

An Overview of Land Acquisition Act and Human Rights Issues.

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ABSTRACT : *With the increasing pressure on land due to urbanization, rapid economic development, increasing infrastructure requirements etc., especially in a fast growing economy like India, the acquisition of land by the government has increased. Indian Government under doctrine of “eminent domain” acquired land of individual persons for ‘greater good’ and ‘development’ purposes, as result of which, millions of people become displaced from their homes. Forcing the people out of their homes is violation of human right.*

I. INTRODUCTION

More than 50 years ago less developed countries all over the world were liberating themselves from colonial bondage, and economists had started to give serious thought as to what the optimal course of development would be initiating thereby a new discipline called development economics, the primary constraint was thought to be the scarcity of capital. Prof. Levis described development as a process of transferring labor from low productivity agriculture and other traditional occupations to high productivity modern industry.¹ Economic development is directly related to the creation of infrastructure. So far as the geographical situation is concerned, irrigation projects, hydroelectric projects and mining project are made by the state.² Independent India began with the Nehru vision that big dams and mega development projects are modern temple of development. In the post independence period India has sought rapid economic growth through planned development. This has entailed large scale investments in dams, roads, mines, power plants, industrial estate, new cities and other projects involving land acquisition.³ Since independence land has been acquired from people particularly from farmers for the purpose of expanding towns/cities by converting agricultural land into non agricultural land. In the name of industrialization a larger portion of land was being acquired from the people for ‘public purpose’ and development and was later handed over to private companies.⁴ Through the history of mankind, societies have tried to balance between individual rights and state power.⁵ At international level it is viewed as violation of human Rights.⁶

II. DEVELOPMENT INDUCED DISPLACEMENT

Development induced displacement means forcing the communities and individuals out of their homes, often also their homelands, for purpose of economic development.⁷ Displacement is deemed to be a necessary price to pay for development by those to whom development means only economic growth. But others who view development not only as economic growth but primarily as improvement of standard of living of whole population. In that sense, displacement is not an economic issue alone, but is to a great extent a question of human rights. Besides, displacement rehabilitation and resettlement are to be viewed not as one time event but as process that begins as soon as the project is announced and continues for several years after persons are resettled.⁸ The Human Rights declaration states that everyone has the right to life, liberty and security. Under the heading of economic, social and cultural rights, all government are expected to try progressively to improve the living conditions of their citizens. But studies shows that forced displacements have created potential risks- “landlessness, nobleness, homelessness, marginalization, increased morbidity and mortality, food insecurity,

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1 Abhor Starker, ‘Development and Displacement Land Acquisition in West Bengal’, EPW, April 21, 2007, P-1435.

2 Ashok Kumar Sahay Prabira Sethy, ‘Tribal Displacement and Resettlement: effective safe guards’, Social Action, volume 58, January-March 2008, p-2.

3 Sanpete Goyal, ‘Economic Perspectives on Resettlement and Rehabilitation,’ EPW, June 15, 1996 P-1461.

4 Xavier Eyra, ‘An SEZ with a Defiance’, Social Action Vol. 58, July-Sept-2008, p-272.

5 <http://www.ohchr.org/English/bodies/ceser/does/infro-ogas/IDMC2 India PDF> (Visited on 22/11/20011).

6 See <http://www.2ohchr.org>. (Visited on 22.11.2011)

7 Kelly .A Dhru, ‘Displacement due to Land Acquisition for Development Projects in India: the Problems with Existing Legislative Policy’ (Unpublished, NLSIU in Association with NTPC, New Delhi, conducting training program. 15th-17th December 2010)

8 Supra note 4, p-281.

loss of access to common property and social disarticulation, impoverishment. The relationships that were once kinship based became individualistic and the traditional institution, which held the society together, suddenly got jeopardized what anthropologists call disorganization.⁹ Rehabilitation is a process of nurturing people affected by projects. Projects may be irrigation projects, power projects or a defense projects the concern is about those who lose their property and displaced for the sake of general good.

