

## **National Policy on Rehabilitation and Resettlement, 2007: Reading from Human Rights Perspective**

**Dr. Kailash Thakur<sup>1</sup>**  
**Dr. Harish Verma<sup>2</sup>**

### **Introduction:**

Since independence Indian governments are undertaking large developmental projects<sup>3</sup> to accelerate economic growth of the country. The governments in their zeal to promote economic growth of the country have forgotten that large developmental projects are displacing millions of people every year from their homes and land. The development induced displacement results into social breakdown of ties and cultural disruption. To mitigate sufferings of ousted families, their rehabilitation and resettlement(R & R) becomes responsibility of the governments. It is worthy to mention here that the track record of R&R of displaced families has been poor. Forced displacement without infusing adequate R&R leads to impoverishment of affected families. The inadequate and delayed rehabilitation and resettlement denies to displaced families basic human rights such as right to life and liberty, right to property, right to livelihood, right to shelter, right to privacy, right to food, right of self-determination and right to freedom etc. Therefore to minimize human rights violations project affected persons should be rehabilitated and resettled in time bound manner after displacement. Initially the government of India had enacted National Policy on Rehabilitation and Resettlement for Project Affected Families, 2003. The aim of the Policy was to ensure proper rehabilitation and resettlement for project affected families. But this Policy was criticized for being ineffective to address human rights dimensions of forced displacement. The Policy of 2003 failed to address human rights of oustees. Therefore, this Policy has been recently replaced with National Rehabilitation and Resettlement Policy (hereinafter called as NRRP, 2007).

Rehabilitation and resettlement is a significant and sensitive issue in the whole process of forced displacement, therefore the present discussion cannot be preceded further without discussing the meaning of these two terms in some details.

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1 Dean & Chairman, Department of Laws, H.P. University Summerhill-Shimla-171005

2 Assistant Prof. Law, L.R. Institute of Legal Studies-Solan 173212

3 These developmental projects include- hydro electric power projects, mining, construction of bridges, railway alignments, roads, expressway projects, industries, parks, sanctuaries, birds' parks, construction of five star hotels and motels and some other mini projects such as oil and gas development projects, mini air ports, metro links, holiday resorts, hi-tech city and golf clubs etc.

### A. Meaning of Rehabilitation:

Rehabilitation is a term of wide connotation. According to the Oxford English dictionary it means: ‘to restore to former privileges or reputation or to proper condition’<sup>4</sup>. According to a study rehabilitation refers to a process of reconstruction of the livelihood of displaced persons<sup>5</sup>. Some of the author defines it as a long-run trend towards ecological restoration and a restorative attempt to recover the features of a natural state<sup>6</sup>. Basically rehabilitation includes various measures and strategies to make the resettlement site ecologically sustainable and rehabilitable. It involves replacing or rebuilding the economic resources, cultural systems, social structures, and community support mechanisms that the displaced persons lose to the project<sup>7</sup>.

### B. Meaning of Resettlement:

Resettlement is one-time physical relocation. It has been defined as the final movement of displaced persons to a new relocation site after getting full compensation for their land and properties<sup>8</sup>. This movement may be voluntary or involuntary. However, in most of the cases movement is presumed to be involuntary and without consent of affected families. Involuntary movement of ousted families, destroys productive assets and disorganizes their production systems, and creates a high risk of chronic impoverishment that typically occurs along one or several of the dimensions<sup>9</sup>. Thus involuntary resettlement consists of two closely related yet distinct processes. One is that it amounts displacement of people and another one is that it includes rebuilding or reconstructing their livelihoods at new place of habitation. Thus the stages of resettlement include payment of compensation, acquisition of houses and properties, allotment of land and plots at new sites, free transport for shifting to new site, payment of *ex-gratia*, rehabilitation grant, subsistence allowance, development assistance, and ration card issued at new R&R site and civic amenities provided at new site<sup>10</sup>. All these stages make resettlement process more complex issue and a challenging

4 See, *Oxford Dictionary and Thesaurus*, edited by Julia Elliott 635 (10<sup>th</sup> impression 2007)

5 B.K. Sinha, “Draft National Policy for Rehabilitation: Objectives and Principles,” 15 June *Economic and Political Weekly* 1455 (1996).

