc to infrastructure claiming 34 precious lives, though the rescue operation could save many pilgrims along with local population.¹⁴⁰

The cyclone as last year again hit the eastern coast of the country. Through it had a land fall in Tamil Nadu, it damaged some parts of Andhra Pradesh due to heavy rains claiming 61 lives. This issue also covers rail accidents in which the casualty toll was recorded to be 28 people have died and 25 were injured. The report also covers unmanned railway crossing deaths which amounts to a large part of the deaths resulting from accidents. This portion deals with the necessity of awareness among public when they cross the railway line. The lesson learnt from this disaster is a separate chapter of the report.¹⁴¹

The super cyclone in Orissa in October, 1999 and the Bhuj earthquake in Gujarat in January, 2001 underscored the need to adopt a multidimensional endeavor involving diverse scientific, engineering, financial and social processes; the need to adopt multidisciplinary and multi sectorial approach and incorporation of risk reduction in the developmental plans and strategies.¹⁴² Table 1.2 to 1.4 gives an

¹⁴⁰ K.J.Anandha Kumar and Ajinder Walia, “*India Disaster Report 2012*”, National Institute of Disaster Management, 2013, Pg. 3-4.

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

indication of the magnitude of the damage and losses incurred by the country in recent natural disasters.

The study regarding to this topic it is significant to say that, a proposal have been taken to create Disaster Management Authorities, both at the National and State levels, with representatives from the relevant Ministries/ Departments to bring about this coordinated and multi-disciplinary with experts covering a large number of branches.

The National Emergency Management Authority is proposed to be constituted. The organization will be multi-disciplinary with experts covering a large number of branches. The National Emergency Management Authority is proposed as a combined Secretariat/Directorate structure – a structure which will be an integral part of the Government while, at the same time, retaining the flexibility of a filed organization. The Authority will be headed by an officer of the rank of Secretary/ Special Secretary to the Government in the Ministry of Home Affairs with representatives from the Ministries/Departments of Health, Water Resources, Environment & Forest, Agriculture, Railways, Atomic Energy, Defence, Chemicals, Science & Technology, Telecommunication, Urban Employment and Poverty alleviation, Rural Development and Indian Meteorological Department as Members. The authority would meet as often as required and review the Status of warning systems, mitigation measure and disaster preparedness. When a disaster strikes, the Authority will coordinate disaster management activities.¹⁴³ The Authority will be responsible for:-

- The Central Government provides necessary support and assistance to State Governments by way of resource data, macro-management of emergency response, specialized emergency response teams, sharing of disaster related data base etc.

¹⁴³ Disaster Management in India- A Status Report, Government of India, Ministry of Home Affairs, National Disaster Management Division, August 2004, Pg. 6.

- Proper coordination/mandating Government's policies for disaster reduction/mitigation
- Ensure the adequate preparedness at all levels
- During the strike of disaster coordinating response is important
- Assisting the Provincial Government in coordinating post disaster relief and rehabilitation
- Coordinating resources of all National Government Department/agencies involved.
- Monitor and introduce a culture of building requisite features of disaster mitigation in all development plans and programmes.

Another important point to be noted that, at the national level the overall responsibility for disaster management also lies with the Ministry for Women's Empowerment and Social Welfare exercised through the National Disaster Management Centre (NDMC). The Ministry had made a series of Disaster Management Bill (Bill No. 68), which was passed at the second reading but was referred to a standing committee to discuss what amendments would be introduced before its final reading. The final version of the Bill was passed as a statute on 4 May 2005.

The Bill is to provide for the establishment of the National Council for Disaster Management (chaired by the President), the Natural and Human Disaster Management Centre, and the appointment of two Technical Advisory Committees (one to deal with natural disasters, and the other with human disasters). These bodies will have mandates to formulate disaster management plans, declare a state of disaster, award compensation, and to address any other matters connected therewith or incidental thereto. The Act outlines the procedures and guidelines by which the Council, Centre and Committees should be established and should abide.¹⁴⁴

¹⁴⁴ Report of the Women's Division: Disaster Relief Monitoring Unit, Human Rights Commission, August 2005. Pg. 10.

