

Development Induced Displacement in India: A Perspective of Human Rights

*Dr. Vinod Kumar*¹

I. Conceptualising Development Induced Displacement

“Development Induced Displacement” can be defined as- forcing communities and individuals out of their homes, often also their homelands, allegedly for the purposes of development². It is a subset of forced migration. Each year approximately fifteen million people are forced to leave their homes worldwide following big development projects³. India is one of the worst victims of development induced displacement. No country in the world has seen displacement and mass exodus of the poor and indigenous population due to “developmental projects” greater than India did. The extent of the problem can be understood from the fact that India has 3600 large dams and 700 are under construction.⁴ India comes third in terms of number of dams in the world after USA and China. According to official statistics about 50 million poor people have been displaced in India during last 50 years out of which 21.3 million have been displaced exclusively due to construction of dams, 16.4 million for mine, 1.25 million for industrial development and 0.6 million for wildlife sanctuaries and reserved parks⁵. However, only 27% have been rehabilitated 73% displaced people are still waiting to be rehabilitated for years and years. In the present economic paradigm, displacement has become synonymous with development and its inevitability is unchallenged. Even the loudest of its critics regard it as a necessary evil and only ask for rehabilitation of the displaced, rather than

¹ Asst. Professor of Law, National Law University (NLU) Delhi

² Bogumil Terminski, *Oil-induced displacement and resettlement. Social problem and human rights issue*, Simon Fraser University (March 2012), Social Science Research Network available on http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2029770 retrieved on Jan. 19, 2015 and also see “Development Induced Displacement”, by Bjorn Patterson (May 12, 2005) <http://www.narmada.org>

³ Michael M. Cernea, "Development-induced and conflict-induced IDPs: Bridging the Research Divide", *Forced Migration Review*, Special Issue (December): 25-27, 2006; A. Oliver-Smith (ed.), *Development & Dispossession: The Crisis of Forced Displacement and Resettlement* (School for Advanced Research Advanced Seminar), 2009.

⁴ ABANDONED : *DEVELOPMENT AND DISPLACEMENT*, (2010), Perspective publication, Delhi, p. 69

⁵ Reference No.30/RN/Ref./December/2013, Lok Sabha Secretariat, Parliament Library and Reference, Research, Documentation and Information Service

questioning paradigm of development itself which ultimately leads to displacement.

The modernization theory of development views development as a transforming traditional, simple third world societies into modern, complex westernized ones through large scale capital intensive development projects accelerating the pace towards allegedly “a brighter and better future”. In the traditional paradigm of development land was considered as a valuable resource integral to the livelihood of masses. However, in the modern paradigm of development after economic globalisation land has become just a commodity up to be bought and sold or if it can not be bought and sold, it can be snatched away by force. In this drastic shift in the paradigm of development uprooting of the people is considered a *sine qua none*. Displacement, migration and consequences thereof are considered not only as unavoidable collateral damages but also a condition precedent for development. Walter Fernandez who has done systematic study of the development induced displacement says, “Forced population displacement is always crisis-prone and the displacement of different kind can not be looked in isolation. They are linked with each other and form an inevitable part of the entire paradigm of development. Hence, the analysis of displacement cannot be divorced from the analysis of the paradigm of development”.⁶ In brief, the development induced displacement in under developed and developing countries leads to *twenty point risks* i.e. 1- homelessness, 2- landlessness 3- migration 4- loss of livelihood 5- loss of access to common resources 6- food insecurity 7- increased morbidity and High mortality and increases the risks of epidemics and health problems⁷ 8- alienation and Social exclusion 9- child labour, loss of childhood and child education 10- loss of human dignity 11- rupturing of social bonds 12- loss of bio-diversity 13- development of culture of poverty due to psychological internalisation 14- downward mobility of occupation to the extent of begging and Begar (forced labour) 15- forced prostitution i.e. trafficking of tribal girls 16- high rate of criminality 17- high rate of suicide or alternatively taking up arms against the system 18- ecological destruction 19- pollution and 20- loss of culture and cultural identities. Besides, it leads to the major change in land use patterns, disappearance of forests and naked exploitation of natural resources. The above stated *twenty point risks* are not mutually exclusive but interdependent and intricately woven with each other in terms of cause and effect relationship.