6 Afroz Ahmad, “Rehabilitation for the Displaced-A Comprehensive Policy Approach,” XLIII, *The Administrator* 52 (1998).

7 Walter Fernandes, “Sixty Years of Development-Induced Displacement in India: Scale, Impacts, and the Search for Alternatives,” *India: Social Development Report* 92 (2008).

8 Afroz Ahmad, *supra* note 6.

9 Enakshi Ganguly Thukral, “Development, Displacement and Rehabilitation: Locating Gender,” 15 June *Economic and Political Weekly* 1500 (1996).

10 Afroz Ahmad, *supra* note 6.

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### **NRRP, 2007: A Reading from Human Rights Perspective :**

Human rights are basic rights of all which cannot be deprived even to project affected families. Like any other ordinary group of persons, ousted families are also entitled to enjoy human rights spelt out in Indian Constitution in part III and IV and in various International Human Rights Instruments of which India is signatory. But poor R & R plans, impinge upon several human rights of project affected families. Therefore, in the present paper the authors proposed to answer many questions related with R & R of displaced families. The questions are: - To what extent existing NRRP, 2007 addresses human right dimension of forced displacement? Are displaced persons being adequately rehabilitated and resettled? Whether the Policy is in consonance or in line with International human rights instruments relevant to govern rights of oustees? The study of the provisions of NRRP, 2007 from human rights perspective would try to answer all these proposed questions. The following are the important provisions of the Policy.

#### **1. Prembulary Message:**

The consequences of forced displacement are brutal in nature. It deprives people from their house and property. The UN Guiding Principles on Internal Displacement, 1998 (in short UNGPID, 1998) makes it clear that every human being has a right to be protected against being arbitrarily displaced from his or her home or place of habitual residence<sup>11</sup>. Similarly arbitrary displacement of persons from their property would be arbitrary it would amount, violation of Constitutional right to property guaranteed in Article 300A of Indian Constitution. The UNGPID, 1998 provides that prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects<sup>12</sup>. Therefore forced displacement should not be carried out in a manner that violates the mandate of Constitution and international laws to protect human rights of human being.

The NRRP, 2007 in its objectives<sup>13</sup> also focuses on how to minimize displacement and to promote, as far as possible, non-displacing or least-displacing alternatives? The objectives of the Policy are clear. It wants to displace less and negligible number of persons from their land and houses. If displacement would be unavoidable, the policy further would ensure adequate rehabilitation packages for the affected families. It has been seen that governments do not hesitate to

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11 The UN Guiding Principles on Internal Displacement, 1998 principle 6 (i)

12 *Id.*, Principle 7.1

13 NRRP, 2007 ch.II, para. 2.1 (a) to 2.1 (f)

acquire agricultural land for the construction of projects. But the Policy of 2007 makes it clear that acquisition of agricultural land for non-agricultural use in the project would be kept to the minimum. The policy provides that as far as possible, projects will be constructed on wasteland, degraded land or un-irrigated and multi-cropped land. These goals of NRRP would definitely serve very useful purpose especially in case of tribals and rural populations who depend on land to earn their livelihood. Thus, the introductory part of the Policy seeks to protect the basic human right of livelihood of project affected families by focusing only on acquiring waste land instead of acquiring irrigated and productive land for the projects. .

## **2. Amplitude of the Policy:**

The NRRP, 2007 extends its benefits to all displaced families whose land, property and livelihoods are adversely affected. In other words in addition to owners of land, the Policy also protects basic rights of other categories of persons such as tenants, the agricultural and non agricultural laborers, artisans, cobblers, goldsmiths, shopkeepers, potters and others who reside, work in and around villages likely to be submerged. These categories of persons cannot produce formal legal title of land in their possession. Under Land Acquisition Act 1894, these categories of persons are not entitled to claim compensation and any financial benefits. The forced displacement results into loss of traditional occupation, trade or business for them. Right to carry on any occupation, trade or business is a fundamental human right guaranteed to every citizen under Article 19(1) (g) of Indian Constitution as well as in several International Human rights laws.

Similarly, the individual studies<sup>14</sup> are also indicative that due to the loss of earning opportunities, displaced persons become victims of exploitation and trafficking for various nefarious purposes. Thankfully Policy of 2007 aims to provide to such categories of persons, financial support so that they may lead dignified life and may not fall in any nefarious business in the absence of earning opportunities in post displacement period.

