

**DEVELOPMENT INDUCED DISPLACEMENT, REHABILITATION AND  
RESETTLEMENT: A CASE STUDY OF NARMADA VALLEY**

Under the guidance of Prof. (Dr.) V. Vijayakumar

Dissertation Submitted in Partial Fulfillment of the requirements for  
LL.M. Degree Course in Human Rights Law

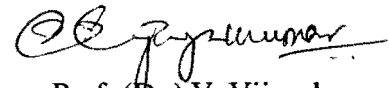
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## CERTIFICATE

This is to certify that this dissertation entitled "Development Induced Displacement, Rehabilitation and Resettlement: A Case Study of Narmada Valley" submitted by Ms. Vimalpreet Kaur (I.D. No. 344) for the degree of Masters of Laws of National Law School of India University is the product of bonafide research satisfactorily carried out by her under my guidance and supervision. This Dissertation or any part thereof has not been submitted for the award of any other degree in any other University.

  
Prof. (Dr.) V. Vijayakumar

Date: 9 June 2010

Place: NLSIU, Bangalore

## **DECLARATION**

I, Vimalpreet Kaur, do hereby declare that the work in the project is outcome of the research conducted by me under the guidance and supervision of Prof. (Dr.) V. Vijayakumar at National Law School of India University, Bangalore as part of the academic program. The study contains several aspects of the issue of rehabilitation and resettlement with reference to Narmada Valley. The complete report of this study is being produced in this document.

I, hereby declare that this work is original except for such help taken from such authorities as has been referred to at the appropriate places for which necessary acknowledgments have been made. The contents of this project are not plagiarized.

I further declare that this work has not been published or submitted earlier, either in part or in whole, for any degree or diploma or any other purpose at any other University or institution.

  
Vimalpreet Kaur

Date : 9 June, 2010

Place: Bangalore

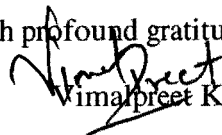
## ACKNOWLEDGEMENT

I express my sincere gratitude to Prof. (Dr.) V. Vijayakumar and owe my foremost regards to him for giving me an opportunity to carry out this work under his guidance. This work would not have been possible without his invaluable support and thought provoking comments. It is due to his patient guidance that I have been able to complete the task.

I am very glad to present this research work based on “Development Induced Displacement, Rehabilitation and Resettlement: A Case Study of Narmada Valley”. I am highly indebted to Ms. Medha Patkar for giving me the opportunity to work with her. I am thankful to Mr. Srikant, Late Mr. Ashish, Mr. Bhagirath, Mr. Kailash, Kammo Bhain and everyone else at Narmada Bachao Andolan Office at Badwani, M.P. I want to thank my fiancé Satwinderpal Singh for being so supportive and also my parents, Mom and Dad for always being there for me. I extend my gratitude to the Library staff of NLSIU who made available the required materials within a very short span.

I am also indebted to all those who obliged me while doing the surveys. Their valuable contributions have played a vital role in the completion of this project. Last but not least, I want to thank my classmates for it has been a wonderful experience studying together for two years. It has been truly an enriching experience.

Though I have tried out best at the same time I know that there is nothing called perfection so I would like to have all valuable suggestions for future.

With profound gratitude,  
  
Vimalpreet Kaur

## TABLE OF CASES

1. B.D. Sharma v. Union of India, 1992 (Supp) 3 SCC 93.
2. Bagalgaon Refinery and Petrochemicals Limited v. Samiuddin Ahmed, (2001) 9 SCC 557.
3. Francis Coralie v. Union Territory of Delhi, AIR 1978 SC 597.
4. Gram Seva Sanstha v. State of Madhya Pradesh, 1986 (Supp) SCC 578.
5. Karjan Jalasay Yojana Assargrasth Shakhar Ane Sangharsh Samiti v. State of Gujarat, AIR 1987 SC 532.
6. Lalchand Mahto v. Coal India Limited, Supreme Court of India, Civil Original Jurisdiction, MP No. 16331 of 1982.
7. M.C Mehta v. Union of India, 2002 (4) SCC 353.
8. N.D, Jayal v. Union of India, (2004) 9 SCC 362.
9. Narmada Bachao Andolan v. Union of India, AIR 2000 SC 3751.
10. Narmada Bachao Andolan v. Union of India, AIR 2005 SC 2994.
11. Olga Tellis v. Bombay Municipal Corporation, 1985 (3) SCC 545.
12. Pradip Prabhu v. Government of Maharashtra, Writ Petition (C) No. 4647, 5564-67 and 7339-43 of 1982, 13696-700 of 1983, 15206-08 of 1984 and 1778 of 1986.
13. Samatha v. State of Andhra Pradesh, AIR 1997 SC 3297.
14. Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715.

## **LIST OF STATUTES**

1. Constitution of India, 1950
2. Environment Protection Act, 1986
3. Guiding Principles on Internal Displacement, 1998
4. ILO Convention 107 on Tribal and Indigenous Population, 1957
5. Indian Forests Act, 1861
6. International Covenant on Economic Social and Cultural Rights, 1966
7. International Covenant on Civil and Political Rights, 1966
8. Land Acquisition Act, 1894
9. Madhya Pradesh Pariyojna ke Karan Visthapit Vyakti (Punhsthapan) Adhiniyam, 1985
10. Maharashtra Project Affected Persons Rehabilitation Act, 1986
11. Maharashtra Resettlement of Project displaced Persons Act, 1976
12. National Rehabilitation and Resettlement Bill, 2007
13. National Rehabilitation and Resettlement Policy, 2007
14. Protection of Human Rights Act, 1993
15. Universal Declaration of Human Rights, 1948
16. Vienna Declaration and Programme of Action, 1993
17. Wild Life Protection Act, 1972

## **LIST OF ABBREVIATIONS**

AIR - All India Reporter

Art - Article

CAD - Command Area Development

CAT - Catchment Area Treatment

CIL - Coal India Limited

CPR - Common Property Right

CWINC - Central Waterways, Irrigation and Navigation Commission

DP - Displaced Person

DRD - Declaration on Right to Development

ECHA - Executive Committee on Humanitarian Affairs

ECOWAS - Economic Community of West African States

ERC - Emergency Relief Coordinator

GA - General Assembly

GNP - Gross National Product

GO - Government Order

GoG - Government of Gujarat

GOI - Government of India

GoM - Government of Maharashtra

GoMP - Government of Madhya Pradesh

Ha - Hectare

IASC - Inter-Agency Standing Committee

IBRD - International Bank for Reconstruction and Development

ICCPR- International Covenant on Civil and Political Rights

ICESCR - International Covenant on Economic Social and Cultural Rights



IDP - Internally Displaced Person  
ILO - International Labour Organization  
LA - Land Acquisition  
NBA - Narmada Bachao Andolan  
NCA - Narmada Control Authority  
NGO - Non Governmental Organization  
NHRC - National Human Rights Commission  
NIHRP - Narmada International Human Rights Panel  
NRRP - National Rehabilitation and Resettlement Policy  
NTPC - National Thermal Power Corporation  
NVP - Narmada Valley Project  
NWDT - Narmada Water Disputes Tribunal  
OCHA - Office for the Coordination of Humanitarian Affairs  
PAF - Project Affected Family  
PAP - Project Affected Person  
R&R - Relief and Rehabilitation  
RES - Resolution  
RTD - Right to Development  
SC - Supreme Court  
SCC - Supreme Court Cases  
SSP - Sardar Sarovar Project  
UDHR - Universal Declaration of Human Rights  
UN - United Nations  
UNHCR - United Nations High Commissioner for Refugees  
Vol – Volume

## CHAPTER - I

### INTRODUCTION

Migrations have occurred throughout human history. Migration is the movement of people from one place to another for the purpose of taking up permanent or semi-permanent residence. It is a complex socio-political and economic phenomenon. The pace of migration increased after 18<sup>th</sup> century due to industrial revolution. People can either choose to move (voluntary migration) or be forced to move (involuntary migration). Forced migration has been a means of social control yet free migration is a powerful factor in social adjustment and the growth of populations.

There are two main types of migration: first, internal migration, i.e. migration within one country, and secondly international migration, which means the movement from one country to another. One of the most significant migration patterns has been rural to urban migration—the movement of people from the countryside to cities in search of opportunities. Peterson<sup>1</sup> gave a typology which divided migration into five classes: primitive, impelled, forced, free, and mass.

People move for a variety of reasons. E. G. Ravenstein in 1889 tried to explain the theory of migration by emphasizing on an economic motive for migration i.e., the desire inherent in most men to 'better themselves in material respects'. Everett Lee in 1966 gave the Push-Pull theory. Push factors are those in their old place which force people to move

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<sup>1</sup> William Peterson in 1958 published an article 'A General Typology of Migration' in the American Sociological Review discussing extensively about migration and its typologies.

like civil war or political oppression while pull factors are factors in the place of destination which encourage people to move. These include peace and safety, a chance of a better job, better education, social security, and a better standard of living in general as well as political and religious freedom.

Human migration affects population patterns and characteristics, social and cultural patterns and processes, economies, and physical environments. As people move, their cultural traits and ideas diffuse along with them, creating and modifying cultural landscapes.

In recent years, internally displaced persons have emerged as one of the most pressing humanitarian, human rights, political and security issues facing the global community. 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.<sup>2</sup> Therefore, at times, the protection of IDP rights demand an equal amount of protection or even more than as is required for other citizens.

Speaking of India, the partitioning of the South Asian subcontinent to create India and Pakistan in 1947 produced one of the great mass migrations in human history, involving some 20 million people. There has been a steady migration within India from rural to

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<sup>2</sup> Protecting Internally Displaced Persons: A Manual for Law and Policymakers, October 2008, at 1, <http://www.unhcr.org/refworld/docid/4900944a2.html>, (Accessed on 3.4.2010).

urban areas. In 2000 the net immigration rate was -0.03 migrants per 1,000 population.<sup>3</sup> In recent past, the economic scene in India has under gone a sea-change because of globalization and liberalization process. At All India level, movements within state account for 77.5% of total migrant households in urban India & 85.5% in rural India. Movement of households is mainly guided by the employment angle. It accounts for 67.5% of the household migration to rural India & 60.2% of the household migration to urban India. Another important reason of migration of households is 'Study' which accounts for 10.6% of the household migration to rural India and 24.6% of the household migration to urban India. At all India level migrants account for 24.68% of the population. In case of rural population the share of migrants is 22.74% where as the corresponding share in urban population is 30.65%.<sup>4</sup>The present study is based on the population migration due to development based projects and an extensive study of Narmada valley has been done.

During the last two decades of the previous century, the magnitude of forced population displacement caused by development programs was of the order of 10 million people each year or some 200 million people globally during that period.<sup>5</sup>

The effect of internal displacement on IDPs themselves, as well as on the local authorities and communities that host them, can be devastating. While the act of displacement itself

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<sup>3</sup> <http://www.nationsencyclopedia.com/Asia-and-Oceania/India-MIGRATION.html>, (Accessed on 3.6.2010).

<sup>4</sup> National Sample Survey Organizaion, "Migration in India", Department of Statistics, Government of India, 2001, [http://mospi.nic.in/rept%20%20pubn/ftest.asp?rept\\_id=430&type=nss0](http://mospi.nic.in/rept%20%20pubn/ftest.asp?rept_id=430&type=nss0), (Accessed on 3.6.2010).

<sup>5</sup> Chris de Wet, "Economic Development and Population Displacement: Can Everybody Win?", Economic and Political Weekly, Vol. 36, No. 50 (Dec. 15-21, 2001), at 4637.

often may violate the human rights of those affected, the subsequent loss of access to homes, lands, livelihoods, personal documentation, family members, and social networks can negatively affect the ability of IDPs to assert and enjoy an entire range of fundamental rights. Most obvious, IDPs immediately become dependent on others for basic needs such as shelter, food and water. Moreover, the longer displacement continues, the greater is the risk that traditional family and social structures break down, leaving IDPs dependent on outside aid and vulnerable to economic and sexual exploitation.<sup>6</sup> At times, the displacement is permanent as in the case of development based projects. In such situations, it is even tougher for the community to adjust to the new surroundings and reconcile with the fact that they cannot go back to their native place again. Thus, there exists a persistent need to address their plight.

United Nations Secretary-General Kofi Annan has described the problem as ‘an unprecedented challenge for the international community: to find ways to respond to what is essentially an internal crisis’.<sup>7</sup> Thus, an effective balance needs to be found between the compelling obligation to provide humanitarian assistance and protection to persons at risk and the UN principle of non-intervention in internal affairs.<sup>8</sup> It was not until 1990s that this gap in the international legal sphere began to get filled. This is primarily because the numbers of internally displaced persons worldwide began to swell

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<sup>6</sup> *Supra*, note 2.

<sup>7</sup> Roberta Cohen and Francis M. Deng, Masses in Flight: The Global Crisis of Internal Displacement, Brookings Institution, Washington D.C., 1998, at xix.

<sup>8</sup> Roberta Cohen, “Some Reflections on National and International Responsibility in Situations of Internal Displacement”, [http://www.brookings.edu/~media/Files/rc/papers/2004/spring\\_humanrights\\_cohen/20040504.pdf](http://www.brookings.edu/~media/Files/rc/papers/2004/spring_humanrights_cohen/20040504.pdf), (Accessed on 1.3.2010).

dramatically. There was also greater acceptance of the idea that the events taking place within a state are a legitimate subject of international concern.

Internal displacement occurs typically in response to armed conflict, persecution, situations of widespread violence, natural and manmade disasters and, more recently, large-scale development projects which is the focus of this study. Development and development based projects have been one of the key reasons for displacement in the last few decades. The situation that exists today is one in which huge numbers in the country supposedly 'citizens' with rights have been uprooted and made refugees in their own homes by the state in the cause of so-called 'national development', at the same scale as virtual whole major nations being erased.<sup>9</sup> This dissertation essentially deals with the issue of Narmada Valley and the problem of rehabilitation and resettlement being faced by the community there.

It has been argued that alienation, deprivation and inequality are inherent in the strategy of Indian development. Independent India inherited an economy pervasive of intense poverty. This scenario was responsible for a desire and hence choice of development strategy in India. It is estimated that owing to construction of over 1,500 major development projects since independence over 20 million people were displaced from their habitat, about 40 per cent of this displacement belongs to tribal population.<sup>10</sup> In a

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<sup>9</sup> Jai Sen, "Displacement and Rehabilitation: Some Points towards Changing Course of Current Thinking", Economic and Political Weekly, Vol. 30, No. 17 (Apr. 29, 1995), at 963.

<sup>10</sup> D. C. Sah, "Development and Displacement: National Rehabilitation Policy", Economic and Political Weekly, Vol. 30, No. 48 (Dec. 2, 1995), at 3055.

democratic set up such involuntary migration is considered infringement of the right of people but we, in India, have treated this trauma very casually.

In the words of L K Mahapatra:

Development for Whom? Who are to be the beneficiaries? There are usually competing sets of interests, and there tend to be 'winners' and 'losers'.<sup>11</sup>

And this is indeed a truism when it comes to development based projects leading to displacement. Whereas the construction of a dam may create benefits for certain categories of people, such as urban consumers of water and electricity, or commercial farmers, it tends to create negative consequences for other parties. Since dams and irrigation projects tend to be constructed in remote hilly forested areas, which are favoured by tribals, they have been disproportionately affected by these projects. Because of the legal problems regarding the status of forest land, they are very often evicted without any compensation at all, and are left landless and resource less.

Today hundreds of 'Bandh Virodhi Sangharsh Samitis' (anti-dam committees) and 'Visthapith Jan Andolans' (displaced persons' agitations) dot the country. Almost 40 years after the fact, the oustees of Bakhra Nangal are still fighting, as are the oustees of numerous other projects including SSP which is the focus of this study.

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<sup>11</sup> *Supra*, note 5 at 4638.

Nehru referred to dams as the 'temples of modern India'. But this is being taken as an acceptance of the fact that the Project has to accommodate itself to political goals and time frames, whether or not these are compatible with sound planning, financing and implementation. Development projects, especially irrigation projects, are rarely financially viable, and thus social benefit-cost accounting used to justify them. In a densely populated country like India, every project that requires large amounts of land displaces thousands, sometimes lakhs, of people, depriving them of their traditional livelihood.

The government of India has been responsible for the forcible uprooting and displacement of some two to five crore citizens of the country since independence, in the name of what has been called 'development planning', and it has ensured the satisfactory rehabilitation of only a small minority of this total number.<sup>12</sup> The intensity of such land acquisitions has grown so high that many rural communities are threatened with separation from their traditional sources of livelihood and social networks.<sup>13</sup> The tense situation in the Narmada Valley today is the outcome of serious problems relating to the rehabilitation of the tribal community. A project symbolizing development has caused deprivation of people who have lived beyond 'development' strategies for centuries.

PAPs are usually from the less powerful, and the economically more marginalized, sections of a society. So, PAPs often come from fragile economic and ecological systems,

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<sup>12</sup> Jai Sen, "National Rehabilitation Policy: A Critique", Economic and Political Weekly, Vol. 30, No. 5 (Feb. 4, 1995), at 241.

<sup>13</sup> R. N. Sharma, "Involuntary Displacement: A Few Encounters", Economic and Political Weekly, Vol. 38, No. 9 (Mar. 1-7, 2003), at 907.



which can take a very long time to reconstruct. This disrupts and even destroys the sets of relationships, the patterns of resource allocation, and the marketing relationships on which productive activity depends. It also undermines the territorially based sets of social relationships of family and neighbourhood, from which much of the rural people's sense of their world, and thus of themselves, is derived.

As the Guiding Principles 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'.<sup>14</sup> The study intends to evaluate the efforts made by national authorities to assist and protect those displaced due to development based projects, to study if the laws and policies have been compatible with international legal norms, and that the ardent task of drawing up protective laws and policies which should be made to assist those affected by internal displacement. This study addresses the situation of the Narmada valley to highlight the legal complexities as are faced in such a situation and how these could be mitigated.

As I stood besides the Holy Narmada gazing across the river, I had tears in my eyes to think that the beautiful valley will soon be submerged under the water leaving nothing but the remnants of life around it. Arundhati Roy is so right when she writes that 'anyone who has loved a river can tell you that the loss of a river is a terrible, aching thing'. Two months in the valley, I saw hope and despair, tears and faith, anguish and pain, dreams and aspirations. I had so many questions in my mind: How do the adivasis in the

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<sup>14</sup> Principle 3(1), Guiding Principles of Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2, (11 February 1998).

Narmada valley dealing with the dangers of displacement, even death? Why do people on the banks of the river, continue to take extraordinary risks against overwhelming odds? Whether they want to be rehabilitated to an alternate site at all? Is it easy to leave one's home and forget about it completely? How do they perceive the choices they had to make? After reaching Badwani, M.P., I started my journey on a boat with three other NBA workers distributing food grains to people living along the bank of the river. I remember reaching village Bhadal in the middle of the night, a beautiful smile welcomed me and two little kids helped me to climb up the hill to a safer place. For few days I stayed there trying to understanding them. In every house I was welcomed with a glass of goat milk and corn. On Holi they told me that they used to have big fair in their village and everyone from surrounding villages used to come with dhols and young girls dancing to the music. But now everything has changed. Staying there was an immensely rich experience for me. Thereafter I moved to village Jalsindhi and Anjanwada. On the way, People used to give us a shout as they needed food grains for their survival. What prospects do you have if the water comes, I ask. Well, what prospects do we have if we leave, they ask. The water has become stagnant but these tribals have to move on taking with them the memories of the place where once they used to live. It left me thinking: Development for whom and at what cost? I was sad but equally astonished to see the strength of those tribals to deal with the problems they were facing. 'Zindabad' is the slogan with which they greet everyone and I truly salute their 'Zindabad' spirit.

Development programs, large and small, frequently cause population resettlement, voluntary or involuntary. This dissertation focuses on the study of development-induced

involuntary population displacement, both economic and physical, and on post-displacement resettlement and reconstruction. Such population movements are analyzed not as idiosyncratic, accidental side-effects of particular projects, but as a category of complex social processes inherent to development. By their high frequency, cumulative magnitude, and destructive socio-economic and cultural effects, forced displacements have come to be recognized as a severe pathology of development, of growing concern and visibility on international and national agendas. These processes give rise to massive socio-economic losses, to pain and suffering, to growing resistance movements, and also to policies and programs intended to restrict and temper their effects. This dissertation approaches displacement/resettlement as a strategic window through which to explore broader theoretical and policy issues in development, especially 'the makings of induced development'. This work includes the basic concept, study of policy statements on resettlement, coupled with practical work to show the interface between what's written on the paper and reality. A study of Narmada Valley Project is done describing the situation of the displaced population.

**OBJECTIVE OF THE RESEARCH:** This work is based on two main premises- to place the issue of displacement within the model of Indian development, and to identify missing links in evolving a successful policy frame. Thus, the objective of the research is to evaluate:

- (a) Post-displacement resettlement and reconstruction.
- (b) The effectiveness of the policies in place.
- (c) The role of the civil societies.

- (d) The role of NHRC and the judiciary.

**HYPOTHESES:**

1. Development-induced involuntary displacement faces ethical challenges from human rights perspective.
2. Reconciliation between development operations and displacement could be achieved by having appropriate policies and framework in place.

**RESEARCH QUESTIONS:**

1. What are the issues pertaining to displacement, rehabilitation and resettlement in the Narmada valley?
2. Whether the basic tenets of this dominating development paradigm have direct bearing on tribal people's life and livelihood? Whether developmental projects violate human rights in displacing the native population?
3. What are the legal safeguards available to protect the rights of the displaced?
4. Whether Guiding Principles on internal displacement include project induced displacement?
5. Whether Guiding Principles on internal displacement are reflected in framing the policies? If not, what are the limitations of the existing policies to protect the displaced?
6. Whether Rehabilitation and Resettlement Bill, 2007 pass the filter of human rights protection? If not, what further changes could be made in the Bill to better protect the rights of the displaced?

7. Whether NHRC has been successful in protecting the rights of the displaced population?
8. What is the approach of the Indian Judiciary towards the rights of the displaced people?
9. Whether SSP assimilate the philosophy of development ensuring ecological balance? What are the reasons for the continuing conflict of interest between the government and the tribals?
10. Whether reconciliation is possible between developmental operations and displacement? Can everyone win in this struggle between development on one hand and protection of rights of the displaced on the other?
11. In cases where displacement is permanent, can rehabilitation do away with the trauma of leaving one's own land?

#### **RESEARCH METHODOLOGY:**

Analytical and descriptive methodologies have been used in making this dissertation. Comparative analysis of the policies has also been done. Case study method has also been used as this work primarily focuses on the rehabilitation and resettlement issues faced by the oustees in the Narmada Valley. Primary and secondary sources of data have been used. Observation method for data collection has also been used. Library and online database materials have been used wherever primary data is not available.

The methodology for the study was decided based on the objectives of the study. The three dimensions of the study underlying the objectives include: (a) conducting a field survey for collection of primary data regarding socio-economic and psycho-social

characteristics of the affected population in the impact area. (b) Collecting information from secondary sources and (c) discussions with NGOs dealing with these people.

For intensive field study which is empirical in nature, a schedule was used. Interview method was also used. People were not comfortable when papers were shown to them. So the researcher preferred to talk out the issues and the problems they are facing and tried to understand the situation they are going through.

The study area included Badwani, Village Bhadal, Jalsindhi, Anjanwara, Kakrana, Chikalda, Sakarja, Domkhedi, Kodamba, Piprigaon and some villages around Badwani which are now declared to be in danger zone. Amlivadi Rehabilitation site was also visited. As far as the sampling is concerned, the study included 50 families, some partially and some fully displaced and other falling in the danger zone.

#### **CHAPTERISATION:**

The dissertation focuses on displacement caused by development projects. Responses to internal displacement should be such that they comply with relevant international law principles. This dissertation addresses comprehensively the specific protection needs of internally displaced persons during all phases of displacement. It discusses steps that can be taken prior to displacement in order to prevent or mitigate it, and also focus on specific measures to be taken during the time people are displaced in order to address protection needs as well as to facilitate durable solutions that would end their displacement. A comprehensive study of Narmada Valley Project has been made. Each of the core chapters should be read in conjunction with chapters I that explains in brief all

the topics covered in other chapters. The core chapters are organized in the order that they describe the subject matter in a sequence. The five core chapters (Chapter II to VI) addresses the protection needs that are discrete in the sense of corresponding to specific categories of recognized human rights. However, many of these issues are interlinked, and respect for one set of rights may be a precondition for the realization of many others. The structure is meant to facilitate rapid identification of potential problems as well as possible regulatory responses.

Apart from the introductory chapter, Chapter II entitled 'Displacement and Resettlement in the paradigm of Development Induced Displacement: The Narmada valley Project' discusses the entire Narmada issue and the policies which three states have in place. Chapter III entitled 'National and International Protection: Laws and Policies' summarizes the relevant minimum standards set out in national and international law for treatment of the displaced. This section also generalizes about how the topic at hand tends to be regulated in domestic law, noting patterns or trends regarding both the manner in which relevant issues are regulated and the level of government at which such regulation occurs (for example, how competences tend to be distributed between the central and regional or local levels). This chapter provides an overview of the key objectives that laws and policies on internal displacement should aim to achieve. It reflects the hard core of what arguably are a state's obligations under international law or are necessary to achieve adequate protection of and assistance for IDPs, and thus they have to be given effect even in situations where the resources or capacity do not exist to implement such measures. Chapter IV entitled 'Role of NHRC and Indian Judiciary vis-

à-vis the Displaced’ discusses the role played by Indian judiciary and NHRC in an effort to protect and preserve the rights of the displaced. Chapter V entitled ‘Cost Bneefit Analysis of Development based Projects: Interface of Ethics, Law and Economy’ deals with the cost benefit analysis of the development based projects discussing the flawed economics of the development projects, resettlement and compensatory principle. A study of human and environment costs pertaining to such projects has been made. This section draws out the specific protection implications of displacement, noting both general concerns and particular risks faced by vulnerable groups within internally displaced populations. Chapter VI entitled ‘Resistence to Development Projects and Reconstruction of Communities’ details out the reaction of the communities towards these projects and the hardships they face. The final chapter provides a general analysis concluding the work and recommendations for drafters as well as examples of human rights compatible provisions which should be adopted in existing national laws and policies whenever possible.

Where relevant, this study also presents international standards and best practice guidelines. The structure of this work is roughly chronological, beginning with issues to focus on during the emergency or early stages of displacement and typically ending with guidance related to the facilitation of durable solutions and an effort to minimize displacement.



## CHAPTER - II

### DISPLACEMENT AND RESETTLEMENT IN THE PARADIGM OF DEVELOPMENT INDUCED DISPLACEMENT: THE NARMADA VALLEY PROJECT

The development had been one of the major factors during the 20<sup>th</sup> century. The power is vital infrastructural input for economic and social growth of country. The three options for power production are hydro, thermal and nuclear.

British Colonialists were the most ardent dam builders outside Europe and North America in the later nineteenth and early twentieth centuries, leaving their mark most firmly on the basins of the Indus, Ganges and Nile.

One day, every last drop of water drains into the whole valley of the Nile...shall be equally and amicably divided among the river, people, and the Nile itself...shall perish gloriously and never reach the sea.

Winston Churchill, 1908<sup>15</sup>

This statement evidently shows the inclination of the British towards building big dams which according to them was the symbol of development.