III. CURRENT STATUS OF INTERNALLY DISPLACED PERSONS IN INDIA

The effects of the displacement spill over generations in many ways, such as loss of traditional means of employment (lively hood), change of environment disrupted community life and relationship marginalization, a profound psychological trauma. It destroys the existing modes of production, affects kinship and impoverishment, and threatens cultural identity of tribal and ethnic minorities. In addition forced resettlement tends to be associated with increased sociocultural and psychological stresses and higher morbidity and mortality rates. Population displacement, therefore disrupts economic and socio cultural structures. People who are displaced undergo tremendous stress as they lose productivity process-land otherwise in the adjustment process.¹⁰ But for the government and its agents displacement for development, cash compensation seems to be the only panacea for the problems induced by displacement and only policy of rehabilitation, whereas, in practice it is the most inadequate means for rehabilitation. The development induced displaced person are also facing the same situation as compared to the induced displaced persons. In rehabilitation process what is important is the packages. Package differs from project to project, normally cash component is invariably involved in all projects in addition to provide space for housing.¹¹ The case of the Narmada Dam exemplifies displacement without proper rehabilitation. Thousands of people mostly tribal have been displaced due to the dams built across the river Narmada. More than 2,000 families displaced by the multipurpose Hirakund dam project in Sambalpur district of Orissa were not compensated as of February 2002. In the 2007, on the land acquisition issue is singur for setting up a automobile project, Nandigram area of west Bengal turned into a battle field between the state police officials and anti-land acquisition Bhumi Uchhed Pratirodh committee (BUPC) {LAND EVICTION RESISTANCE COMMITTEE} comprising of the poor who were unwilling to sell their lands. Numerous supporters of the BUPC were killed, women were raped and at least 1500 persons were displaced from their homes. On 16th November 2007, the Calcutta High Court declared the police killings as unconstitutional and unjustified and awarded compensation of Rs 500,000 each to those killed, Rs 200,000 to each of the rape victims and 100,000 to each injured person.¹²

Another important, impact of displacement is the problem of scheduling and certification. The displaced people are generally not rehabilitated in the form of home and land but by money. Very few are given land in the new areas, which creates conflict with the already existing groups. They are not recognized as tribal in the areas of they do not have certificate of proof of residence in the new place and thus lose their tribal identity.¹³ Resettling the displaced poor, remote and economically disadvantaged is not always an easy task.¹⁴ Much more such consequences compelled the government to pass legislation, which addresses not only the issue of compensation but also of resettlement rehabilitation and participation in negotiation.¹⁵

IV. TRAUMATA DISPLACEMENT

To understand why displacement is traumatic it not undertaken correctly, it is important to comprehend what land means to a farmer, beyond the primal urges that seems to bind human beings to their lands. For one land is an asset that provides him food and a livelihood. Second, it enables him to utilize the major (and sometimes the only) skill that he possesses working on the land. Third it can be passed on to the next generation and hence provides security to several generations. And fourth it is marketable and in sometimes distress serves as collateral. Cash compensation as the only means of rehabilitating displaced people is a classic middle class response to the problem of the poor. It shows a complete lack of understanding of the livelihood relations that the "most helpless man" that Gandhi referred to has with land. It is a response that is singularly indicative of lack of application of the mind. Public purpose clearly has lost purpose and has completely forgotten that the

9 Bhubanswar Sabar, 'Development-Induced Displacement and Human Rights Violation of Orissa: An Anthropological Insight,' Social Action, vol-60, April-June 2010, p-177.

¹⁰ Supra Note 2, p-1486.

¹¹ Dr. C. Nagiah, 'Resettlement and Rehabilitation Upper Krishna Project, Special Deputy Commissioner UKP', (Unpublished, NLSIU in Association with NTPC, New Delhi conducting training program. 15th-17th December 2010)

¹² Anupam Hazra, 'Development at the Cost of Human Life', Social Action, volume 60 April-June 2010, pp-193-194.

¹³ *Id.*, p-178.

¹⁴ Usha Ramanathan 'Land Acquisition and Compensation in Involuntary Resettlement', EPW, vol.31, no.24, (June 15 1996) p 1486.