## **3. Forms of Displacement and Stance of the Policy:**

Displacements are of different types<sup>15</sup> and all forms of displacement result into to brutal up-rootment of people from their land, houses and livelihood etc. Displacement denies basic human rights to oustees. The NRRP, 2007 not only

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14 H.R. Jhingta and Harish Verma, "Trafficking of Women and Children in India: A Study of Legislative Response," Vol.16 (2) Himachal Law Judgment 12-26 (2006); B.R. Sharma and Harish Verma, "Trafficking of Women and Children in India: A Study of Judicial Response," X M.D.U. Law Journal 73-82 (2005)

15 There can be three types of displacement- Development induced displacement, Conflicts induced displacement and Disasters induced displacement.

speaks to provide benefits to families displaced due to developmental projects but also extends its benefits to families displaced due to conflicts and disasters. The Policy is comprehensive to respond towards human rights dimensions of all forms of displacement.

#### **4. Provision for SIA:**

In case of development induced displacement, ousted people are compensated for the land and house being acquired. But it should not be forgotten that every person develop some emotional attachments to land, houses and livestock and the whole social structure around it. It is difficult to quantify this and pay compensation for it. When any developmental project is initiated, governments ignore to assess the overall social impacts of the project on oustees. The NRRP, 2007 provides that whenever it is desired to undertake a new project or expansion of an existing project, which involves involuntary displacement of 400 hundred or more families *en masse* in plain areas, or 200 hundred or more families *en masse* in tribal or hilly areas, DDP blocks<sup>16</sup> or areas mentioned in the Schedule V or Schedule VI to the Constitution, the Social Impact Assessment (SIA) study<sup>17</sup> shall be carried out. At time of undertaking SIA study, the government shall *inter alia*; take into consideration the impacts that the project will have on public and community properties, assets and infrastructure, particularly, roads, public transport, drainage, sanitation. The Policy further states that the governments shall take into consideration the impacts that the project will have on sources of safe drinking water for human beings and for cattle, community ponds, grazing land, plantations, public utilities, such as post office, fair price shops etc, food storage *godowns*, electricity supply, health care facilities, schools and educational/training facilities, place of worship, land for traditional tribal institutions, burial and cremation grounds, etc. It would not be out of place to mention here that any adverse impacts on surrounding environment results into denial of the right to water, education, health and common property resources etc. All these are indispensable human rights to lead a complete life. By introducing a provision for SIA, the Policy takes care of these basic human rights of ousted families.

#### **5. Provision for EIA:**

The construction of large developmental projects adversely affects quality of surrounding environment. The projects cause loss to flora, fauna and pollute water resources and ecology of the area. It is difficult to assess the overall adverse impacts of the projects on environment. Therefore, before starting

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16 The “DDP block” has been defined in Ch. III 3.1(i) of the National Rehabilitation and Resettlement Policy, 2007 which means a block identified under the Desert Development Programme of the Government of India.

17 NRRP, 2007, ch. IV, para 4.1-4.7

construction of a project, a proper study about surrounding environment and environmental risks involved in taking project should be taken into consideration. Rio Declaration in 1992 recognizes that while taking decision, whether a particular development project should be sanctioned or not human beings cannot be sacrificed at the alter of economic growth and while encouraging any developmental project, its effect on community must first and foremost be taken into consideration<sup>18</sup>. If it is not environmentally safe to construct a particular project in some areas, the project should not be taken. If construction would be taken without conducting EIA study, it would cause great harms to environment and amounts violation of environmental rights<sup>19</sup> which must be respected even at the time of carrying out any developmental activities. The new Policy makes a provision for Environmental Impact Assessment<sup>20</sup> (EIA) study to assess the impacts of proposed projects on surrounding environment. The Policy states that if it is not feasible to initiate a project, the idea of construction of project would be dropped. Thus the policy very well accommodates the issue of environment protection in its provisions.

#### **6. Public hearing, Participation and Counseling:**

A popular criticism of R & R plans and justifiability has been the lack of involvement of the affected persons in decision making. The involvement of displaced in the process would help the displaced families in physical, occupational, socio-economic, cultural psychological and ecological adaptation to the new environment. The participation of ousted people in decisions making would also helps to diminish risk aversions. Therefore public hearing and participation of ousted families in decision making is important for the success of rehabilitation and resettlement plans.