⁶ Walter Fernandez, “Singur and the Development Scenario”, EPW, Vol. 42, Issue No. 03, (January 20, 2007)

⁷ Michael Cernea, *Social Integration and Population Displacement*, International Social Science Journal, (1995,) p. 143/1

Historically speaking, the phenomenon of development induced displacement was associated with the nation building process through the construction of multipurpose development projects like construction of hydroelectric dams for power and irrigation purposes, mining, creation of military installations, airports, industrial plants, weapon testing grounds, railways, road developments, wildlife projects and reserved parks, forest and sanctuaries and urbanization, etc. A variety of sources including gazettes, official documents, reports indicate that there is a wide range of development projects which are officially supported by governments across the countries both in rural and urban areas.⁸ While such projects have potential to bring enormous benefits to society, they also impose costs, which are often borne not by the rich but essentially by the poor and indigenous people. Development projects lead to compulsory acquisition of land and mass displacement of poor people. This phenomenon is not localized but global with variance of magnitude and intensity. The obvious result of development induced displacement is “migration” from villages to the cities.

II. Development Induced Displacement: Urban Spectrum of Human Rights Violations

Development-induced displacement must be seen in a larger spectrum of human rights. The phenomenon not only contains socio-economic dynamic but also has politico-cultural dynamics operated through laws, policies and political processes. Development induced displacement affects a huge chunk of human population at multiple levels in multiple ways violating their human rights and fundamental rights. In India, displacement has manifested in varied forms in different parts of the country. It includes rural displacement and urban displacement both. According to the official statistics, India has second largest slum of the world after Kenya. India has about 49,000 slum clusters⁹ and majority of them are located in metropolitan cities. Urban slums are marked by ghettos with dilapidated conditions of houses or shanties with overcrowded population of the locality with congested and filthy waterlogged streets, unhygienic living conditions, poor ventilation, inadequate lighting, scarcity of potable water, lack of toilet facilities etc. Question may be asked as to who these slum dwellers are and where have they come from? Certainly answer lies in the phenomenon of rural and tribal displacement. Majority of them are the displaced Dalits, tribal and poor rural bearing the brunt of “development” migrated to cities to meet their hunger and starvation. Majority of them are the victims of the development projects. Further, the slum clusters where they live, the living

⁸ Rajni Kothari, *The Displacement and the Deprived*, “Resource Rich Tribal Poor”, A Report by Action Aid and Indian Social Institute Delhi (2008), p. 45

⁹ News Report published in Economic Times, Delhi (June 17, 2010)

conditions are hellish without even basic amenities as narrated above. Most of the population of these slum clusters were self reliant agrarian population before migrating to cities. However, migration has now reduced them either to wage labourer or to poppers and beggars. Quite a few can be found begging on the traffic signals of the cities anywhere in India. Moreover, their migration to cities is perceived as a ‘nuisance’ and they are branded as “parasites or criminals” by the “urban civilized world”. Their presence in the cities is tolerated with a considerable grudge.

Development projects are not only a cause of rural displacement but are equally a cause of urban displacement as well. In urban areas the development projects like creating Metro rail, constructing flyovers, shopping malls and sky scraper real estate or displacement in the name of beautification of metropolitan and mega cities have caused a massive displacement within urban areas. For example, recently during the preparation of the Commonwealth Games during the process of image polishing of the city of Delhi thousands of shanties were demolished forcibly and thousands of poor people were forced to displace considering their presence a dark and ugly spot on the face of the cities. As stated above majority of the victims of development induced displacement in cities are none other than Dalits and minorities somehow surviving in ghettoised living conditions. Instead of improving their living conditions state believes in kicking them out from the cities as if they are not the citizens of the country. This urban displacement leads to inter cities migration. Development induced migration not only taken place from villages to urban areas but also takes place within urban areas.