It is imperative that the implementation of the Act takes into account the provisions in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) that allow for the adoption of special measures aimed at accelerating *de facto* equality between men and women (Article 4). Article 3 of the same Convention provides that States parties should take all appropriate measures “to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men”. Therefore it is very necessary that there be equal or sufficient representation of women in all bodies, committees and other political, social, economic or cultural fields. It has recommended that the Council, the Centre and Committees established by this Act, at least one third of their members and staff should be of women. This would be a step towards attaining *de facto* equality and is important in ensuring that women, one of the most vulnerable groups following a disaster are adequately represented and given a voice.

Table 4.3: Damage due to Natural Disaster in India

Year	People Affected (Lakh)	Houses & Buildings, Partially Or Totally, Damaged	Amount Of Property Damage/Loss (Rs Crore)
1985	595.6	2,449,878	40.06
1986	550.0	2,049,277	30.74
1987	483.4	2,919,380	20.57
1988	101.5	242,533	40.63
1989	30.1	782,340	20.41
1990	31.7	1,019,930	10.71
1991	342.7	1,190,109	10.90
1992	190.9	570,969	20.05
1993	262.4	1,529,916	50.80
1994	235.3	1,051,223	10.83
1995	543.5	2,088,355	40.73
1996	549.9	2,376,693	50.43
1997	443.8	1,103,549	n.a.
1998	521.7	1,563,405	0.72
1999	501.7	3,104,064	1020.97
2000	594.34	2,736,355	800.00
2001	788.19	846,878	12000

Source: 10th Five Year Plan 2002-2007, Volume 1, Dimensions and Strategies, Government of India, New Delhi, Pg. 192, website

http://planningcommission.nic.in/plans/planrel/fiveyr/10th/volume1/10th_voll.pdf, visited on 30.05.2014.

Table 4.4: Annual Damage Due To Heavy Rains, Landslide And Floods

S.No	Year	Districts affected	Villages affected (No)	Population affected (Lakh)	Crop area affected (Lakh Ha.)	Houses damaged (no.)	Human life loss (no.)	Cattle loss (no.)	Estimated value of loss to houses (Rs. In crore)	Estimated value of public properties (Rs. In crore)
1	1999	202	33,158	328.12	8.45	884,823	1,375	3,861	0.72	-
2	2000	200	29,964	416.24	34.79	2,736,355	3,048	102,121	631.25	389.72
3	2001	122	32,363	210.71	18.72	346,878	834	21,269	195.57	676.05

Source: 10th Five Year Plan 2002-2007, Volume 1, Dimensions and Strategies, Government of India, New Delhi, Pg. 192, website http://planningcommission.nic.in/plans/planrel/fiveyr/10th/volume1/10th_voll.pdf, visited on 30.05.2014.

Table 4.5: losses due to droughts: 1999-2001

S.No	Year	Districts affected	Villages affected (No)	Population affected (Lakh)	Damaged to crops area (Lakh Ha)	Estimated value of damaged crops (Rs crore)	Cattle population affected (in lakh)
1	1999	125	-	369.88	134.22	6.44	345.60
2	2000	110	54,883	378.14	367.00	371.87	541.67
3	2001	103	22,255	88.19	67.44	NA	34.28
	Total	338	77,138	836.21	568.66	378.31	921.55

Source: 10th Five Year Plan 2002-2007, Volume 1, Dimensions and Strategies, Government of India, New Delhi, Pg. 193, website http://planningcommission.nic.in/plans/planrel/fiveyr/10th/volume1/10th_voll.pdf, visited on 30.05.2014.

c. India And Its Hazards Due To Natural And Man-Made Disaster

India is one of the most disaster prone countries of the world. It has had some of the world's most severe droughts, famines, cyclones, earthquakes, chemical

disasters, mid-air head-on air collisions, rail accidents, and road accidents. India is also one of the most terrorist prone countries.