The NRRP, 2007 has a lot of scope for extensive public participation at all stages of the rehabilitation and resettlement process. The Preamble of the Policy states that rehabilitation and resettlement plans will be formulated with the active participation of the affected persons. The Policy further provides that public hearing shall be organized by the government in the affected areas. People's participation include mandatory public hearing at the SIA and EIA stages, wide publicity for the survey results and R&R plan, consultations with *Gram Sabhas*, representation of the affected persons in the R&R Committees, and accessibility for all to the grievance redressal mechanisms. Thus, the new Policy aims to

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18 U.N Development and Environment (Earth Summit) 1992 principle 1

19 The major environmental rights are: Right to ecological balance, Right to reside in pollution free environment, Right to pure drinking water and right against noise etc.

20 Environmental Impact Assessment is an exercise of evaluating and predicting future changes caused by proposed projects, plans or policies to the quality of the environment. EIA is a multi-disciplinary process requiring application of a variety of knowledge and expertise. See, P.Leelakrishnan, "Environmental Impact Assessment: Legal Dimensions 34 *Journal of the Indian Law Institute* 541 (1992).

ensure right of participation and decision making to oustees on important matters.

### **7. Land Based Rehabilitation**

Land is the major source of income for rural populations in India. They depend on agricultural land to earn their livelihood. If any agricultural land would be acquired for the construction of any development project, it causes not only loss of income to affected families but also impinges on their right to livelihood. Therefore land for land can be the best alternative to restore the lost livelihood for affected families who had agricultural background before displacement. It is noticeable here that there is a widely held assumption, that cash compensation by itself often fails to result in acquisition of productive assets and income restoration. This is the reason that new Policy seeks to promote land based rehabilitation. The Policy provide land for land<sup>21</sup> to each affected family owning agricultural land in the affected area and whose entire land has been acquired or lost. They may be allotted agricultural land or cultivable wasteland to the extent of actual land lost, subject to a maximum of one hectare of irrigated land or two hectares of un-irrigated land or cultivable wasteland. Similarly, the policy provides that in the case of irrigation or hydel projects, the affected families shall be given preference in allotment of land for land in the command area of the project, to the extent possible<sup>22</sup>. Thus alternative land option under NRRP, 2007 definitely would be an effective means to ensure sustainable resettlement. By ensuring continuity with the past occupation associated with land this goes a long way in cushioning the disruptive impact of forced displacement<sup>23</sup>. Clear provision regarding allotment of land in the Policy would enable displaced families to enjoy their various rights associated with land.

### **8. Employment Based Rehabilitation**

The forced displacement for large projects also denies right to continue employment for affected persons. It has been seen that displaced persons some time cannot continue with their private jobs when they are up rooted from their old place of habitation. Therefore, one job per displaced family can be a very useful measure to mitigate sufferings of displaced families at new place of habitation. The NRRP, 2007 makes a provision for a job to the affecting families- at least one person per nuclear family<sup>24</sup>. The Policy also provides that wherever necessary, the requiring body shall arrange for training of the affected persons, so as to enable such persons to take suitable jobs<sup>25</sup>. The Policy further states

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21 NRRP, 2007 ch. VII para 7.4.1

22 *Id.*, Para 7.4.2

23 Mohammed Hasan, "Creating New Economic Opportunities for Displaced People: Approaches to Income Restoration," 36 *Social Change* 96 (2006).

24 NRRP, 2007 ch. VII para 7.13.1 (a)

25 *Id.*, para 7.13.1 (b)

that the requiring body shall give preference to the affected persons in allotment of contracts, shops or other economic opportunities coming up or around the project site<sup>26</sup>. The affected persons shall be offered the necessary training facilities for development of entrepreneurship, technical and professional skills for self employment<sup>27</sup>. These provisions of Policy would help to restore and improve economic position of the project affected persons in post displacement period. Thus the Policy explicitly focuses on how the displaced families, can earn livelihood to lead comfortable life in post displacement period.

