

● RIGHTS OF DISPLACED PERSONS AND ISSUE OF DEVELOPMENT

Shaikh Sahanwaz Islam* & Kumar Ashutosh**

Abstract

Development is inevitable but should not at the cost of right to life and livelihood. The displacement caused by developmental programmes due to economic and other factors is now attracting greater attention. All the developmental projects like Dams, mines, express ways or declaration of protected areas disrupts lives of the people who live in that area and often requires relocating them to an alternative site. Displaced people mostly loose their lands, homes, jobs and property which often lead to social isolation and increased morbidity and mortality. The social and cultural activities and the kingship systems of tribal people vanish with their displacement in particular. Sometime they loose their identity and loose their intimate link with the environment. The present study is an analysis of the issues relating to displacement and the role of judiciary in maintaining a harmonious balance between the individual interests and interests of community interest in India.

Key words

Development, Displacement, Individual Interests, Interests of Community and Judiciary.

I. INTRODUCTION

The World Bank estimates that every year roughly more than 10 million people world wide have been displaced by developmental projects for a variety of reasons. During last 50 years development projects have displaced more 30 millions people in India and 40 million in China. Uprooting people is a serious issue. It reduces its ability to subsist on their traditional and natural resource base. People, whose lives are closely woven around their own natural resources, find it hard to adopt a new way of life in a new place. According to the United Nations, internally displaced persons (IDPs) are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.¹ Principle 6, 2(c), of the Guiding Principles states that "the prohibition of arbitrary displacement includes displacement in cases of large-scale development projects, which are not justified by compelling and overriding public interests." Hundreds of millions of people worldwide have been forcibly evicted from their homes and livelihoods to make way for dam construction, urban renewal, highways, power plants, mining, and

*Assistant Professor (Law), Law College Dehradun, Uttaranchal University, Dehradun

**Assistant Professor (Political Science), Law College Dehradun, Uttaranchal University, Dehradun

¹"Guiding Principles on Internal Displacement", 1998, Introduction, para 2

other development projects. The World Bank and other regional development institutions have adopted operational policies on involuntary resettlement that call for avoiding or minimizing population displacement whenever possible, and requiring compensation and assistance for anyone that is displaced. In practice, however, resettled populations tend to become impoverished over time as a result of losing their land, jobs, and homes, among other factors.

Despite their numbers and their dire situations, this population of IDPs tends to be overlooked in part because no international agency is mandated to provide assistance and protection to them. For more information about involuntary resettlement and where it occurs, discussions of the relevant legal framework for addressing development-induced displacement, including the role of the Guiding Principles, and proposals for enhancing the international response to forced evictions.² The Victims of National development is a new concept of 21st century. The displaced persons are the victims and they have to pay the price for the developmental projects of the nation.

The term “Displaced Person” also includes the project affected persons but sometime the statistical data ignores such persons who are also directly affected due to displacement. The minimisation of displacement is crucial in the context of liberalisation and the number increases day by day. The acquisition of land in India in last five decades has been doubled in last one decade. The rationale for many developmental projects is questionable. Displacement due to construction of dams mostly affected the tribal peoples and forest dwellers.

II. DISPLACEMENT AND ISSUE OF DEVELOPMENT IN INDIA

The public sector mostly acquires forest land, unused lands, whereas the private sector acquires land for their profit, ignoring the fertility and quality of land. Which land is suitable for what type of developmental project is a subjective satisfaction, it varies person to person under different consideration. For example in West Bengal in 200 acre and 96 acre of land are acquired for Tata Metalics and Birla farm near South Kharagpur in 1992 even if alternative land was available near North Medinapur Railway station which

Dams and the Displacement of Tribal People*

Name of Project	State	Population facing displacement	Percentage of displaced Tribal People
Karjan	Gujarat	11,600	100.00%
Sardar Sarovar	Gujarat	200,000	57.60%
Maheswar	Madhya Pradesh	20,000	60.00%
Bodhghat	Madhya Pradesh	12,700	73.91%
Icha	Bihar	30,800	80.00%
Chandli	Bihar	37,600	87.92%
Koel Karo	Bihar	66,000	88.00%
Mahi Bajaj Sagar	Rajasthan	38,400	76.28%
Polavaram	Andhra Pradesh	150,000	52.90%
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²Elisa Mason, “Internally Displaced Persons: Guide to Legal Information Resources on the Web”, 2009, available at: <http://www.llrx.com/features/internaldisplacment.htm> Visited on 12-10-2015