Disasters have been classified into natural, man-made disasters. Natural disasters are catastrophic events resulting from natural causes. Natural disasters are often termed “Act of God”. Although the natural disasters are beyond the control of human being, however, the impacts of the natural disasters can be reduced by setting up of advanced warning systems which forecast the impending natural disasters, also the consequences of the natural disasters can be reduced through an effective disaster management. The occurrence of disasters from all kinds of hazards is among the highest in Asia and Pacific. In Asia alone in last decade more than 83% of the total reported disasters were due to floods.¹⁴⁵

Indian context, the pie chart have been plotted in figure 1. India has received total 772 disasters during 1990-2009, out of which there were 292 natural and 480 were man-made disasters. As per figure 2, India has faced highest natural disasters in the form of flood (141 in number) and storm (56 in numbers). India has also received several disasters in the form of epidemics (39), mass movement (26), drought (21) and earthquake (9) (see upper frame of figure 1). As far as man-made disasters are concerned, like in subcontinent, India faced 340 disasters in the form of transport accidents (see lower frame of figure 2). It has also faced 81 miscellaneous and 59 industrial related disasters. From these observations, naturally India and, hence, the south Asia subcontinent is highly vulnerable to.¹⁴⁶

Figure 3.1, India Data (1990-2009), Natural Disaster Types

¹⁴⁵ I.M. Shaluf and F. Ahmadun, “*Disaster types in Malaysia: an overview*”, Disaster Prevention and Management, Vol. 15 No. 2, (2006), Pg. 286-98.

¹⁴⁶ Jyoti Purohit and C.R. Suthar “*Disasters Statistics in Indian Scenario in the Last Two Decade*”, International Journal of Scientific and Research Publications, Volume 2, Issue 5, May 2012, Pg. 3-4.

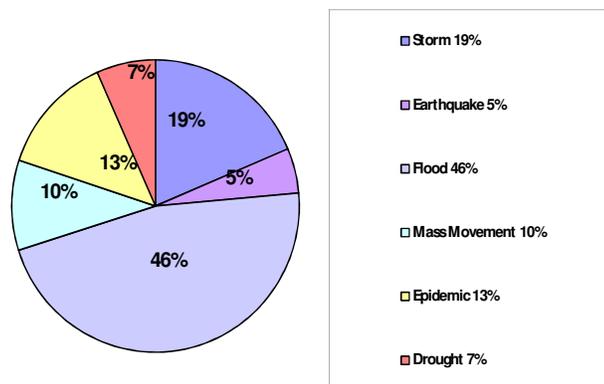


Figure 3.2, India Data (1990-2009), Man-Made Disaster

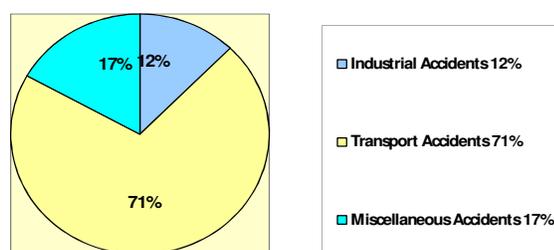


Figure 1-2: Number of Disasters in terms of natural (upper frame) and man-made (lower frame) have been plotted for India during 1990-2009.

d. Vulnerabilities In India Regarding To Natural And Man-Made Hazards

Vulnerability is the susceptibility of being harmed. The Researcher has debated on the concepts of hazards and vulnerability. A disaster occurs when hazard interacts with vulnerability. For example, if an earthquake (hazard) occurs, a

structurally safe building will withstand the shock (resistant), but a hutment (vulnerable) may collapse; creating a disaster for the hutment dwellers.¹⁴⁷

Vulnerability could be due to the human related factors or natural features. The human related factors that increase vulnerability of India could be intended or unintended, and include poverty, illiteracy, corruption, apathy, technological misuse, land use pattern and terrorism. Poor land use planning and inconsistent emergency management systems leads to vulnerability to floods, drought, cyclones, earthquake, heat and cold waves, and landslides.

Disasters occur with amazing frequency in India and while the society at large has adapted itself to these regular occurrences, the economic and social costs continue to mount year after year. It is highly vulnerable to floods, drought, cyclones, earthquakes, landslides, volcanoes, etc. Almost all parts of India experience one or more of these events.¹⁴⁸ With urbanization and concentration of population in metropolitan cities, more and more people are becoming vulnerable to locational disasters.¹⁴⁹ For instance, a quarter of Indian population lives within 50 km of the coastal line. The population within 1 km of the coast is 1.6 million, and 3.4 million within 2 km of the coast. These people are vulnerable to river flooding, and coastal surges following cyclone or tsunami.