### **9. Redressal and Monitoring Mechanism:**

Displaced families often face problems regarding redressal of their grievances for not being offered the admissible rehabilitation and resettlement benefits. In order to deal with the problem Chapter-VIII of the Policy provides a robust mechanism for time bound disposal of grievances. The mechanism includes R&R committees at the project level<sup>28</sup> and standing R&R committees at the district level<sup>29</sup>. The Policy also incorporates a new provision for monitoring the R&R benefits schemes at the national level<sup>30</sup>. A National Monitoring Committee would monitor the implementation of the R&R process and would be serviced by a National Monitoring Cell. Similarly, an ombudsman shall be appointed by the appropriate government, in the manner as may be prescribed, for time-bound disposal of the grievances arising out of the matters covered by this policy<sup>31</sup>. Any affected person, if aggrieved, for not being offered the admissible rehabilitation and resettlement benefits, may move an appropriate petition for redressal of his or her grievances to the Ombudsman concerned<sup>32</sup>. Thus, NRRP, 2007 provides detailed provisions to ensure human right to get efficacious remedy for displaced families.

### **10. Tribals and their Welfare:**

The right to free, prior and informed consent is a very significant human right. This right is also available to indigenous peoples often ousted for developmental projects. The U.N Declaration on the Rights of Indigenous Peoples, 2007 laid emphasis on right to be informed before displacement. This Declaration states that the indigenous peoples cannot be forcibly removed from their lands or territories without their free, prior and informed consent<sup>33</sup>.

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26 *Id.*, para 7.13.1 (d)

27 *Id.*, para 7.13.2

28 *Id.*, ch. VIII. para. 8.1

29 *Id.*, para. 8.2

30 *Id.*, ch. IX. para. 9.1

31 *Id.*, ch. VIII. para. 8.3.1

32 *Id.*, para. 8.3.2

33 U.N Declaration on the Rights of Indigenous Peoples, 2007 art.10



Similarly, Indigenous/tribals have their own family set-up, customs, culture and language. They reside in groups and manage their all affairs independently. The Policy shows deep concerns to the customary, cultural and livelihood rights of this weaker section of the society. The Policy makes a provision that the families of Scheduled Tribes adversely affected due to projects would be resettled, as far as possible, in the same Schedule Area in a compact block, so that they can retain their ethnic, linguistic and cultural identity<sup>34</sup>. The Indian Constitution and several human rights laws also provide several welfare provisions to ST communities. Also the Policy of 2007 provides that Scheduled Tribes to get free of cost land for community and religious gathering to the extent decided by the appropriate government<sup>35</sup> and families of STs resettled out of district to get 25% higher benefits in monetary terms<sup>36</sup>. In order to compensate loss of livelihood the policy provides that in the case of irrigation or hydel projects, the affected Scheduled Tribes, other traditional forest dwellers and the Scheduled Cates families having fishing rights in a river or pond or dam in the affected area shall be given fishing rights in the reservoir area of the irrigation or hydel projects<sup>37</sup>. The families of Scheduled tribes, enjoying reservation benefits in the affected areas shall be entitled to get reservation benefits at the resettlement areas<sup>38</sup>.

### 11. Houses for Landless:

The right to adequate housing is available to everyone. In democratic country like ours it has become an obligation of the governments to ensure this right to all. The several human rights instruments<sup>39</sup> recognize right to food, clothing, and housing as basic human right. Indian judiciary also declares right to shelter<sup>40</sup> as an integral part of right to life. In case of forced displacement, the displaced persons suffer the risk of homelessness especially the Schedule tribes. They cannot produce formal legal title of their house in their possession. The movement they are ousted from land, it causes loss of house to them. Under compensatory scheme of LAA, 1894, they are not entitled to receive compensation neither for their houses nor for the land lost. Homelessness of a large number of tribals due

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34 NRRP, 2007 ch. VII para. 7.21.6.

35 *Id.*, para. 7.21.7.

36 *Id.*, para. 7.21.8.

37 *Id.*, para. 7.21.10.

38 *Id.*, para. 7.21.11.

39 See, International Covenant on Economic, Social and Cultural Rights 1966, art 11(1); Universal Declaration of Human Rights 1948, art 25 and UN Guiding Principle on Internal Displacement 1998, principle 18.