One of the significant causes of development induced migration within urban areas is the declaration of the status of slum dwellers as illegal encroachers on public land. It is presumed to be a monopoly of state to declare as to whose status is legal and whose status is illegal. Determination of the legality of existence and status in the metropolitan area is a policy prerogative of state. That means, whose existence can be tolerated in the cities and whose not, depends on the whims and fancies of state. Simple presence of a poor person in a metropolitan city is offending and a legitimate reason of displacement. The irony is that acquiring a small patch of land by poor people to have makeshift shanties is declared “illegal” and the govt. renders them homeless by demolition drive and that too sometimes in chilling winter. But on the other hand, acquiring land by govt. for real estate mafias is considered a “public purpose”.

During Emergency period, the *Urban Land (Ceiling and Regulation) Act, 1976* was enacted by the Central govt. to impose ceiling on vacant land in urban areas. It ostensibly sought to prevent “the concentration of urban land in the hands of a few persons and speculations and profiteering therein” and to bring about “an equitable distribution of land in urban agglomerations

to sub serve the common good”. This central legislation was later on repealed by *The Urban Land (Ceiling and Regulation) Repeal Act, 1999*, on the pretext that it locked up land and pushed up the housing prices. However, the real intention was to cater the interests of the real estate mafias. Then, the Master Plan 2021 and Jawaharlal Nehru National Urban Renewal Mission (JNNURM) conceived which collectively conceptualise the idea of linking 63 cities together with the FDI of Rs. 50,000 crores¹⁰. This is a joint venture of the central and various state governments. The Master Plan 2021 and JNNURM have actually been conceived to facilitate the entry of Foreign Direct Investment (FDI) which actually strokes the last nail in the coffin of the rights of slum dwellers as they further intimidates urban slum dwellers by authorizing govt. to expel them out of the cities. This will be a kind of further marginalising of their already peripheral existence. This has deprived slum dwellers not only from their right to shelter but also from right to livelihood. The reflection of development induced displacement is brazen in under developed and developing countries.

III. Development induced Displacement: Rural Spectrum of Human Rights Violation

It is not an exaggeration that during the last 20 years of economic liberalisation, millions of hectares of agricultural lands have been acquired for non agricultural purposes and that has directly and adversely impacted the livelihood of millions of poor agricultural labourers. Dalits, Tribal and indigenous communities constitute 80% of the total displaced population of the country. Traditionally, state was the principle agent of development induced displacement for public purpose or for its own sake. However, the contemporary development induced displacement takes place in disguise. Now poor Dalits, tribal and indigenous communities are displaced by the state and its instrumentalities acting as agents on behalf of the private corporations. Now displacement is done under the garb of national development through economic development strategies which are actually for the benefit of the private corporate entities i.e. national and multinational corporations. Corporate, ruling elites and bureaucrats are the direct beneficiaries while tribal, Dalits, indigenous communities in rural and urban areas are the direct victims and looser of the development projects. Enforced displacement in the name of or for the purpose of creating Special Economic Zone (SEZ) may be cited as an apt example. There are 371 officially recognised SEZs in India but only 169 have come into existence and rest

¹⁰ Appraisal of Jawaharlal Nehru National Urban Renewal Mission (JnNURM) Final Report – Volume I, (March 2011) prepared and presented by Grant Thornton, India, the Appraisal Agency for the Jawaharlal Nehru Urban Renewal Mission (JnNURM).

have not yet actually come into existence even after years of land acquisition from the poor. It rises fundamental questions of power structure and power relationship between state vis a vis poor. The questions are, whether the ruling elites living in palatial heavens in megalopolis and advocating the policies of forcible acquisition of land are they ready to sacrifice even an inch of their land for the sake of development projects. If not, then why every time poor are expected to sacrifice their land, forests and livelihood in the name of development? Why poor are supposed to pay the price for the development which they themselves in no way are the beneficiaries of?