Many regions in India are highly vulnerable to natural and other disasters on account of geological conditions. It is found that, 60% of the total area of the country is vulnerable to seismic damage of buildings in varying degrees. The most vulnerable areas, according to the present seismic zone map of India, are located in the Himalayan and sub-Himalayan regions. Kutch and the Andaman and Nicobar Islands, which are particularly earthquake hazard prone. Over 8% Indian area of 40

¹⁴⁷ David A. McEntire, "Revisiting the Definition of 'Hazard' and the Importance of Reducing Vulnerability", *Journal of Emergency Management* Vol. 3, No. 4, July/August 2005, Pg 13- 18.

¹⁴⁸ Alok Gupta, "Vulnerability and Disaster Management in India", *Prehospital and Disaster Medicine*, Vol 15 No. 3, 2000, Pg. 98.

¹⁴⁹ Planning Commission, Government of India. 2008. *Eleventh Five Year Plan (2007-12): Inclusive Growth*. Volume 1, Chapter 9.3 Disaster Management, Pg. 207. New Delhi: Oxford University Press. Website-http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11_v1/11v1_ch9.pdf, visited on 02.06.2014.

million hectares is prone to floods, and the average area affected by floods annually is about 8 million hectares. About 5,700 kilometers is prone to cyclones, approximately 7,500 kilometers long coastline, and 68% area is suspected to be the region to drought. Disasters are no longer limited to natural catastrophes. The man-made emergencies also cause disasters in terms of fatalities and economic losses.

The percentage of the population below the official poverty line was 28% in 2004-2005. The absolute number of poor people was 302 million in 2004-2005. Forty six percent of the children in the age group zero to three years suffered from malnutrition in 2005-2006. India has been ranked a lowly 74, among countries of the world on the worldwide Corruption Perceptions Index, prepared by independent international agency Transparency International. Corruption is wide spread and percolates most of the sections of the society. Corruption is not only wide spread, but is also blatant. The literacy rate has steadily gone up to 64.8% in 2001, the number of illiterate persons still exceeds 304 million, making India the country with the highest number of illiterate persons in the world.¹⁵⁰

e. Special Problems Of IDP Women Due To Disaster

Few years back a tragic end of story was found due to the cause of tsunami, the large majority of displaced persons were housed in welfare centers set up in schools, public buildings, or on previously unoccupied state or private land in affected areas. The relief and reconstruction efforts, while to be highly commended considering the scale of the devastation, resulted in circumstances that compromised the human rights and human dignity of those affected by the tsunami. While reconstruction of permanent housing is pending, some camps for internally displaced persons (IDPs), and transitional shelter sites continue to function. The conditions in which many of these camps were kept, as well as the social realities of living in these camps have caused the rights of the tsunami displaced to be of critical concern. In this context the researcher had explained regarding the protection of vulnerable groups such as women and children.

¹⁵⁰ *Ibid.*

There has been both international and national recognition of the special needs of women through instruments such as The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Principle 4 of the Deng Principles on IDPs also calls for the special needs of women and children to be taken into account in a context where women are internally displaced.¹⁵¹ Despite this, partly due to their cultural status, women remain on the periphery of relief, rehabilitation and reconstruction efforts. Women are the backbone to every family, ensuring that the home is well taken care of, that the family is properly fed and clothed and that all their immediate needs are met. In this sense, a woman and her role form the foundation to her family. Speaking to women IDPs, it is clear that their concerns are first and foremost to do with their children's health, nutrition and education, and their husband's livelihoods. In many cases, a woman's livelihood depends on her husband's livelihood.

The researcher had made a note regarding the urgent need to deal with the concerns of women IDPs in a sensitive and expeditious manner. The government, international organisations, and organs of civil society have a unique opportunity with IDPs to address issues that may in other contexts be hidden within what may be termed the "private sphere", or domestic sphere. Rights violations that take place in this sphere are often ignored and go unreported, remaining invisible. Though, in the context of IDPs violations of human rights such as instances of domestic violence, denial of appropriate spaces for privacy, or discrimination in access to relief have been taking place in a very public context. These concerns cannot be ignored if a sustainable solution to the IDP issue is to be found, and it is our duty, as well as that of the state to ensure that violations of the rights of women do not take place in future time.

f. Disaster Management Policy

Disaster management is a multidisciplinary activity involving a number of a number of Departments/agencies spanning across all sectors of development. Where

¹⁵¹ Report of the Women's Division: Disaster Relief Monitoring Unit, Human Rights Commission, August 2005, Pg. 24.

a number of Departments/agencies are involved, it is essential to have a policy in place, as it serves as a framework for action by all the relevant departments/agencies. Indian disaster policy is geared to make a paradigm change from response and calamity relief to disaster prevention, preparation and mitigation. Another significant change is to move from disaster management largely from government to public private partnership, and community disaster management. In this regard, significant changes have been made, but the authoritarian attitude of the government officials is the main stumbling block.