¹⁵ Supra note 9, p-179.

public is the family getting displaced.¹⁶The year of 2004 has seen the forced displacement of hundreds of tribal from the inner states of India in Chhattisgarh, due to the government. Plans to bring tourism to the area through the development of national park. In Chhattisgarh itself almost 17 lakh acres of land have been demarcated as protected area for the sake of wild life conservation where people face the threat of eviction. According to government where tourism projects have proposed. The majority of them are Adivasis and Dalits.¹⁷These has been a shift in the pattern of land acquisition, in the past most of the development projects were in the category of the water resources. Now most of the project are in the mining and industry sector some projects are also in the areas of tourism, transport and communication and infrastructure.¹⁸

V. DISPLACED TRIBAL PEOPLE PROBLEMS

Majority of development induced displaced persons are tribal people. As per the survey of Faction Aid and Indian Social Institute over 14 million people have been displaced from their homes in the four states of Andhra Pradesh, Chhattisgarh, Orissa and Jharkhand. A total of 10.2 million acres have been acquired for setting up of development projects such as mines industrial plants and dams in these states in the last decade. Out of the 14 million displaced persons in these four states, 79 percent were tribals. Studies on the social impact of development projects suggest that indigenous people and ethnic minorities are disproportionately affected. In India, advise or tribal people, although only representing 8 per cent of the total population, make up 40-50 per cent of the displaced.¹⁹Formal or informal interaction can be seen also in the next step i.e., in the process of land take over there was agitation in some projects but to our surprise we realized that agitation in most cases was not by the powerful middle cast medium farmers, but by the tribals and other apparently powerless communities. After deeper analysis and discussion with the villagers it was realized that firstly, their direct dependence on common proper resources (CPR) is greater than that of the middle level farmers. Secondly, being less exposed to the mainstream society and economy than the middle level farmers, they can not expect many benefits from the project to flow to them. Finally, there is greater homogeneity among them than among the middle caste.²⁰The decision on displacement adds to this ongoing sense of threat to their livelihood and the consequent feeling of insecurity. Similar is the situation with the dalits, particularly the landless labors among them who depend for their survival on the village as a community. Disappearance of the village is the threat to their livelihood. Where possible they react to this situation by trying to define their livelihood.²¹They therefore need to defend themselves more than the middle farmers do.²²As a result of loss of land through displacement deprives them by their livelihood with the no other economic base to take its place. It impoverishes the tribals more than others.²³On the one hand for the developed countries the displacement problem is not so big due to balance of land and man ratio. On the other hand for the developing countries the displacement problem has emerged as an issue due to adverse land man ratio. According to the statistical estimates 2 core people out of which 85 lakhs are tribal have been displaced from their native places from 1957 to 1990 due to the construction, irrigation projects, mining projects and national highway projects.²⁴In a democratic country, where displacement takes place by government or private collaboration with government, it is the responsibility of the government to take care of the displaced people by providing rehabilitation and resettlement. According to the constitution, there is a provision for those who are migrated from their native place after partition in between Pakistan and India for the government of India to take care for their rehabilitation and settlement. But though there is a provision for reservation for the SCs and STs Population in different spheres, there is no provision in the constitution for those people who are displaced from their native places due to the construction of development projects by the government.²⁵According to the international labor organization (ILO) convention No.7 a clear cut guidance has been mentioned particularly for STs rehabilitation and resettlement. An expert committee had suggested reservation plan for resettlement of tribal people in the 7th five year plan. In 1990 the ministry of social justice and welfare department of the government of India had prepared a plan for resettlement of tribal people and wanted to know the opinion of the states in this regard. But the plan did not

¹⁶Samrat Roy, J. Felix Raj, 'SEZ: Bracken Promises in West Bengal', Social Action Pub: Vol. 58, July-Sep 2008, p-289.

¹⁷*Id.* p-185.

¹⁸Joseph MarianusKujur, 'Development Induced Displacement in Chhattisgarh: A Case Study from a Tribal Perspective', Social Action, Vol. 60 April June 2010 p-38.

¹⁹Supra note 12, p 192.

²⁰Walter Fernandes, 'Tribal Land Natural Resources and Displacement', The Administrator, Vol. xxxviii, April- June 1993, p-27.

²¹*Id.* p-28.

²²*Id.* p-28.

²³*Id.* p-30.

²⁴Ashok Kumar Sahay and PrabiraSethy, 'Tribal Displacement and Resettlement: Effective Safeguard', Social Action, Vol. 60, April June 2010 p -2.