In fact, one of the most devastating impacts of the current paradigm of development worldwide is that it has caused differentiation within the tribal themselves in terms of language, occupation, education, religion, social and political orientation and socio-economic status which is ultimately wearing off their cultural identities in fundamental ways. Development induced displacement apart from threatening life, resources, livelihood and natural environment; it also threatens culture and cultural identity of the victims. This is the least talked about aspect of development induced displacement discourse. Tribes are not only existentially dependent on forest but their cultural construct and religious worldview are also shaped by forests and forest environment. Forests represent their sacred groves and spaces. They are not only the abode of gods and deities but also sites of religious and collective rites.¹¹ Displacement from their traditional lifestyle has snapped them from the core of their religious, cultural and spiritual existence. Therefore, development induced displacement is a profound socio-economic and cultural disruption for the victims of the development. Development agenda sometimes becomes a tool for ethnic dislocation and disempowerment in the disguise¹² Dislocation breaks up living patterns and social continuity. It dismantles existing modes of production, disrupts social networks, causes the impoverishment of many of those uprooted and threatens their cultural identity. This is an irreparable sentimental loss which has always been an unexplored area of research. Policies of rehabilitation often inadequate not only in terms of their livelihood but also in terms of their cultural, psychological and ecological rehabilitation. If the current paradigm of development brings about destruction and devastations in such a gigantic scale in multiple forms and manifestations, it becomes absolutely necessary to redefine it. It is really a development or “developmental terrorism”.

¹¹ “Resource Rich Tribal Poor”, *A joint Report by Action Aid and Indian Social Institute*, Delhi (2008), p. 6

¹² Balakrishnan Rajagopal, *The Violence of Development*,” Washington Post (August 9, 2002,)

Earlier the development projects (in whatever name they are initiated) which were considered as the building block of national development have now proved curse for the displaced masses as it is marked by mass impoverishment and mass violation of human rights in India¹³. Development induced displacement has resulted into high alcoholism marked by rise in domestic violence in India¹⁴. In every category of victims of development, women and children are the worst hit and pay the highest price of development. The scale of violence against women, sexual abuse of women and children and human trafficking has increased exponentially. Displaced people often internalize a sense of helplessness and powerlessness because of their encounter with the powerful external world.

IV. Law as an instrument of Displacement

The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Forest Conservation Act, 1980 (as amended in 1988) prohibit the diversion of forest land for non forest purposes. The Act divests the state governments of the power to take away the status of reserved forests from any forest without the prior permission of the central government. 73rd Constitutional Amendment Act, 1992 inserted Part IX to the Constitution in order to ensure the local self govt. by making a scheme of three tier (village, block and district) system of democratic decentralization of policy making and implementation. Article 243G under this Part authorized the state to confer power to these grass root institutions in relation to the matters of development including the issues of the Eleventh Schedule. Thereafter, Panchayats (Extension to the Scheduled Areas) Act (PESA), 1996 was enacted. PESA was extended to Part IX of the Constitution to Scheduled Areas. The provisions of PESA made it mandatory to have land acquisition for the purposes of development projects in the Scheduled Areas only with the prior consultation (consent) and recommendation of the Gram Sabha. It also prohibits the state legislature from enacting any law under Part IX of the Constitution which is inconsistent with the provisions of the Act. Not only this, PESA recognizes the ownership rights of minor forests produces, planning and management of minor water bodies and prevention of alienation of tribal land along with the traditional tribal right of inhabitation in the Scheduled Areas. But most of the state governments in exercise of the powers under Article 243G of the Constitution have diluted the powers of Gram Sabha. Instead of strengthening Gram Sabhas, they have been made subservient to the executive powers of the district administration.