The Great Famine of 1876-1878 led to constitution of the Famine Commission of 1880 and eventual adoption of **Famine Relief Code**. India probably has the world's oldest disaster relief code which started in 1880. This relief code provides details of the relief to be given by the government to the affected people.¹⁵²

The India Disaster Report provides the nature of disaster response by the government of India. It identifies key issues with respect to the availability of and access to disaster-related information and its quality, the absence of coherent disaster preparedness and response policy, and urgent actions and interventions needed. It shows that significant advances in health and social and economic development have been repeatedly interrupted and reversed by disasters.¹⁵³

India has been following **Five Year National Plans** to use funds from the Plan for mitigating natural disasters. The earlier five year plans did not mention disaster management. The Tenth Five-Year Plan 2002-2007 for the first time had a detailed chapter entitled Disaster Management. The plan emphasized the fact that development cannot be sustainable without mitigation being built into the

¹⁵² Kailash Gupta, "*Disaster Management and India: Responding Internally and Simultaneously in Neighboring Countries*", website- <http://www.pddms.in/downloads/FEMA%20%20Disaster%20Management%20and%20India.pdf>, visited on 02.06.2014.

¹⁵³ S Parasuraman, and P. V. Unnikrishnan, "*India Disaster Report: Towards A Policy Initiative*", (Eds.). 2000, New Delhi: Oxford University Press, website- www.popline.org/node/167910, visited on 03.06.2014.

development process. Disaster mitigation and prevention were adopted as essential component of the development strategy.

Disaster management has emerged as a high priority for the country. The Eleventh Five Year Plan aims at consolidating the process by giving impetus to projects and programs that develop and nurture the culture of safety and the integration of disaster prevention and mitigation into the development process. The guidance and direction to achieve this paradigm shift will need to flow from **National Disaster Management Authority (NDMA)**, and in the true spirit of the **Disaster Management Act, 2005** to all stakeholders including State Governments and Union Territories, right up to the Panchyat Raj (local administration by five locally elected citizens) Institutions. Communities at large will need to be mobilized to achieve this common objective as they are the first responders (and not the usually thought fire, ambulance, and police). Even the best of isolated efforts will not bear fruit unless they are part of an overall, well-considered approach, and responsibilities of all stakeholders are clearly spelt out and accountability and sustainability factored in.¹⁵⁴

‘Gujarat State Disaster Management Bill’ was passed in the State Assembly on March 28, 2003 and the Act has come into force from May 13, 2003. Gujarat is the first in India to have enacted an Act to provide legal and regulatory framework for disaster management. The purpose of this Act is to provide for effective management of disasters, for mitigating of effects of disasters, for administering emergency relief during and after occurrence of disasters and for implementing, monitoring and coordinating measures for reconstruction and rehabilitation in the aftermath of disasters. The Act also lays emphasis on moving from relief to all phases of disaster management i.e. mitigation, relief, reconstruction and rehabilitation by clarifying the roles of principal entities in disaster management.¹⁵⁵

¹⁵⁴ Planning Commission, Government of India. 2008. *Eleventh Five Year Plan (2007-12): Inclusive Growth*. Volume 1, Chapter 9.3 Disaster Management, Pg. 207. New Delhi: Oxford University Press. Website-http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11_v1/11v1_ch9.pdf, visited on 02.06.2014.

¹⁵⁵ Gujarat State Disaster Management Authority, An Initiative of Government of Gujarat, website - <http://www.gsdma.org/policies-acts/gsdm-act.aspx>, visited on 09.06.14.