**CONTEMPORARY DEVELOPMENT PARADIGM:** All human societies possess a creative capacity for development in accordance with their own internal laws and necessities. The contemporary imposition of the supposedly universal model of development and consequent dispossession is of a different order.

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<sup>15</sup> Patrick McCully, Silenced Rivers: The Ecology and Policies of Large Dams, Orient Longman, Hyderabad, 1998, at 20.

The doctrine of individualism and statist ideology being crucial for capitalist and neo colonialist development the collective identities are severely impaired and stigmatized. As the dominant notion of development is gradual triumph of reason, rationality and value neutrality, it has consistently cultivated contempt for consciousness, values, ethics and traditions. Development projects are handed down without any concern for the cultural historical and ecological complexities prevailing in tribal regions.<sup>16</sup>

In recent decades the 'International Bank for Reconstruction and Development' (IBRD or the World Bank) has been a major actor in supporting development projects which cause forced eviction of large masses of people.

Michael Cernea, a sociologist, who has researched development-induced displacement and resettlement for the World Bank, points out that being forcibly ousted from one's land and habitat carries with it the risk of becoming poorer than before displacement, since a significant portion of people displaced do not receive compensation for their lost assets, and effective assistance to reestablish themselves productively.<sup>17</sup> Cernea has identified seven dimensions of impoverishment risk induced by displacement. They are: landlessness, joblessness, homelessness, marginalization, food insecurity, morbidity and social disarticulation.

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<sup>16</sup> Jaganath Pathy, "Impact of Development Projects on Tribals", in, Vidyut Joshi, Tribal Situation in India-Issues in Development, Rawat Publications, New Delhi, 1998, at 275-276.

<sup>17</sup> [http://www.internaldisplacement.org/8025708F004BE3B1/\(httpInfoFiles\)/C753862FA2CF8B7CC1257115004752ED/\\$file/Protection%20from%20module%20handout%20development%20displacement.pdf](http://www.internaldisplacement.org/8025708F004BE3B1/(httpInfoFiles)/C753862FA2CF8B7CC1257115004752ED/$file/Protection%20from%20module%20handout%20development%20displacement.pdf), (Accessed on 4.4.2010).

Displacement is objectionable to the extent that such forced displacement makes people worse off. They are often inadequately compensated for what they lose; they often have to move to areas more poorly endowed; and they often are unfamiliar with the new environment and the skill it requires, and therefore lose in terms of making a living.<sup>18</sup>When we talk of human rights living in a welfare state, such a scenario cannot be accepted at any cost.

In this context, it can safely be said that displacement cannot be the norm. Only in those rare cases when it cannot be helped, rehabilitation should be used as an opportunity to develop the affected communities. The heart of the problem is that people displaced by development projects are generally seen as a necessary sacrifice on the road to development.

**DEVELOPMENT IN INDIAN CONTEXT:** Last few decades have seen an ever accelerating trend in large infrastructural projects undertaken by the central and state governments in India. On the economic front, people question the wisdom of government investment in high cost, long gestation period projects. Social benefit-cost accounting used to justify them. The methodology is not rigid since the social benefits and costs are difficult to estimate. This results in poor accountability and leaves the sanctioning of projects vulnerable to political pressures.

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<sup>18</sup> Peter Penz, "Development, Displacement and International Ethics", in, Philip Quarles Van Ufford and Ananta Kumar Giri (ed.), A Moral Critique of Development: In Search of Global Responsibilities, Routledge, London, 2003, at 141.

In a densely populated country like India, every project that requires large amounts of land displaces thousands, sometimes lakhs, of people, depriving them of their traditional livelihood. The government attempts to pay 'fair' compensation to the oustees for this loss. This has rarely worked. Almost every mega project has left a trail of dispossessed, impoverished and angry people.

According to Chris de Wet, development undertakings should ideally provide the affected people with an enhancement of (a) their material circumstances; (b) their range of options or choices; (c) their control over their day-to-day affairs.<sup>19</sup> Thus, there are two fundamental reasons for displacement as a problem. First, it is compulsory and involuntary, and second, it is rare that 'fair' compensation is paid.

The paradigm of development that has found favour with planners makes displacement of large numbers of people, even whole communities, an unavoidable event. The utilitarian principle of maximum happiness for the maximum numbers has been invoked to lend respectability to making the lives of communities into a cost in the public interest.<sup>20</sup>

The construction of large hydro projects in India and elsewhere is being criticised on the consideration of submergence of forest lands, R&R problems, seismic risk and other environmental issues. The National approach to development as enunciated in the ninth Five Year Plan recognizes that 'irrigation is vital to increase agricultural output to keep

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<sup>19</sup> *Supra*, note 5 at 4638.

<sup>20</sup> Usha Ramanathan, "Displacement and the Law", *Economic and Political Weekly*, Vol. 31, No. 24 (Jun. 15, 1996), at 1486.

the pace with the food requirement of the ever increasing population.<sup>21</sup> All that might be required. But conservation of ecology and economic development should also go together. Sustainable development can be achieved only with the adequate attention to protection and in fact up gradation of environment. This two way linkages between environment and development has to be appreciated in context of Indian situation.

Planning Commission<sup>22</sup> does recognize (a) the eroding resource base and socio-cultural heritage of tribal population through a combination of development interventions, commercial interest and lack of effective legal protection to tribal; and (b) that the disruption of life and environment of the tribal population remains uncompensated owing to unimaginative, insensitive package of relief but still the development process remained unmindful of displacement.

Any development is necessitated by the need to displace a particular relation, either because the relation is untenable or the relation cannot be sustained. To that extent both are dimensions of the same process involving change. The interconnection between displacement and development gives a basis for the idea of inevitability of displacement and thus a justification for developmental projects to be initiated without much thought for the displaced and their development.<sup>23</sup> It is invariably a rehabilitation and resettlement

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<sup>21</sup> V.B. Buch, "Need, Environmental Appraisal, Scope and Measures for Environment Management in Sardar Sarovar Multi Purpose Project", in, R.S. Goel, Environmental Management in Hydropower and River Valley Projects, Oxford and IBH Publishing Company Private Limited, New Delhi, 2000, at 211-212.

<sup>22</sup> Report of the Planning Commission, 1990.

<sup>23</sup> M. Bharathi and R. S. Rao, "Linking Development to Displacement", Economic and Political Weekly, Vol. 34, No. 28 (Jul. 10-16, 1999), at 1955.

policy and the entire process is taken as a necessary evil and cost, which need to be minimized.

The extreme dependence which such large projects necessitate, dependence on the specialized experts and the difficulties in coordinating, monitoring and accounting large teams, leaves the affected population as onlookers without a say either in planning or in implementing the project.

As the focus of study is the issue of displacement and resettlement in Narmada Valley, this Chapter discusses the genesis of the entire controversy and an analysis of the various policies applicable in different states.

**ECOLOGICAL SETTING OF NARMADA AND THE SSP:** Narmada is the fifth largest river of India rising at an elevation of 900 meter near Amarkantak in Madhya Pradesh and traversing 1312 KM through MP, Maharashtra and Gujarat to merges in the Gulf of Khambat. The Narmada basin is bounded by the Vindhyas on north, Satpuras on south and can be divided into five well defined physiographic zones.<sup>24</sup>

The Narmada River originates from the Vindhyan Mountains at an elevation of 1051 m in Madhya Pradesh (M.P.), and flows through Madhya Pradesh, Maharashtra, and Gujarat, meeting the sea in the Gulf of Cambay in Gujarat. The total length of the river is 1312 km

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<sup>24</sup> *Supra*, note 21 at 213.

and the total basin area is 98800 km sq. comprising about 88% of Madhya Pradesh; 2 % in Maharashtra and 10% in Gujarat.<sup>25</sup> (See ANNEXURE I showing the Narmada Valley)

There are numerous villages beside the river in Gujarat and Madhya Pradesh. Across the river from Anjanvara lie the villages of Maharashtra. The distance is spanned by enduring ties of kinship and marriage. Women from Anjanvara marry 'paldhad'(on the opposite bank) and vice versa. Emotional and economic support cements these alliances. Through the seasons, there is a constant traffic of people visiting relatives, carrying small gifts- some mangoes or groundnuts, for instance.

Besides this everyday reciprocity, there is the help accorded in times of crisis, when money has to be raised for bride price, or when someone wants a patch of land to farm. For married women, particularly, access to their natal village is a precious thing. But then Anjanvara watched the villages across the river close down. A road was built all the way along the river and, one by one, the houses paldhad were dismantled and taken away to their settlement sites. For those who are staying on, the emptied villages signal the end of the social universe as they have known it. (See ANNEXURE I)

### **NARMADA VALLEY PROJECT AND THE CONFLICT: THE GENESIS**

Broadly the Narmada Valley Project is a series of dams sought to be built on the Narmada that seeks to abrogate and fund a mentally reorder the riparian rights of the many sets of people who currently use the waters of the Narmada, to provide water and

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<sup>25</sup> Afroz Ahmad, "The Narmada Water Resources Project, India: Implementing Sustainable Development", *Ambio Research for Mountain Area Development: Africa and Asia*, Vol. 28, No. 5, (Aug., 1999), at 398.

electricity to amorphous sets of other peoples.<sup>26</sup> Though dams have been important instruments in the construction of the modern Indian nation, they have often been built ignoring popular demands for equity, efficiency, participatory decision-making, sustainability and accountability.

The Sardar Sarovar Project (SSP) is part of a gigantic scheme seeking to build more than 3000 dams, including 30 big dams, on the river Narmada in western India.<sup>27</sup> SSP is a multipurpose dam and canal system whose primary rationale is to provide irrigation and drinking water.

In 1946, the then Government of Central Provinces and Berar and the then Government of Bombay requested the Central Waterways, Irrigation and Navigation Commission (CWINC) to take up investigations on the Narmada river system for basin wise development of the river with flood control, irrigation, power and extension of navigation as the objectives in view. The study commenced in 1947 and most of the sites were inspected by engineers and geologists who recommended detailed investigation for seven projects. Thereafter in 1948, the Central Ministry of Works, Mines & Power appointed an Ad-hoc Committee headed by Shri A.N. Khosla, Chairman, CWINC to study the projects and to recommend the priorities. With the formation of the State of Gujarat on 1st May,

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<sup>26</sup> <http://www.ielrc.org/content/c9502.pdf>, (Accessed on 3.5.2010).

<sup>27</sup> Philippe Cullet, "Human Rights and Displacement: The Indian Supreme Court Decision on Sardar Sarovar in International Perspective", The International and Comparative Law Quarterly, Vol. 50, No. 4 (Oct., 2001), at 973.



1960, the Narmada Project stood transferred to that State. Accordingly, the Government of Gujarat gave an administrative approval to Stage-I of the Narmada Project in 1961.<sup>28</sup>

The Project was then inaugurated by late Pandit Jawaharlal Nehru in 1961. The Khosla Committee submitted the unanimous report to the Government of India in September, 1965 and recommended a Master Plan of the Narmada water development.<sup>29</sup> But the report could not be implemented on account of disagreement among the States. On 6th July, 1968 the State of Gujarat made a complaint to the Government of India under Section 3 of the Inter-State Water Disputes Act, 1956 stating that a water dispute had arisen between the State of Gujarat and the Respondent States of Madhya Pradesh and Maharashtra over the use, distribution and control of the waters of the Inter-State River Narmada. The Government of India constituted a Tribunal<sup>30</sup> headed by Hon'ble Mr. Justice V. Ramaswamy, a retired Judge of this Court. On the same day, the Government made a reference of the water dispute to the Tribunal. On 16th August, 1978, the Tribunal declared its Award under Section 5(2) read with Section 5(3) of the Inter-State Water Disputes Act, 1956.

#### **AWARD OF THE TRIBUNAL**

The main parameters of the decision of the Tribunal were as under:

*A) Determination of the Height of Sardar Sarovar Dam:* The height of the Sardar Sarovar Dam was determined at FRL 455 ft. The Tribunal was of the view that the FRL +436 ft.

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<sup>28</sup> *Narmada Bachao Andolan v. Union of India*, AIR 2000 SC 3751 (Dr. A.S. Anand, CJI., S.P. Bharucha and B.N. Kirpal, JJ.).

<sup>29</sup> *Ibid.*

<sup>30</sup> This action was taken under Section 4 of the Inter-State Water Disputes Act, 1956.

was required for irrigation use alone. It directed the State of Gujarat to take up and complete the construction of the dam. (See ANNEXURE II: Sardar Sarovar Dam)

B) *Geological and Seismological Aspects of the Dam:* The Tribunal accepted the recommendations of the Standing Committee under Central Water & Power Commission that there should be seismic co-efficient of 0.10 g for the dam.

C) *Relief and Rehabilitation:* The final Award contained directions regarding submergence, land acquisition and rehabilitation of displaced persons. The Gujarat Government was to pay to Madhya Pradesh and Maharashtra all costs including compensation, charges, expenses incurred by them for and in respect of compulsory acquisition of land. The award also provided that if the State of Gujarat was unable to re-settle the oustees or the oustees being unwilling to occupy the area offered by the States, then the oustees will be re-settled by home State and all expenses for this were to be borne by Gujarat.

D) *Allocation of the Narmada Waters:* The Tribunal determined the utilizable quantum of water of the Narmada at Sardar Sarovar Dam site on (the basis of 75% dependability at 28 MAF. It further ordered that out of the utilizable quantum of Narmada water, the allocation between the States should be as under: Madhya Pradesh : 18.25 MAF Gujarat : 9.00 MAF Rajasthan : 0.50 MAF, Maharashtra : 0.25 MAF.

E) *Period of Non Reviewability of Certain Award Terms:* The Award provided for the period of operation of certain clauses of the final order and decision of the Tribunal as being subject to review only after a period of 45 years from the date of the publication of the decision of the Tribunal in the official gazette.<sup>31</sup>

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<sup>31</sup> *Supra*, note 28.

The Tribunal in its Award directed for the Constitution of an Inter-State Administrative Authority i.e. Narmada Control Authority (NCA) for the purpose of securing compliance with and implementation of the decision and directions of the Tribunal. The Tribunal also directed for Constitution of a Review Committee consisting of the Union Minister for Irrigation (now substituted by Union Minister for Water Resources) as its Chairperson and the Chief Ministers of Madhya Pradesh, Maharashtra, Gujarat and Rajasthan as its members. The Review Committee might review the decisions of the Narmada Control Authority and the Sardar Sarovar Construction Advisory Committee.<sup>32</sup>

**PROVISIONS RELATING TO REHABILITATION IN NWDT AWARD:**

1. An oustee shall mean any person who, since at least one year prior to the date of publication of notification u/s 4 of the Land Acquisition Act, has been ordinarily residing or cultivating land or carrying on any trade, occupation or calling or working for gain in the area likely to be submerged permanently or temporarily.
2. A family shall include husband, wife and minor children and other persons dependent on the head of the family, e.g. widowed mother.

3. **LAND ALLOTMENT:**

(A) Landed Oustees: Every displaced family from whom more than 25% of its land holding is acquired shall be entitled to and be allotted irrigable land to the extent of land acquired from it subject to the prescribed ceiling in the State concerned and a minimum of 2 hectares (5 acres) per family, the irrigation facilities being provided by the State in whose territory the allotted land is

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<sup>32</sup> The Sardar Sarovar Construction Advisory Committee headed by the Secretary, Ministry of Water Resources as its Chairperson was directed to be constituted for ensuring efficient, economical and early execution of the project.

situated. This land shall be transferred to the oustee family if it agrees to take it. The price charged for it would be as mutually agreed between Gujarat and the concerned State. Of the price to be paid for the land a sum equal to 50% of the compensation payable to the oustee family for the land acquired from it will be set off as an initial installment of payment. The balance cost of the allotted land shall be recovered from the allottee in 20 yearly installments free of interest. Where land is allotted in Madhya Pradesh or Maharashtra, all recoveries for the allotted land shall be credited to Gujarat.

(B) Encroacher Ousteers: No land allotment benefit provided.

(C) Landless Ousteers: No provision for land allotment

(D) Major sons of all above categories of ousteers: Every major sons will be treated as separate family.

4. HOUSE PLOT: Free of cost allotment of house plot to each oustee family measuring 18.29 x 27.43 m (60'x90') including major sons.
5. REHABILITATION GRANT/GRANT IN AID: Resettlement/rehabilitation grant @ Rs.750/- per family inclusive of transportation charges. Grant-in-aid upto Rs.500/-
6. TRANSPORTATION GRANT: Transportation charges to be met out of resettlement/ rehabilitation grant of Rs.750/-
7. Compensation for land and houses would be as per LA act, 1894.
8. Civic Amenities include:
  - (a) One primary school (3 rooms) for every 100 families
  - (b) One Panchayat Ghar for every 500 families.

- (c) One dispensary for every 500 families.
- (d) One seed store for every 500 families.
- (e) One children's park for every 500 families.
- (f) One village pond for every 500 families.
- (g) Drinking water well with trough for every 50 families.
- (h) One tree platform for every 50 families.
- (i) One religious place of worship for every 500 families.
- (j) Each colony should be linked to main road by roads of appropriate standards.
- (k) Electrification, water supply, sanitary arrangements etc.<sup>33</sup>

The award was hailed as a breakthrough in rehabilitation as it made provisions far beyond those of earlier projects where only cash compensation (often under valued) had been provided. It stated that the project affected persons must:

- (a) improve or at least regain the standard of living they were enjoying prior to displacement;
- (b) be relocated as village units, 'padas', (hamlets) or families, in accordance with their preference, as far as possible;
- (c) become fully integrated within the community in which they are resettled;
- (d) be provided with appropriate compensation and adequate social and physical rehabilitation infrastructure.

Under the broad prospective provided by NWDT, the Government of Gujarat set the following objectives for oustee resettlement and rehabilitation: (i) improve or at least

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<sup>33</sup> [http://nca.gov.in/forms\\_pdf/Rehabilitation%20%20Policy.pdf](http://nca.gov.in/forms_pdf/Rehabilitation%20%20Policy.pdf), (Accessed on 5.5.2010).

retain the standard of living they were enjoying prior to their displacement, (ii) be relocated as village units, village section or families, in accordance with the oustee preference, (iii) be fully integrated into the community, to which they re resettled, (iv) be provided with appropriate compensation and adequate social and physical rehabilitation infrastructure including community services and facilities.<sup>34</sup> After Gujarat, Maharashtra and Madhya Pradesh also followed the suit.

In fact, all the states have come out with their respective policies. A comparison of the three policies has been drawn out in the table below:

**TABLE: 2.1**

	Madhya Pradesh	Gujarat	Maharashtra
Definitions:	[1.1] Displaced person is defined and not the oustees though the definition remains the same except that the words 'working for gain in area' are missing but the word 'project' instead of submergence is used.	Ousteas defined as NWDT award	Ousteas defined as NWDT award.
	[1.2] Displaced family includes widowed mother or	Ousteas family includes only widowed mother.	-

<sup>34</sup> Paramjit S. Judge, "Response to Dams and Displacement in Two Indian States", *Asian Survey*, Vol. 37, No. 9 (Sep., 1997), at 846.

	old father.		
	<p>[2.1] Encroachers have been defined as bhoomiswamis for the purpose of entitlement of compensation and as well as allotment of land provided the encroachments were made prior to 13.4.87, i.e., the date of clearance of Indira Sagar and SSP by GOI.</p>	<p>GOG has not defined encroachers. They have been equated with the landed oustees subject to certain restrictions. According to these restrictions the compensation admissible at the rate of market value of land acquired in the same village under LA Act, i.e., solatium and interest is not to be counted in the compensation.</p> <p>GOG has not defined the deadline of the encroachment and is taking into account,</p>	<p>“Encroacher oustee” is defined as who was able to the satisfaction of the concerned authorities that his encroachment on the government/forest land was prior to 31.3.1978, as per survey carried out in 1985. Ousteas who have encroached forest lands in and around the affected village after 31.3.1978 shall be deemed to be landlees oustee.</p>

	<p>[2.2] M.P. has prescribed that for calculating agricultural and rural abadi land under submergence price of similar land in adjacent command area will be treated as basis. For urban areas the sale price of nearest town of similar size outside submergence will be the basis for calculating the compensation.</p>	<p>section notification for private land in the consideration of such cases.</p> <p>The land acquisition of submerged land is almost over and they have determined the compensation according to the L.A. act.</p>	<p>Not clarified.</p>
	<p>[2.3] M.P. has provided for acquisition of enclaves, surrounded by water, hamlet rendered as non viable social unit, disjointed holdings,</p>	<p>GOG decided to acquire the private lands and houses which get isolated physically and socially due to submergence in Sardar Sarovar.</p>	<p>GOM has not decided policy of such cases. However, if 75% or more land of a contiguous holding of any person is required to be compulsorily required, such person</p>



	<p>non submerged land less than 2 ha.</p> <p>[2.4] For compensation of buildings, the basis of replacement will be taken.</p> <p>[2.5] M.P. has provided for taking away the building material i.e., salvageable material without deducting compensation.</p> <p>[2.6] For trees in private land capitalized value income as basis.</p> <p>[2.7] Outstanding loans from financial institutions and government agencies will not be deducted from compensation. But they will be</p>	<p>GOG has gone by straight line method.</p> <p>GOG has provided the same.</p> <p>For compensation of trees, GOG follows GOG R.D. order.</p> <p>GOG has not made such a provision. GOG has recovered such dues from compensation.</p>	<p>shall have the option to compel compulsory acquisition of entire contiguous holding.</p> <p>Same policy.</p> <p>Same policy.</p> <p>-</p> <p>-</p>
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<p>Allotment Of Agricultural Land</p>	<p>rescheduled as recoveries in dues giving a 2 year moratorium.</p> <p>[3.1] As far as possible. Community will be the unit for displaced families.</p> <p>[3.2] The entitlement of land is minimized to 2 ha. To those families whose land would be acquired. These 2 ha would be either government or private land. In case where more than 2 ha is acquired from family land of equal size would be allotted subject to ceiling of 8 ha.</p>	<p>There is no specific provision.</p> <p>(a) same except for ceiling of 8 ha  (b) 2 ha minimum of land holder holding less than 2 ha  (c) Joint holder entitled to 2 ha.  (d) Landless agricultural labourers -2 ha  (e) Encroachers- 2 ha  (f) Major sons of landed oustees, joint holders, landless labourers and encroachers, 2 ha.  (g) No provision for major sons of land holders.</p>	<p>The oustees shall have an option to select the alternative agricultural land and the Gouthan site in Maharashtra or Gujarat.</p> <p>(a) Every displaced family for whom more than 25% of its land holding s acquired shall be entitled to the extent of land aquired from him, subject to prescribed ceiling in the state and minimum of 2 ha of land per family.  (b) Joint holder entitled to land equal to his share, subject to minimum of 2 ha.  (c) 1 acre land to</p>
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	<p>GoMP provides for irrigation by well, tube well etc on land allotted. It further provides in case land cannot be irrigated, the entitlement would be 4 ha instead of two ha. In cases where irrigation is not possible, development of dry land will be subsidized by government upto 75% of the cost.</p> <p>GoMP provides for minimum 1 ha and</p>	<p>GOG has not committed about wells but normal schemes are operable. Tubewells are considered wherever possible. GOG has maintained the standard of 2 ha for purpose of allotment.</p> <p>GOG has provided maximum of 2 ha land.</p>	<p>landless oustee on the basis of first come first served.</p> <p>(d) Major sons and married daughters of landed oustees who are recorded as joint holders will get agricultural land to farmer's share of joint holding.</p> <p>GoM decided to grant irrigation facilities under Jeevandhara scheme by wells or by lift irrigation where canal facilities are not available.</p> <p>GoM has provided 2 ha land for encroacher</p>
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Recovery of Cost of Allotted Land	<p>maximum 2 ha land for encroachers.</p> <p>No provision for major sons of encroachers.</p> <p>[4.1] GoMP has provided for voluntary purchases And also committee to determine the price through voluntary sales.</p>	<p>GOG has provided 2 ha land.</p> <p>GOG has provided for purchase committee for direct transactions between the parties.</p>	<p>oustee for agricultural purposes.</p> <p>No provision for major sons of encroachers.</p> <p>Every encroacher oustee family shall be entitled to ex-gracia payment of land encroached upon by him to the extent of compensation payable under L.A. Act, 1894 excluding 30% or 12% interest.</p>
	<p>[4.2] GoMP has provided for consent award.</p>	<p>GOG has not provided the consent award.</p>	<p>-</p>
	<p>[5.1] 50 % of compensation payable to displaced family is set off on initial instalment towards the cost of land allotted and the balance will be recoverable in 20</p>	<p>GOG has provided for government land, 50% of compensation as first installment and rest 20 years interest free installments. GoG has provided for ex-gracia payment in case of land purchased through land</p>	<p>GoM has provided for 50% of compensation as first installment and rest 20 years interest free installments. GoM has not made provision for ex gracia payment in purchase of private land.</p>

<p>Rehab Grant and Grant-in-aid</p>	<p>years. For first 2 years, there will not be recovery. This will be treated as interest free loans and the land will be mortgaged to government.</p> <p>M.P. has provided for SC/ST, small and marginal farmers grant in aid to cover the gap between compensation and cost of land.</p> <p>[5.4] Government of MP has provided for option to pay more than 50% of the compensation towards the cost of land. It has also provided the grant in aid for Rs. 1000 per ha for 2 years, in case where interest from loan is not availed of.</p> <p>[6.1] Landless</p>	<p>purchase committee. The difference between compensation and the purchase price is payable as ex-gracia i.e, not recoverable.</p> <p>There is no such provision in Gujarat.</p> <p>GOG has provided the</p>	<p>GoM has not made such provision.</p> <p>Every oustee family</p>
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	<p>families, agricultural labourers are provided rehabilitation grant of 600 to each family in suitable instalments in period of 1 year. For other agricultural displaced families, rehabilitation grant will be Rs. 3200 for 1 year. Grant in aid of Rs. 6100 as related to 1985 prices and GOI's Poverty linked figures and tis will be revised by GOI.</p>	<p>subsistence allowance per family for 1 year at Rs. 4500. In Gujarat most persons are ST and uniform rate is prescribed. GOG has provided resettlement grant at Rs. 750 escalated at 8% per year considering the base year Jan 1980. Also grant in aid for those receiving less than Rs. 2000.</p>	<p>shall be sanctioned resettlement grant of Rs. 750 with Jan 1980 as basis and a rise of 8% shall be allowed every year with reference to this basis. Every oustee family shlla be pad grant in aid upto Rs. 500 as laid down in NWDT award.</p>
<p>Allotment of Residential Plots</p>	<p>[6.2] Free transport facility is provided, for salvageable material, livestock, agricultural produce and agricultural equipment. Rs. 500 would be provided if transportation facility is not required by the family.</p>	<p>GOG has provided for household kits, salvageable materials, and food grains excluding cow dung, firewood and fodder.</p>	<p>GoMP has provided free transport for personal kits, all household material and salvageable dismantled building materials like doors, window frames etc.</p>
	<p>M.P. has provided</p>	<p>Govt. of Gujarat has</p>	<p>Government has</p>