¹³ The study conducted by National Commission for Women (NCW). NCW Report (2004) as reported in Pioneer (January 5, 2005)

¹⁴ *ibid.*

Here it is important to point out that Fifth and Sixth Schedules of the Constitution of India provide unfettered powers to the Governors of the states to protect the interests of the tribal and indigenous people within the Scheduled Areas. The powers of the Governors include the power to prohibit the transfer of tribal lands to non tribal. However, history has been a witness of the fact that no Governor has ever exercised these powers to protect the interests of the tribal of the Scheduled Areas. If the powers were exercised by the Governors, forcible acquisition of land within the Scheduled Areas would not have taken place in so ruthless and unfettered manner. Moreover, no law yet been passed to extend the provisions of Panchayati Raj to the areas of Sixth Scheduled of the Constitution. The state insensitivity to the tribal cause can be understood that even the recommendations of Bhuria Committee appointed by the Govt. of India itself have not been accepted. One of the most important recommendations of the committee was that in all industrial enterprises set up in the Scheduled Areas, other than small ventures the community should be made owner with 50% share in its favour by virtue of its allowing the industry to use the local resources. Another important recommendation of the Committee was that there should be a complete ban on transfer of agriculture land for non agriculture purposes. Lastly, after due process of consultation with regard to land acquisition for industrial development the decision of the Gram Sabha must be considered final.

In pursuance of the doctrine of *Eminent Domain*, the colonial regime enacted *Land Acquisition Act, 1894* to acquire people's land in the name of "*public purpose*". It is to be further noted that *public purpose* must mean any purpose or necessity which is directly related with the direct benefit and upliftment of the people who are being so displaced. Such purpose or necessity, for naming a few, includes construction of schools, dispensaries, hospitals, *Anganwaris*, fare price shops, community centres, water tanks, ponds and vocational training centres etc. The "public purpose" or "public necessity" surely does not include creating of Special Economic Zones or setting up of Mega Power Projects that would cater to the needs of urban elites and the Corporate Houses and has nothing to do with the upliftment of the local population. The Act was amended in the 1984 to make sure that the govt. is allowed to acquire land not only for public purpose but also for other purposes including for multinational companies. Section 17(1) of the Act empowers collector to acquire private land in case of "public emergency". However, the "emergency clause" is frequently abused by acquiring land for private companies and real estate mafias. Moreover, there was no provision in the Act which provides that an individual's land can be acquired only when there is no alternative land available so that there would be minimum displacement and that too when it is absolutely inevitable. Another problem with the Act was that the Act was based on the presumption of individual ownership of land and it does not recognise the community ownership of

land. After a lot of public outrage and people's movement against unjust land acquisition the Act was further amended and re-titled in 2013 as *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* in order to provide it a human face by providing just and reasonable compensation and adequate rehabilitation clause. The biggest blow that the Act of 2013 has given to tribal, indigenous and poor rural is that it has shifted the focus from "land right" to "compensation" as the very title of the Act suggests. This is actually stricken the last nail in the coffin of land right of poor farmers. Even British Raj had not given this big blow as they had never denied the right of farmer over his land and the courts were never deprived from their legitimate jurisdiction to grant stay against forcible land acquisition. Under the Act of 1894 the ownership of the landholder was undisputed and govt. could not take it away directly bypassing the legitimate jurisdiction of court to grant stay against forcible land acquisition. However, the Act of 2013 has done away with this right. Now according to the new Act land owner would not be able to get stay from courts as courts have been deprived from their legitimate jurisdictions to grant stay. Therefore, a poor farmer would have no other option but to hand over his land for compensation. Now in 2015 the new political regime at the Centre is trying hard to dilute it even further by amending it adopting unusual legislative method of Ordinance in order to cater the interests of corporate giants eager to make Foreign Direct Investment (FDI).

Here it is necessary to remind the legislative history of Ordinance in India. In brief, during the Constituent Assembly Debates (CAD) the chief architect of the Indian Constitution, Dr. B.R. Ambedkar had justified the incorporation of Ordinance promulgation power¹⁵ of the govt. through the President of India (Art. 123 of the Constitution) and similar powers to state govt. through Governor (Art. 213). He cited the examples that similar provisions existed in Britain under British Emergency Powers Act, 1920 where the king had power to promulgate Ordinance. Also, similar Powers did exist with the Governor General under Section 42, 43 of The Govt. of India Act, 1935. Under Section 43 of the Act even the Governor General had parallel legislative powers for issuing Ordinance bypassing the legislature. However, Indian Constitution does not provide such kind of blanket powers to the President or the Governor. According to Dr. Ambedkar, Ordinance issuing power is *extraordinary legislative recourse* can be resorted to only in certain situations complying with certain conditions. These are as follows- 1. when there is *sudden and immediate situation* which was not contemplated earlier; 2. when the contingency requires urgent promulgation of law and such promulgation is not in violation of fundamental rights; 3. when the legislature is in recess, not in session, and 4. The ordinance must be laid down before the each house of the Parliament (legislature) within six weeks