The recurrent occurrences of different types of disasters compelled Government of India to establish many different committee and commissions to suggest dealing with the problem. The most recent and the important was the establishment of **High Power Committee on Disaster Management (HPC)** in 1999 for making recommendations on the preparation of Disaster Management plans and suggestions for effective mitigation mechanisms. The High Power Committee gave its recommendations in October 2001 including a draft of the disaster management act, a National Response Plan, move from disaster response to disaster preparedness, and establishment of National Disaster Management Authority. Following one of the HPC recommendations, the disaster management function was transferred from Ministry of Agriculture to Ministry of Home Affairs.¹⁵⁶

The Government of India has long been thinking of a National Disaster Management Authority. The Gujarat earthquake gave extra impetus for having a national disaster management authority. However, the bureaucracy does take its claims on the time from a decision is taken to the actual action. The Indian Ocean Tsunami of 2004 really gave a jolt for this decision process. Finally on December 23, 2005 the Disaster Management Act, 2005 was enacted by the Government of India. The Disaster Management Act, 2005 mandated creation of National Disaster Management Authority, with Prime Minister as the Chairman, and State Disaster Management Authorities headed by the respective Chief Ministers, to spearhead and implement a holistic and integrated approach to disaster management in India. The act also provided for creation of National Institution of Disaster Management.¹⁵⁷

NDMA has come out with the national vision statement of:

"To build a safer and disaster resilient India by a
holistic, pro-active, technology driven and sustainable

¹⁵⁶ Kailash Gupta, "*Disaster Management and India: Responding Internally and Simultaneously in Neighboring Countries*", website <http://www.pddms.in/downloads/FEMA%20%20Disaster%20Management%20and%20India.pdf>, visited on 02.06.2014.

¹⁵⁷ *Ibid.*

development strategy that involves all stakeholders and fosters a culture of prevention, preparedness and mitigation."¹⁵⁸

NDMA has prepared broad features of the draft national policy on disaster management is enunciated below:-

1. A holistic and pro-active approach towards prevention, mitigation and preparedness will be adopted for disaster management.
2. Each Ministry/Department of the Central/State Government will set apart an appropriate quantum of funds under the Plan for specific schemes/projects addressing vulnerability reduction and preparedness.
3. Where there is a shelf of projects, projects addressing mitigation will be given priority. Mitigation measures shall be built into the on-going schemes/programmes.
4. Each project in a hazard prone area will have mitigation as an essential term of reference. The project report will include a statement as to how the project addresses vulnerability reduction.
5. Community involvement and awareness generation, particularly that of the vulnerable segments of population and women has been emphasized as necessary for sustainable disaster risk reduction. This is a critical component of the policy since communities are the first responders to disasters and, therefore, unless they are empowered and made capable of managing disasters, any amount of external support cannot lead to optimal results.
6. Cooperation with different agencies at national, regional and international levels.

¹⁵⁸ Website- <http://www.ndma.gov.in/en/about-ndma/vision.html>, visited on 09.06.14.

7. A capacity development is needed for proper planning and preparedness at all levels and related areas.
8. Compliance and coordination to generate a multi-sectoral synergy.
9. The States will be revised to develop them into disaster management codes for institutionalizing the planning process with proper attention to mitigation and preparedness.
10. With proper construction designs needed to correspond the requirements which is laid down in relevant Indian Standards.

g. Epilogue

The disaster definition and types of disasters worldwide have been reviewed in brief and the disaster types in terms of natural and man-made in India have been reviewed. The natural disasters and man-made disasters have also been reviewed in terms of their sub categories like flood, drought, transport and industrial disasters etc. In the final conclusive words, the Researcher may advice that the natural disasters can be reduced by setting up advanced warning systems, which forecast the impending natural disasters timely. In addition to this, natural and man-made disasters can also be prevented or reduced through public involvement in disaster management policies, books, video, conducting workshop and training programme, community participation, capacity building, mock drills etc.

H. A Sum-Up

- 1 In countries of every region of the world, internally displaced persons are victims of violations of human rights. These span the whole range of civil, political, economic, social and cultural rights. At the same time, the internally displaced are also a group particularly vulnerable to violations of their rights, both during and after displacement. They face discrimination on account of their status as displaced persons, as well as exposure to

discrimination on racial, ethnic and gender grounds. For internally displaced persons, this kind of “double discrimination” can prove devastating.