<p>Landless Displaced</p>	<p>for rural area 90 x 70 ft. plot free of cost. It has provided the grant in aid compensation paid for previous dwelling house and cost of new house to extent of India awas Scheme.</p> <p>In urban area, it will be a planned resettlement. Separate urban agency will be set up. The size of the plot would be on the basis of HUDCO, EWS and LIG categories. It would give subsidies for loan and land for houses as per norms of HUDCO. Industrial growth centre will also be established.</p> <p>For landless displaced family grant in aid will be</p>	<p>provided for 90 x 60 ft plot. No other provision is made.</p> <p>Every major son of landed encroacher, joint holder will also be entitled for residential plots.</p> <p>Landless agricultural families are given land for 2 ha. GOG has also</p>	<p>provided a house plot of 60 x 90 area to each oustee family and each major son of landholder and encroacher oustee.</p> <p>(a) All the landless agricultural labourers will be allotted land</p>
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<p>Civic Amenities</p>	<p>paid in the initial period and self and waged employment opportunities will be provided. Provision of vocational training will be made and priority in employment will also be considered in project.</p> <p>Civic Amenities as per NWDT award will be provided and it will not be less liberal than NWDT award.</p> <ul style="list-style-type: none"> <li>- Cremation and burial grounds</li> <li>- Religious place of worship provided</li> </ul>	<p>provided for vocational training and priority in employment in project works on the principle of 'first come first served'.</p> <p>GOG is going according to the norms prescribed by NWDT Award.</p> <p>Additional facilities:</p> <ul style="list-style-type: none"> <li>- electrification.</li> <li>- Internal roads.</li> <li>- S.T. bus stops</li> <li>- Plinth of Rs. 10000 on residential plots.</li> <li>- Religious place of worship.</li> </ul>	<p>available at relocation site on the principle of first come first served.</p> <p>(b) Landless oustees who have not received land would be provided economic assets and IRDP scheme to acquire stable livelihood. (Max assistance of Rs. 9000)</p> <p>Same as NWDT.</p> <p>Additional facilities:</p> <ul style="list-style-type: none"> <li>- Playground for school. (1 acre for primary and 2 acre for secondary)</li> <li>- Electric supply.</li> <li>- Open gutters.</li> <li>- Public latrines.</li> <li>- Open place for collection of animals.</li> <li>- State transport bus stop.</li> <li>- "Khalwadi" threshing platform.</li> </ul>
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Employment			<ul style="list-style-type: none"> <li>- Gochar charan-land for grazing for village cattle.</li> <li>- Opne place for bazaar and also for future expansion.</li> <li>- Cremation ground/burial ground.</li> </ul>
Miscelleneous	<p>GoMP has provided employment exchange for giving priority in project works. Age relaxation of 3 years in class 3 post in government.</p> <p>Establishment of vocational training institute.</p>	<p>GOG has provided employment exchange at Kevadia and placement officer has been appointed. ITI is instituted at Kevadia.</p>	
	<p>Fisheries Research Training Institute in periphery of reservoir for fisheries. Preference for displaced person</p>	<p>GOG has provided for fisheries development in reservoir.</p> <ul style="list-style-type: none"> <li>- Special grant of Rs. 5000 for agricultural development is</li> </ul>	<p>Every oustee settling down at the relocation site shall be also eligible for a house building loan (of Rs. 8000 for landed and</p>

	<p>for allotment of plots in project area. Exemption of stamp duty and registration fee.</p> <ul style="list-style-type: none"> <li>- Religious and archaeological places will be constructed out of submergence area.</li> <li>- Medical facilities ensure safe shifting of displaced persons.</li> <li>- Facility of various schemes of SC/ST will continue at new site.</li> </ul>	<p>provided. This is in addition to the benefit of other government schemes.</p> <ul style="list-style-type: none"> <li>- A plinth will be provide at the rehabilitation plot of the oustees by Government housing (Max expenditure upto Rs. 10000)</li> <li>- Exemption of stamp duty and registration fee.</li> <li>- Free tratorisation on allotted land.</li> </ul>	<p>Rs. 4000 for landless) to be recovered in 20 interest free annual instalments.</p>
<p>Source: Usha Ramanathan, <u>Along the Narmada: Jan Sunwayi</u>, Abacus Publications, New Delhi, 2000</p>			

**ANALYSIS:** But despite of all these provisions, the rehabilitation work has not been satisfactory. The NWDT award represents the minimum non negotiable to which persons,

families and communities are entitled. The judgment of the Supreme Court in October 2000 has evidently had the effect of giving go ahead to dam construction. Even as it did this, there was in the judgment a reiteration of the binding nature of the NWDT award and that the terms of the award may not be derogated from.<sup>35</sup>

Although it is recognized by the court that the policies for resettlement and rehabilitation have changed over time, influenced by the rising consciousness of losses that has appeared among the oustees, as well as by the standards demanded by the World Bank in it as a lender (though it withdrew subsequently) and by a pragmatism that has accompanied the political state's desire to see the dam to completion.

The unevenness of the policies, where Gujarat provides a relatively liberal package, in comparison with Maharashtra and Madhya Pradesh although it has given legal sanction by the Supreme Court in its October 2000 judgment, tends to foster inequity: the choice for the oustee in Maharashtra and Madhya Pradesh is between accepting less or moving out of their state to Gujarat. Though people in all the three states are exposed to the same situation, there are vast differences in the Rehabilitation and Resettlement, which have not been modified by the governments of Maharashtra and Madhya Pradesh to bring them on par with the government of Gujarat. If the people from these two states do opt to resettle in Gujarat, non-availability of land in sufficient quantities poses difficulties due to the magnitude of displacement in Madhya Pradesh. The experience of all the three states clearly reveals that land for cultivation and resettlement cannot be acquired easily

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<sup>35</sup> This is evident from the decision of the Supreme Court in *Narmada Bachao Andolan v. Union of India*, AIR 2000 SC 3751 (Dr. A.S. Anand, CJI., S.P. Bharucha and B.N. Kirpal, JJ.).

and there is also unwillingness of people from different cultural and linguistic backgrounds (from Maharashtra and Madhya Pradesh) to settle in Gujarat. Though flexibility is required while framing policies to suit the conditions but minimum standards should be maintained, especially in the current scenario where basic problem faced by all the three states was same.

Most of the Gujarat state oustees have been tribals who were agricultural cultivators, so successful rehabilitation required that they should be provided with agricultural land and relocated in the tribal villages within their kinship zone.<sup>36</sup> But another problem lies in the fact that in most of India, all land even remotely suitable for agriculture is under the plow. Private purchase can be resorted to, as is being done by the Gujarat government for the SSP. Unfortunately, here too, although absentee landlords reap a windfall profit, the sharecroppers, tenants and labourers who currently till the land are displaced. This phenomenon is known as 'secondary displacement'.<sup>37</sup>

The Daud Committee<sup>38</sup> set up to assist the resettlement and rehabilitation of the SSP affected persons in response to the unyielding resistance of people facing submergence, was appointed by the Government of Maharashtra by Government Resolution dated 23 February 2001 as amended by the Government Resolution dated 12 March, 2001. The report read in continuum with what people felt and had to say, reveals an expanse of

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<sup>36</sup> Paramjit S. Judge, "Development, Displacement and Rehabilitation: A Case of Ousteers of Sardar Sarovar Project on the Narmada", in, K. Gopal Iyer, Sustainable Development: Ecological and Socio-Cultural Dimensions, Vikas Publications, New Delhi, 1996, at 26.

<sup>37</sup> Arul Menezes, "Compensation for Project Displacement: A New Approach", Economic and Political Weekly, Vol. 26, No. 43 (Oct. 26, 1991), at 2467.

<sup>38</sup> Report of the Daud Committee was submitted to the Government of Maharashtra in June, 2001. The Committee held open hearings, met the affected people, visited submergence areas and also rehabilitation sites.

commonality which we can ignore only by placing humanity, responsibility and the notion of “WE, the People” at peril.

Since then the Government of Maharashtra has set up:

- (a) A Task Force to survey the submergence villages in the state.
- (b) A Planning Committee to draw up a master plan, which is then to be implemented.
- (c) An Overview Committee, comprising government representatives, representatives from the movements in the valley and experts to oversee the process.<sup>39</sup>

But then again, the progress is very slow. Recently, Devender Pandey Expert Committee Report (Feb 2009 & 2010) has also come out which discusses the (non) implementation of the environmental safeguard measures of the Sarovar and Indira Sagar Project.

There are evidences that MP government has been indulging in illegal acts of ex-parte land allotment, apart from disbursing cash compensation to the oustees, in order to displace them.<sup>40</sup> This is evident from the fact that many oustees are still residing in the valley when they should have been resettled by now.

Ironically, while the reality of the SSP is an example of political activism at work, the official policy on displacement provides us a good example of 'model' welfare-strategy for rehabilitation. The key provision of the policy is the promise of 'land for land'. Every

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<sup>39</sup> Philippe Cullet, The Sardar Sarovar Dam Project: Selected Documents, Ashgate Publishing, New York, 2007, at 397-398.

<sup>40</sup> Sanjay Sangvai, “Narmada Displacement: Continuing Outrage”, Economic and Political Weekly, Vol. 37, No. 22 (Jun. 1-7, 2002), at 2132.

displaced person has been promised 'land of his choice equal in area to the land submerged'. A policy such as this, vigorously implemented, can be a complete solution to the displacement problem. With vigilance, to ensure that corruption and fraud is kept in check, such a policy can be implemented at a reasonable cost. But the sad reality is that the initiative is hardly taken to implement them.

Also in case of canal affected persons, they are being treated differently which is sheer injustice since they are equally affected by the project. Ultimately, to say the least, beyond policy is implementation. It is in the villages and hamlets and towns that the tales of submergence are being written and in the site of rehabilitation and resettlement that stories of kept and failed promises are being born.

## CHAPTER - III

### **NATIONAL AND INTERNATIONAL PROTECTION: LAWS AND POLICIES**

The industrial revolution of India which really began during the Second World War, caught up with the ushering in of planned development in the fifties. The power, irrigation and industrial projects in the first and second five year plans laid the real foundation of industrial development. But this development paradigm also resulted in the displacement of hundreds of thousands of people.

Justice to the victims of development demands that there be no displacement without rehabilitation being an integral part of the project. It is a right of the DPs not the concession of the project authorities. What is needed is a development policy wherein displacement and rehabilitation become a part of policy frame. This chapter while discussing the history of displacement in India analyzes the existing laws and policies to see if they have been able to meet the requisite goals.

**HISTORY OF DISPLACEMENT IN INDIA:** Involuntary displacement of people due to a deliberate economic policy is not new to India. The nexus between dominant development paradigm and adivasis imbroglio can easily be traced to the colonial era. It intensified in the decades of planned development.

The conservative estimate of the number of people displaced from 1950 to 1991 is about 2,13,00,000, if one restricts the causal factors to dams, mines, wildlife sanctuaries,

industries etc.<sup>41</sup> Irrespective of the causes leading to such migration, the degree of suffering experienced by its victims cannot be quantified in money values.

**DISPLACEMENT IN THE EARLY 19<sup>TH</sup> CENTURY:** There is ample historical evidence to suggest that in the first half of the 19<sup>th</sup> century a major wave of development induced involuntary displacement took place between 1830 and 1842. The phenomenon was the colonial industrial policy of the British. The indigenous industry was hit hard. This is vividly encapsulated by *Lord William Bentinck's* statement in 1834: 'the misery hardly finds a parallel in the history of commerce, the bones of cotton weavers were bleaching the plains of India.'<sup>42</sup> This is when it all started and this process of displacing communities without properly rehabilitating them is still going on.

Towards the end of the nineteenth century, the colonial administration began the process of conferring legal title of land ownership to individuals in some tribal regions and treated the rest of the land as *res nullius* which effectively meant absolute ownership of the state. After independence private ownership got institutionalised<sup>43</sup>. The increased commercial extraction of timber, establishment of numerous forest based industries and the so called development projects have mutilated the forests, scared away the game, polluted water resources, depleted fish stocks and eventually devastated the tribal livelihood.

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<sup>41</sup> Walter Fernandez and Vijay Paranjpye, "Hundred Years of Involuntary Displacement in India: Is the Rehabilitation Policy An Adequate Response?", in, Walter Fernandez and Vijay Paranjpye, Rehabilitation Policy and Law in India: A Right to Livelihood, Indian Social Institute, New Delhi, 1997, at 6.

<sup>42</sup> *Ibid.*, at 7.

<sup>43</sup> *Supra*, note 16 at 277.



**THE FIRST STRUGGLE AGAINST UNJUST DISPLACEMENT (1927):** The struggle against the Mulshi Dam and the hydro-electrical works located in the western India in the erstwhile Bombay Presidency, is a landmark in the history of involuntary displacement in India. The project was owned by the corporate industrial house of the Tatas and had been commissioned in 1920. A total of 11,000 persons were to be displaced from their traditional paddy fields. The local inhabitants decided to resist. A protest of 1300 signatures was prepared and sent to the government. Later on 16<sup>th</sup> April, 1927, 1200 men women and children staged a satyagraha.<sup>44</sup>

This was the first struggle of the people voicing their concern and their legitimate right to speak up for themselves. But the struggle for their rights is still going on.

**DISPLACEMENT IN MODERN INDEPENDENT INDIA: THE WELFARE STATE**

But even after the departure of British, this shameful legacy of social injustice continues. India is a country which faced the horrors of partition. This scenario was responsible for a desire and hence choice for development strategy in India. The debate over development strategy in India was guided by these considerations.

The underlying assumption was that with a faster growth in production, benefits will trickle down to the masses and thereby ensuring distributive justice. But the growth remained too small to trickle down.<sup>45</sup>

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<sup>44</sup> *Supra*, note 41 at 10.

<sup>45</sup> D.C. Sah, "Displacement and Rehabilitation", in, Vidyut Joshi, Tribal Situation in India- Issues in Development, Rawat Publications, New Delhi, 1998, at 254.

The industrial revolution of India which really began during the Second World War, caught up with the ushering in of planned development in the fifties. The power, irrigation and industrial projects in the first and second five year plans laid the real foundation of industrial development.<sup>46</sup>

Damodar Valley Corporation Dams in Bihar, Hirakud in Orissa, Bhakra in Punjab, Pong in Himachal, Ukai in Gujarat, Nagarjuna in Andhra Pradesh, Koyna in Maharashtra, Rihand in U.P.- all these and others came up in the 1950s and 1960s. They offered the solution to our poverty and so everyone said. Still there were few muted voices who challenged the claims made on behalf of dams.

The damage to wildlife and destruction of human habitats, did not feature much. Slowly the voices became louder and more numerous. Experience showed that dams were more expensive and less beneficial than declared. The canals that were to take water hundreds of miles away were rarely completed.<sup>47</sup>

The last to speak up were the persons most affected- the oustees or people displaced from the submergence areas. They took whatever was offered and moved out. In every case, the tribals suffered the most as their entire ethos was irrevocably destroyed. Historically tribals have been pushed to corners owing to economic interests of various dominant

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<sup>46</sup> B.C. Muthayya, Rehabilitation of Displaced Villages: A Plan, National Institute of Rural Development, Hyderabad, 1984, at 1.

<sup>47</sup> Vasudha Dhagamvar, "A Long Long Way from Home: The Search for a Rehabilitation Policy", in, Enakshi Ganguly Thukral, Big Dams: Displaced People, Rivers of Sorrow, Rivers of Change, Sage Publications, New Delhi, 1992, at 188.

groups. In contemporary India, the need for land for development is still forcing them, albeit this time to integrate with mainstream.

At last they spoke, why is it always the poor, the tribals, the villagers who must sacrifice? Why should it always be us? Why do others gain at our expense? Why don't we get a share in the new riches? A detailed project report of a dam runs into volumes but seldom anything is devoted to the fate of displaced persons. Once popular consciousness grows, government started making promises which are hardly fulfilled.

#### **INTERNATIONAL CONVENTIONS/POLICIES PROTECTING THE RIGHTS OF THE DISPLACED:**

For those who are displaced, these development projects usually have overwhelmingly negative consequences, resulting in social and psychological disruption, and often long-term economic impoverishment. They have effectively become what one might call 'people in the way of progress', having to move to make way for, and to suffer for, the kind of infrastructural development that is, for many people, the hallmark of progress. It is seen as unfortunate, but nevertheless as expedient, 'for the sake of the nation', that some should suffer.<sup>48</sup> Policy response is often not adequate.

As the World Bank's General Counsel has concluded:

Lessons derived from Bank-assisted projects involving resettlement [show] that in many countries the national legal framework of resettlement operations is incomplete... Resettlement legal issues [are treated] as a

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<sup>48</sup> *Supra*, note 5 at 4637.

subset of property and expropriation law. For various reasons, these national laws do not provide a fully adequate framework for development-oriented resettlement... New legislation often must be introduced or existing laws must be modified, in order to plan and carry out involuntary resettlement adequately.<sup>49</sup>

Therefore, the Bank has recommended policy reform in this area to all borrowers whose projects entail involuntary resettlement. In 1980, the World Bank became the first development agency to adopt an explicit policy concerning involuntary resettlement.<sup>50</sup>

The main thrust of the Bank's policy was:

- (a) To improve or atleast regain the standard of living enjoyed prior to displacement
- (b) A broader definition of the term 'oustees' to include both the landed and landless, that is, those who cultivated or were engaged in gainful employment.
- (c) To relocate villages and families as a unit according of their preferences; Participation of the oustees in the Rehabilitation process.
- (d) The allocation of 'no less than' 2 ha of irrigable land.

The indiscriminate involuntary displacement of the tribals violates several national and international instruments. There are several conventions internationally which safeguards the rights of the displaced.

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<sup>49</sup> Michael M. Cernea, "Public Policy Responses to Development-Induced Population Displacements", Economic and Political Weekly, Vol. 31, No. 24 (Jun. 15, 1996), at 1519.

<sup>50</sup> Roopee Sahaee, "National Rehabilitation Policy: Many Loopholes", Economic and Political Weekly, Vol. 38, No. 6 (Feb. 8-14, 2003), at 510.

**Right to Participation:** The affected communities must be able to participate in different levels of decision-making. The right to participation is well grounded in Article 25, ICCPR. More specifically, the 1991 International Labour Organisation Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention 169) stipulates in Article 7 that indigenous and tribal peoples shall participate in the formulation, implementation and evaluation of national and regional development plans that affect them.

**Right to Freedom of Movement:** Article 12 of the UN International Covenant on Civil and Political Rights (ICCPR) covers the right to liberty of movement and freedom to choose one's residence and the UN Human Rights Committee is monitoring its implementation.<sup>51</sup>

**Right to Life and Livelihood:** When security forces take action to move people forcibly or to quell civil dissent against development projects, this may constitute a direct threat to the right to life, which is protected in Article 3 of the UDHR and Article 6 of the ICCPR. The right to own property and not to be arbitrarily deprived of this property as well as the right to work are spelled out in Articles 17 and 23 of the UDHR respectively) as well as in Article 6 of the ICESCR. The ILO Convention 107 on Tribal and Indigenous Population 1957, which India ratified in 1962, states in Article 12 that when in exceptional circumstances the tribals are displaced, they shall be provided with lands of

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<sup>51</sup> Bjorn Pettersson, "Development Induced Displacement: Internal Affair or International Human Rights Issue", <http://www.fmreview.org/FMRpdfs/FMR12/fmr12.6.pdf>, (Accessed on 15.3.2010).

quality, at least equal to that of the land previously occupied, individually and collectively by them, suitable for their present needs and future development.<sup>52</sup>

Article 11 of the ICESCR, moreover, provides for 'the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions'.

**Rights of Vulnerable Groups:** Human rights of vulnerable groups are protected generically in the International Bill of Human Rights. The ILO Convention 169 spells out protections for indigenous groups. The principle of non-discrimination is not only codified in Article 2 of the UDHR, Article 2 of the ICCPR and similarly Article 2 of the ICESCR but also in the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>53</sup> The *Vienna Declaration and Programme of Action, 1993* to which India is a party, clearly identifies 'forced eviction' as 'gross violation of human rights'.

Majority of the conventions have the reporting system and complaint mechanism but what is being observed is the backlog of reports and complaints hardly work. If international pressure be put on states not following the essential requirements, situation can be improved. Nonetheless, the involuntary development induced displacement is a phenomenon everywhere. To hide the trauma policy makers and international financial

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<sup>52</sup> This Convention, though ratified by India, has hardly been followed in rehabilitating the displaced communities.

<sup>53</sup> *Supra*, note 17.

institutions have now started using the pretentious phrase ‘involuntary relocation’. In actual practice its nothing but ‘forced eviction’.

The *Morse-Brody Report*<sup>54</sup> states that ‘Concern for such groups is an aspect of the world's increased awareness of how isolated cultures have all too often paid an appalling price for development. The mechanism by which they become separated from their lands and become stripped of their own cultural integrity are all too well known’.

In 1990, the General Assembly assigned to Resident Coordinators the function of coordinating assistance to IDPs. In 1991 the post of Emergency Relief Coordinator (ERC) was created followed by the creation of Inter-Agency Standing Committee (IASC) chaired by ERC and composed of Heads of major UN humanitarian and development agencies. Since 1997 also chaired by ERC is a smaller body, the Executive Committee on Humanitarian Affairs (ECHA). In the same year the Department of Humanitarian Affairs (DHA) was started which was replaced by a smaller office renamed as the Office for the Coordination of Humanitarian Affairs (OCHA). Finally in 1998, the representative of the UN Secretary council on IDPs, Mr. Francis Deng, presented to the United Nations Commissioner for Human Rights, Guiding Principles on Internal Displacement.<sup>55</sup> The Guiding Principles are grounded in existing human rights and humanitarian law standards.

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<sup>54</sup> B. Morse and T. Berger, *Sardar Sarovar: Report of the Independent Review*, Ottawa, 1992.

<sup>55</sup> Jeevan Kumar, “Rights of Internally Displaced Persons in the Light of the Guiding Principles of Internal Displacement”, [http://repository.forcedmigration.org/show\\_metadata.jsp?pid=fmo:3044](http://repository.forcedmigration.org/show_metadata.jsp?pid=fmo:3044), (Accessed on 4.4.2010).

When the issue of internal displacement emerged onto the international agenda in the early 1990s, no definition of ‘internally displaced persons’ existed. For the purposes of the Guiding Principles, two core elements of the concept of internal displacement were clear. One was the involuntary nature of the movement. Two, was the fact that such movement takes place within national borders.<sup>56</sup> The latter criterion distinguished the internally displaced from refugees who, according to international law, by definition are outside of their country.<sup>57</sup> Thus, the distinctive feature of internal displacement is the involuntary movement that takes place within national borders.

In 1992, a working definition had been put forth by the United Nations Secretary-General, which defined internally displaced persons as:

Persons or groups who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disaster, and who are within the territory of their own country.<sup>58</sup>

This definition was considered by some to be broad and by others to be narrow. It was broad enough to include persons uprooted by natural and man-made disasters like cases of floods, earthquakes, famine, nuclear or chemical accidents. But it excluded situations where displacement of populations was not a spontaneous event. Similarly, the criterion of being ‘forced to flee’ would exclude all those situations where populations did not flee

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<sup>56</sup> Erin Mooney, “The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern,” *Refugee Survey Quarterly*, Vol. 24, No. 3 (2005), at 10.

<sup>57</sup> Article 1 of the Convention on the Status of Refugees, 1951.

<sup>58</sup> United Nations Commission on Human Rights, “Analytical Report of the Secretary-General on Internally Displaced Persons”, UN Doc. E/CN.4/1992/23 (14 February 1992), Para. 17.



But were obliged to leave their homes, was not addressed by this definition. Also problematic was the notion of people fleeing ‘in large numbers’ as in reality many displaced fled in small groups or even on an individual basis.

Eventually the definition which emerged out of deliberations in the Guiding Principles on Internal displacement defines IDPs as:

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.<sup>59</sup>

The lack of explicit mention of development in the IDP definition has sometimes led to confusion, including erroneous assertions that those displaced as a result of development projects are excluded from the Guiding Principles. However, the fact that the Guiding Principles also apply in situations of development is apparent from the content of the Principles themselves, which directly address displacement by development projects in Principle 6 and also draw upon resettlement standards from the development field. At a regional conference on internal displacement in Asia co-sponsored by UNHCR, the Asia Forum for Human Rights and Development, the Norwegian Refugee Council, the U.S. Committee for Refugees and the Brookings Institution in 2000, it became clear that any

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<sup>59</sup> United Nations Commission on Human Rights, “Report of the Representative of the Secretary-General on Internally Displaced Persons: Guiding Principles on Internal Displacement”, UN doc. E/CN.4/1998/53/Add.2 (11 February 1998).

discussion of internal displacement in the region would not be complete without taking into account displacement due to development projects.<sup>60</sup>

The application of the Guiding Principles in South Asia expressly covers displacement by conflict and disaster as well as development projects. In West Africa too, the governments of the Economic Community of West African States (ECOWAS) are increasingly recognizing development as a cause of displacement.

The Global IDP Project, while citing the figure of 25 million IDPs displaced by conflict nonetheless acknowledges that the number of people uprooted by development projects is thought to be much higher, and notes that both groups are covered by the Principles. Furthermore, it points out that in the case of development-induced IDPs, 'their plight remains largely unnoticed and they often receive even less support from their government and/or international aid agencies than people displaced by conflict or natural disasters'.<sup>61</sup>

The Guiding Principles reflect and are consistent with international human rights law and international humanitarian law and to a large extent thus codify and make explicit guarantees protecting internally displaced persons that are inherent in these bodies of law.

These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as

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<sup>60</sup> 'Report of the Regional Conference on Internal Displacement in Asia (Bangkok, Thailand, 22-24 February 2000), Paras. 12-16, in, Refugee Survey Quarterly, Vol. 19, No. 2 (2000), at 26.

<sup>61</sup> *Supra*, note 56 at 13.

during return or resettlement and reintegration.<sup>62</sup> These Principles concentrate on the 'Prevention' aspect. Thus, the governments are urged to prevent and avoid conditions that might lead to displacement.<sup>63</sup> Further, Principle 7 states 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. In case, displacement is necessary, many rights and guarantees are provided as guidance to the states to follow.<sup>64</sup> Such rights need to be ensured to an IDP without discrimination.

As regards the responsibility of states affected by internal displacement, the Guiding Principles rest on two key tenets:

1. Sovereignty entails not only the right of each state to conduct its own affairs but also the primary duty and responsibility to provide protection and assistance without discrimination to its population, including the internally displaced, in accordance with international human rights and humanitarian law.<sup>65</sup>
2. While those displaced within their own country remain entitled to the full protection of rights available to the population in general, displacement gives rise

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<sup>62</sup> Walter Kalin, Guiding Principles on Internal Displacement: Annotations, The American Society of International Law, Washington, DC, 2008, at 1.

<sup>63</sup> Principle 5, Guiding Principles of Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2 (11 February 1998).

<sup>64</sup> Principle 10 to Principle 23, Guiding Principles on Internal Displacement, 1998, specifically talks about Protection during Displacement and different kind of rights to which a displaced person is entitled such as Right to life, Right against arbitrary arrest and detention, Right against enforced disappearances, Right against discrimination, Right to dignity, Right to liberty and security of person, Right to liberty of movement, Right to freedom to choose his/her residence, Right to seek asylum in another country, Right to seek whereabouts of missing relatives, Right to respect of his/her family life, Right to adequate standard of living, Right to medical treatment, right to be recognized everywhere as a person before law, Right against arbitrary deprivation of property, Right to freedom of speech and expression, Right to religion, Right to education etc.