²⁵*Id.* p-2.

take a concrete shape. Therefore each state government is taking different ad hoc measure for their different projects.²⁶ Development displacement has direct link with the STs Population. There government should formulated plans and polices for the resettlement of these people on the priority basis. But the paradox of institution is that the government is paying little caution to resettlement plans and policies of these ousters.

Land for land and jobs to new projects have been rationale solutions these do not work anywhere. There is not always sufficient suitable land elsewhere to make land for lands scheme work. Modern manufactory and other activities are skill based rather than labor intensive therefore these kind of projects can absorb only limited numbers of unskilled labor.²⁷ In the first four decades since independence 40 per cent of the people who lost land to state sponsored activities like mining, dam building and other infrastructure projects have been tribals only 25% of them have been resettled and rehabilitated. Increasingly people threatened by development are refusing to sacrifice their interest for the larger common good. The resistance is largely due to state's failure to provide adequate compensation to land holders and fail to ensure resettlement and rehabilitation of ousters.²⁸

VI. CONSEQUENCES OF MONETARY COMPENSATION

Most countries have land acquisition laws that require prompt and adequate monetary compensation for persons who lose their land and property. However, cash compensation has many negative consequences, particularly for tribal and other marginal populations. The sudden cash in their hands gave the false impression of wealthiest. They changed their life style, they are involved in gambling and drinking increased to an unprecedented level. Finally cash compensation disproportionately benefits some interest groups (i.e. big land lords) and not so much poor and small scale farmers and women.²⁹ Though money plays an important role in our life, it cannot be the only way measuring everything. The market centered economy and try to measure everything in terms of money. Can hard cash provide security and the livelihood to a poor farmer who owns only a few acres of land, has knew traveled beyond a few kilometers of his village, has deal with only few rupees or hundreds and who hardly knows to read and write, understand the logistics of money, market, industry, senses etc. of business man? Basically the concept of cash compensation fails to understand the habits of farmers, tribal and the dalits in the villages who are unaccustomed to the handling of such huge money. Secondly in cash compensation it is only the owners of land who are considered. In villages it is not only the farmers but also many others who sharecroppers, agricultural workers, artists and pastoralists who will lose their livelihood.³⁰

VII. CONCEPTUALIZATION OF REHABILITATION

Land and Rehabilitation Policy

While looking at the rehabilitation policy there has never been a national policy on rehabilitation.³¹ The purpose of any rehabilitation & resettlement policy to ensure that the needs of the entire affected person's are addressed so that they not only living but also improve upon it.³² The Land Acquisition Act, 1894 did not address the rehabilitation & resettlement aspects of development induced displacement. Displaced persons are only granted compensation for the land acquired.³³ The notion of rehabilitation gradually emerged when it was realized that compensation for land and property acquired was not enough to make good the loss of displaced.³⁴ This notion was transformed into reality through rehabilitation policies and packages in the context projects like the Narmada valley & Tehri Dam projects. Till the early 1950s, some Indian princely states had a fairly good rehabilitation policy. For example, when the Nizamsagar dam in the present day Andhra Pradesh was built in the 1930s, the then Nizam of Hyderabad decreed that all the peasants displaced by it should be resettled in a model township, be given land for land, and houses and other facilities according to modern principles.³⁵ But changes began in the 1960s. Initially the "land for land" policy remained, but not in the common area, mainly dry land would be allotted. This too was changed in the 1960s.

²⁶Supra Note, 24, P-3.

²⁷ Supra Note 24, P-4.

²⁸ Supra note 18, p -31.

²⁹ Supra note 14, p- 1486 at 90.

³⁰ Supra note 4, p-281.

³¹ Supra note 20, p-19.

³²Sukumar Das, 'Acquisition Compensation & Rehabilitation', 43, Administration, 37 (1988).

³³Ramaswamy R. Iyer, 'Towards a Just Displacement & Rehabilitation Policy', EPW, 3103 (2007).

³⁴ M. Asif, 'Land Acquisition Act: Need for an Alternative Paradigm' 24 EPW 1564 (1999)

³⁵ Supra note 20, p-19.

Land allotment would be only for those who desired it. By the 1970 monetary compensation became the norm for the displaced persons.³⁶ Probably till 1970, it was much easier for the state to evict a person from his land without paying any compensation or any type of rehabilitation.