- 2 The two primary components of the definition of an IDP are **coerced movement** and **remaining within national borders**. The first establishes the importance of distinguishing between persons who must involuntarily leave from those who choose to migrate, for instance, to seek better employment opportunities elsewhere. The second component excludes persons who cross borders because other legal regimes pertinent to migrants, asylum seekers and refugees already cover their situation.
- 3 Development has found favour with a planner which makes displacement of large number of people which is an avoidable event. The oustees who bear the pain never share the gains of development. Thus displacement caused by large development projects resulted in Transfer of land of the weaker section of society to more privileged ones. The large projects particularly mega dams, hydel power, urbanisation and industrialisation creates problem to mainly tribals and other weaker section of the society not only these their legal rights according to Part III of Constitution embedded also being violated.
- 4 International and National Human Right Commission has adopted Universal Declaration of Human Right for adequate resettlement and land right which means adequate privacy, adequate space, physical accessibility, security, basic infrastructure, Sanitation, suitable environment, health and related factors. These are the basic rights which should be at an affordable cost.
- 5 Forced evictions without adequate resettlement violate the affected people’s fundamental right to life and livelihood as enshrined in Article 21 of the Indian Constitution. Reaffirming the principles of indivisibility of all human rights, the fundamental right to life encompasses the right to live with human dignity. Article 14 of the Constitution of India guarantees equal Protection under law.
- 6 The Supreme Court framed broader question decided by judges that law placed under constitutions decided 9th Schedule, providing immunity of scrutiny of court if they violate fundamental rights. The Constitution of India

has been amended 13 times so far for incorporating 2007 land legislation in 9th Schedule. Land under Indian constitution is a state subject; every State has its own land laws.

- 7 The Rehabilitation Policy of DPs/PAP it may be said that, the NPRR 2003 did not meet any such demands of the displaced people. But after the announcement of the draft policy NPRR of 2004 by the Government of India it is found a reality and regressive in comparison to previous draft and also with some of the existing state or project R & R policies. This policy, as we shall see later, is far from that and has a strong cash-based component, provides space only for consultation with PAFs and has no provisions for addressing second generation problems and making the livelihood sustainable. At best the policy has provision for 'resettlement' or 'relocation' but attempts no 'rehabilitation' even though it admits that displacement has other traumatic psychological and socio-cultural consequences.
- 8 The NPRR extends its mandate to include landless agricultural workers, forest dwellers, tenants and artisans in its definition of PAFs, but on the whole remains gender blind. Contrary to the centrality of the idea that, 'avoidance of involuntary resettlement where feasible or minimising it by exploring all alternatives' should be an integral part of any R & R policy, the policy accepts displacement and then appoints the Administrator for Resettlement & Rehabilitation who will work to minimise displacement of persons and identify non-displacing or least displacing alternatives in consultation with the requiring body.
- 9 The overall policy is poor in details and specificity of provisions of R & R and rich only in ambiguities and probableness, leaving much to the interpretation of officials concerned. It has a very restricted mandate and covers only development induced displacement in rural areas and has no provisions for disaster induced or conflict induced displacement. but very unfortunate that, it fails to introduce provisions which would allow participation of DPs, IDPs and civil society in the process of planning of the project, seeking non-displacing alternatives, or in sharing intended benefits accruing out of the project.

- 10 The core of the right to property is a right to the thing itself not a right to the value of it. Therefore, compensation is not a replacement for property, it is only indemnification for the losses of the private owner. So, the right to property cannot be regarded as merely a right to compensation and it cannot be said that a state has a power to take private property as long as it compensates the owner. Therefore in order to take private property by paying compensation there should be strong public necessity. Displacement is increasingly being understood a multi-dimensional phenomenon affecting people's lives in their entirety, encompassing not only the economic but also the social and cultural spheres, all of which feedback into each other. Once people are shifted they lose bargaining power sense of mutual obligation disappears amongst them. In the wider interest of the nation; the state has exercised its prerogative of eminent domain. In the greater goal of greater number of pole sorrows and problems of the project affected minority are lost sight of or else they are treated on par with the constitutionally guaranteed 'marginal' or the 'disadvantaged'. In other words, they must be treated specifically and uniquely. Further in many major projects government have typically followed an incremental approach to the resettlement of the displaced people. In that people were shifted and resettled according to construction and submergence schedule.
- 11 The Bill to amend the land acquisition Act is specifically mandatory for Resettlement & Rehabilitation of the displaced to be internalized and integrated with the acquisition process. Further, the proposed legislative amendments to the Acquisition law and the brand new draft of law on R&R are yet to be passed by the Congress Government i.e., called as Acquisition, Rehabilitation and Resettlement Act 2012. Since then the state first exercised its prerogative to acquire land for public and private developmental and industrial projects the issue of the resettlement and rehabilitation of people and communities displaced by the projects has been a subject of great controversy. The issue of just compensation for people whose lives are disrupted and lands are acquired by the state gets aired with each large industrial or infrastructure project.