<sup>65</sup> Principle 3 of the Guiding Principles on Internal Displacement, 1998 rests primary responsibility on the state to provide protection to IDPs. It states: 'National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.'

to particular vulnerabilities on the part of those affected. Therefore, and in order to ensure that the displaced are not deprived of their human rights, states are obligated to provide special measures of protection and assistance to IDPs that correspond to these vulnerabilities in order to ensure that IDPs are treated equally with respect to non-displaced citizens. They shall not be discriminated against as a result of their having been displaced and shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.<sup>66</sup>

Erin Mooney opines that training government officials, including the military and police, on the rights of IDPs is a key to ensuring that national actors are aware of their responsibilities towards the displaced. It is part of building national capacity, and accountability, to effectively discharge these responsibilities.<sup>67</sup>

Thus, the State is responsible for providing an environment in which internally displaced persons can make informed decisions about their choice for a specific path which will take them to a durable solution.

**LAWS/POLICIES IN INDIA:** Experience has shown that a comprehensive policy framework is inevitable if impoverishment risks have to be avoided. Recognition by policy makers that there are potential risks is the first step of avoiding the risk. A policy

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<sup>66</sup> Principle 29, Guiding Principles of Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2 (11 February 1998).

<sup>67</sup> Erin Mooney, "Realizing National Responsibility for Internally Displaced Persons", Roundtable on the Protection of Internally Displaced Persons, December 2004, [http://www.brookings.edu/speeches/2004/1209humanrights\\_mooney.aspx](http://www.brookings.edu/speeches/2004/1209humanrights_mooney.aspx), (Accessed on 6.5.2010).

frame having provisions first to identify the impoverishment risks associated with resettlement and then counteract them is needed for rehabilitation.<sup>68</sup>

In India, there are several laws and regulations beginning from the British period considering the history of displacement and the development paradigm in India.

**THE FOREST POLICY STATEMENT:** The status of forest land is one of the more thorny problems facing the state today. This problem comes to a head in the case of displacement. In 1854, the first Forest Act declared all land under forest to be the property of the colonial power, to be managed so as to achieve maximum return.<sup>69</sup>

The British government established the Imperial Department of Forests in 1864, and a German expert, Dietrich Brandis was invited to take over as the first Inspector General of forest in India. The colonial Government passed the Indian Forests Act of 1865, which facilitated the acquisition of those forest lands that were earmarked for building railway lines. After a long process of administrative debate and debate, a more stringent and comprehensive law was enacted, the Indian Forest Act of 1878.<sup>70</sup> It established the absolute proprietary right of the state and gave it a monopoly control over the lands by converting them into state property. Here again the logic and justification of the British Policy was 'public interest'.

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<sup>68</sup> *Supra*, note 45 at 269.

<sup>69</sup> This Act enabled the British Government to acquire forest land too.

<sup>70</sup> *Supra*, note 10 at 9.

### **LAND ACQUISITION ACT, 1894:**

The principal law (central) which deals exclusively with the subject of acquisition of private land by the state is Land Acquisition Act, 1894. The Land Acquisition Act was first promulgated in 1894 as a culmination of other land laws introduced by the British from 1824 onwards mainly to suit the colonial needs. Minor amendments were introduced in it in 1914 and 1938 with substantial changes being incorporated in 1984.

Various steps for the acquisition of land under the act are:

- (a) Preliminary notification in the official gazette and newspapers by the collector, the intent of the government to acquire land for a public purpose according to Section 4(1) of the LA Act.
- (b) Survey of the land to be acquired.
- (c) Filing of the objections with the collector in writing by any person interested in the said land.
- (d) Hearing of objections and preparation of the report by the collector according to Section 6 of the LA Act.
- (e) Declaration that land is acquired for a public purpose within one year of notification under section 4 (1) and publishing in the official gazette and newspapers giving full details of the area to be acquired with details of the locations, purpose of acquisition etc.
- (f) The land to direct the collector to take order of acquisition of the said land.
- (g) The land to be acquired is measured and marked out on a plan.
- (h) Issue of notice to persons with interest in the land requiring them to file claims and objection, if any. Notice is also issued to the occupiers.

- (i) The collector to enquire into the objections filed, if any, pursuant to notice under section 9 and into the value of land and to make an award within a period of two years from date of publications of declaration.
- (j) The award to be brought to the notice of all interested parties as provided in Section 12(2) of the LA Act.
- (k) The collector to take possession of the land after passing the award under Section 11.
- (l) If a person does not accept the award passed under Section 11, he shall make a request in writing to the collector to refer the matter to the court within 6 weeks of receipt of notice from the collector under section 12(2) or within 6 months from the date of collector's award whichever expires first.
- (m) The compensation determined on the basis of market value, damage to any standing crops or property due to acquisition and diminution of the profits of the land between time of publication of declaration under section 6 and the time of taking possession by the collector.
- (n) On making an award under section 11, the collector shall make payment to the awardees or deposit it in the court to which reference under section 18 is made before taking possession.<sup>71</sup>

**THE RIGHT TO OBJECT:** The objection can be raised on account of:

- (a) That one's land is not needed/ suitable for that purpose.
- (b) That it is not a public purpose.

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<sup>71</sup> A.C. Tyagi, "Resettlement and Rehabilitation in River Valley Projects", in, R.S. Goel, Environmental Management in Hydropower and River Valley Projects, Oxford and IBH Publishing Company Private Limited, New Delhi, 2000, at 177-78.

- (c) That more land has been acquired than necessary.
- (d) That the acquisition will destroy historical monuments or places of public interest or that it will desecrate religious buildings.
- (e) Without objecting to the acquisition, one can object to the omission of one's name from the list of persons having an interest in the particular land.
- (f) One can object to the low quantum of compensation.<sup>72</sup>

But the irony remains: who will raise objection in case of poor tribal population? Where will they go? Who will they talk to? These sound simple but there are larger questions when it comes to those who lose everything for the benefit of others.

**QUESTIONING EMINENT DOMAIN:** At present, displacement results in the denial of people's entitlements and the right to live with dignity enshrined in Article 21 of the Constitution. The reason is that there are two types of citizens: those encroaching on revenue land who may become its owners and those in possession of forest land who cannot get a patta. This distinction itself is based on the colonial principle of terra nullius according to which land not having individual ownership documents belongs to no one and hence accrues to the State. This principle was declared invalid by the Australian Judiciary in 1993.<sup>73</sup> But it continues to be followed in India, where if a piece of land has no private ownership, it belongs to the state.

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<sup>72</sup> Vasudha Dhagamwar, "The Land Acquisition Act: High Time for Changes", in, Walter Fernandez and Vijay Paranjpye, Rehabilitation Policy and Law in India: A Right to Livelihood, Indian Social Institute, New Delhi, 1997, at 114.

<sup>73</sup> *Supra*, note 41 at 22.



This principle, known as eminent domain, is the guiding principle in land transactions. All lands not having an individual patta, including CPRs that are the tribal life support system, are assumed to be state property, and may be acquired by the state without paying any compensation to the communities whose livelihood they form. Abandonment of the principle of eminent domain and a restrictive definition of public purpose are essential conditions for a rehabilitation policy to be of practical use to the DPs.

**ANALYSIS:** As this act was enacted at a time when the role of the state in promoting public welfare and economic development was negligible, its provisions are obviously not in consonance with the social and economic realities of today. Since independence the role of the state in promoting economic development has expanded greatly. And on the social front, it is no longer sufficient for the state to merely maintain law and order. The state is now expected to effectively advance the welfare of the citizens.<sup>74</sup>

The bulk of those displaced by developmental projects are the poor, the illiterate and many of them, tribals who are not capable of investing the compensation wisely. Once this money has been squandered, they are left quite destitute. Today, as matters stand, a person whose land has been acquired has nothing left but to look at the government for some relief. By using the concept of 'eminent domain' the British were able to theorise and legitimise their control over land, which was the most fundamental resource for people's survival. In a modern democratic society, no right or authority even when

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<sup>74</sup> Kalpana Vasvani, "Rehabilitation Laws and Policies: A Critical Look", in, Enakshi Ganguly Thukral, Big Dams: Displaced People, Rivers of Sorrow, Rivers of Change, Sage Publications, New Delhi, 1992., at 156.

acquired through democratic procedures can be unlimited or absolute. Each right is inseparably linked to a duty.

The Land Acquisition Act, 1894 is the enabling law for land acquisition. But is extremely project oriented and recognizes very few rights of those who are deprived of their livelihood. The Land Acquisition Act, when applied to large scale acquisitions resulted in displacement and deprivation of means of livelihood for the affected people, but did not give them the right to resettlement or rehabilitation. Even those who were compensated monetarily were hard put to replace their lost land assets and regain their means of livelihood.

The Land Acquisition (Amendment) Bill was introduced in the Lok Sabha on 6 December 2007. It seeks to amend Land Acquisition Act, 1894. Important aspects of the Bill include a wider definition of 'public purpose',<sup>75</sup> provision of social impact assessment where the acquisition involves displacement of certain number of families, creation of the Land Acquisition Compensation Disputes Settlement Authorities for acquisitions by Central and State governments and so on.

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<sup>75</sup> The expression 'public purpose includes: (i) the provision of land for strategic purposes relating to naval, military and air force works or any other work vital to the state; (ii) the provision of land for infrastructure projects of the appropriate government, where the benefits accrue to the general public; and the provision of land for any other purpose useful to the general public, for which land has been purchased by a person under lawful contract to the extent of seventy percent but the remaining thirty percent of the total area of land required for the project as yet to be required.

Among others, it should ensure that displacement and social dislocation are reduced to the absolute minimum. The government's power to acquire land permanently without giving any notice on grounds of emergency/urgency should be taken away. The onus of proving the public interest/purpose must rest on the government as a mandatory responsibility not only before but also during the implementation of the project. The rights of the communities over CPRs and other assets for which they do not have an ownership document but which are their livelihood should be safeguarded. The right of the people to participate in the decision concerning the project that displaces them should be reasserted.

**COMMITTEE ON THE REHABILITATION OF DISPLACED TRIBALS:**

In 1985, the Committee on the Rehabilitation of Displaced Tribals due to Developmental Projects, Ministry of Home Affairs, Government of India suggested that the rehabilitation of displaced persons should form an integral part of all projects of a certain magnitude, whether such project are being executed by the government or corporations, in the joint, public or private sectors.<sup>76</sup>

**LAWS/POLICIES OF THE STATE GOVERNMENTS:** The grim reality with which we are faced today is that despite the fact that thousands of people have been uprooted from their homes as a result of the acquisition of land for development projects, there is no law on the subject.

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<sup>76</sup> *Supra*, note 75 at 160.

Even Madhya Pradesh Pariyojna ke Karan Visthapit Vyakti (Punhsthapan) Adhiniyam, 1985 and the Maharashtra Project Affected Persons Rehabilitation Act, 1986 are not automatically applicable to all the persons in the state. The M.P. Act has left it to the discretion of the state government to decide whether or not it is necessary to apply the provisions of the act to a particular project.

The Maharashtra Act of 1986 is an improvement on its precursor the Maharashtra Resettlement of Project Displaced Persons Act, 1976 and also the M.P. Act for it is automatically applicable to all the irrigation projects in which the area of the affected zone exceeds 50 hectares or the area of the benefitted zone exceeds 200 hectares or if an entire village is affected. Unfortunately this act is not applicable to inter state projects as given in Section 1(4) (c) of the Act.<sup>77</sup>

The Karnataka Act was passed by the legislature in 1987 but received the President's assent in 1994. Orissa had passed several Government Orders beginning from 1977. All of them put together into a policy for irrigation for displaced persons which was promulgated in 1994. Gujarat initially followed Maharashtra's land scheme but later passed many GOs.

**NATIONAL REHABILITATION AND RESETTLEMENT POLICY:** Policy development is the introduction of constitutive rules about how to approach a major social process in terms of basic goals and compatible means.

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<sup>77</sup> *Supra*, note 75 at 161.

After displacing about 3 crore persons during so many years of planned development, the government of India finally realised the need to formulate the rehabilitation policy for the displaced persons.<sup>78</sup> With the Five-Year Plans intensifying the process both of development and displacement from 1951, a legal answer for rehabilitation was overdue.

A major factor responsible for the poor record of resettlement and rehabilitation in India is the inadequacy of the legal-institutional framework. It became economically pragmatic as well as politically wise to have a national policy on resettlement and rehabilitation of people displaced by development projects, which defines the binding obligations of all state governments in this field.<sup>79</sup> The National Thermal Power Corporation (NTPC) 1993 was the first displacing agency to have such a policy. Coal India (CIL 1994) followed the suit in late 1994.<sup>80</sup>

A National Rehabilitation Policy was first mooted in 1985 and committee was appointed by Ministry of welfare for the purpose. It was first drafted in 1993 by the Ministry of Rural development. In 1994, a core group was constituted by the Committee of secretaries to examine the draft policy.

Based on the input from the process of consultation with NGOs and social activists, a revised draft was prepared in 1996. The Committee of Secretaries approved the draft

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<sup>78</sup> Walter Fernandes, "Rehabilitation Policy for the Displaced", Economic and Political Weekly, Vol. 39, No. 12, Money, Banking and Finance (Mar. 20- 26, 2004), at 1191.

<sup>79</sup> Sangeeta Goyal, "Economic Perspectives on Resettlement and Rehabilitation", Economic and Political Weekly, Vol. 31, No. 24 (Jun. 15, 1996), at 1461.

<sup>80</sup> Walter Fernandez, "The Draft National Policy for the Rehabilitation of DPs: Is Displacement Inevitable?", in, Walter Fernandez and Vijay Paranjpye, Rehabilitation Policy and Law in India: A Right to Livelihood, Indian Social Institute, New Delhi, 1997, at 35.

policy in 1998.<sup>81</sup> In February 2004, the Ministry adopted a National Policy for Resettlement and Rehabilitation. It was stated in the preamble that there is need to minimise large scale displacement and to handle the issues related to resettlement and rehabilitation with utmost care.<sup>82</sup> Then again the Ministry came up with a new National Rehabilitation and Resettlement Policy that came into operation on the 31st October 2007.

**Objectives:**

- (a) Minimise displacement by exploring non-displacing or less displacing options.
- (b) Higher income and better standard of living to PAPs.
- (a) Reduce trauma of loss of livelihood systems, productive assets and income sources.
- (b) Promote mutual understanding between PAPs and project authorities through right to information and transparency.

The Policy is based on the principle that R&R is the joint responsibility of the state government and the project authorities, the later bearing the entire cost of all R&R benefits.

**Salient Features:**

1. Intensive survey and identification of the people likely to be affected by a project, to be completed within three months from the date of notification under section 4 of LA Act, 1894 or other similar acts.

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<sup>81</sup> *Supra*, note 71 at 179-180.

<sup>82</sup> Sharad Kulkarni, Comments on the Rehabilitation and Resettlement Bill, 2007, [http://www.doccentre.net/edocs/comments\\_on\\_the\\_rehabilitation.pdf](http://www.doccentre.net/edocs/comments_on_the_rehabilitation.pdf), (Accessed on 22.4.2010).

2. The PAP to include all persons whose source of livelihood, place or residence or other property resources are affected notwithstanding the legal status enjoyed by them, in relation to the concerned resource base for their livelihood and subsistence.
3. The cut off date for the identification of PAPs shall be minimum three years of residence before the date of publication of notification under section 4 of LA Act, 1894.
4. Survey to be made public in local language, both in writing or orally, at each panchayat and district/tehsil/taluk headquarters.
5. The PAPs to be given due opportunity to raise objections.
6. For the purpose of this policy, the word 'Family' shall mean and include every major adult member, his (her) spouse, along with minor children below the age of 18 years and shall also include unmarried/widows, daughters and parents or other dependents residing with the family and dependent on it.
7. The word 'loss of livelihood' shall mean and include loss of any job or employment or alienation from main source of trade, occupation or vocation, which was hitherto their main source of income.<sup>83</sup>
8. Policy covers all cases of involuntary displacement.
9. Social Impact assessment (SIA) introduced for displacement of 400/200 or more families in plain/tribal, hilly, Scheduled areas, etc.
10. Consultations with Gram Sabhas or public hearing made compulsory.
11. Principle of rehabilitation before displacement.
12. If possible, land for land as compensation.

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<sup>83</sup> *Supra*, note 71 at 180-181.

13. Skill development support and preference in project jobs (one person per nuclear family)
14. Rehabilitation Grant in lieu of land/job.
15. Option for shares in companies implementing projects to affected families.
16. Housing benefits to all affected families including the landless.
17. Monthly pension to the vulnerable, such as disabled, destitute, orphans, widows, unmarried girls, etc.
18. Monetary benefits linked to the Consumer Price Index; also to be revised suitably at periodic intervals.
19. Necessary infrastructural facilities and amenities at resettlement areas.
20. Periphery development by project authorities.
21. Committees for each project, to be headed by Administrator for relief and rehabilitation.
22. Ombudsman for grievance redressal.
23. National Rehabilitation Commission for external oversight.
24. The revised policy covers all projects leading to involuntary displacement of people, and envisages special provisions for Scheduled Tribes and Scheduled Castes, the main features of which are given below: -
  - (a) Consultation with the concerned gram sabha or the panchayats at the appropriate level in the Scheduled Areas under Schedule V of the Constitution in accordance with provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996. Each Affected family of Scheduled Tribe followed by Scheduled Caste



shall be given allotment of land for land, if Government Land is available in the resettlement Area.

(b) In case of land being acquired from the members of the Scheduled Tribes, at least one third of the compensation amount be paid at the outset as first installment and rest at the time of taking the possession of the land.

(c) Additional one time financial assistance equivalent to five hundred days minimum agricultural wages for loss of customary rights or usage of forest produce.

(d) Scheduled Tribes to get free of cost land for community and religious gathering, to the extent decided by the appropriate government.

(e) Scheduled Tribes affected families resettled out of district to get twenty-five percent higher benefits in monetary terms.

(f) Scheduled Tribes and Scheduled Castes affected families to be given fishing rights in the reservoir areas of the irrigation or hydel projects

(g) Scheduled Tribes and Scheduled Castes affected families enjoying reservation benefits in the affected areas shall be entitled to get the reservation benefits at the resettlement areas.

### **NATIONAL REHABILITATION AND RESETTLEMENT BILL**

National Rehabilitation and Resettlement Bill was tabled in 2007 before the winter session of the Parliament. The bill seeks to 'provide for the rehabilitation and resettlement of persons affected by the acquisition of land for projects of public purpose or involuntary displacement due to any other reason'. The bill comes at a time when concerted efforts are being made by both the central and state governments to increase

economic activity through the deployment of domestic and foreign private capital on a gigantic scale in new infrastructure and industry. The past history of the treatment meted out to displaced people does not inspire any confidence among the targeted communities. There is widespread and determined resistance to land acquisition and it is in this context that the Government has come out with the R&R bill along with a companion bill to amend the Land Acquisition Act.

The preamble says that it 'provides for the rehabilitation and resettlement of persons affected by the acquisition of land for projects of public purpose or involuntary displacement due to any other reason'.

Two major points mentioned in the objectives are:

1. To provide a better standard of living, making concerted efforts for providing sustainable income to the affected families and
2. To integrate rehabilitation concerns into development planning and implementation process.

In a candid admission of the non-justiciability of the policy resolutions, it is stated in the Statement of Objects and Reasons that 'since the inception of the Land Acquisition Act, 1894 for the first time a legislation namely, the Rehabilitation and Resettlement Bill 2007 has been developed on the lines of the provisions of the new policy, so as to give a statutory backing to them and provide for Social Impact Assessment making of scheme and plans well defined rehabilitation and resettlement benefits for the affected families'

(emphasis added). The statement further adds that 'in brief, the Rehabilitation and Resettlement Bill 2007 will provide for the basic minimum that all projects leading to involuntary displacement must address the grievances of the affected persons'.<sup>84</sup>

The Rehabilitation and Resettlement Bill, 2007 provides for the basic minimum requirements that all projects leading to involuntary displacement must address. The Rehabilitation and Resettlement Bill, 2007 will be primarily applicable to the rehabilitation and resettlement of persons adversely affected by the acquisition of lands for projects.

#### **ANALYSIS OF THE BILL:**

The definition of 'affected person' is quite exhaustive and existing as given in section 3(b) of the Bill.<sup>85</sup>

1. Provisions for Social Impact Assessment have been made.
2. Where the appropriate Government is satisfied that there is likely to be involuntary displacement of large number of persons due to acquisition of land, and where there is likely to be displacement of—

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<sup>84</sup> *Supra*, note 82.

<sup>85</sup> (b) "affected family" means—

(i) a family whose primary place of residence or other property or source of livelihood is adversely affected by the acquisition of land for a project or involuntary displacement due to any other reason;

(ii) any tenure holder, tenant, lessee or owner of other property, who on account of acquisition of land (including plot in the *abadi* or other property) in the affected area or otherwise, has been involuntarily displaced from such land or other property;

(iii) any agricultural or non-agricultural labourer, landless person (not having homestead land, agricultural land, or either homestead or agricultural land), rural artisan, small trader or self-employed person; who has been residing or engaged in any trade, business, occupation or vocation continuously for a period of not less than five years in the affected area preceding the date of declaration of the affected area, and who has been deprived of earning his livelihood or alienated wholly or substantially from the main source of his trade, business, occupation or vocation because of the acquisition of land in the affected area or being involuntarily displaced for any other reason.

(a) four hundred or more families *en masse* in plain areas; or

(b) two hundred or more families *en masse* in tribal or hilly areas, then the State Government shall appoint an Administrator for Rehabilitation and Resettlement.

According to Section 9 of the Bill.

3. One of the important functions of the administrator is to minimize displacement of persons and to identify non-displacing or least displacing alternatives in consultation with the requiring body. He is to hold consultation with the affected persons while formulating a rehabilitation and resettlement scheme or plan and ensure that the interests of the adversely affected persons are protected while formulating the rehabilitation and resettlement scheme or plan. He prepares and arranges land for rehabilitation and resettlement of the affected families.
4. According to Section 11 of the Bill, there would be a Commissioner for Rehabilitation and Resettlement appointed by State government. The Commissioner shall be responsible for supervising the formulation of rehabilitation and resettlement schemes or plans and proper implementation of such schemes or plans.
5. Authorities at the Project level include: Administrator for Rehabilitation and Resettlement, A Rehabilitation and Resettlement Committee and an Oversight committee for R&R for every major project under the Act in the concerned ministry or department of the appropriate government. Thus there will be as many oversight committees in the State or at the Centre for each major ongoing project.
6. Authorities at the district level include: A Standing Rehabilitation and Resettlement Committee.

7. Authorities at the State level include: An Ombudsman as provided by Section 14 and Commissioner for Rehabilitation and Resettlement as provided by Section 11 of the Bill. The ombudsman has the power to consider and dispose of all petitions relating to resettlement and rehabilitation against the decision of the Administrator for Rehabilitation and Resettlement or Resettlement and Rehabilitation Committee.
8. Authorities at the national level include: A National Monitoring Committee and National Rehabilitation Commission.
9. A major provision rules out the jurisdiction of civil courts in matters relating to the R&R.
10. It provides for survey and census of affected families after declaration of affected area. It is to include the village-wise information of the affected families and survey to be completed within 90 days from the date of declaration.
11. The appropriate government will declare the resettlement areas. According to section 26, the affected families may, wherever possible, be settled in a group or groups. The Administrator for Rehabilitation and Resettlement may Purchase or exchange land for rehabilitation and resettlement.
12. One very important provision is given in Section 28. It says that it shall be the responsibility of the requiring body to provide requisite funds to the administrator for Rehabilitation and Resettlement for proper implementation of the rehabilitation and resettlement scheme or plan for the affected families.
13. In case of a project involving land acquisition on behalf of a requiring body, the compensation award, full payment of compensation, and adequate progress in

rehabilitation and resettlement shall precede the actual displacement of the affected families.

14. Infrastructural facilities and amenities in resettlement areas are provided in the bill. Provisions for Local self-government institutions in resettlement areas have been made.

15. The bill provides for a lot of benefits for the affected families in Chapter VI. These include:

- (a) Housing Benefits: Rural areas 250 sq m and in urban areas 150 sq m.
- (b) Allotment of agricultural land: shall be allotted, in the name of each person included in the records of rights with regard to the affected family, agricultural land or cultivable wasteland to the extent of actual land loss by the affected family subject to a ceiling of one hectare of irrigated land or two hectares of un-irrigated land.
- (c) Financial assistance for cattle shed.
- (d) Transportation cost.
- (e) Financial assistance for working shed or shop.
- (f) Employment and Skill Development: Preference to the affected families in providing employment in the project, at least one person per family, subject to the availability of vacancies and suitability of the affected person for the employment; and also training of the affected persons, so as to enable such persons to take on suitable jobs.
- (g) Rehabilitation grant and option for allotment of shares.
- (h) The affected families may be allowed fishing rights in the reservoirs.

- (i) **Subsistence Allowance:** In case of a project involving land acquisition on behalf of a requiring body, each affected family which is involuntarily displaced shall get a monthly subsistence allowance equivalent to twenty-five days minimum agricultural wages per month for a period of one year from the date of displacement.
- (j) **Monthly pension to vulnerable affected persons** subject to the minimum of five hundred rupees per month.

**ANALYSIS OF THE BILL *VIS-À-VIS* HUMAN RIGHTS:** The Bill seeks to establish an R&R administration at the central and state levels. This administration will be responsible for planning for and implementing R&R. The bill describes the process to be followed while planning and implementing R&R and prescribes how 'affected areas' and 'affected families' are to be identified and the quantum of benefits for different categories of the latter.

The Act shall apply to the rehabilitation and resettlement of persons affected by acquisition under the Land Acquisition Act, 1894 or any other act of the Union or State for the time being in force, or involuntary displacement of people due to any other reason. Thus there is no necessity of any notification to cover any specific project. This is a good provision.

It is clearly provided that the compensation award, full payment of compensation and adequate progress in rehabilitation and resettlement shall precede the actual displacement

of the affected families as given in Section 29 of the Bill. This will reduce the harassment of the affected families that have till now been practically forgotten after the land is acquired. It is important to include that some authority preferably the administrator has certified this.

Two of the main functions of the administrator includes: To minimize displacement of persons and to identify non-displacing or least displacing alternatives in consultation with the requiring body; and to hold consultation with the affected persons while formulating a rehabilitation and resettlement scheme or plan. This is a good provision in consonance with the human rights approach.

Apart from the notifications under the Land Acquisition Act, an area will be notified as an 'affected area' "where the appropriate Government is of the opinion that there is likely to be involuntary displacement of four hundred or more families en masse in plain areas" (the number is less for hilly and tribal areas). R&R planning is mandated by the bill only for families living in such 'affected areas'. A family that neither owns nor occupies (tenants) land such as that of an agricultural labourer, artisan, small shop keeper, etc will be considered to be an 'affected family' and entitled to any R&R benefits only if it is displaced from a notified 'affected area'.

Thus the opinion of the Government on the scale of the displacement will decide if there will be planned R&R of the displaced. The scale of displacement will determine if families who neither own nor occupy land (who are the poorest) will be entitled to any benefits at all - unconscionable from the standpoint of justice. Other conditions also apply



to these families in particular, such as the need to prove residence for 5 years in the affected area in order to claim benefits, revealing the distrust of the Government towards this section of society. The basic principles in the National Relief and Rehabilitation Policy must be incorporated in the Rehabilitation and Resettlement. The five year residence limit as given in Sections 3(n), 3(d), 3(iii), 21(2) (vi) and 35(2) of R&R Bill, is higher than the one in the NRRP, which only specifies three year residence.

