

## **DEVELOPMENT INDUCED INTERNAL DISPLACEMENT VIS-A-VIS REHABILITATION, RESETTLEMENT AND COMPENSATION: A CRITICAL APPRAISAL OF PREVAILING LEGAL PRINCIPLES AND POLICY TREND IN INDIA**

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### **I. Introduction**

PROLOGUE — The current pattern of economic development which has been constantly invoked to justify the forced eviction of people all over the country, are themselves incompatible with the goals of creating wider conditions of equity and social security. Projects that involve displacement often lead to the loss of livelihood of the poor, the marginalized the powerless and it all happens in the name of national development. The parameter of development has found favour with planners makes displacement of large numbers of people, even sole communities, an unavoidable event. The utilitarian principle of maximum happiness for the maximum number of people has been invoked to lend respectability to making the lives of communities into a cost, in the public interest. The forced displacement of people for the purpose of various “development projects” such as big dams, large industrial or mining projects, highways and flyovers and so on, has been going on in India for a very long time.<sup>3</sup> Some dams, barrages and canals were built in British time, but after independence and with the commencement of centralized economic planning there was an explosion of such projects. These projects were formulated, designed and executed by engineers, and concerns about environmental impacts or about the displacement of masses did not enter into the process of planning and decision-making. Displacement due to these projects takes place because the masses owning these lands are needed for the construction of dams and reservoirs. There are different estimates of the total number of persons that have been displaced by developmental projects in general and by big dams in particular.

### **II. Legal Framework and Policy Issues**

Land Acquisition Act of 1894 is the legislation at the centre of debate when displacement takes place. The Act is significant as it is of colonial

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3 Ramaswamy Iyer.R. “Towards a just Displacement and Rehabilitation Policy”, Economic and Political Weekly, July 28, 2007 at p. 3103

vintage. Under this Act, a private land can be acquired by the state for a “public purpose”. In turn, compensation has to be paid for the land or property taken over, based on historical cost and a solatium.

Further, the Act is a statutory statement of the state’s power of ‘eminent domain’ which vests the state with ultimate control over land within its territory. It denies to the individual, from whom the land is acquired, the right to exercise choice as to whether to part with land or not, so long as the acquisition is avowedly for a ‘public purpose’. First, the issue of ‘public policy’ and the ‘public interest’ needs to be examined. The composite substantive due process created by the Supreme Court in the *Maneka Gandhi Case*<sup>4</sup> cast a constitutional duty to examine whether any infringement of Fundamental Right is a reasonable restriction in the public interest. Hence, public policy or public interest which has far reaching effect, which irreversibly alter not just the lives of individuals but nature and history itself must be properly arrived at. The Act neither defines public purpose, nor does it lay down any procedure as to how public purpose is to be determined. The power to determine its definition rests essentially with the state. The power of eminent domain conflicts most obviously with the constitutional imperatives contained in Part XVI of the Constitution of India, designed to protect Scheduled Tribes. Experience with public purpose has demonstrated its utilitarian potential. Utilitarianism is a pragmatic philosophy advocating the seeking of the greatest happiness of the greater number. It does not actually advocate the marginalization of those who get excluded from the benefits of the system. What is public purpose for a category of person may represent the trauma of displacement for another. The exercise of state power is governed by the identification of public purpose, without the constraint of addressing the adverse impact it may have on the affected population. The doctrine of eminent domain asserts the right of the state over land and related resources within the territory. However, the Court has reiterated its stand in *Daulat Singh Surana v First Land Acquisition Collector*<sup>5</sup> and held that the power of eminent domain can be exercised by the state only in public interest. However, the determination of ‘public interest’ is left exclusively to the state agencies on a case by case basis not forgetting the fact that their decision regarding the land requirement for projects can often be arbitrary, leading to the acquisition of land far in excess of actual requirement, thus causing displacement that is better avoided.<sup>6</sup>

In India, today, there is no framework for private acquisition as there have been some instances of private parties that are in hurry and do not go through the Land Acquisition Act, even for projects of significance. There is

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4 AIR 1978 SC 597

5 (2007) 1 SCC 641

6 Hari Mohan Mathur, “Resettling People Displaced by Development Projects: Some Critical Management Issues”, *Social Change*, Vol. 36 No. 1, March 2006 at p. 42

pressure on the government of the day to acquire land for investment by private parties without mentioning the public purpose behind such acquisition.