40 In *Francis Curalie Mullin vs. Administration, Union Territory of Delhi* (1981) 1 SCC 607 at p. 619 Justice Bhagwati (as he then was) said “We think that right to life includes the right to live with human dignity and all that goes with it, namely the basic necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one self in diverse forms.

to arbitrary displacement is denial of right to shelter to them. The Policy adequately integrates right to shelter in its provision and considers housing vital for all displaced families including landless.

## **12. Elimination of Gender Biases:**

During allotment and distribution of R & R benefits to ousted families, women face severe discrimination as compared with other oustees. For example, in case of allotment of house, and plots of land they are neither consulted nor informed. Their participation in decision making is negligible. Since very few women owned property or have land in their name before displacement, they are therefore, not entitled to compensation and are not treated equals with their male members of the family. They are neither consulted nor informed about compensation packages awarded to male members in their families. Therefore this gender based discrimination is visible in our joint family set-up. The male members in joint family set-up do not disclose to female members about amount of compensation received for land acquired. After receiving compensation, the male members very often become extravagant and incurred expenditure on undesired things. It makes position of women more vulnerable. The Policy of 2007 eliminates this gender discrimination and protects rights of women. The Policy states that the house and land allotted to the affected families shall be free from all encumbrances and may be allotted in the joint names of wife and husband of the affected family<sup>41</sup>. The Policy thus, ensures right to equality and eradicates the possibility of gender based discrimination while preparing resettlement and rehabilitation plans for women oustees.

## **13. Compensation before Displacement:**

Payment of compensation in advance before actual physical displacement of affected families is the best way to reduce the risks of joblessness, homelessness, marginalization and food insecurity in post displacement period. The payment in advance would help displaced families to reconstruct their pre displacement status. An empirical study<sup>42</sup> is indicative of the fact that in absence of advance payment of compensation, the displaced families neither could construct houses nor could invest compensation amount to start new business which forced them to lead uncomfortable life. The NRRP, 2007 makes a provision that in case of a project involving land acquisition on behalf of a requiring body, the compensation award shall be declared well in time before displacement of the affected families. Full payment of compensation as well as adequate progress in resettlement shall be ensured in advance of the actual displacement of the

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41 See, NRRP, 2007 ch. VII, para 7.7 - 7.8

42 Harish Verma, "Rights of Dam Ousteers: A Critical Study of Project Affected Families of Kol Dam in Himachal Pradesh," Un-published Dissertation of Ph.d submitted for degree of award in 2011 in Himachal Pradesh University.

affected families<sup>43</sup>. The Policy further provides that conversion to the intended category of use of the land being acquired (for example, from agricultural to non-agricultural) shall be taken into account in advance of the acquisition, and the compensation award shall be determined as per the intended land use category<sup>44</sup>.

### **Conclusion:**

It is amply clear from the preceding discussion that development induced displacement put several adverse impacts on displaced families. It brings untold miseries to ousted families. In order to mitigate sufferings of oustees, a well designed rehabilitation and resettlement plan must be put in place. The Policy of 2007 is comprehensive and is covering all dimensions of forced displacement. The Policy has several good provisions to address human rights of oustees. For example, it incorporates requirement for Social Impact Assessment of the project and put in place dedicated administrative arrangements for preparation and implementation of the R & R plan in consultation with the affected persons. The Policy also provides admissible set of entitlements for the displaced persons that include provision of house sites, allotment of agricultural land, and preference in access to employment in the project and training for employability outside, financial grant for construction of house, cattle shed, work shed for rural artisans and so many other noble provisions. The NRRP, 2007 addresses the major problems experienced by the affected persons in post displacement period. The gender concerns have also been properly addressed in the new policy. It also makes a provision regarding allotment of land in lieu of land taken to the project affected families. Thus it can be said that the existing Policy of 2007 responds very well towards protection of human rights of displaced persons especially women, tribal, Schedule cast and other vulnerable persons who are the worst suffers of development induced displacement. There would be no hesitation in concluding that the provisions of the policy are in line with or in compliance with International human rights laws such as UDHR, 1948, International Covenant on Civil and Political Rights, 1966, World Bank Policy on Involuntary Resettlement, 2001 and Asian Bank Development Policy on Resettlement 2006 etc.

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43 See, NRRP,2007 ch.VII, para. 6.22(a)

44 *Id.*, para. 6.22(c)