After the publication of this declaration the Administrator has to undertake a baseline survey and census for the identification of persons and families likely to be affected. This should contain village wise information of persons and families including vulnerable persons like disabled, widows and orphans. This is to be completed within 90 days of the publication of declaration. Administrator has to publish a draft containing the details of the findings of the survey and invite objections and suggestions from all persons 'likely to be affected'. This excludes organization and not-affected social activists or scholars to offer suggestions or raise objections. They should be included as well. There is a good provision that the final details of the survey shall be published in the official gazette.

The Administrator has to prepare a draft scheme for the rehabilitation and resettlement of the affected families 'after consultation with their representatives' (emphasis added). This draft shall be published for discussion in the concerned Gram-Sabhas. This is a good provision that will enable the affected persons to know in advance the scheme for their rehabilitation.

Under the Rehabilitation and Resettlement Bill, 2007, a multiplicity of authorities are sought to be created. It is imperative to define their roles so that they are complementary and there is synergy in their functions. Some could be merged. This will do away with large authorities of more or less ornamental type. It is necessary to reduce this undue emphasis on committees and authorities to facilitate direct and speedy disposal of the matter relating to the R&R.

The guiding principle in cases of development related displacement should be minimal displacement. For each project displacing 400 or more families there shall be a committee called the Rehabilitation and Resettlement Committee to monitor and review the progress of the implementation of the rehabilitation scheme and to carry out post implementation social audits. This is good provision ensuring the association of the representatives of the project affected persons. But who will decide the adequacy of the progress is not made clear. It should be mentioned that this shall be decided by the Rehabilitation and Resettlement Committee for the project. This should be included in Section 12.

The Bill provides for the appointment of an ombudsman for the time bound disposal of the grievances regarding R&R. There is no mention of his qualifications, position or worth. The form and manner and period within which the petition to him is to be made are to be prescribed.

The Bill also talks about a 'social impact assessment' (Also in Amending Bill to the Land Acquisition Act) that will be required when there is large scale displacement, an idea

similar to the 'environment impact assessment' that is now mandatory for projects. The details of who will do this and how this will work are not clear from the bill. It is early to comment if and how this will benefit people affected by a project but in view of the proclaimed principles of participatory, informed and transparent process, leaving at least the important issues of the agency and its composition to the rules is contrary to the claims and these must be specified in the Amending Bill and the R&R Bill. There is no provision in the Amending Bill as well as in the R&R Bill to publish this social impact assessment. This also goes against the proclaimed principles in the statement of subjects and reasons. Section 4 of the bill should be sufficiently amended to reflect this.

According to Section 6(2) of the R&R Bill, the public hearing undertaken in the project affected area for the environmental impact assessment shall also cover issues relating to social impact assessment. The Bill does not envisage public hearing for social impact assessment where no environment impact assessment is required. Public hearing should be held during all instances of social impact assessment.

According to the provision in the Amending Bill and the R&R Bill, the social impact assessment report shall be submitted to the independent multidisciplinary group consisting of two non-official social scientists, secretary of the Tribal Welfare Department or his nominee and a representative of the requiring body, all to be nominated by the appropriate government. There is no provision for appointing any representative of the affected persons. This cannot be called informed and participatory.

Section 7 of the R&R Bill provides the social impact assessment clearance shall be granted in such manner and within such time as may be prescribed. It appears that the clearance is to be given by the Expert Group and that it can be conditional. However, there is no provision that it should be published and made available to the public. This is quite necessary to ensure that the people and in particular the likely to be affected know the details of the clearance of the Expert Group.

The Bill prescribes conditions for project affected families to qualify as beneficiaries and makes the benefits themselves conditional on external circumstances. Guidelines are given for the survey of affected families, for the rehabilitation scheme, purchase of land and provisions for infrastructural facilities. Many of these are recommendatory with qualifications like as far as possible. Land will be allotted to 'affected families' whose agricultural land has been acquired 'if Government land is available in the resettlement area'. Preference will be given in jobs to 'affected families', 'subject to the availability of vacancies and suitability of the affected person for the employment'. The conditional availability of certain resettlement provisions are a matter of concern.

Although the Bill talks of vulnerable persons at many different places, the definition of vulnerable persons should have been given. Regarding service of notice under LA Act, Section 45(3) provides 'When such person cannot be found, the service may be made on any adult male member of his family residing with him, and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells.... The reference to 'adult

male member' is in violation of gender equality and autonomy of women. The term 'adult male member' may be replaced with 'adult member'.

Time limit should be defined for various stages in the process for acquisition of the land. Besides, where land has been acquired and has not been used for the intended purpose or any other public purpose, then instead of auctioning the land, option should be given to the original owner to take it back on laid down terms.

Civil courts are barred by the bill from entertaining suits on matters that are the responsibility of the R&R administration. What happens if benefits described in the bill are not forthcoming? Grievances may not be taken to courts but only to an ombudsman appointed by the government. In this respect, the situation will be no different from what prevails today - beneficiaries and benefits of R&R will be determined solely by the Government.

The requiring body shall contribute to the socio-economic development of such geographic area on the periphery of the project site as may be defined by the appropriate government, and for this it shall earmark a percentage of its net profits or in case no profits are declared in a particular year, such minimum alternative amount determined by the appropriate government in consultation with the requiring body (section 33). This will help the residents of the area adjacent to the project, particularly in case of acquisition for companies and other public sector projects.

While acquiring land for a 'public purpose', with its attendant displacement and denial of livelihood, the R&R bill does not accept that it is the unconditional duty of the state to

resettle and rehabilitate all the affected citizens so that they are able to maintain, if not improve, their current standard of living. Instead, rehabilitation is presented as an act of benevolence of the state, a measure to mitigate the suffering of the affected citizens to the extent permitted by the external circumstances and subject to various conditions. It is stressed that rehabilitation is as important as development.

There are certain provisions of the Bill which pass the filter of human rights while others need to be changed to reflect the human rights standards set out in the Constitution and also in various international conventions.

Even NHRC stressed that there shall be no arbitrary displacement of individuals from their home or place of habitual residence by state authorities. In particular, public interest should justify any large-scale development project.

There seem to be a number of potential, and interrelated, reasons for the dismal record of IR schemes. These include:

- (1) That IR involves imposed socio-spatial change, usually of a negative kind, what one might term 'displacement'.
- (2) That development-induced IR seems to embody certain contradictory tendencies. Firstly, development is presumably about increasing people's options, well-being and control over their circumstances, whereas involuntary relocatees, moved in the interests of such an option-increasing initiative, find their autonomy, and very often also their options and well-being, decreased. Secondly, there are conflicting time-frames involved.

The time frame of the infrastructure side of the project is almost always shorter than the time frame required for economic and social recovery.

(3) Cernea argues that the various impoverishment risks hit affected people all at once, and that they must deal with these risks virtually simultaneously, as a patterned situation, not just one at a time. The result is a crisis.

(4) The possibility that IR is something so inherently complex and sui generis that it is effectively beyond the control of rational development procedures, and takes its own course.<sup>86</sup>

Considering the above conditions, any successful solution must give the people to be displaced some degree of choice in the transaction. This choice can be limited to a simple collective acceptance or rejection of an offer of compensation or in more participation in decision making and other aspects of the process. The bill has few provisions for this. Only time will tell if it is able to achieve the desired goal.

#### **R&R BILL AND UN GUIDING PRINCIPLES:**

The Guiding Principles on Internal Displacement adopted by General Assembly in 1998 identifies the rights and guarantees relevant to protection on internally displaced in all phases of displacement. They provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement and set forth guarantees for safe return, resettlement and reintegration. Although they do not constitute a legally binding instrument, they guide the conduct of States.<sup>87</sup>

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<sup>86</sup> *Supra* Note 5, at 4637.

<sup>87</sup> <http://nandinisundar.blogspot.com/2010/05/rehabilitation-plan-for-dantewada-and.html>, (Accessed on 20.4.2010).

The R&R Bill is to a larger extent, consistent with the rights and obligations set forth in the Guiding Principles. The definition of 'affected family' is broad enough to be at par with the definition of 'internally displaced person'.<sup>88</sup> While the Principles adopt a more individualistic approach, the bill talks in context of 'Affected Family' in various sections. The Draft National Policy on Rehabilitation is a multi-dimensional response to displacement with full rehabilitation covering i) the entire community (landless labourers, landholders, houseless, householders and even the unemployed and the forest dwellers), ii) their socio-cultural cost of displacement and iii) economic dimensions such as upgrading the skill levels.<sup>89</sup>

Principle 5 of the Guiding Principles emphasize that all authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons. Similarly, one of the important functions of the Administrator for Rehabilitation and Resettlement Section as given in Section 10 (3) (i) of the Rehabilitation and Resettlement Bill, 2007 is to minimize large-scale displacement.<sup>90</sup> This calls for a broader concerted effort on the part of the planners to recognize rehabilitation and resettlement issues as intrinsic to the development process formulated with the active participation of affected persons and families. The Guiding Principles enumerate extensive social and economic rights as also civil and political rights of the displaced. The Guiding Principles, rooted in well-

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<sup>88</sup> Internally displaced person is defined in Principle 2 of the Guiding Principles on Internal Displacement, 1998.

<sup>89</sup> Mahendra P. Lama, "Internal Displacement in India: Causes, Protection and Dilemmas", <http://www.fmreview.org/FMRpdfs/FMR08/fmr8.9.pdf>, (Accessed on 22.4.2010).

<sup>90</sup> This section emphasizes that as far as possible the Administrator for Rehabilitation and resettlement has to identify non-displacing or least displacing alternatives.



established standards of international human rights law, provide overarching principles related to planning evacuation, shelter, and settlements.<sup>91</sup> Similarly the R&R Bill in Chapter VI provides Rehabilitation and Resettlement benefits to the affected families.

Guiding Principles provides a framework for understanding the problem. They can serve as empowerment, monitoring and advocacy tool. They provide a framework for developing protection strategies.<sup>92</sup>

As far as the role of women is concerned, the Guiding Principles in Principle 7 (3) (d) states that the authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation. This is reflected in the Bill as well. The Rehabilitation and Resettlement Committee shall include a representative of women residing in the affected area.<sup>93</sup> Also, Section 23 emphasizes that the Administrator for Rehabilitation and Resettlement shall prepare a draft scheme or plan for the rehabilitation and resettlement of the affected families after consultation with the representatives of the affected families including women.

**NARMADA SITUATION IN LIGHT OF THE BILL:** Although NWDT Award which came out in 1979 was hailed since it included elaborate provisions for rehabilitation and resettlement and subsequently even the policies came out in three states of Maharashtra, Gujarat and Madhya Pradesh which had dealt with the issue extensively, still there were

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<sup>91</sup> Roger Zetter and Camillo Boano, "Planned Evacuations and the Right to Shelter during Displacement", [http://www.brookings.edu/~media/Files/rc/papers/2010/0119\\_internal\\_displacement/0119\\_internal\\_displacement\\_Ch5.pdf](http://www.brookings.edu/~media/Files/rc/papers/2010/0119_internal_displacement/0119_internal_displacement_Ch5.pdf), (Accessed on 22.4.2010).

<sup>92</sup> Roberta Cohen, "The Guiding Principles: How do they support IDP Response Strategies?", The Brookings CUNY Project on Internal Displacement, April 2002, [http://www.brookings.edu/~media/Files/rc/reports/2002/04humanrights\\_kaelin/RecentCommentariesGPs.pdf](http://www.brookings.edu/~media/Files/rc/reports/2002/04humanrights_kaelin/RecentCommentariesGPs.pdf), (Accessed on 6.5.2010).

<sup>93</sup> Section 12 of the Rehabilitation and Resettlement Bill, 2007.

some serious lapses on the part of the authorities as far as the Narmada situation is concerned.

Firstly, the award came out way back in 1979 and situation has changed a lot since then. In the R&R Bill, the minimization of displacement is concentrated upon but in the policies nowhere such thing is highlighted. Moreover, surveys conducted by the Government had always been a matter of concern. The detailed provisions made for survey, assessment and thereafter framing of policies given in the R&R Bill is not reflected in the case of Narmada Valley Project. Had the surveys been done properly, many false claims would have been avoided and the person who is actually suffering from the entire activity had got his due. Statistics taken do not reflect the real picture.

Secondly, the R&R Bill in Section 29 says that in case of a project involving land acquisition on behalf of a requiring body, the compensation award, full payment of compensation, and adequate progress in rehabilitation and resettlement shall precede the actual displacement of the affected families. But in the Narmada Valley, adivasis have still not been rehabilitated fully though the dam is nearing completion now. This all should have been done before displacing them and the policies do not throw much light on this aspect.

The definition of 'affected family' given in R&R Bill is quite existing and exhaustive and do not make unnecessary distinction between oustee, encroacher, major sons etc. The provisions regarding grant of civic amenities is made both in the policies as well as the

R&R Bill. There is housing benefit, provision for cattle shed, transportation cost, subsistence allowance made both in policies as well as the bill. On this aspect, the policies had good provisions and were quite in consonance with the draft Bill. Regarding the role of women, the policies do not reflect their role in the planning and management as given in R&R bill.

Even the provisions which have been written down in the policies had been observed properly and a systematic approach had been adopted involving the displaced, it would have been a much better scenario in the valley. Ultimately whatever law exists, everything falls back on implementation.

The Constitution of India contains plethora of human rights. Article 39(b) gives a directive that the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. This coupled with Article 14<sup>94</sup> and Article 256<sup>95</sup> make the state duty bound to make policies which 'subserve the common good'. And also, there should be equality at all levels of the process including right to participation, speaking orders, hearing of parties, and justification for undertaking a particular activity. A more participatory role is expected. The community should have the power to decide for themselves.

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<sup>94</sup> Article 14 deals with right to equality. It states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

<sup>95</sup> Article 256: The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

## CHAPTER - IV

### ROLE OF NHRC AND INDIAN JUDICIARY *VIS-A-VIS* THE DISPLACED

In recounting the major issues taken up in the Zagreb Conference, Chris de Wet introduced the problem of displacement in the following words:

Since World War II, many communities all over the world have undergone resettlement as a result of dam construction, rural development projects, urban renewal and development, and implementation of political programmes. He went on to state that the resettlement of these communities has been inadequately planned and poorly implemented leading to severe human suffering.<sup>96</sup>

It is rare that the problems of displaced community are addressed in spite of presence of laws, policies and procedures. In addition, a process of what is known as 'deferred investment' takes place. Once it becomes known that people are to be moved from an area, everybody stops investing in that area.

As noted in a report to the World Commission on Dams, 'often, due to the nature of the development process, the project-affected peoples come to know about actions that have been taken without their knowledge or consent. Therefore, they need a quick and

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<sup>96</sup> Veena Das, "Dislocation and Rehabilitation: Defining a Field", Economic and Political Weekly, Vol. 31, No. 24 (Jun. 15, 1996), at 1509.

efficacious remedy that can halt on-going violations and prevent future ones. The right to remedy is therefore crucial...to all development projects'.<sup>97</sup>

Many resettled groups never regain the level of economic well-being or autonomy that they enjoyed before resettlement and are therefore permanently, marginalized by the experience. This is directly related to the fact that they have no choice as to whether they are to move or not. Such a scenario calls for the Judiciary to keep a check if the laws are made in consonance with the provisions of the constitution and the larger goals mentioned therein and whether they have been followed properly.

**SARDAR SAROVAR PROJECT AND HUMAN RIGHTS:** The word 'tribe' is generally used for a socially cohesive unit, associated with a territory, the members of which regard themselves as politically autonomous. European invaders, at many places, entered into land treaties with various indigenous groups, by which some limited portions of land was kept reserved for tribals and the remaining was considered 'free land' for development. Some anthropologists raised their voice against this sort of cultural hegemony.<sup>98</sup> It is based on this that ILO passed a Special Convention, no.107<sup>99</sup>, regarding human rights of indigenous people.

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<sup>97</sup> Balakrishnan Rajapogal, "Human Rights and Development", World Commission on Dams, Thematic Review, Working Paper, Vol. 4, 2000, [http://www.internationalrivers.org/files/world\\_commission\\_on\\_dams\\_final\\_report.pdf](http://www.internationalrivers.org/files/world_commission_on_dams_final_report.pdf), (Accessed on 5.5.2010).

<sup>98</sup> Vidyut Joshi, "Rehabilitation in the Narmada Valley: Human Rights and National Policy Issues", in, Jean Dreze, Meera Samson and Satyajit Singh, The Dam and the Nation: Displacement and Resettlement in the Narmada Valley, Oxford University Press, New Delhi, 1997, at 168-169.

<sup>99</sup> There are three important things about the ILO 107: First, it affirms the rights of tribals or indigenous peoples to their traditional lands; second, it stipulates the cause for which tribal peoples may be removed: national security, national economic development, and the health of the tribal population; three, it provides that tribal people who are displaced shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development.

Studies indicate that surveys for assessing the extent of displacement are often haphazard, undertaken by untrained personnel.<sup>100</sup> As a result the number of displaced persons and those eligible for compensation is often underestimated.

In the fifty years since Independence, after Nehru's famous "Dams are the Temples of Modern India" speech (one that he grew to regret in his own lifetime), his foot soldiers threw themselves into the business of building dams with unnatural fervor.<sup>101</sup>

Dam-building grew to be equated with Nation-building. Big Dams started well, but have ended badly. Their reservoirs displace huge populations of people, leaving them homeless and destitute. There is mounting evidence that links Big Dams to earthquakes. Big Dams haven't really lived up to their role as the monuments of Modern Civilization, emblems of Man's ascendancy over Nature. There are so many risks associated with them which need to be assessed properly but these are often ignored.

For every claim to virtue made by the proponents of big dam there is a clear cut, factual and demonstrable refutation.

Elmer T. Peterson, *Big Dam Foolishness*, 1954<sup>102</sup>

While the drawbacks of dam projects are consistently belittled by the dam building lobby, the benefits are regularly exaggerated.

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<sup>100</sup> Enakshi Ganguly Thukral, "Dams: For Whose Development?", in, Walter Fernandez and Enakshi Ganguly Thukral, *Development, Displacement and Rehabilitation: Issues for a National Debate*, Indian Social Institute, New Delhi, 1989, at 40

<sup>101</sup> Arundhati Roy, "The Greater Common Good", [www.narmada.org/gcg/gcg.html](http://www.narmada.org/gcg/gcg.html), (Accessed on 3.5.2010).

<sup>102</sup> Patrick McCully, *Silenced Rivers: The Ecology and Policies of Large Dams*, Orient Longman, Hyderabad, 1998, at 148.

The Narmada Tribunal, in its award, decided the sharing of waters between states also specified a rehabilitation policy. Construction work on the Sardar Sarovar Project on the Narmada started in 1987. The Narmada Control Authority (NCA), with representation from central and state Governments, was charged with overseeing the rehabilitation and resettlement of project affected people. The project itself was given conditional clearance by the Government, one of the conditions being that construction of the dam would keep pace with rehabilitation and resettlement. Despite the existence of R&R policies and packages and a machinery for ensuring its implementation, rehabilitation measures were inadequate.

In 1995, the World Bank agreed to lend the government of India \$450 million to help finance the construction of SSP. This raised serious questions. After protests by the affected people gained international attention, the World Bank, which had planned to finance the project, appointed an expert committee, the Morse Committee, to provide an independent assessment of the project. After extensive investigations, it found several violations of Bank Policy, Indian and human rights law, inadequate implementation of resettlement policies and non compliance with environmental aspects.<sup>103</sup>

The committee stated in its report in 1992 : 'We think the Sardar Sarovar Projects as they stand are flawed, that resettlement and rehabilitation of all those displaced by the Projects is not possible under prevailing circum-stances and that the environmental impacts of the Projects have not been properly considered or adequately addressed. Moreover, we believe that the Bank shares responsibility with the borrower for the situation that has

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<sup>103</sup> Malavika Vartak, Sanjay Sangvai and Bikram Batra, Human Rights Violation in the Narmada Valley, Institute of Advanced Legal Studies, Pune, 2003, at 40.

developed'.<sup>104</sup> The Morse Report was not well received at first but it constituted an essential catalyst for the World Bank's eventual withdrawal from the project. Formally, it is the Government of India which asked for the loan to be cancelled, thus making it clear that both the Bank and the Government fully accepted the significance and accuracy of the report. Meanwhile, the construction of the dam continued with scant regard to rehabilitation issues.

It made another contribution. It was after the Morse Report that the issue of human rights was raised with regard to the SSP. It is necessary to state:

1. ILO Convention 107 regarding rights of indigenous people is ratified by the government of India.
2. ILO Convention, 169 an improved version of convention 107 is not mentioned at all in the Morse Report. This makes it clear that convention 107 is deliberately brought in to impart human rights angle, to the issue of rehabilitation and resettlement.<sup>105</sup>

In the Narmada Valley, there have been instances of forced eviction, beatings by the police, illegal arrest and detention of those who work for the cause of the tribals and the tribals themselves. In an effort to prevent and document human rights violations during 1992, forty environmental and human rights organisations from 16 countries created the Narmada International Human Rights Panel (NIHRP) to investigate alleged violations of

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<sup>104</sup> Bradford Morse and Thomas R. Berger, "Sardar Sarovar-Report of the Independent Review", Resource Futures International, Ottawa, 1992, at xii.

<sup>105</sup> Vidyut Joshi, "Rehabilitation in the Narmada Valley: Human Rights and National Policy Issues", in, Jean Dreze, Meera Samson and Satyajit Singh, The Dam and the Nation: Displacement and Resettlement in the Narmada Valley, Oxford University Press, New Delhi, 1997, at 170.



human rights law. It observed and recorded the violations of human rights covenants, treaties and resolutions including but not limited to United Nations Code of Conduct of Law Enforcement Officials and ILO Convention 107.

In its letter Amnesty International has drawn attention to Articles 19 and 20 of UDHR which provide that everyone has a right to freedom of opinion and expression and the right to freedom of peaceful assembly and association. These rights are reflected in Article 19<sup>106</sup> of the Constitution of India.<sup>107</sup>

Besides, displaced persons belonging to the tribal community have been given another right which is contained in Article 29 of the Constitution of India which is a guaranteed fundamental right to preserve the cultural identity of any citizen or group of citizens, free from government encroachment. The fundamental right guaranteed in Article 29 is an absolute right.<sup>108</sup> If, for example, the rehabilitation that takes place of tribal communities is detrimental to their cultural identity, if challenged in a court, may be held to be a violation of their fundamental right guaranteed by Article 29.

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<sup>106</sup> Article 19(1) states that: All citizens shall have the right—

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(g) to practise any profession, or to carry on any occupation, trade or business.

<sup>107</sup> *Supra*, note 103 at 41.

<sup>108</sup> Jeevan Kumar, "Rights of Internally Displaced Persons in the Light of Guiding Principles of Internal Displacement", [http://repository.forcedmigration.org/show\\_metadata.jsp?pid=fmo:3044](http://repository.forcedmigration.org/show_metadata.jsp?pid=fmo:3044), (Accessed on 4.4.2010).

## **SOME INSTANCES OF HUMAN RIGHTS VIOLATIONS IN THE VALLEY:**

1. Somaval and Manibeli: Experiences of Displacement: Responding to alarming reports in newspapers describing the conditions of the tribals, human rights violations and the tardy rehabilitation of the PAPs, the Indian People's tribunal (IPT) decided to visit Manibeli. On August 22, 1993, Justice B.G. Kolse Patil visited Manibeli via Baroda to find that the tribals appeared to have neither food nor clothing and their houses were devoid of any household articles. All the government had provided was tin sheds. There seems to be just paper compliance.
2. On June 25<sup>th</sup>, 1994, the Gujarat Government demolished the houses of the tribals in Vadgam, the first village near the dam site in Gujarat. They were forcibly taken to Dharampuri resettlement site. The houses were destroyed in a brutal manner. People did not have time to collect their essentials. Evictions were done by strong contingent of the SRP, police, home-guard and Nigam authorities-over 200 at any one demolition site. Some houses were brought down while the occupants were inside.<sup>109</sup>
3. Village Piplaj, district Khargone: Initially Gamni, A bhil adivasi was told that his would not be submerged. Then he was told that it would be submerged and was given Rs 47000 in compensation while a patidar Kiran Shantilal was given five times the amount for a piece of land which was only slightly larger.
4. Village Jangarwa, Dist Khargone: Mangi Ram, was promised five acres of land but was eventually given only two.
5. Village Kakrana, distt Jhabua: Jaguia Patu and fifteen other adivasi men from his village received yellow postcards on which they gave their thumb impression.

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<sup>109</sup> *Supra*, note 103 at 51-52.

They got worried as someone told them that this meant acceptance of compensation. On approaching SDM Alirajpur, he said that acceptance of notification virtually means acceptance of land. If this is the case, it is serious flaw in the law.

**DEVELOPMENT AND POWERLESSNESS:** Displacement is primarily the consequence of struggle for the control of natural resources such as the forests, land water and other products. B.D. Sharma expresses that 'what is a life support system to the tribal is only a raw material for the industrialist'.<sup>110</sup>

One can hardly disagree to that. Displacement is the result of this unequal struggle for the natural resources, between the powerful minority and the powerless majority. It is safe to say that what matters in this process, is not merely the number of persons evacuated from their habitat but also the type of communities affected. From the Narmada Perspective, being a fight over the fate of a river valley it began to raise doubts about an entire political system. What is at issue now is the very nature of our democracy. Who owns this land? Who owns its rivers? Its forests? Its fish? These are huge questions.

In India over the last ten years the fight against the Sardar Sarovar Dam has come to represent far more than the fight for one river. This has been its strength as well as its weakness. Some years ago, it became a debate that captured the popular imagination. That's what raised the stakes and changed the complexion of the battle.

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<sup>110</sup> Walter Fernandez, J. C. Das and Sam Rao, "Displacement and Rehabilitation: An Estimate of Extent and Prospects", in, Walter Fernandez and Enakshi Ganguly Thukral, Development, Displacement and Rehabilitation: Issues for a National Debate, Indian Social Institute, New Delhi, 1989, at 63-64.

**PERIOD OF CONFUSION AND TENSION:** The affected people were totally clueless as to what was going on. ARCH-Vahini based in Mangrol and Rajpipla Social Service Society (RSSS) based in Rajpipla did some work in Gujarat. In 1980, the government of India amended the Indian Forest Act, 1927 to prohibit the state governments from declaring any reserved forest as non-reserved without the prior approval of the central authorities. A separate Ministry of environment was created in 1980. In order to get clearance from the Ministry, the state government were to place a detailed appraisal of the extent of displacement and its negative impacts. Even before the GOI gave conditional clearance to initiate the project, around 2000 families from Gujarat and 90 from Maharashtra were shifted.<sup>111</sup>

The people facing eviction were neither informed nor consulted. Medha Patkar, a 30 year old social worker decided to take up the cause of the Tribals. She graduated from Tata Institute of Social sciences, Mumbai and visited NVP site and decided to stay there and fight for the rights of the adivasis.