Rehabilitation and Resettlement Bill, 2002

In the absence of a statutory rehabilitation law or even a national policy there is no legal imperative for state government or project authorities to integrate comprehensive rehabilitation planning into the planning of a project.³⁷ Bill such as rehabilitation and resettlement bill, 2002 Land acquisition (Amendment) Bill 2001 are being considered by the parliament. The effort which incorporated obligation towards a social impact assessment but these are failed due to lack of political will.³⁸ Even the draft rehabilitation policy, by N.C. Saxena, in the 1990 did not pass though despite having many positive aspects. The subject gradually faded into oblivion, until 2003 when the draft National Rehabilitation policy was finally notified. This policy came into effect in February 2004 as the National policy on rehabilitation and resettlement for project affected families. However because of its inadequacy in many aspects, the policy was severely criticized. The National Advisory Council (NAC) unsatisfied with this, sent its own revised policy draft to the government. The Government then brought out a version of the 2003 policy in the year 2006 which became the national rehabilitation and resettlement policy, 2007.³⁹

The National Rehabilitation and Resettlement Policy, 2007

One of the objectives of the policy is to minimize displacement of people and to promote non displacing or least displacing alternatives. It also recommends that only the minimum necessary area of land commensurate with the purpose of the project should be taken, and the use of agricultural land for non agricultural purposes should be kept to the minimum, multi crop land should be avoided and irrigated land should be kept to the minimum for such purposes. Projects may preferably be set up on wastelands or unirrigated lands. Further the compensation award shall take into account the market value of the property being acquired, including the location wise minimum price per unit area (or to be fixed) by the respective state government. In case project involving land acquisition on behalf of requiring body, the disputes related to the compensation award for the land or other property acquired will be disposed of as per the provisions of the Land Acquisition Act, 1894 or any other Act of the union or a state for the time being in force under which the acquisition of land is undertaken, and will be outside the purview of the functions of Ombudsman.⁴⁰ Apart from loss of land, the villager suffers loss from common property resources, forest produce, village grazing land, community centre, social security and so. The problem is more acute with the artisans. The assessment of compensation is made on the basis of the property owned by an individual, ignoring the fact that common properties also contribute to the living and livelihood in a society. The gender and class bias of the state is evident in any such case of huge displacement; widows, unmarried daughter, and children are never considered as separate entity for the relief and rehabilitation purposes. The general policy of compensation does not fit into the welfare schemes of the government founded on the principles of socialism. Lack of national policy and lacunas in the existing policy documents is a major problem. Apart from implementation is the serious problem. Because in most cases, there is a wide gap between the framed policies on paper and what get translated in reality.⁴¹ Therefore, in order to address all these issues the most awaiting and long pending, Rehabilitation & Resettlement Bill 2012 passed by the Lok Sabha on 29th Thursday night August 2013. People of India counting hours for president and enforcement. Accordingly to new law at least 80 per cent of the land owners need to give their consent for a private projects and in case of projects launched in public-private owners needs to give at least 70 per cent of land owners consent. This consent includes consent for the amount of compensation. Minister Jairam Ramesh assured the Bill is only setting the bottom line, State Government are free to further improve upon it. The Bill proposes that farmers and land owners be paid up to four times the market value for land acquired in rural areas, and two times the market value in urban areas. This is the very first Law that links land acquisition and accompanying obligations for Resettlement and Rehabilitation. The law also provides compensation to those

³⁶ Supra note 3, p-1461.

³⁷ The landmark case of *Maneka Gandhi v. Union of India* (APR 1979 SC 597 and subsequent cases have interpreted the right to life to include a life more than animal existence and included right to education right to safe and healthy environment and a good quality of life.