- 12 The repealed Land Acquisition Act, 1894 provides for payment of cash compensation and to those who have a direct interest in the title to such land. Thus, under the Act, the legal obligations of the project authorities do not go beyond monetary compensation to a narrowly defined category of project affected persons. The Act by restricting monetary compensation for land ownership forecloses taking account of the multiple dimensions of loss and dispossession that occur as a result of displacement, some of which are very difficult if not impossible to quantify in monetary terms. The researcher had made some provisions of the land acquisition Act 1894 and found that the Act is grossly inadequate of its scope which does not go beyond cash compensation to person who hold legal land titles, thereby excluding several other categories of losses and making ineligible for compensation vast number who are genuinely project affected but without any formal land titles. Cash compensation appears to be clearly defective as a basis of resettlement policy. There is no obvious way of putting a 'price' on many of the losses experienced by displaced persons and experience also suggests that large cash payments tend to be poorly used by their beneficiaries. Till then no specific law to address resettlement and rehabilitation exists. A draft rehabilitation and resettlement bill largely the consequences of the land related agitations of the last decade was introduced in parliament in 2007 and in 2011. Its passage through parliament, like the Land Acquisition Amendment Bill, has been delayed because of political considerations. Rehabilitation & Resettlement policies will be first step in the right direction. Its critics see the policy as a whitewash; it does not give the state a mandate to act, but only suggests that it should do so. Its proponents see a policy, however, flawed, as better than no law at all.
- 13 Lastly the researcher may give concluding remark regarding the disaster management programme which follows to the realities of the shame of having different type of world's worst disasters, India has become a glowing example for other countries to follow in not only responding within the country during regional catastrophic disasters, but also to respond simultaneously in the neighboring countries.

- 14 India has also shown the path to the world for starting disaster management education from middle and high school. This generation of middle and high school students will make probably near revolution in community based disaster management, which is the only proven method of disaster management; and it is hoped that India would be world leader in disaster management. Probably casting legal duty on citizens for providing help during disasters would also make India leading the way.¹⁵⁹
- 15 There is paradigm shift in India from reactive approach of responding and calamity relief after the disaster to proactive approach of disaster prevention, preparedness, and mitigation. The enactment of Disaster Management Act, 2005, establishment of National Disaster Management Authority with the Prime Minister as its Chairperson, and disaster management training by the National Institute of Disaster Management along with the Disaster Management Cells of the state Administrative Training Institutes will help in India becoming disaster resilient.¹⁶⁰
- 16 There are no long-term, inclusive and coherent institutional arrangements to address disaster issues with a longterm vision. Disasters are viewed in isolation from the processes of mainstream development and poverty alleviation planning. For example, disaster management, development planning and environmental management institutions operate in isolation and integrated planning between these sectors is almost lacking.
- 17 Absence of a central authority for integrated disaster management and lack of coordination within and between disaster related organizations is responsible for effective and efficient disaster management. State-level disaster preparedness and mitigation measures are heavily tilted towards structural aspects and undermine nonstructural elements such as the knowledge and capacities of local people, and the related livelihood protection issues.

¹⁵⁹ Kailash Gupta, “Disaster Management and India: Responding Internally and Simultaneously in Neighboring Countries”, website- <http://www.pddms.in/downloads/FEMA%20%20Disaster%20Management%20and%20India.pdf>.

¹⁶⁰ *Ibid.*

18 The Researcher may conclude by recommending that, with a greater capacity of the individual/community and environment to face the disasters, the impact of a hazard would be reduced.

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