#### **NATIONAL HUMAN RIGHTS COMMISSION: ROLE IN AMELIORATING THE SITUATION OF THE DISPLACED**

The Government of India established the National Human Rights Commission under the Protection of Human Rights Act, 1993 to redress the human rights violations in the country. Under Section 12 of the Act, NHRC is empowered to intervene and investigate into human rights violations. The Commission has invoked its powers on several

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<sup>111</sup> S. Parasuraman, "The Anti-Dam Movement and Rehabilitation Policy", in, Jean Dreze, Meera Samson and Satyajit Singh, The Dam and the Nation: Displacement and Resettlement in the Narmada Valley, Oxford University Press, New Delhi, 1997, at 38-39.

occasions to implement mitigating proposals for relief of the displaced. While redressing various complaints of rights violations following displacement, the Commission stressed the following:

- (a) Full compliance with ILO Convention 107, and other international human rights instrument relevant to displacement, relief and rehabilitation to which India is party.
- (b) The resettlement and rehabilitation of persons displaced through the acquisition of land for various projects should form part of the provisions of the Land Acquisition Act.
- (c) The need of State and Central governments to re-examine and amend laws, regulations and practices.
- (d) Adequate rehabilitation packages to those who are adversely affected by mega development projects.
- (e) Procedure laid down in the Wild Life Protection Act, 1972 in regard to the rights of the affected people and their rehabilitation has to be followed.
- (f) Improving the preparedness of the country to face earth quakes, especially as a considerable part of the country was in an earthquake-prone zone
- (g) Incorporating policy measures such as maintaining electronic lists of dead and missing, widows, children and young girls, lists of properties partially or fully destroyed or damaged and centralized collection and distribution centres where relief materials could be received from NGOs and private organizations.<sup>112</sup>

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<sup>112</sup> "NHRC's Recommendations on Relief and Rehabilitation of Displaced Persons", National Human Rights Commission, New Delhi, October 2008, <http://nhrc.nic.in/Publications/NHRCsRecomendationsonReliefandRehabilitation.pdf>, (Accessed on 4.5.2010).

The Commission has given certain general recommendations on relief and rehabilitation.<sup>113</sup> The Commission has also reported on the Rehabilitation Policy.

Even Supreme Court has acknowledged the role of the National Human Rights Commission. In one of the cases, it has been observed that 'Proceedings arising under Article 32 need not always be dealt with by this Court alone and in appropriate cases suitable directions, including transfer of the matter, can be issued to High Courts or other authorities (Like, National Human Rights Commission) to deal with such matters'.<sup>114</sup>

**ROLE OF JUDICIARY *VIS-À-VIS* THE DISPLACED COMMUNITY:** Change is an inherent characteristic of any developmental project. Since independence a large number

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<sup>113</sup> The recommendations are given in brief:

1. Pre-displacement, displacement, relief and rehabilitation should be viewed from a rights based perspective rather than as an administrative/ governance issue that focuses on needs of beneficiaries.
2. As part of relief and rehabilitation, authorities provide food, potable water, clothing, shelter, basic health care, education etc. It is important to note that access to these basic minimum services is not a matter of welfare or charity but is a human right.
3. There is a need for Central and State Governments to re-examine and amend laws, policies, plans, regulations and practices to mainstream and integrate human rights concerns on issues related to pre-displacement, displacement, relief and rehabilitation.
4. Authorities concerned with pre-displacement, displacement and post-displacement activities should be sensitized about human rights through capacity building.
5. All affected and displaced persons have the right to be treated with dignity.
6. All affected and displaced persons have the right to be treated without any discrimination in matters relating to rescue, relief and rehabilitation.
7. All affected persons and displaced persons have the right to information regarding all aspects related to immediate humanitarian assistance, relief and rehabilitation.
8. All displaced persons, in particular displaced children, have the right to receive education, which shall be free and compulsory at the primary level.
9. All displaced persons have the right to an adequate standard of living.
10. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide displaced persons with and ensure access to:
  - a. Essential food and potable water;
  - b. Basic shelter and housing;
  - c. Appropriate clothing; and
  - d. Essential medical services and sanitation.

<sup>114</sup> *N.D. Jayal v. Union of India*, (2004) 9 SCC 362 (S. Rajendra Babu, D.M. Dharmadhikari and G.P. Mathur, JJ.).

of people in India have been displaced by several developmental projects such as irrigation, dams, heavy and large scale industries, power plants etc. Displacement and rehabilitation have drawn the attention of the people all over India in recent times.<sup>115</sup>

We have seen the expansion of the scope of Article 21 which guarantees the right to life and personal liberty. The Supreme Court has held in several cases that the right to live is not merely confined to physical existence but includes within its ambit the right to live with human dignity and all that it entails: the bare necessities of life such as adequate nutrition, clothing, shelter and facilities for reading, writing and expressing oneself in diverse forms, moving freely and mixing and co-mingling with fellow human beings.<sup>116</sup>

In *Olga Tellis v. Bombay Municipal Corporation*,<sup>117</sup> the Supreme Court held that the right to livelihood and right to work are part of right to life.

When ever there is population movement, a lot of problem is faced by the displaced community. All state sponsored employment guarantee schemes, should be applicable to displaced persons for providing employment to them. For skilled jobs preference should be given to displaced people if skills are available among them. An important part of rehabilitation package is creation of employment opportunities based on the assessment of employable people.

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<sup>115</sup> G.Satyanarayana, Development, Displacement and Rehabilitation, Rawat Publications, New Delhi, 1999, at 13.

<sup>116</sup> Francis Coralie v. Union Territory of Delhi, AIR 1978 SC 597.

<sup>117</sup> 1985 (3) SCC 545.

In *Bagalgaon Refinery and Petrochemicals Limited v. Samiuddin Ahmed*,<sup>118</sup> the court stated that at least one person from the displaced family should be given a job in public sector undertaking. Thus, the court acknowledged the Government's policy decision to give employment to those who are displaced from their native place.

Mitigation of suffering is possible by developing income generation programmes, establishing cottage and small scale industries, financial assistance for self employment, provision of cultivable land for the landless people, initiative for more irrigation facilities and by giving top priority in provision of jobs for helpless and innocent victims such as women.

In *Lalchand Mahto v. Coal India Limited*,<sup>119</sup> it was held that:

Before any development project is taken up, the social cost involved must be evaluated with a view to balancing the advantages...every developmental program must provide for the simultaneous rehabilitation of the persons who are thrown out of their land and houses on account of acquisition of land for such developmental projects. No, developmental project, however laudable, can possibly justify impoverishment of large sections of people and their utter destitution.

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<sup>118</sup> (2001) 9 SCC 557 (R. C. Lahoti and K. G. Balakrishnan, JJ.).

<sup>119</sup> Supreme Court of India, Civil Original Jurisdiction, MP No. 16331 of 1982.



In *Pradip Prabhu v. Government of Maharashtra*,<sup>120</sup> the Supreme Court required the government to confer land rights on the tribal oustees in respect of their land holding in accordance with the government's policy resolution.

In *Gram Seva Sanstha v. State of Madhya Pradesh*,<sup>121</sup> a legislation enacted by the state of Madhya Pradesh for the displaced persons called Madhya Pradesh Project Displaced Persons (Resettlement) act, 1985, was not applied to the Hasdeo Banga Dam Project. The court urged the state government to consider:

Whether the Hasdeo Dam Project should be brought within the coverage of the act so that the act may not remain merely cosmetic but becomes really meaningful and effective in order to provide resettlement and rehabilitation to the large number of tribals affected by the project.

In *Karjan Jalasay Yojana Assargrath Shakhar Ane Sangharsh Samiti v. State of Gujarat*,<sup>122</sup> it has been held thus: 'Simultaneously with taking possession of the acquired land from any person in occupation of it, such person shall be provided either alternative land of equal qualify but not exceeding three acres in area and if that is not possible, then alternative employment where he would be assured a minimum wage... No possession of any part of the acquired land shall be taken from any person unless and until he is either provided with alternative land or alternative employment which is not temporary in character so that he and the members of his family do not remain without means of

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<sup>120</sup> *Pradip Prabhu v. Government of Maharashtra*, Writ Petition (C) No. 4647, 5564-67 and 7339-43 of 1982, 13696-700 of 1983, 15206-08 of 1984 and 1778 of 1986, Decision of 7 March 1995 (Per Kuldeep Singh, N. Venkatachala, S. Saghir Ahmed, JJ.).

<sup>121</sup> 1986 (Supp) SCC 578 ( P. N. Bhagwati, C.J. and Rangnath Mishra, JJ.).

<sup>122</sup> AIR 1987 SC 532.

subsistence ... if for any reason the State Government is not able to provide alternative land or arrange for alternative employment, the State Government will subject to the same exception, pay to the head of the family at the latter place of residence compensation equivalent to minimum wage every fortnight during the period alternative land or employment is not provided'.

In *B.D. Sharma v. Union of India*,<sup>123</sup> the Supreme Court had directed that the displaced persons should be rehabilitated as soon as they are uprooted. And none of them should be allowed to wait for rehabilitation. Rehabilitation should be so done that at least six months before the area is likely to be submerged, rehabilitation should be complete and should be in respect of homestead substitution of agricultural property and such other arrangements which are contemplated under the rehabilitation scheme.

In this case, the court also directed the formation of a Committee under the chairmanship of the Secretary, Ministry of Social Justice & Empowerment, Government of India to visit the submergence areas/re-settlement sites and furnish the report of development and progress made in the matter of rehabilitation.

In *Samatha v. State of Andhra Pradesh*<sup>124</sup>, the Supreme Court observed that the tribals 'predominantly live in forest areas and intractable terrains, 95 percent of them are below the poverty line and depend on agriculture or agriculture based activities and some of

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<sup>123</sup> 1992 (Supp) 3 SCC 93.

<sup>124</sup> AIR 1997 SC 3297 (K. Ramaswamy, S. Saghir Ahmed and G. B. Patnaik, JJ.).

them turn out as migrant construction workers on account of their displacement from hearth and home for the so called exploitation of minerals and construction of projects’.

Development is necessary to grow and progress but it should take care of the displaced community, their rehabilitation, preservation of flora and fauna and environment as well. Big dams do have a lot of impact on the environment.<sup>125</sup> For tribal population, right to live in healthy environment, right to livelihood and right to rehabilitation are an immediate priority.

In *Vellore Citizens Welfare Forum v. Union of India*,<sup>126</sup> and in *M.C Mehta v. Union of India*,<sup>127</sup> it was observed that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of 'sustainable development.' This is a development strategy that caters the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for

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<sup>125</sup> The upstream environmental and ecological impacts of big dams are:

(1) Soil erosion (2) micro-climatic changes (3) loss of forests, flora & fauna (4) changes in fisheries, especially on spawning grounds (5) chain effects on catchment area due to construction and displacement etc (6) landslips, salutation and sedimentation (7) breeding of vectors in the reservoir and increase in related diseases (8) seismicity (9) loss of non forest land (10) water- logging around reservoir (11) growth of weeds.

The down-stream environment impacts of the large dams are :- (1) Water-logging and salinity (2) micro-climatic changes (3) reduced water flow and deposition in river, with related impacts on aquatic ecosystem, flora and fauna (4) flash floods (5) loss of land fertility along with river (6) vector breeding and increase in related diseases. There are economic costs as well as social costs and environment costs involved in a project of construction of large dam. The social costs is also too heavy. It results in wide spread displacement of local people from their ancestral habitat and loss of their traditional occupations. The displacement of economically weaker sections of the society and tribals, is the most serious aspect of displacement from the point of view of uprooting them from their natural surroundings.

<sup>126</sup> AIR 1996 SC 2715.

<sup>127</sup> 2002 (4) SCC 353.

all generations. It is a guarantee to the present and a bequeath to the future. All environmental related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by the strict adherence of sustainable development without which life of coming generations will be in jeopardy.

In *N.D, Jayal v. Union of India*,<sup>128</sup> it has been observed that ‘the large dam projects are, therefore, required to be taken care by the Government with utmost concern of the poor and the deprived sections of the society who are necessarily to be displaced from their habitat and shifted to a totally new environment and way of life. The poor and the marginalized group in carrying out of a dam project suffer most because the natural resources-base of their survival are eroded and cash compensation of land at a different location many times does not fully rehabilitate them’. The court also acknowledged that conditions laid down in the National policy, Packages and Guidelines for resettlement and rehabilitation of 1997.<sup>129</sup>

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<sup>128</sup> (2004) 9 SCC 362 (S. Rajendra Babu, D.M. Dharmadhikari and G.P. Mathur, JJ.).

<sup>129</sup> Ministry of Welfare of Government of India in the year 1985 initiated a Rehabilitation Policy. It came to be approved only in the year 1997. Thus the National policy, Packages and Guidelines for resettlement and rehabilitation accept the following principles :-

1. Displacement should be minimized. So people displacing projects should be the last option after studying non-displacing and least displacing projects, and if this is the only alternative.
2. The public purpose based on which people are displaced or otherwise deprived of their livelihood should be defined. Prior informed consent to be affected by it should be mandatory after the project is explained to them and if they see that is according to the public purpose thus defined properly.
3. Replacement value to be the norm for compensation, against the present norm of market value which is totally inadequate.
4. Right to life with dignity enshrined in Article 21 of the constitution should be respected. So, the displaced persons should have a better lifestyle after displacement than before it because they are paying the price of national development.
5. Displaced Persons (DPs/PAFs) should be the first beneficiaries of any project.
6. Rehabilitation is mandatory and should go on side by side with the project.
7. Land for land is recommended to all and is mandatory for tribals, Compensation is to be provided for common property resources and forest lands that may be acquired from their dependants.

The court further stated that it has to be seen 'whether the *pari passu condition* laid down in the environment clearance of the Project have been fulfilled or not by the authorities of the Project. Mistakes in resettlement and rehabilitation of people ousted by other similar Projects committed in the past have to be avoided. The construction of dam cannot be allowed to proceed and be completed leaving the oustees high and dry'.

*Rajendra Babu J.* emphasized on one of the conditions for the grant of environmental clearance to the Project. The final condition stated thus: 'If the completion of studies, formulation of Action Plan and their implementation to be scheduled in such, a way that their execution is *pari passu* with the engineering works is not adhered to, all engineering works of the Project should be stopped and this condition will be enforced under the Provisions of Environment Protection Act 1986'. Thus, whenever a conditional clearance<sup>130</sup> is given to a Project, it must adhere to all the conditions and concentrate simultaneously on the rehabilitation and resettlement if it is one of the stipulated conditions.

*Narmada Bachao Andolan Judgment of 2000:* After exhausting avenues of working with the authorities, the NBA went to the Supreme Court with a Public Interest Litigation in

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8. The DPs/PAPs are defined in a way as to include not only land owners but also those who depend on it without owning it, and those who have common property resources as their sustenance.

<sup>130</sup> In order to take care of the negative aspects of the large dams, the conditions for clearance generally require:

1. Compensatory afforestation.
2. Treatment of catchment area to prevent prematured silt in other aspects.
3. Measures to prevent or minimize water logging and salinastation in the command area and around the reservoir.
4. Measures to prevent and minimize impact on health.
5. Safeguards against ill effects to the seismic city.
6. Ways of saving translocated wild plants and animals.
7. Providing alternative fuels to project labor and ladders for migrant fish to cross over the dam.

1994 asking for a suspension of construction pending a comprehensive review of the project on various grounds including serious failures in rehabilitation and consequent hardship and suffering of project affected people.

The Supreme Court granted an interim stay on construction in 1995, but in its eventual judgment of October 2000, coming after 6 years, rejected the NBA petition and allowed the construction to proceed<sup>131</sup>. The Court expressed satisfaction with the machinery of the Government for rehabilitation and saw no reason to doubt the independence of this machinery. It also held the view that the machinery was to be presumed to be working: 'there is no reason now to assume that these authorities will not function properly. In our opinion the Court should have no role to play'. It reiterated that construction should keep pace with implementation of the relief and rehabilitation and take place only on the clearance from the NCA. Thus, the effect of grant of clearance subject to *pari-passu* conditions was also examined by the Court in Sardar Sarovar Project's case.<sup>132</sup>

The court also observed that:

Displacement of people living on the proposed project sites and the areas to be submerged is an important issue and a properly drafted relief and rehabilitation plan would improve the living standards of displaced persons after displacement. When clearances are given, conditions regarding preservation, conservation and rehabilitation are imposed and

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<sup>131</sup> *Narmada Bachao Andolan v. Union of India*, AIR 2000 SC 3751 (Dr. A.S. Anand, CJI., S.P. Bharucha and B.N. Kirpal, JJ.).

<sup>132</sup> *Narmada Bachao Andolan v. Union of India*, AIR 2000 SC 3751, four conditions were imposed: '(i) NCA will ensure that environmental safeguard measures are planned and implemented *pari-passu* with progress of work on project, (ii) The detailed surveys' studies assured will be carried out as per the schedule proposed and details made available to the Department for assessment, (iii) the attachment area treatment programme and the rehabilitation plans be so drawn as to be completed ahead of reservoir filling, (iv) The Department should be kept informed of progress on various works periodically.'

those conditions will have to be fulfilled by the authorities concerned to implement the project.

Later, in 2005, in another petition by NBA, Court observed that there is a direct nexus with raising of the height *vis-à-vis* implementation of relief and rehabilitation progress both of which must proceed equably or ratably which would mean that relief and rehabilitation measures must be undertaken as and when the height of the dam is further raised.<sup>133</sup> Hence, the court again emphasized on the *pari passu* aspect.

Justice S.S. Jha Commission had been appointed to carry out its investigative work into the massive corruption of hundreds of crores in the rehabilitation of the Sardar Sarovar project affected families. But they did not get adequate funds to start the process of investigation. In this regard, NBA filed a petition under Article 226 of the Constitution in Jabalpur High Court.

On 21 May, 2010, a Division Bench of Jabalpur High Court comprising of Justice Shri K. K Lahoti and Justice Shri Ajit Singh, issued notices to the Principal Secretary, General Administration Department and Principal Secretary, Department of Finance of the Government of Madhya Pradesh to show cause and reply as well as comply with all its previous orders in this regard by 24th June and file its affidavit on or before 25th June, 2010, failing which the Court will have to initiate strict action against the State Government.<sup>134</sup> The Court had issued this direction, acting on a complaint made by

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<sup>133</sup> *Narmada Bachao Andolan v. Union of India*, AIR 2005 SC 2994 (Y.K. Sabharwal, K. G. Balakrishnan and S. B. Sinha, JJ.).

<sup>134</sup> <http://www.citizen-news.org/2010/05/jabalpur-high-court-acts-on-complaint.html>, (Accessed on 23.5.2010).

the Commission to the Hon'ble Court, through a letter dated 18th May, 2010 addressed to the Registrar of the High Court. The Commission had leveled a specific allegation against the Madhya Pradesh Government that adequate budgetary allocations are not being made to the Commission and also that the allotment was not being made in the manner prescribed by the Hon'ble High Court.

Earlier on 12 March, 2010 the court passed an Order declining to grant interim relief to the Government of Madhya Pradesh (GoMP) on an application filed by it, seeking modification of the Order of the High Court dated 12-11-2009. The Court had directed that all requisitions and funds for the Justice Jha Commission of Inquiry shall be placed with the Registrar General of the High Court and all grants by the State will also be routed through him.

Another case is also filed in the Supreme Court by Narmada Bachao Andolan regarding the relief and rehabilitation of the canal affected persons (Omkareshwar Canal) which is still *sub judice*.

#### **ANALYSIS OF THE SSP JUDGMENT, 2000 AND THE ROLE OF JUDICIARY**

In the Judgment of 2000, while it insists on the one hand the sanctity of the 1979 Tribunal Award, it does condone some changes in the award (for instance, the Gujarat government changes in the definition of oustees) and also selectively recognizes the applicability of laws adopted after this decision (for instance, the Forest Act, 1980) while denying the



relevance of others (for instance, the Environmental Impact Assessment Notification, 1994).<sup>135</sup>

The Sardar Sarovar Judgment is, in the Supreme Court's own words, fundamentally about the human rights of displaced people. The actual reasoning gives a completely different picture. However, rather than providing a full reasoned analysis of the human rights situation, the judgment focuses on the various administrative procedures put in place by the state to deal with the issues arising from the Sardar Sarovar Project. First, the court refuses to confront the Morse Report commissioned by the World Bank in the early 1990s. This report was certainly not well received but it has nevertheless been of major significance in the history of SSP. Besides, India has ratified a number of human rights treaties, most of which could have found application in this case.

One of the dimensions highlighted in the petition which is not fully addressed in the judgments is that of project affected people's participation in decision-making. Significantly, even the old ILO Convention 107 does not stop at requiring countries not to displace tribal people unless it is in the interest of national economic development. Merely reiterating that the NWDT Award is final and binding does not answer the central question of the oustees' right to participate in the proceeding.<sup>136</sup> Participation in decision-making gives an opportunity to hear the views of the people who are not promoters of the project. It constitutes one of the avenues for making sure that displaced people share in

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<sup>135</sup> Philippe Cullet, "Sardar Sarovar Judgment and Human Rights", Economic and Political Weekly, Vol. 36, No. 18 (May 5-11, 2001), at 1503.

<sup>136</sup> Philippe Cullet, "Human Rights and Displacement: The Indian Supreme Court Decision on Sardar Sarovar in International Perspective", The International and Comparative Law Quarterly, Vol. 50, No. 4 (Oct., 2001), at 983.

the benefits of the project. Indeed, everybody seems to agree that displaced people should not be worse off following their displacement.

While the judgment never fully addresses fundamental rights issues, it surprisingly goes much beyond the scope of the petition to discuss the usefulness of dams as a whole in India. While the majority judgment opines that 'large-scale river valley projects per se all over the country have made India more than self-sufficient in food', the WCD report notes much more cautiously that the actual extent of the contribution of large dams to these improvements is difficult to determine<sup>137</sup>

As far as the latest case of corruption in the Jabalpur High Court is concerned, the stand of the court is appreciated. A lot of corruption is going on in the rehabilitation process and it needs to be addressed so that even if some relief is provided, it does not get vanished in the middle and does reach the one in need.

All judicial pronouncements operate in a social field. The process of interpreting a judicial decision is an exercise that cannot be undertaken solely through judicial canons of interpretation.<sup>138</sup> These judicial decisions do give a semblance of relief. But in the end, everything falls back on implementation. It has been observed that the right to livelihood and the right to work remain very feeble and ineffective fundamental rights, incapable of being enforced by judicial action. It remains, therefore, unexplained what social purpose

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<sup>137</sup> *Supra*, note 136 at 985.

<sup>138</sup> Mathew John, "Interpreting Narmada Judgment", *Economic and Political Weekly*, Vol. 36, No. 32 (Aug. 11-17, 2001), at 3030.

has been served by the courts in unduly expanding and reconceptualising the right to life under Article 21 without carrying the burden to fulfil the enlarged commitment.

The position of a displaced person who has no legal interest in the land acquired even though he may be dependent on it is even more pitiable for he does not even have the right to receive compensation for the havoc wrecked by the acquisition. In view of the appalling prospect facing a person whose land has been compulsorily acquired by the government, not only right to life guaranteed by Article 21 of the Constitution but the various freedoms guaranteed by Article 19 too would seem to them to be nothing more than paper rights.<sup>139</sup>

It can be argued that acquisition of land for public purpose infringes individual right to choose their dwelling and denies free access to chosen economic activities, that too for a cause whose consequences may be disastrous for their well being.

It is only recently that right thinking citizens have started expressing their concern over the process of land acquisition, shifting the rehabilitation of the innocent people who have been living for generations in their natural abodes and villages in their own style.<sup>140</sup>

Land to the oustees at best is only a first step towards their rehabilitation. What is required is to enable them to make productive use of this resource. This would involve institutional support in terms of motivation, education, skill development and information

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<sup>139</sup> *Supra*, note 74 at 159.

<sup>140</sup> *Supra*, note 115 at 14.

and risk sharing. Look at the plight of the one who is left with nothing. Over and above they are beaten, abused, thrown out of their houses or threatened thus violating all the rights enshrined in Part III of the Constitution. They need permanent sources of income generation and the support to live on.

Restricting the mischievous role played by middlemen while dealing with the problem of land oustees is very much essential and an individual approach, irrespective of education, caste, land and income background of the land oustee has to be encouraged. If at all the rehabilitation programme is to be successful, it should aim not only at the resettlement of the uprooted persons in the new abode but also rehabilitate them, regain and enhance their economic output in the long run.

## **CHAPTER - V**

### **COST BENEFIT ANALYSIS OF DEVELOPMENT PROJECTS: INTERFACE OF ETHICS, LAW AND ECONOMY**

There are two polar schools of thought on the issue of displacement and its ecological and social impact. Some argue as to how displacement has had a beneficial impact and how it has offered to hitherto isolated communities the opportunity of integrating with main-stream society. Some have even argued that such relocations, if planned and executed efficiently and transparently, can improve rural livelihoods while simultaneously helping habitat recovery. The process of dam construction and resettlement of itself provides the impetus for integration into wider structures, as it pulls people out of the potential isolation of small pre-settlement villages into newer, larger and more diverse social and administrative structures and networks. The provision of improved roads and education provides people with additional means and incentives to move outward, into wider circles and exchanges.

The anti-displacement viewpoint, on the other hand, has stressed that the urge to 'integrate' rural communities, particularly adivasis, with the so-called mainstream is a patently urban and paternalistic phenomenon that exhibits ignorance about the lifestyles of such communities. These lifestyles are intricately linked to their surrounding landscapes and have over time developed a fine balance with nature. Any disruption of

this equilibrium, they argue, irreparably damages not only the livelihood of these communities, but also natural systems of the area.<sup>141</sup>

These two schools have frequently been at odds with each other as to whether dams are good or have a negative impact on society.

**COST BENEFIT ANALYSIS:** In recent decades, however, a “new development paradigm” has been articulated, one that promotes poverty reduction, environmental protection, social justice, and human rights. In this paradigm, development is seen as both bringing benefits and imposing costs.<sup>142</sup>

Among its greatest costs has been the involuntary displacement of millions of vulnerable people. Not only is development-induced displacement a widespread, and growing, phenomenon, but evidence suggests that while the beneficiaries of development are numerous, the costs are being borne disproportionately by the poorest and most marginalized populations. Of the types of development projects that bring about physical displacement, dams and their related infrastructure, including power stations and irrigation canals, stand out as the largest contributor to displacees. (See, ANNEXURE VI)

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<sup>141</sup> Asmita Kabra, “Displacement and Rehabilitation of an Adivasi Settlement: Case of Kuno Wildlife Sanctuary, Madhya Pradesh”, Economic and Political Weekly, Vol. 38, No. 29 (Jul. 19-25, 2003), at 3073.

<sup>142</sup> W. Courtland Robinson, “Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement”, The Brookings Institution-SAIS Project on Internal Displacement, Washington DC, May, 2003, at 10.

Dam construction can severely impact human security by inducing forced displacement. Financial institutions therefore need to integrate individual security considerations into their decision-making process.<sup>143</sup> Without this, it is fairly impossible to adopt a humane approach and reach to an appropriate decision.

Today the cost benefit analysis depends only on the market value. Quantification of other assets is limited to the marketable commodities of the formal economy.<sup>144</sup> Considering a place like Narmada valley, in the backward i.e., administratively neglected regions, the market value is extremely low. Besides, the DPs/PAPs pay a higher price than shown in the cost benefit analysis. The psychological trauma of forced displacement, the cost of transition to a new economy and a total rehabilitation are not included in it.