Name of Project	State	Population facing displacement	Percentage of displaced Tribal People
Panchet	Bihar	93,874	56.46%
Upper Indravati	Orissa	18,500	89.20%
Pong	Himachal Pradesh	80,000	56.25%
Inchampalli	Andhra Pradesh and Maharashtra	38,100	76.28%
Tultuli	Maharashtra	13,600	51.61%
Daman Ganga	Gujurat	8,700	48.70%
Bhakra	Himachal Pradesh	36,000	34.76%
Masan Reservoir	Bihar	3,700	31.00%
Ukai Reservoir	Gujurat	52,000	18.92%

* Report of Ministry of Water Resources, GoI, New Delhi (2011).

was less fertile and rocky in comparison to the land acquired. Both the farm never even took off but it displaced hundreds of Lodha Tribal family. A national data is provided below for detailed reference.

III. LEGAL ASPECTS OF DISPLACEMENT

International Aspect

As the Guiding Principles on Internal Displacement, 1998 underline, it is not the international community but national authorities that have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction (Principle 3(1)). The manual aspires to recognize the efforts made by national authorities in many countries to assist and protect IDPs, to highlight laws and policies that have been most compatible with international law norms, and to encourage and assist those in positions of responsibility in other countries affected by internal displacement to undertake the difficult but crucial task of drawing up protective laws and policies of their own. To prevent internal displacement, protect the displaced during displacement, and find durable solutions for them once the cause of displacement no longer exists requires no more and no less than respect for human rights and, in armed conflict situations, the protective rules of international humanitarian law. As a result, in some situations the protection of IDPs' rights demands the same measures as are necessary to protect the rights of all citizens, regardless of whether or not they are displaced. For instance, a central means of implementing the right to liberty and security of person is the passage of legislation setting out protections against arbitrary arrest or detention that are applicable to all citizens, whether or not they are displaced.

Indian Aspect of Displacement

All the developmental projects like Dams, mines, express ways or declaration of protected areas disrupts lives of the people who live in that area and often requires relocating them to an alternative site. Displaced people mostly lose their lands, homes, jobs and property which often lead to social isolation and increased morbidity and mortality. The social and cultural activities and the kinship systems of tribal people vanish with their displacement in particular. Sometime they lose their identity and lose their intimate link with the environment. In India, the first draft of the National

Policy on Resettlement and Rehabilitation for Project Affected Family was brought out in 1993 and it was subsequently revised a number of times.

The Indian Constitution dictates that the resettlement and rehabilitation of the person displaced is the responsibility of individual union states. Till date some states have enacted separate law for rehabilitation. The Public Sector companies like NTPC and Coal India Ltd have separately formulated policies on resettlement and rehabilitation. The only existing relevant law has been the Land Acquisition Act, 1894, which prescribed only how land could be acquired with payment of compensation, but contains nothing about people's entitlement to being resettled and rehabilitated for the land on which they do not have any legal rights. In absence of specific policy and law relating to displacement, judiciary has intervened under the general principles of human right and fundamental rights in order to give justice to the persons displaced.

There are several causes behind Displacement in India. The main cause of displacement is the acquisition of land for public purpose. Some examples are as follows:

- Two third of the land acquired for HAL MIG plant at Sunabeda, Odisha in 1996 lay vacant for three decades and was later sold at high profit. Where 3000 tribal families were displaced.
- Land acquired on both sides of RORO irrigation canal in Jharkhand for public purpose later on given to the relatives to the officials to build housing co-operatives.
- Burla township, Odisha has come up as an excess land acquired for Hirakund Dam.
- The Bangalore Link Road needed 200 hectares but 1200 hectares of land was acquired and the excess land was later on handed over to the companies for building colonies for profit.

a) Right of the State to Displace

- The state may acquire land for public purpose under the draconian law i.e. The Land Acquisition Act, 1894 without considering the peoples consent.
- In the name socio-economic justice under DPSP of the constitution, the state can make law for acquisition of land for public interest.
- Under section 2 of Forest (Conservation) Act, 1980, the central govt. may allow the use forest land for non forest purpose.
- The principle of Public Trust Doctrine that state is the trusty of natures gift, which may be applied negatively to displace forest dwellers in the name of preservation of ecology.