¹⁵ Constituent Assembly Debates, Vol. VIII, Book 3, p. 213, 214

when the legislature re-assembles and the Ordinance must be approved by both the Houses of the legislature within such period. However, in the present case, there is no sudden and immediate situation of public interest and the Winter Session of the Parliament just over on Dec. 24, 2014. Moreover the Budget Session is due on Feb. 23, 2015. In the present case exercise of this extraordinary power is in clear negation of the intent of the founding fathers of the Constitution. Clearly, the situation does not demand any extra ordinary legislative recourse. However, the new political regime seems to be in haste and determined and resolute in compromising public interests for the sake of corporate giants. That is the precise reason why it is bringing amendment in the Act of 2013 through Ordinance to facilitating corporate for going ahead with their business ventures plundering people's resources. Therefore, Karl Marx's *Instrumentalist Theory of Law* seems to have clear application in Indian context of land acquisition. According to Marx, law is a tool in the hands of ruling classes to plunder people's resources and oppress the poor to perpetuate poverty. According to Marx, state holds all the economic resources through the modes of production, use their superiority through the legal framework, in order to aggravate poverty, rather than alleviating it. Therefore, Indian legal framework must be seen in this Marxian perspective.

V. Role of Judiciary

As far as the judicial position on the subject matter is concerned, it seems to have been shaky and influenced by the political considerations. On the one hand, the Andhra Pradesh High Court in *Samatha v. State of Andhra Pradesh*¹⁶ case in 1997 put a complete ban on the transfer of tribal land to non-tribal or to private industries. It was held that leasing out tribal land to non-tribal in the Scheduled Areas for mining purposes is the clear contravention of the Fifth Schedule of the Constitution. The Court directed that at least 20% of the net profits should be set aside as a permanent fund for establishment and provisions of basic amenities and basic social needs like health and education. However, the mala-fide intent of the Central Govt. can be understood by the fact that the Ministry of Mines issued a secrete note (No. 16/48/97-M.VI) dated July 10, 2000 to the secretaries of all states which proposed to amend the Fifth Schedule itself to remove the legal basis for the Samatha judgment and to get it passed in the Parliament by a simple majority so that the interests of the capitalist/industrialist class might be catered.¹⁷ Not only the central government, different state governments have also devised different camouflage and clandestine ways to subvert the Samatha judgment.

¹⁶ (1997) 8 SCC 191

¹⁷ Supra note 3, p. 15

The Supreme Court of India on the other hand, in *Ram Chand v. Union of India*¹⁸ case held “The power to acquire private property for public purpose is an attribute of sovereignty and essential to the existence of a government. The power of eminent domain was recognized on the principle that the sovereign state can always acquire the property of a citizen for public purpose lie good, without the owner’s consent”. This judgment has actually helped the govt. to snatch away lands of people in the name of “public purpose” and under the most abusive doctrine of “eminent domain” and to carry out the mala-fide intent of the govt. This judgment has indeed legitimised the injustice caused to poor by the acts of the executive and the legislature. The subsequent judgements of the Supreme Court have simply affirmed and reaffirmed the ideological stand taken by it in Ram Chand’s case. Therefore, it is not inappropriate to hold that the apex judiciary also seems to have adjusted itself ideologically according to the norms of neoliberalism which has ultimately resulted into unspeakable sufferings and miseries of the displaced masses.

¹⁸ 1994(1) SCC 44, p. 49-50