However, as every case of public purpose can not be anticipated or specified, yet there is a great need to describe public purpose and delimit the same. It would be appropriate to provide a special window in the law for the government to bring in a public purpose that is beyond the specified list. The government can announce the proposal, invite challenges and overcome the same in a court of law and then go ahead with the use of eminent domain. On the other hand, when the government chooses to acquire land under public purposes mentioned in the Act, it should be able to go ahead, with the onus being with the challenger to prove that public purpose is not involved.<sup>7</sup>

### **III. Process of Resettlement and Rehabilitation**

In India, we have noted that, the only national law regarding displacement is the Land Acquisition Act of 1894, which places no legal obligation on either the project authorities or the state beyond the limited conception of ‘adequate compensation’. The suffering of displaced people raise vital issue of constitutional norms and human rights including the right to survival and the basic right to live with dignity. The plight of uprooted tribal, systematically pauperized in their search for work and livelihood, so that ‘the nation’ may thrive and progress is particularly ironical in the light of special constitutional guarantees to protect Scheduled Tribes. However, it is not enough to talk about a policy only for resettlement and rehabilitation, rather, there must be a comprehensive policy of resettlement and rehabilitation, of which the cornerstone must be commitment to avoid and minimize displacement. The goal of such policy must be to facilitate affected populations to directly and substantially benefit from the project. Clearly, developmental rehabilitation has any chance of becoming a reality only if it is backed by effective sanctions of law and institution. Firstly, the narrow definition of ‘compensation’ in the Land Acquisition Act needs to be expanded to incorporate elements of developmental rehabilitation. Further, this definition must be in the nature of a legal and enforceable obligation on project authorities towards those, negatively affected by the project in various ways.<sup>8</sup> Moreover, in the process of displacement and their resettlement, there is always one sided decision making. The oustees are rarely consulted or even informed about the phasing and content of their rehabilitation package, their entitlements and their choices. In the famous case of Narmada Bachao Andolan v Union of India,<sup>9</sup> the Apex Court laid down that the displacement of tribals and other persons would not

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<sup>7</sup> Marris Sebastian, Pandey Ajay, “Towards Reform of Land Acquisition Framework in India” Economic and Political Weekly, June 2, 2007, at p. 2089

<sup>8</sup> Working Paper of the World Commission on Dams, at p. xxxvi, cited from [www.dams.org](http://www.dams.org) visited on 7<sup>th</sup> January 2008.

<sup>9</sup> AIR 2000 SC 3751

per se result in the violation of their fundamental or other rights. The effect is to see that on their rehabilitation at new locations they are better off than what they were. At the rehabilitation sites they will have more and better amenities than which they enjoyed in their tribal hamlets. The gradual assimilation in the mainstream of the society will lead to betterment and progress.<sup>10</sup> In N.D. Jayal v Union of India<sup>11</sup> the Court in express term laid down that rehabilitation is not just providing food, clothes and shelter. It is also about extending support to rebuild livelihood by causing necessary amenities of life. Rehabilitation of oustees is a logical corollary of Article 21. The oustees should be in a better position to lead a decent life and earn livelihood in the rehabilitated location. The prior rehabilitation will create a sense of confidence among the oustees and they will be in a better position to start their life by acclimatizing themselves with the new environment<sup>12</sup>. However, mere statement of policy of rehabilitation, however lofty, should not be acceptable without full details of the measures proposed to operationalise the principles. For instance, a policy like that of the Gujarat Government for Sardar Sarovar Project provides for a minimum of two hectares of irrigated land for various categories of displaced persons. What it does not contain is, where this land is located; how it would be obtained; and according to which time schedule. Hence, not only a detailed rehabilitation plan be prepared before a project is undertaken or assessed, but implementation should also be planned and prepared, carefully determining the time schedules. The state governments should also make a survey of these rehabilitation and resettlement sites, because these sites are often found inhospitable and their location are selected without reference to availability of livelihood opportunities.

#### **IV. Sustainable Development and Development**

The right to development encompasses much more than economic well-being and includes within its definition the guarantee of fundamental human rights. The ‘development’ is not related only to the growth of Gross National Product (GNP) but this idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process for the improvement of peoples’ well-being and realization of their full potential. It is an integral part of human rights. The principles of ‘sustainable development’ and ‘development’ have been followed from the decision of Supreme Court in Vellore Citizens’ Welfare Forum v Union of India<sup>13</sup> and M.C. Mehta v Union of India.<sup>14</sup> In both the cases the Court laid down that a balance between environment protection and developmental activities could only be maintained

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10 *Ibid.* at p. 3785

11 (2004)9 SCC 363

12 *Ibid* at p. 394

13 (2002)4 SCC 356

14 (1997)8 SCC 191

strictly following the principle of ‘sustainable development’. All environments related developmental activities should benefit more people while maintaining environmental balance. This could be ensured by strict coherence to sustainable development without which life of the coming generations will be in jeopardy. Further, in *Samatha v State of Andra Pradesh*<sup>15</sup> and in *Madhu Kishwar v State of Bihar*,<sup>16</sup> the Court reiterated its stand and held that right to development is also declared as a component of Article 21. Therefore, the concept of ‘sustainable development’ is to be treated as an integral part of ‘life’ under Article 21 of the Constitution. However, the Court in *Narmada Bachao Andolan case*<sup>17</sup> laid a different proposition. It held that merely because there will be a change is no reason to presume that there will be ecological disaster. It is when the effect of the project is known and then the principle of ‘sustainable development’ would come into play, which will ensure that mitigative steps are and can be taken to preserve the ecological balance. ‘Sustainable development’ means what type or extent of development can take place which can be sustained by nature/ecology with or without mitigation. Moreover, in *N.D. Jayal v Union of India*,<sup>18</sup> the Court held that adherence to sustainable development principle is a sine qua non for the maintenance of symbiotic balance between the right to environment and development. The right to environment is a Fundamental Right while on the other hand; right to development is also one. Hence, the right to ‘sustainable development’ cannot be singled out. Therefore, the concept of ‘sustainable development’ is to be treated as an integral part of right to life under Article 21. The weighty concepts like, intergenerational equity, public trust doctrine and precautionary principle which have been declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.