b) Rights of the Person Displaced

1) Constitutional Rights

- Article 14: Right to equality- any arbitrary displacement violates right to equality.
- Article 19 (1)(e): the right to reside and settle in any part of the territory of India. It includes rights not to be displaced without reasonable cause.
- Article 21: Right to life and personal liberty which includes the right to livelihood. Displacement is no doubt deprivation of right to livelihood

All these rights are justifiable rights under article 32 and 226 of the Constitution

2) *The Scheduled Tribe and Other Traditional forest dwellers (Recognition of Forest right) Act 2006:*

Section 3 and 4 confers the forest dwellers nistar rights to hold and live in the forest. Their displacement is subject to adequate compensation and rehabilitation.

3) ***Environmental Impact Assessment Notification, 1992 of Environment (Protection) Act, 1986:***

The Central Government is empowered to assess whether the developmental project are in harmony with the environment. Schedule-1 of the EIA notification includes almost all the mega developmental projects. Under EIA Local people or project affected persons may raise their voice during Public Hearing, if such developmental project is prejudicial to them. At the time of assessment of profit and loss, the scheme also considers the number of persons to be displaced and their cost of rehabilitation.

c) Absence of Regional Planning

The decision for establishment of developmental projects is taken without proper regional planning, which resulted in multiple displacements. Some examples are as follows:

- The persons displaced by Rihand Dam in 1960 have been displaced four times.
- Saliga Tribals displaced by Kabeni Dam of Karnataka in 1970 are again displaced by Rajiv Gandhi National park.
- The fishing families displaced by Mangalore Port in 1960 were again displaced by Konkon Railway in 1980.

d) Compensation to the Displaced

Compensation should always be according to the replacement value. It must include market value of assets lost, lose of livelihood of Common Property Resource (CPR) dependents and lose of others who live by rendering services to the village community. Replacement value should include both material and monetary compensation which will make possible for displaced person and project affected persons to begin life anew because they have to face a new economic culture and society; they should be prepared psychologically, socially and technically; compensation cannot be only for patta land. It also includes the barbers, labourers, dhobi and merchants, vendors who depend on village have to be helped to begin life anew; the Common Property Resource (CPR) have to be replaced with viable alternatives; if necessary training may be given and they may be made literate; and all these aspects are the part of the social cost of the project and cannot be ignored.

IV. JUDICIAL INTERVENTION ON DISPLACEMENT

To protect the socio-economic justice, equality and liberty of the persons displaced the Supreme court has intervened in number of cases in order to make a balance between developmental interest of the state and individual interest of the displaced person.

In *BD Sharma v. Union of India*,³ it was ruled that the overarching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of out streets. They should be rehabilitated before six months of submergence. In *Narmada Bachao Andolan v. Union of India*,⁴ it was observed that rehabilitation is not only about

³(1992) Supp (3) SCC 93

⁴AIR 2000 SC 3751

providing just food, clothes or shelter. It is also about extending support to rebuild livelihood by ensuring necessary amenities of life. In *N.D. Jayal and Another v. Union of India*,⁵ the court held that the courts have recognised the rights of the ousters to be resettled and right to rehabilitation has been read into Article 21. In *Francis Coralie v. U.T. of Delhi*⁶ Justice Bhagwati observed that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life. Such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing with fellow human beings. In *Olga Tellis v. Bombay Municipal Corporation*⁷ case, the court observed that Article 21 means something more and “the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed.

V. CONCLUSION

The victims of displacement are the persons who scarify their life and liberty for the national development hence priority should be given for their protection above all national agenda. Development is inevitable but it should not at the cost of right to life and livelihood of individuals who are victim of such development programmes. Displacement should be minimized and it should be only for a public interest. People's livelihood should be in consideration while taking decisions about displacement. There is requirement of rationalization of public purpose in a restrictive manner as public interest as the only principle on which acquisition could be based. The Displaced Persons/Project Affected Persons should be given opportunity to participate in decision making process. Deprivation even for a public interest must require their prior informed consent. The decision should recognize the historically established rights of the tribal and rural communities over natural resources and their subsistence. The principle of compensation should be on replacement value and not the market value or present depreciated value of assets. Alternative must also be adopted to ensure that they get permanent income from the project. Regional planning is required to avoid multiple displacements.

⁵(2004) 9 SCC 362

⁶AIR 1981 SC 746

⁷AIR 1986 SC 180