The cost benefit analysis limits itself to pre construction planning. Apart from destroying the livelihood of the poor, non participatory decision making has implications also for the valuation of costs and benefits.<sup>145</sup>

Only the marketable communities of the formal economy are taken into consideration in the cost benefit analysis worked out by the project authorities. It helps the project authorities to reduce cost and arrive at a favourable cost benefit ratio. It would be much worse if the social and environmental impact on the DPs and the loss they suffer in their informal economy were included. This is not done because most DPs being powerless,

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<sup>143</sup> Georg Caspary, "The Impacts of Development Induced Displacement on Human Security: A Study of Dam Finance", *Human Security Journal*, Vol. 4, 2007, at 70.

<sup>144</sup> Jason Stanley, "Development Induced Displacement and Resettlement", <http://www.forcedmigration.org/guides/fmo022/>, (Accessed on 5.5.2010).

<sup>145</sup> *Supra* Note 41, at 25.

are unable to make their voices heard despite economic, social, cultural and psychological dispossession they suffer.

Even without adding the social and environmental impact of displacement of the poor, one can question many projects according to the present purely economic criteria of the planning commission. For example, a study of representative set of major dams by the Comptroller and Auditor general shows that hardly any of them was completed without a 10 years time overrun and 500 person cost over run.<sup>146</sup>

The principle of the 'greater good for the larger numbers', routinely invoked to rationalise forced displacements is, in fact, often abused and turned into an unwarranted justification for tolerating ills that are avoidable.<sup>147</sup> The outcome is an unjustifiable repartition of development's costs and benefits: Some people enjoy the gains of development, while others bear its pains.

**QUESTIONING COST BENEFIT:** What is required is a new look at the cost benefit analysis. The alternative is based on the principle that assessment of assets taken over has to go beyond market price to the concept of replacement value. To arrive at this assessment, one has to quantify the psychological trauma and the social and cultural loss the DPs suffer, so also the ongoing benefits like food and energy that they get from CPRs and other resources on which their informal economy is based.

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<sup>146</sup> *Supra*, note 80, at 41-42.

<sup>147</sup> Michael M. Cernea, "Risks, Safeguards and Reconstruction: A Model for Population Displacement and Resettlement", *Economic and Political Weekly*, Vol. 35, No. 41 (Oct. 7-13, 2000), at 3959.



1. During the century India's population has increased enormously occupying almost every inch of land.
2. The state has taken on welfare as well development goals, for which more land is needed, than for the activities of a *laissez faire* state.
3. Independent India has become social, democratic republic. The government of such a state is required to consult people before taking major steps.<sup>148</sup>

To arrive at a realistic cost benefit analysis, procedures for the evaluation of assets owned by people should be spelt out and defined in consultation with them. Following needs to be done:

- (a) While calculating/assessing the economic value of assets lost, for the purpose of compensation, the concept of 'replacement value' of all quantifiable assets should be used in the place of 'present depreciated value' of assets carrying ownership titles alone.<sup>149</sup>
- (b) The policy should recognize the social and psychological trauma caused by dislocation and displacement and focus on mechanisms to compensate and relieve the distress thus caused.
- (c) Efforts have to be made to prepare the oustees for a new life, economically, socially and psychologically.

**NARMADA SITUATION:** In the valley hundreds of species of plants, animals etc are being submerged. Man is adaptable but what about the trees and the forests, animals and

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<sup>148</sup> *Supra*, note 72 at 112.

<sup>149</sup> *Supra*, note 41 at 25-26.

creatures, they cannot. If we have used our knowledge to advance, we need to use it to save our planet as well.

This Sardar Sarovar project has undergone many financial and economic cost-benefit exercises. A Review Group appointed by the Union water resources ministry on August 5, 1993. On the human aspects of the project, the review observes that efforts must be made to count the human and social costs of the project, and its remedial measures.<sup>150</sup> As per the government records, the cost-benefit ratio is positive. But as far as the real and ultimate analysis goes, there are so many aspects which have been ignored or sidelined.

**IMPACT OF THE SARDAR SAROVAR PROJECT:** The Sardar Sarovar Dam is expected to impound water to the full reservoir level of 455 feet. It will submerge around around 37,000 hectares (92,500 acres) of land in three states: Gujarat, Maharashtra and Madhya Pradesh. The water catchment of the dam is slated to be 123 km. The length of the entire distribution system is 75 000 km.<sup>151</sup>

**Impact of Submergence:** The Sardar Sarovar storage reservoir could submerge a total area of 37 533 ha in the three states of M.P., Maharashtra and Gujarat. The land coming under submergence includes: forests, agricultural and, and riverbed/wasteland.<sup>152</sup> As shown in table below, a total of 37533 ha. land will be submerged due to construction of the dam.

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<sup>150</sup> Sanjay Sangvai, "Re-Opening Sardar Sarovar Issue: Significant Gain of Narmada Struggle", Economic and Political Weekly, Vol. 30, No. 11 (Mar. 18, 1995), at 542.

<sup>151</sup> Afroz Ahmad, "The Narmada Water Resources Project, India: Implementing Sustainable Development", Ambio: Research for Mountain Area Development: Africa and Asia, Vol. 28, No. 5 (Aug., 1999), at 400.

<sup>152</sup> *Ibid.*

**TABLE 5.1: Land Submerged**

Type of land	Gujarat	Maharashtra	Madhya Pradesh	Total
Private Cultivated land	1877	1519	7883	11279
Forest land	4166	6488	2731	13385
Other land including river bed	1069	1592	10208	12869
Total land	7112	9599	20822	37533

Source: [http://www.sscac.gov.in/p\\_reha.html](http://www.sscac.gov.in/p_reha.html), (Accessed on 5.5.2010).

As shown in the table below, About 48269 families, spread over 244 villages in the three states, will be affected due to submergence and backwater effect at full height of the dam. Out of 192 villages affected in Madhya Pradesh, less than 25% land is affected in 114 villages, in 20 villages only habitation will be affected, while in 9 villages only Government wasteland will be submerged.<sup>153</sup>

**TABLE 5.2: Number of Affected Families**

Beneficiary State	Villages affected			Families to be rehabilitated	Population affected (1991 Census)
	Fully	Partially	Total		
Madhya Pradesh	01	191	192	39369	89796
Maharashtra	00	33	33	4163	19650
Gujarat	03	16	19	4737	18000
Total	04	240	244	48269	127446

Source: [http://www.sscac.gov.in/p\\_reha.html](http://www.sscac.gov.in/p_reha.html), (Accessed on 5.5.2010).

<sup>153</sup> [http://www.sscac.gov.in/p\\_reha.html](http://www.sscac.gov.in/p_reha.html), (Accessed on 5.5.2010).

**TABLE 5.3: Target of Compensatory Afforestation Programme**

	Area of Forest Diverted for SSP (Ha.)	Area of Land to be Afforested	
		Non Forest land forest	Degraded Land
State of Gujarat	4523	4650	9350
State of Maharashtra	6488	6488	12980
State of M.P.	2732	2190	6550

Source: Status Report on Environment, Narmada Control Authority, June, 1998.

These are just the numbers. This is the target which is to be achieved. But reality is otherwise. No doubt in Gujarat, the plantations were taken up in Kachchh in Anjar, Bhachau, Rapar, Abdasa and Mandavi Taluka.<sup>154</sup> Around 30 species of need, desi baval, pilu, gunda, amla etc were sown but there is nothing else apart from few saplings. Moreover Maharashtra Government has not even done that.

**TABLE 5.4: Archaeological Monuments in Submerged Area**

	Gujarat	Madhya Pradesh	Maharashtra
Relocation of Temples	2	23	-
Excavation Site	-	14	-

Source: Source: Report of Narmada Control Authority, June, 1998.

Two ancient temples: Shoolpaneshwar and Hamfeshwar have been shifted to newer sites.

<sup>154</sup> *Supra*, note 21 at 215.

There is a need of Catchment Area Treatment as well. Loss of soil cover, besides affecting the fertility of soil to support vegetation, creates problems of silting of streams causing impediments to flow and its use as waterway, flooding of rivers and reduction in water storage capacity of reservoirs due to silting. Hence catchment is treatment measures primarily aim at 'conservation of soil'.

The premier agency of Indian council of Agricultural Research, Central Soil and Water Conservation Research and Training Institute (CSWCRTI), Dehradun has been engaged in research, development and pilot projects throughout India to increase the utility and for the intensification of the efforts for eco-restoration of degraded lands.<sup>155</sup>

Along with CAT, Command Area Development is also necessary. The Irrigation commission (1972), who after analysing the problems of low utilisation of irrigation, recommended systematic command area development in the country. In river valley projects too, CAD plan is required to be prepared. In December, 1974, Government of India approved the central sector scheme for CD in irrigated commands to be taken up under the fifth plan.<sup>156</sup>

If we calculate the cost of all this: the entire land which is submerged, the number of species of plants and animals which will go extinct, the thousands of year old heritage

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<sup>155</sup> R.S. Goel and R.N.P. Singh, "Catchment Area Treatment: Need Scope and Limitation while Tagging with River Valley Projects", in, R.S. Goel, Environmental Management in hydropower and River Valley Projects, Oxford and IBH Publishing Company Private Limited, New Delhi, 2000, at 70.

<sup>156</sup> R.S. Goel and B.S. Ahuja, "Command Area Development: Prospects, Status and Strategies", in, R.S. Goel, Environmental Management in hydropower and River Valley Projects, Oxford and IBH Publishing Company Private Limited, New Delhi, 2000, at 107.

which Narmada Valley is carrying and more importantly taking into consideration all the aspects of well-being of the displaced community, The NVP is bound to fail on the cost benefit analysis. What is shown and what is actually done is not hidden to anyone. This is yet another case of flawed economics where the ethics, law and principles are biting the dust.

**RIGHT TO DEVELOPMENT *VIS-À-VIS* RIGHT AGAINST DISPLACEMENT:**

Displacement cannot be considered as an appendix to development. There exists a right not to be displaced. States are required to take all measures to avoid conditions which might lead to displacement. Guiding Principle 5 requires States to adhere to international law so as to prevent or avoid situations that might lead to displacement. All people have the right to freedom of movement and the right to choose their place of residence.<sup>157</sup> The right to protection from displacement is derived from the right to freedom of movement and choice of residence contemplated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

What we need is a development model which deals with displacement as an integral part of the process and by creation of a developmental paradigm within which minimization of displacement is an essential prerequisite.<sup>158</sup>

The integration of human rights into the practice of development cooperation has been increasingly debated. A consensus seems to exist around the core principles of an

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<sup>157</sup> *Supra*, note 17.

<sup>158</sup> Walter Fernandes, "Displacement and Rehabilitation", *Economic and Political Weekly*, Vol. 30, No. 39 (Sep. 30, 1995), at 2460.

“appropriate” development process. the idea that the concept of right to development, correctly understood as ‘the right to a process of development in which all human rights and fundamental freedoms can be fully realized’, following the definition of UN Independent Expert on RTD, Arjun Sengupta, can be a very useful tool to provide a common normative framework.

Amartya Sen’s vision permitted to unlock the reasoning about development and economic growth. The ‘development’ is not related only to the growth of GNP, in the classic work - ‘Development as Freedom’ the Nobel prize winner Amartya Sen pointed out that ‘the issue of development cannot be separated from the conceptual framework of human right’. This idea is also part of the UN Declaration on the Right to Development.<sup>159</sup>

It is within this framework that grew the idea of a human rights based approach to development, intended as a new way to foster development with a particular attention to the protection, the fulfilment and the promotion of all human rights.

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

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<sup>159</sup> The Right to Development was proclaimed by the United Nations in 1986 in the ‘Declaration on the Right to Development’ which was adopted by the United Nations General Assembly resolution 41/128. The Declaration on the Right to Development defines such right as ‘an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.’

The World Conference on Human Rights, held in Vienna in 1993, dealt extensively with the right to development. It adopted the Vienna Declaration and Programme of Action, which recognizes that democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. <http://www2.ohchr.org/english/issues/development/right/index.htm>, (Accessed on 5.5.2010).

their full potential. It is an integral part of human right. Therefore, the adherence of sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development.<sup>160</sup> Human rights cannot take a back seat any point of development.

In the 1970s and 1980s the RTD was introduced as one of several rights belonging to a 'third generation' of human rights.<sup>161</sup> Conceptualized first during the 70s,<sup>162</sup> particularly in UN fora, as a tool to achieve that New International Economic Order pursued by developing countries, this right was officially affirmed in 1981 by the Organization of African Unity and then, in 1986, by the UN with the Declaration of the Right to Development.<sup>163</sup> During the Nineties, then, the RTD was reaffirmed ad a fundamental human rights in many international meetings, including the 1992 Earth Summit in Rio de Janeiro,<sup>164</sup> the 1993 World Conference on Human Rights in Vienna,<sup>165</sup> the 1995 International Conference on Social Development in Copenhagen<sup>166</sup> and the 2000 UN Millennium Declaration.<sup>167</sup> A breakthrough occurred on April 22, 1998, when the U.N.

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<sup>160</sup> See, *N. D. Jayal v. Union of India*, (2004) 9 SCC 362, Para 23, 24 (S. Rajendra Babu, D.M. Dharmadhikari and G.P. Mathur, JJ.)

<sup>161</sup> Stephen P. Marks, "Emerging Human Rights: A New Generation for the 1980's?", *33 Rutgers L. Rev.* 435 (1981), at 441.

<sup>162</sup> Even if some normative basis can be found in articles 54 and 55 of the Universal Declaration of Human Rights, the recognized pioneers of RTD affirmation are Keba M'Baye and Karel Vasak. M'Baye, first President of Senegalese Supreme Court, was the first to introduce the concept in 1972, while Vasak coined for it the definition of "third generation human rights". With regard to the UN fora, fundamental was the work of the Commission for Human Rights, that in 1977 affirmed for the first time the RTD as a fundamental human right with the Resolution 4 (XXXIII) and created the first Working Group to study the international dimension of the RTD.

<sup>163</sup> Adopted by the UN General Assembly Resolution 41/128 with 149 votes in favour, 8 abstentions (Denmark, Finland, Federal Republic of Germany, Island, Israel, Japan, Sweden and United Kingdom) and with the USA casting the only vote against.

<sup>164</sup> Rio Declaration on Environment and Development, 1992, Principle 3.

<sup>165</sup> Vienna Declaration and Programme of Action, 1993, Para 10.

<sup>166</sup> Copenhagen Declaration and Programme of Action, 1995, Para 26 (j)

<sup>167</sup> UN Millennium Declaration, 2000, Para 11 and 24.



Commission on Human Rights adopted by consensus a resolution on the RTD, recommending to the Economic and Social Council the establishment of a follow-up mechanism consisting of an open-ended working group (OEWG) and an Independent Expert.<sup>168</sup>

Sengupta defines it as 'the right to a process of development in which all human rights and fundamental freedoms can be fully realized'.<sup>169</sup>

This definition strictly follows the content of the first Article of the 1986 Declaration. The 1986 Declaration<sup>170</sup> answers to this necessity identifying the human being at the centre of its framework: 'The human person is the central subject of development and should be the active participant and beneficiary of the right to development'.<sup>171</sup>

In this sense equity, social justice and democratic participation become essential aspects of development process, understood as a comprehensive economic, social, cultural and

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<sup>168</sup> Stephen Marks, *The Human Right to Development: Between Rhetoric and Reality*, <http://www.law.harvard.edu/students/orgs/hrj/iss17/marks.pdf>, (Accessed on 26.5.2010).

<sup>169</sup> A. Sengupta, "First Report of the Independent Expert on the Right to Development", UN Doc. E/CN.4/1999/WG.18/2, Para 47.

<sup>170</sup> In sum, the Declaration on the RTD highlights some fundamental concepts:

1. the human being, understood in his individuality and relatedness, is the centre of development process, that is a multitask process in which cultural, political and social aspects must be included.
2. the RTD is an inalienable human right, that every individual can revindicate against his own people and that every people can revindicate against the international community. This right is defined as the right to a process of development in which all human rights of the individual and the people are respected;
3. a shared and diversified responsibility exists for the realization of the RTD, that calls to action the single individual, the community to which he belongs, the State and the international community, with shared but differentiated duties;
4. human rights are indivisible and interdependent. This means that no right can be fully realized without the contemporary realization of all the others and that a State or a community can not pursue the realization of a human right to detriment of some other right;
5. the RTD is indissolubly connected with the concepts of equity, social justice and participation.

<sup>171</sup> DRD, Art. 2 (1).

political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from. And the first guarantee of this equity is the free and meaningful participation of people in the political and economic choices that drive this process.

The concept of RTD, in fact, whether it shares with the others human rights approaches to development the emphasis given to elements like equality, freedom, participation and non discrimination, it also includes something more: it not only prescribes certain rules according to which development should be realized, but also defines development itself as a human right. First, the definition of development as human rights implies a new critical consideration of development process in all its aspects, from financial allocation to priorities of international development cooperation. Second, it imposes a shift, in the discourse of international development cooperation, from a context of need/charity/aid to a context of right/responsibility/cooperation, both at the individual and at the collective point of view.<sup>172</sup>

The human rights-based approach to development is a perspective that considers traditional goals of development activity, as the provision of health or educational services, food or shelter, as human rights. Between these principles, the ones that enjoy the highest degree of consensus are:

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<sup>172</sup> Alessandro Sitta, "The Role of the Right to Development in the Human Rights Framework for Development", [http://www.capabilityapproach.com/pubs/5\\_1\\_Sitta.pdf](http://www.capabilityapproach.com/pubs/5_1_Sitta.pdf), (Accessed on 26.5.2010).

- Attention to the process of development
- Direct linkage to rights
- Participation and empowerment
- Non discrimination
- Attention to the most vulnerable groups
- Accountability

Integrating human rights in development activities means, in this perspective, not only avoiding activities and programmes that are expressly against the spirit of human rights framework (e. g. projects that reinforce discrimination against individuals or groups, or which involve large-scale evictions or displacement of persons or which are top-down implemented), but it means expressing civil, economic, political and social targets in terms of human rights, taking into account human rights norms in every stage of development project, from needs assessment to project evaluation.<sup>173</sup>

The Bill of Human Rights<sup>174</sup> provides clear indications about how to make projects in health, agriculture, education or governance work for the promotion and protection of human rights. Generally, these guidelines are based on some fundamental principles: accountability, participation, non discrimination, and empowerment.

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<sup>173</sup> *Supra*, note 172.

<sup>174</sup> Conventionally, are considered part of the "Bill of Human Rights" the seven international Human Rights Covenants and Conventions adopted after 1945.

Accountability is particularly important in development process. Identifying clearly duty-holders and rights-holders in a specific context and situation can be of great use to enhance the transparency and the effectiveness of the implemented project.

Participation is a common 'pillar' of human rights and human development concepts. That people could have the control over the fundamental choices of their lives, taking part in all those mechanisms and processes that can affect them, is a goal of most of the development strategies. The universality of human rights imposes a particular attention to equity and non discrimination.

Stephen Marks enumerated seven different approaches to development, each affirming to adopt a human rights perspective: the holistic approach, the human rights based approach, the capabilities approach, the social justice approach, the RTD approach, the responsibilities approach and the human right to education approach.<sup>175</sup> All these perspectives share the idea that promotion and protection of human rights are fundamental dimensions of development process.

DRD further states in Article 8 (1) that the States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the

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<sup>175</sup> *Supra*, note 172.

development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.

To affirm the RTD as a human right means to recognize the priority to the realization of all the human rights and fundamental freedoms inherent in it. More, it means to recognize to all individuals and peoples the right to actively take part in a process of development in which can be fully realized all those rights that have been recognized as fundamental human rights in an indivisible and interdependent way.

The RTD perspective brings this idea to its ultimate consequences; if human rights are entitlements of every individual regardless his status or condition, and if development is conceived as the process in which all human rights and fundamental freedoms can be fully realized, development itself is a human right.<sup>176</sup>

As Sengupta says:

While the reduction of poverty or improving the lots of the most vulnerable or the poorest section of the population will satisfy some index of justice, to realize the right to development, viewed as a right to a process, will require looking at the elements that contribute to the dynamics of sustained poverty reduction and human development.<sup>177</sup>

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<sup>176</sup> Alessandro Sitta, "The Role of the Right to Development in the Human Rights Framework for Development", [http://www.capabilityapproach.com/pubs/5\\_1\\_Sitta.pdf](http://www.capabilityapproach.com/pubs/5_1_Sitta.pdf), (Accessed on 26.5.2010).

<sup>177</sup> A. Sengupta, "Second Report of the Independent Expert on the Right to Development", Un Doc. E/CN.4/2000/WG.18/CPR., at 21.

In the RTD perspective, what is important is the creation of a sustainable process for the realization of all human rights and fundamental freedoms, as an interrelated and indivisible whole.

**DISPLACEMENT AND ETHICS:** In dealing with issues of development and displacement, important ethical questions are raised. Why displacement often is considered morally objectionable? Under what conditions, if ever, can a development project justify displacement? Is it ethically just to displace people so long as they are compensated? If so, what type of compensation is owed to displacees? Should displacees share in the direct benefits of the project by which they were displaced? Peter Penz outline three broad ethical perspectives - public interest, self-determination, and egalitarianism - that can be used to justify development-induced displacement. But that these conditions are strong. They include the avoidance of coercive displacement in favour of negotiated settlement, the minimization of resettlement numbers, the full compensation of displacees for all losses, and the use of development benefits to reduce poverty and inequality. Unfortunately, in most cases of Development Induced Involuntary Displacement, these conditions have been violated.<sup>178</sup> The conclusion is that, while forced migration cannot be categorically declared unjustifiable, the conditions that must be met for its justifiability are considerable.

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<sup>178</sup> Jason Stanley, "Development Induced Displacement and Resettlement", <http://www.forcedmigration.org/guides/fmo022/>, (Accessed on 26.5.2010).

The justifying conditions include that the development benefits contribute to reducing poverty and inequality.<sup>179</sup> The self-determination perspective is important in requiring consultation with communities in the design of development projects that will impact them significantly. It requires that the communities' own conception of their interests and their management of their environment be respected. More specifically, it requires that forced migration be avoided and replaced by negotiated resettlement terms, wherever the need for population movements cannot be avoided.

**CAN EVERYONE WIN:** In the vast majority of situations, not 'everybody' can win when it comes to development projects involving resettlement of displaced people. This is insignificant measure because of the complexities inherent in the resettlement process. Development with resettlement projects are about a power differential - outsiders intervene via an infrastructure project and put pressure on people to get out of the way. If we are to enable the less powerful to keep open their options, and hence their chances of benefitting, we need to acknowledge the political issue. The choice for an open-ended, more participatory approach for greater co-ownership of development projects is a political choice.<sup>180</sup>

Development has a hidden ecological, social and human cost which is paid by the people residing near the project site.<sup>181</sup> This cost has to be minimized through an appropriate policy instrument. In the prevalent paradigm of development, market plays an important

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<sup>179</sup> Peter Penz, "The Ethics of Development Induced Displacement", *Refuge*, Vol. 16, No. 3 (August 1997), at 41.

<sup>180</sup> *Supra*, note 5 at 4637.

<sup>181</sup> D. C. Sah, "Development and Displacement: National Rehabilitation Policy", *Economic and Political Weekly*, Vol. 30, No. 48 (Dec. 2, 1995), at 3055.

role. Resettlers who are mainly tribals are unfamiliar with such market forces and mechanisms and remain alienated from these processes primarily because they are not able to obey its working rules.

Planning development projects with sensitivity, needs establishing strong linkages with processes and the institutions which identify and address the disequilibrium created by the projects. Are we in fact able to turn things around, and can the way in which involuntary relocatees are moved be arranged in such a way that they in fact become 'people who are part of progress', so that everybody can win?

If hazards of displacement are to be avoided, it is not enough to provide legality to rehabilitation policies but to share the benefits generated by the large development project of which resettlement has been a part. By applying the resettlement as development approach consistently and redesigning policy, planning and finance accordingly, the risks posed by displacement can be inverted into opportunities for reconstruction.



## CHAPTER - VI

### RESISTANCE TO DEVELOPMENT PROJECTS AND RECONSTRUCTION OF COMMUNITIES: THE NARMADA EXPERIENCE

Resistance from the people has had the welcome effect of putting check on the unilateral strong-arm tactics of the authorities. The oustees organize public processions, 'rasta rokos', 'gheraos' and 'bandhs' which are often brutally suppressed by police strength. This attitude of the government has led to a general loss of faith among the displaced persons.

Many of the oustees' organisations claim that as a result of the government's insincere attitude towards compensation of the oustees; they have had no choice but to oppose the project in question entirely. They say that the only bargaining chip they have is complete opposition of the project. Once the oustees are physically removed, they aver, whatever little attention was initially paid, their grievances completely cease.<sup>182</sup>

The case of the Sardar Sarovar Project (SSP) is instructive. The people evicted in 1962 during the construction of Kevadia colony (which houses project staff), were paid about Rs 80 per hectare for their land. No compensation was given to the landless.

The task of complete rehabilitation of lakhs of people can only be described as herculean, demanding patience and sensitivity. But instead of that, there are the government's assurances, blandishments and promises, backed by the looming threat of the dam: Leave

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<sup>182</sup> *Supra*, note 37 at 2467.

now or you will drown like rats when the water comes. What do you do? Do you have a choice?<sup>183</sup>

Pre-move surveys are usually inadequately done, with the size of the affected populations being underestimated. Inadequate information and understanding of the issues results in resettlement being underfinanced.

*Morarji Desai*, speaking at a public meeting in the submergence zone of the Pong Dam in 1961 says:

We will request you to move from your houses after the dam comes up. If you move it will be good. Otherwise we shall release the waters and drown you all.<sup>184</sup>

Resource allocation and prioritization are at the end of the day political issues and many governments are seen lacking in the necessary political will to push through development oriented policies, administrative structures and budgets for resettlement, and to take on the various interest groups who stand to lose from such an approach.

Ram Bai, whose village was submerged when the Bargi Dam was built on the Narmada and who, now lives in a slum in Jabalpur says:

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<sup>183</sup> Amita Baviskar, "A Grain of Sand on the Banks of Narmada", Economic and Political Weekly, Vol. 34, No. 32 (Aug. 7-13, 1999), at 2214.

<sup>184</sup> *Supra*, note 101.

Why didn't they just poison us? Then we wouldn't have to live in this shit-hole and the Government could have survived alone with its precious dam all to itself.<sup>185</sup>

Seeing the plight of the people of Narmada, many NGOs like Narmada Bachao Andolan, Arch Vahini and friends of the River Narmada etc, are doing their bit to help these people regain their confidence and fight for their rights. Earlier the people were silent but now they themselves have also begun to raise their voice. (See ANNEXURE III)

**PLANNING FOR REHABILITATION AND RESETTLEMENT:** The plan should include:

- (a) Setting up an authority for implementation of the plan for resettlement.
- (b) Identification of land and properties of the PAPs.
- (c) Identification of alternate site for resettlement.
- (d) Identification and acquisition of land and other assets needed to provide an adequate alternative resource base for the PAP.
- (e) A Plan of Action to build up and develop the natural resource base, land, water, forest, wildlife etc in their new settlement areas.
- (f) A Plan of Action to build houses, community building/amenities and other infrastructure facilities making full use of ideas, knowledge, skills and labour of the project affected people who are going to settle there.
- (g) A Plan of Action to train affected people for occupations with a view to placement in newly created jobs within the project or elsewhere.

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<sup>185</sup> *Supra*, note 101.