## V. Impact of Displacement

People displaced by development projects confront a variety of impoverishment risks that include landlessness, joblessness, homelessness, marginalization, increased morbidity, food insecurity, loss of access to common property and social disarticulation. Lack of attention to resettlement issues harms not only the project area people, but it has other serious harms as well. The cost of project building go up when the discontent people mount protest that completely upset the project implementation scheme, resulting in cost overruns. Those who view displacement from the point of view of its outcomes, would, in effect, say that though some level of displacement is inevitable its negative consequences are not. It is acknowledged that displacement causes several social, economic and environmental stresses that translate themselves into physiological, psychological, socio-cultural, economic, and ecological

15 (1996) 5 SCC 125

16 AIR 2000 SC 3751

17 *Supra.* note 8 at p. 3788

18 *Supra.* note 10 at p. 382

damage.

Women have become victims not just of displacement but also of development at large. It is also true that the discrimination of the disadvantaged groups in the society generally becomes harsher in the case of women. The travails of displaced women basically stem from the already existing gender inequalities within the society and family. Laws, policies and government procedures also discriminate against women. It is a consequence of the unequal social and political set-up that men get preference over women in the matter of land, security, physical space, food intake, jobs etc, within home, society and in the government. These inequalities accentuate in the event of a crisis situation like displacement resettlement<sup>19</sup>

In all the affected states, it is the fishing communities that have been hit hardest. It is a fact that a large number of dalits and other weaker sections are also affected. Already struggling with poverty and an uncertain livelihood they now find themselves completely destitute. Their dwellings are destroyed; their boats, nets and livelihoods lost; their families devastated and they find themselves totally on the streets.

Generally, development projects prove harmful to indigenous peoples, especially because they often lack legal recognition and a voice in governance issues. They are particularly vulnerable because they have no individual rights on land. In the absence of any legal title there is no basis on which to prepare compensation package in lieu of their lands that project acquire. Moreover, compensation packages, where provided, have been utterly inadequate to compensate for the loss of land, livelihoods, break-up of their communities and culture. The trauma of resettlement is also exacerbated for indigenous communities because of their strong spiritual ties to their land and their apprehension that once they move, their way of life will be lost forever. For indigenous people, disasters can be the consequences of failure to take people into confidence while selecting sites for their relocation. Resettlement sites developed of great cost but without the participation of affected people have often remained uninhabited. For relocation to succeed, it is necessary to share with the affected people, information on all relocation related matters, such as, the suitability of the site, the assistance needed in moving, the timing of the move, the income generation possibilities and other issues<sup>20</sup>

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<sup>19</sup> Work paper of the world Commission on Dams, “displacement, Resettlement, Rehabilitation, Reparation and Development”, [www.dams.org](http://www.dams.org), visited on 7<sup>th</sup> January 2008

<sup>20</sup> Hari Mohan Mathur, “Resettling People Displaced by Development Projects: Some Critical Management Issues” Social change, Vol.36. No. 1. March 2006, at p. 59

## **VI. Conclusion and Suggestions**

Every community has the right to develop and grow; making best use of what is available. The process of nation building should come from within and not from outside and this can be done by changing our vision toward displacement. First, need of the hour is a National Displacement and Rehabilitation Act, and not merely a policy, because at present displacement is being looked after by Policy. There should also be a statutory clearance for displacing people and a statutory backing for the resettlement and rehabilitation package to be offered to them. The framing of the Act should also provide for monitoring the actual implementation by setting up a National Displacement Rehabilitation Commission like the National Human Rights Commission.

Further, with respect to the Land Acquisition Act 1894, the acquisition needs to be made contestable, not merely in regard to compensation, but also in relation to the public purpose, which is the justification for displacement and such acquisition should also be made procedurally more humane and equitable. Furthermore, ‘public purpose’ can and should be specified in law as arising when specific land is required. The current option of not specifying the public purpose and not allowing challenge, in India, is most undemocratic and gives excessive discretionary powers to the government of the day.

The very important aspect of development induced displacement is that the people likely to be effected must be taken into confidence and provided with the fullest information about the development project from the earliest stage, so that the oustees can satisfy themselves about the desirability of the project, the non-availability of alternatives and the rationale of the proposed displacement.

Lastly, the Land Acquisition Act should confine the operation of ‘eminent domain’. The Land Acquisition Act should provide acquisition of land, only for governmental purpose, such as, building a school or hospital or a government office; and will not include private sector or public sector projects or programmes or activities, whether industrial, commercial or other and that in all such case, land will be purchased through negotiation.