³⁸ <http://www.achrweb.org/review/2007163-07S.html>. (Visited on 27th April 2012)

³⁹ See also India's failed Rehabilitation Policy, *The South Asian*, December 22, 2007, available at <http://www.thesouthasian.org/archives/2007/indias-failed-nationalrehabil.html> (Last visited on 22nd November, 2011)

⁴⁰ NRRP, 2007, Policy document, available at [http://nhrc.nic/publications/NHRCs Recommendations & Rehabilitation.pdf](http://nhrc.nic/publications/NHRCs%20Recommendations%20&%20Rehabilitation.pdf) (last visited on 27th April 2011)

⁴¹ The Bill was also introduced in Lok Sabha on 6th December 2007 and has since been referred to Standing Committee on Rural Development by the speaker of the Lok Sabha.

who are dependent on the land being acquired for their livelihood, besides to those losing land. Where awards are made or possession has not been taken, compensation shall be paid at the rate possible under the new Act.

The acquisition of agricultural and multi crop land has to be done as a last resort. There will be definite restrictions on the extent of acquisition of such land to be determined by the states concerned. The passage of land acquisition, Resettlement and Rehabilitation law has upset real estate developers and builders. Accordingly, real estate developers for land acquired in rural areas will be four times the market rate while in urban areas it will be twice the market rate. Besides, developers are required to get the consent of 80 per cent of people whose land acquired for private projects, and 70 per cent of people for public-private partnership projects. Mandatory consent is the biggest blow for real estate sectors.

VIII. CONCLUSION

The core of the right to property is a right to the thing itself not a right to the value of it. Therefore, compensation is not a replacement for property, it is only indemnification for the losses of the private owner. So, the right to property cannot be regarded as merely a right to compensation and it can not be said that a state has a power to take private property as long as it compensates the owner. Therefore in order to take private property by paying compensation there should be strong public necessity. Displacement is increasingly being understood as a multi-dimensional phenomenon affecting people's lives in their entirety, encompassing not only the economic but also the social and cultural spheres, all of which feedback into each other. Once people are shifted they lose bargaining power sense of mutual obligation disappears amongst them. In the wider interest of the nation; the state has exercised its prerogative of eminent domain. In the greater goal of greater number of pole sorrows and problems of the project affected minority are lost sight of or else they are treated on par with the constitutionally guaranteed 'marginal' or the 'disadvantaged'. In other words, they must be treated specifically and uniquely. Further in major projects government have typically followed an incremental approach to the resettlement of displaced people. In that people were shifted and resettled according to construction and submergence schedule.

The Bill to amend the land acquisition Act, specifically mandatory Resettlement & Rehabilitation of the displaced to be internalized and integrated with the acquisition process. Further, the proposed legislative amendments to the Acquisition law and the brand new draft of law on R&R are yet to be passed by the Congress Government. e., called as Acquisition, Rehabilitation and Resettlement Act 2012. Even since the state first exercised its prerogative to acquire land for public and private developmental and industrial projects the issue of the resettlement and rehabilitation of people and communities displaced by the projects has been a subject of great controversy. The issue of just compensation for people whose lives are disrupted and lands are acquired by the state gets aired with each large industrial or infrastructure project. However, the political will to legislate to protect project affected people has been lacking. The repealed Land Acquisition Act, 1894 provides for payment of cash compensation and to those who have a direct interest in the title to such land. Thus, under the Act, the legal obligations of the project authorities do not go beyond monetary compensation to a narrowly defined category of project affected persons. The Act by restricting monetary compensation for land ownership, forecloses taking account of the multiple dimensions of loss and dispossession that occur as a result of displacement, some of which are very difficult if not impossible to quantify in monetary terms. The provisions of the land acquisition Act 1894 have been found to be grossly inadequate as its scope does not go beyond cash compensation to person who hold legal land titles, thereby excluding several other categories of losses and making ineligible for compensation vast number who are genuinely project affected but without any formal land titles. Cash compensation appears to be clearly defective as a basis of resettlement policy. There is no obvious way of putting a 'price' on many of the losses experienced by displaced persons and experience also suggests that large cash payments tend to be poorly used by their beneficiaries. Till then no specific law to address resettlement and rehabilitation exists. A draft rehabilitation and resettlement bill – largely the consequences of the land related agitations of the last decade was introduced in parliament in 2007 AND IN 2011. Its passage through parliament, like the Land Acquisition Amendment Bill, has been delayed because of political considerations. Rehabilitation & Resettlement policies will be first step in the right direction. Its critics see the policy as a whitewash; it does not give the state a mandate to act, but only suggests that it should do so. Its proponents see a policy, however, flawed, as better than no law at all.