- (h) A Plan of action for acquisition of land and properties of the PAP.
- (i) A Plan of action for the transitional period including a plan to provide all able bodied persons with productive employment to commensurate with their knowledge, skills and experience.
- (j) A Plan of Action for final development and resettlement.
- (k) A Plan of action for actual displacement of families.<sup>186</sup>

**SURVEY TO STUDY REHABILITATION AND RESETTLEMENT EFFORTS OF THE GOVERNMENT IN NARMADA VALLEY:** A study of 50 families was conducted.

25 of them have already shifted to the alternate site although they keep going back to their place and 25 were still at their native place- either they have not been rehabilitated yet or have refused to get land of lower quality and are still in the danger area. As evidence of their 'timeless' relation to the place, their myths of origin which speak of their relation to Goddess Narmada, and their distinct religion, the people of Nimad spoke up what they had to say. (See ANNEXURE VII: Questionnaire)

Most of the respondents are male and very few were females. The mean age was 45 and most of them were married. They belong to Hindu religion and speak 'Nimadi' language. They were agriculturists and do fishery as well. They keep animals like hen, goat, cow for milk. After this project, the number of nuclear families have increased and joint families have decreased. The majority of land oustees are landless now. There is no major

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<sup>186</sup> A.C. Tyagi, "Resettlement and Rehabilitation in River Valley Projects", in, R.S. Goel, Environmental Management in Hydropower and River Valley Projects, Oxford and IBH Publishing Company Private Limited, New Delhi, 2000, at 184-185.

change in the role of women. Most of oustees are unhappy. The reason no doubt is loss of land, loss of livelihood and their native place. (See ANNEXURE IV)

A variety of fish caught from the Narmada has been an important source of protein for the tribals. A round 10,000 fisher families downstream of the dam, near the Narmada estuary in Bharuch, made a living by harvesting about 13,000 tonnes of Hilsa fish and freshwater prawns. The damming of the river has deprived the traditional fishing communities of their source of livelihood and forced them to search for land- and wage-based income-generation activities with which they are unfamiliar.<sup>187</sup>

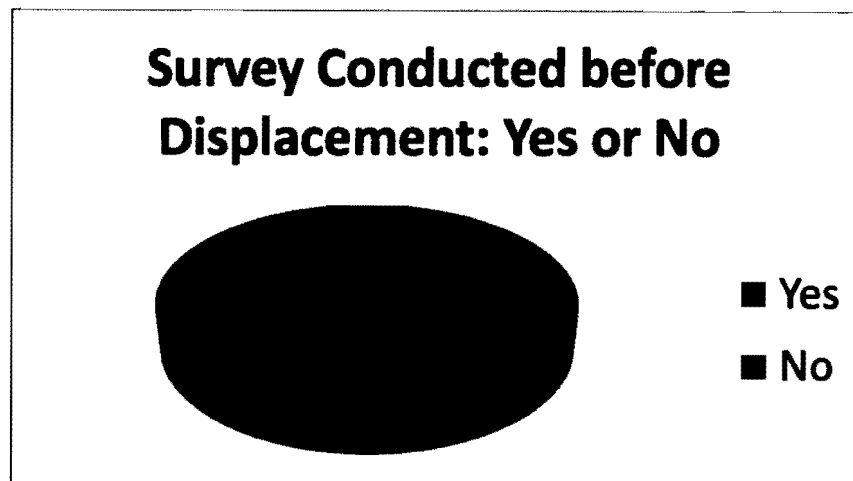
Some tribals are very vociferous in their demands. The main issue concerning them were that their community life had been disturbed and broken up, their lifeline with the forests had been disrupted which affected their way of living, the dam would not benefit them in any way, the alternative lands were found most unsuitable for agriculture.

It was asked: Whether any survey was conducted before the Government started building the Dam. Around 17 families responded in the affirmative. Others stated that no one came to them. Some stated that they only realized when they woke up one day in the middle of the night to find that their houses are flooded with water. Others stated that the officials used to come but no one spoke to them or told them as to what was going on. As shown in the Chart below, the majority had no clue what was going to happen.

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<sup>187</sup> Renu Modi, "Sardar Sarovar Ousteers: Coping with Displacement", Economic and Political Weekly, Vol. 39, No. 11 (Mar. 13-19, 2004), at 1124.

**CHART 6.1**



Kumhariya Bhaiya of village Jalsindhi (See ANNEXURE V) said that initially they felt that nothing is going to happen. But they were startled when they saw water coming in. He spoke in hindi, “Madam, dard hua tha ye dekhkar ki hamare khet, jaanvar, fasal sab doob mein aa gya tha.” (It was painful to see that his fields, his animals and his crops were all submerged in water). He stated that he had been allotted the land but it is of poor quality. He used to sow Jowar, Corn, Bajra but the allotted land is full of stones. One cannot sow anything there. “What kind of compensation is that for displacing them from their homeland?”, he asked with anguish and tears in his eyes.

When they were asked if the survey was conducted properly taking each household into consideration, the majority responded in the negative. Most of them stated that even if the officials came, they only used to talk to the ‘Mukhia’(clan leader) and he ended up making a lot of money by being hand in glove with the authorities.

**CHART 6.2**

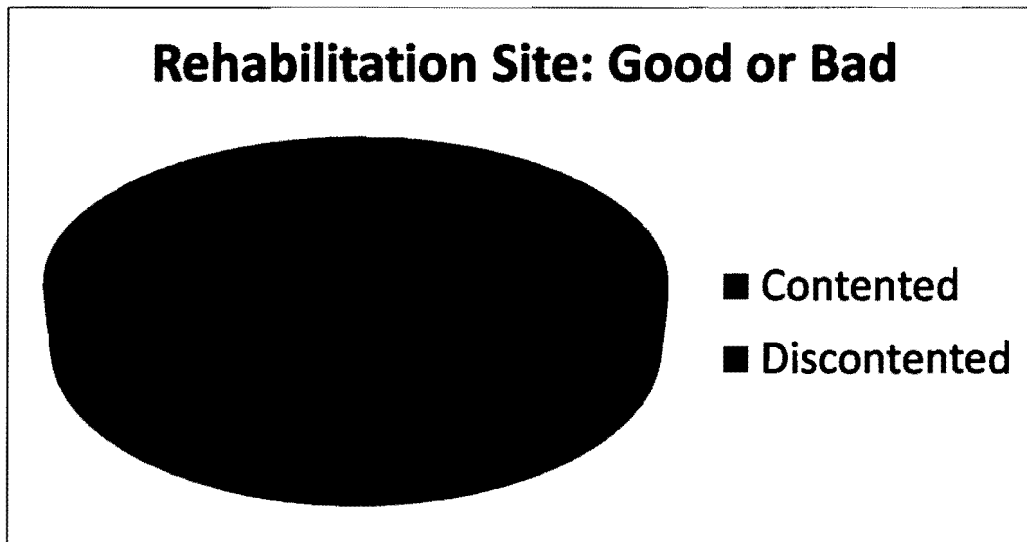


On asking if they felt any heavy handedness on the part of the government and middle men in dealing with the issue, it was stated that many were imprisoned when they refused to leave their native place. There were beatings, threats and all the force and coercion was used to remove them when they refused. Kailash Bhai (See ANNEXURE V) said that government first declared their village to come under submergence and gave compensation as well and later on told them that their village is safe. Even the engineers are not doing a proper job and half of the money the middlemen and officers keep and less than half reach the poor masses.

When asked as to how they feel shifting to another place, everyone showed discontent and pain. When one shifts out of one's free will, one can always come back. Here they knew that it's all gone and they can never see their fields and houses again. When asked if it is appropriate to displace people for development, they replied, "What development and for whom?" They said with disgust, "What will government get by removing us? Do we not have any existence in their eyes? Why are they blind to our pain?"

For those who have shifted to the alternate site, it was asked if they are contented after shifting there, 22 families said that they are not while only 3 families answered in affirmative. They face a lot of hardships at the alternate site. It is depicted in the Table below:

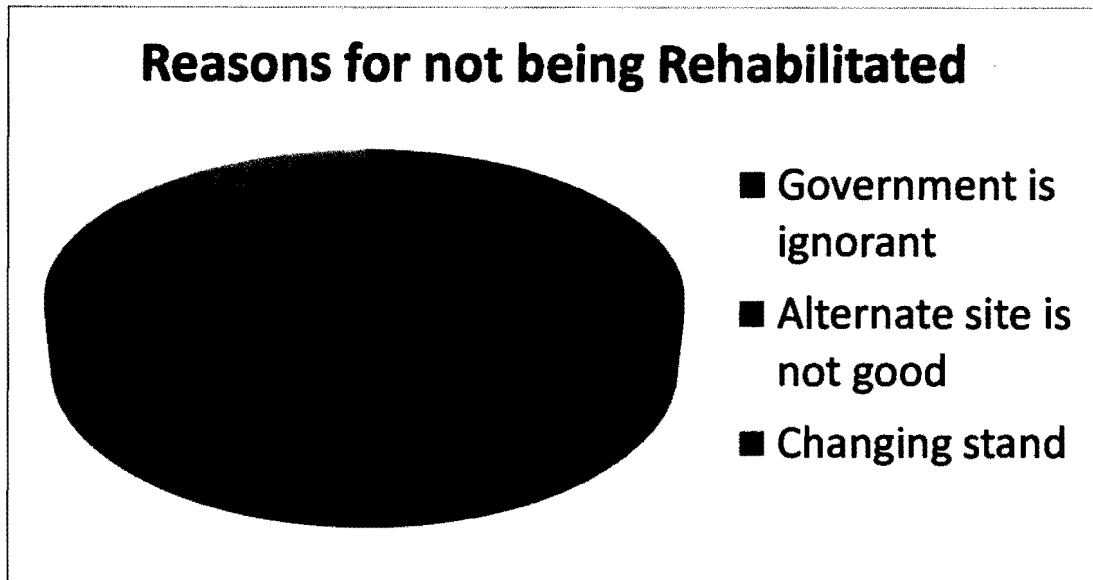
**CHART 6.3**



Those who are yet to be rehabilitated and resettled, it was asked as to what is the reason for the delay, 14 families said that government has been ignorant, 7 said that they do not want to go to an alternate place as they will lose all the kinship ties. They said that they are ready to drown but they will not leave their place. 4 Families said that the government changes its stand often. They were earlier declared to be under submergence but not anymore.



**CHART 6.4**



**OBSERVATIONS:**

- (a) There are so many villages under submergence and had the sequence laid down in the Tribunal been adopted, i.e., rehabilitation first and eviction later, many of the problems which the tribals and officialdom face today would not have been arisen.
- (b) What we find is that while the government is keen on shifting the tribals out of their villages, the same care and anxiety is not reflected in their programme for rehabilitation.
- (c) There are also instances of tribals who figure in the list of PAFs and have been shifted to the rehabilitation sites but have not been given their entitlements of agricultural land. It is said that the land to be given to these tribals is not physically available but this is not something for which the tribals can be held responsible.

- (d) Many who have shifted are awaiting land entitlement, some got uncultivable/ disputed land. Sometimes ex parte allotments are also made.
- (e) At times a piece of land is shown but another one is given and same land is allotted to many different persons.
- (f) Allotted land was of poor quality, waterlogged or saline.
- (g) Allotted land was encumbered or mortgaged by previous landowners before resale to the government. Therefore, PAPs were asked to clear off the debts to the bank before they could apply for loans for seeds, fertiliser or other input.
- (h) Oustees continued to stay back in the villages due for submergence while government records showed them as resettled.
- (i) Families/villages were scattered over various resettlement sites due to a shortage of land, breaking up families and community networks.
- (j) Despite acknowledging the evils of cash compensation, the Gujarat government offered cash compensation packages to the oustees. The government of Madhya Pradesh, too, followed the suit.
- (k) Non-consultation of PAPs on the R and R process and the expedition of the evacuation process through the use of force.
- (l) Allotment for major sons/daughters (a provision included by the Daud Commission) has not been implemented due to an arbitrary assessment of age. Child births in tribal communities do not take place in municipal hospitals where birth dates are recorded and certificates are made available.
- (m) One of the contributing factors is the absence of master plan. While those affected by the dam are included but not those affected by canals.

- (n) Also the Command Area Development Plan has never been made. This is necessary to find out as to where the water is required or else the problem of water logging crops up.
- (o) Middlemen play the havoc over and above.
- (p) There are inadequacies in relation to almost all the civic amenities in the resettlement colonies.
- (q) There are many who are transported to the rehabilitation sites but they are not considered PAFs and the shifting is given the colour of compassion inspired by humanitarian ideals.
- (r) It is surprising why canal affected people are not included. Many times emergency notice is given and work is started without compensating them. In their case also, those who are losing more than 25% of the land, should be treated equivalent to PAFs.

**ANALYSIS:** The relocation process could be seen from two different angles: first, the traditional social linkages and economic institutions in submerging villages had important place in the life of oustees. The randomness of relocation and absence of traditional arrangements at the new sites could make the oustees vulnerable to exploitation. In order to sustain the standard of living, the rehabilitation policy has to be flexible and responding to the emerging needs.

In my opinion, PAFs should include all categories of persons affected by dam. The distinction between declared and non-declared should be done away with. On the land

rights of the tribals, it ought to be said that it is the responsibility of the government to confer on them their due rights in respect of their land holdings in accordance with their own policy statements to that effect. Much is made of the survey of PAPs carried out by the government but then why are there so many affected person still living under the constant fear of getting submerged. A door to door census would have proved the disparity between the reality and the results of the government surveys.

In context of the resettlement of those tribals who are affected at the present height, there are many problems plaguing the process. On one hand there is no proper realistic survey and on the other hand there is no agricultural land available for their resettlement. The NWDT Award has specified community resettlement by way of rehabilitation villages but in reality it is not being done. People are losing all the tie and connection and are totally alienated from their culture.

With the policies in place, the rehabilitation process could have been streamlined properly had the government had the will to do so. The process is still underway in the valley. One can only hope that the struggle of the people of the valley is recognized by the appropriate authorities and in future, whenever such like situation will prevail government will adopt the right approach towards the displaced.

## CHAPTER - VII

### CONCLUSION

Eventually, it is stated that internal displacement is one of the most pressing issues requiring immediate attention and the need for normative frameworks addressing internal displacement exists not only in countries experiencing widespread violence or armed conflict but also those facing displacement by natural or man-made disasters, that is, potentially all countries. This is why it is very essential that the states should consider preparing IDP laws and policies even in the absence of actual displacement.

The most significant question that the present study tried to address relates to the impact of relocation on the living standards and livelihoods of the affected community. Taking Narmada experience, in the short run, there has been a very significant decline in livelihood security, directly attributable to displacement from a resource-rich forest, and disruption of a well-established livelihood pattern.

Development projects are perceived as symbols of national progress. If properly executed, they have the potential to facilitate generation of employment opportunities, formation of new skills, increases in income and consumption levels and improvement of infrastructure facilities. Though the carefully planned and judiciously executed development projects have been instrumental in the faster economic growth of the nation, they have often also proved to be destructive. One of the major shortcomings of an approach focusing on a broad notion of well-being of the nation at large is that it completely sidelines the fundamental rights of people affected by large development

projects. Whatever path is chosen to foster economic development, it is today agreed in India and abroad that this development must be 'environmentally sustainable' and that it should contribute to the realization of human rights for all residents of the country.

The issue of displacement and the processes of resettlement have a historical depth in Indian society. In India, pre-independence economic development based on large projects and big industries was accompanied by widespread displacement. So there was a need to strike a balance between the government's acquisition of land and the rights of those whose land was acquired. The law gave very little scope to the affected party to challenge the process of acquisition or even to demand fair compensation and rehabilitation. People's impoverishment and marginalization were its consequences. After independence came the epoch of Nehruvian socialism and the period saw virtually every kind of state intervention on the subject of property in land. The morality of the law which effects displacement is posited on the 'larger public good'. It is couched in the language of 'public purpose'.

India's first generation of leaders regarded 'Dams' as temples of modern India. So strong was the pro dam bias that the interest of project affected people were not regarded as central to the planning of these projects. Displaced families were given some monetary compensation and then they were forgotten. What happened to their living conditions? Where did they settle? Could they socially integrate in their new settings? Priority was given to easing the economic impact of development through compensation and not on rehabilitation.

The provision of 'land for land' was an innovative and positive step towards the restoration of livelihood given the fact that a majority of the displaced are from rural areas and are agriculturists. Speaking of the Narmada valley situation and the decision of NWDT and the Supreme Court eventually, it can safely be said that NWDT Award overlooked the need for resettlement of those submerged by secondary relocations. Its patriarchal definition of a family saw women as a part of the family and separate provisions were not made for land ownership.

In Indian context, a new definition of development which should consider such questions as development by whom, for whom and at what cost to the individual and the environment, is required. What is required is the promotion of active participation of people at the grass-root level, and ensuring that people are involved in all stages of initiation, goal setting, resource allocation on priority basis, implementation of programmes, and the control, assessment, monitoring and evaluation of developmental activities.

Few projects or states in India have rehabilitation policies, even on paper. Projects like Narmada, which have comprehensive rehabilitation policies in place, even if they are most often not implemented, are rare. The bill is coming up and only the time can tell if it would be able to ameliorate the situation of the displaced.

If we evaluate the success or failure of a resettlement scheme purely in terms of its own stated goals, most schemes would have to count as failures. However, the fact that a

resettlement scheme may not succeed in terms of all the criteria desired for everybody to win, or even for all or most PAPs to win, does not necessarily mean that it is only a failure. Schemes may achieve certain financial, economic or social goals, leaving PAPs better off in some ways, while worse off in others.

But the real problem is that, when it comes to upholding the rights of resettled people *vis-a-vis* their government, the state is both player and referee, inasmuch as it is the ultimate initiator of resettlement and also the source of the laws that the courts must ultimately uphold. It is hoped that some direct and concrete steps be taken to mitigate the effects on the lives of the IDPs. There should be a concerted effort on the part of national policymakers, competent ministries, legislators, and civil society groups concerned with internal displacement to provide assistance in crafting laws and policies. Experience has reconfirmed that a comprehensive policy framework is inevitable if impoverishment risks have to be avoided. A policy frame having provisions first to identify the impoverishment risks associated with resettlement and that of counteracting them is needed for rehabilitation.

It appears, though, that the government only responds to a show of strength. Formalising the negotiating process might improve the situation. A legal framework that predicates construction work on an amicable, negotiated settlement regarding displacement will ensure prompt action. We should not merely talk about 'rehabilitation'; the questions that are involved in what has been called 'displacement' are far larger and far more fundamental. Rehabilitation must be considered as the right of those being displaced and



not merely a privilege and that consequently the real costs of displacement should be built into the project. In a welfare state like India, human rights of not a single individual should be violated.

With the declaration of Right to development and the diffusion of human development theory has opened the way to a better inclusion of human rights concerns into development theory and practice. The choice for an open-ended, more participatory approach, for greater co-ownership of development projects, is a political choice - with all the problems that brings with it. Projects seem to take on a life of their own, as problems arise and as government priorities change. So, we consciously need to adopt a flexible, open-ended approach to planning and implementation while guaranteeing the minimum basics to the displaced.

#### **SUGGESTIONS:**

1. Infrastructure projects should be planned so as to minimize displacement. We should push harder for non-resettlement development options, and for open and honest negotiation with all the potentially affected people. If at all displacement is necessary, community based displacement should be given priority so that people could protect and preserve their culture.
2. Governments should follow internationally accepted resettlement guidelines.
3. The responsibility for compensation and rehabilitation should be placed squarely and concurrently on the project authorities and the government concerned. The satisfaction of this condition must be a fundamental prerequisite of project approval and clearance.

4. The resettlement and rehabilitation should aim not only at the resettlement of the uprooted persons in the new abode but also rehabilitate them, regain and enhance their economic output. One of the land requirements for the approval of any project should be a strict assessment of the land requirements of the project with a view to keep the land acquisition to the minimum so that the forced displacement is minimized.
5. Effective legal mechanisms should be put in place to guarantee the rights of those to be displaced to representation, complaint, and redress.
6. There is a need for proper surveys of the affected population before they are moved. Clear and precise information of affected zone and people is absolutely essential because this would determine the number of people to be resettled. It must include all adversely affected people by the submergence and other project activities.
7. Without this, no proper planning or implementation is possible. The entire project cycle also needs to be properly monitored.
8. The rehabilitation scheme should be prepared well in advance along with the project report and should form a part of it. PAPs should enjoy 'genuine participation' in the planning and implementation process. Whether resettlement should take place at all, should be discussed and negotiated to the satisfaction of those who are due to be moved.
9. The policy should cover all categories of persons who are affected by the project whether or not they hold any land i.e., landless labourers, sharecroppers, artisans,

nomads, cowherds, forest produce collectors, etc., for the lives of such persons are totally disrupted when entire villages are acquired.

10. Sufficient funding should be made available to achieve resettlement with development.
11. Cash compensation alone is clearly inadequate. Therefore this needs to be buttressed by the rehabilitative measures to ensure that the displaced have an assured source of income. Where cash compensation is given, it should be ensured that it is not misused or squandered.
12. Compensation packages should be designed as multi-option packages, to allow for the differing needs of PAPs.
13. A percentage of the income generated by the project as a whole should be made available for the ongoing improvement of the affected people, who have, after all, been affected in perpetuity. This could be made available for at least 10 years.
14. Tribals should be resettled close to their natural habitats ensuring continuation of their traditional rights on minor forest produce and common property resources.
15. There should be compulsory education of children and also adult education.
16. The law when made should be flexible enough so as to accommodate the peculiar needs of particular community.
17. Rehabilitation is a delicate task requiring good deal of understanding and dedication. It has to be done taking all the necessary aspects into consideration.

## BIBLIOGRAPHY

### **BOOKS:**

1. Cohen, Roberta and Francis M. Deng, Masses in Flight: The Global Crisis of Internal Displacement, Brookings Institution, Washington D.C., 1998.
2. Cullet, Philippe, The Sardar Sarovar Dam Project: Selected Documents, Ashgate Publishers, New York, 2007.
3. Dreze, Jean, Meera Samson and Satyajit Singh, The Dam and the Nation: Displacement and Resettlement in the Narmada Valley, Oxford University Press, New Delhi, 1997.
4. Fernandez , Walter and Enakshi Ganguly Thukral, Development, Displacement and Rehabilitation: Issues for a National Debate, Indian Social Institute, New Delhi, 1989.
5. Fernandez , Walter and Vijay Paranjpye, Rehabilitation Policy and Law in India: A Right to Livelihood, Indian Social Institute, New Delhi, 1997.
6. Goel, R.S., Environmental Management in Hydropower and River Valley Projects, Oxford and IBH Publishing Company Private Limited, New Delhi, 2000.
7. Joshi, Vidyut, Tribal Situation in India- Issues in Development, Rawat Publications, New Delhi, 1998.
8. K. Gopal Iyer, Sustainable Development: Ecological and Socio-Cultural Dimensions, Vikas Publications, New Delhi, 1996.
9. Kalin, Walter, Guiding Principles on Internal Displacement: Annotations, The American Society of International Law, Washington DC, 2008.

10. McCully, Patrick, Silenced Rivers: The Ecology and Policies of Large Dams, Orient Longman, Hyderabad, 1998.
11. Muthayya, B.C., Rehabilitation of Displaced Villages: A Plan, National Institute of Rural Development, Hyderabad, 1984.
12. Ramanathan, Usha, Along the Narmada: Jan Sunwayi, Abacus Publishers, New Delhi, 2002.
13. Satyanarayana, G., Development, Displacement and Rehabilitation, Rawat Publications, New Delhi, 1999.
14. Thukral, Enakshi Ganguly, Big Dams: Displaced People, Rivers of Sorrow, Rivers of Change, Sage Publications, New Delhi, 1992.
15. Ufford, Philip Quarles Van and Ananta Kumar Giri (ed.), A Moral Critique of Development: In Search of Global Responsibilities, Routledge, London, 2003.
16. Vartak, Malavika, Sanjay Sangvai and Bikram Batra, Human Rights Violation in the Narmada valley, Institute of Advanced Legal Studies, Pune, 2003.

#### **ARTICLES:**

1. Ahmad, Afroz, "The Narmada Water Resources Project, India: Implementing Sustainable Development", Ambio: Research for Mountain Area Development: Africa and Asia, Vol. 28, No. 5, (Aug., 1999).
2. Baviskar, Amita, "A Grain of Sand on the Banks of Narmada", Economic and Political Weekly, Vol. 34, No. 32 (Aug. 7-13, 1999).
3. Bharathi, M. and R. S. Rao, "Linking Development to Displacement", Economic and Political Weekly, Vol. 34, No. 28 (Jul. 10-16, 1999).

4. Caspary, Georg, "The Impacts of Development Induced Displacement on Human Security: A Study of Dam Finance", Human Security Journal, Vol. 4 (2007).
5. Cernea, Michael M., "Public Policy Responses to Development-Induced Population Displacements", Economic and Political Weekly, Vol. 31, No. 24 (Jun. 15, 1996).
6. Cernea, Michael M., "Risks, Safeguards and Reconstruction: A Model for Population Displacement and Resettlement", Economic and Political Weekly, Vol. 35, No. 41 (Oct. 7-13, 2000).
7. Cohen, Roberta, "Some Reflections on National and International Responsibility in Situations of Internal Displacement", [http://www.brookings.edu/~media/Files/rc/papers/2004/spring\\_humanrights\\_cohen/20040504.pdf](http://www.brookings.edu/~media/Files/rc/papers/2004/spring_humanrights_cohen/20040504.pdf).
8. Cohen, Roberta, "The Guiding Principles: How do they support IDP Response Strategies?", The Brookings CUNY Project on Internal Displacement, April 2002, [http://www.brookings.edu/~media/Files/rc/reports/2002/04humanrights\\_kaelin/RecentCommentariesGPs.pdf](http://www.brookings.edu/~media/Files/rc/reports/2002/04humanrights_kaelin/RecentCommentariesGPs.pdf).
9. Cullet, Philippe, "Human Rights and Displacement: The Indian Supreme Court Decision on Sardar Sarovar in International Perspective", The International and Comparative Law Quarterly, Vol. 50, No. 4 (Oct., 2001).
10. Cullet, Philippe, "Sardar Sarovar Judgment and Human Rights", Economic and Political Weekly, Vol. 36, No. 18 (May 5-11, 2001).
11. Das, Veena, "Dislocation and Rehabilitation: Defining a Field", Economic and Political Weekly, Vol. 31, No. 24 (Jun. 15, 1996).

12. De Wet, Chris, "Economic Development and Population Displacement: Can Everybody Win?", Economic and Political Weekly, Vol. 36, No. 50 (Dec. 15-21, 2001).
13. Fernandes, Walter, "Displacement and Rehabilitation", Economic and Political Weekly, Vol. 30, No. 39 (Sep. 30, 1995).
14. Goyal, Sangeeta, "Economic Perspectives on Resettlement and Rehabilitation", Economic and Political Weekly, Vol. 31, No. 24 (Jun. 15, 1996).
15. John, Mathew, "Interpreting Narmada Judgment", Economic and Political Weekly, Vol. 36, No. 32 (Aug. 11-17, 2001).
16. Judge, Paramjit S., "Response to Dams and Displacement in Two Indian States", Asian Survey, Vol. 37, No. 9 (Sep., 1997).
17. Kabra, Asmita , "Displacement and Rehabilitation of an Adivasi Settlement: Case of Kuno Wildlife Sanctuary, Madhya Pradesh", Economic and Political Weekly, Vol. 38, No. 29 (Jul. 19-25, 2003).
18. Kulkarni, Sharad, "Comments on the Rehabilitation and Resettlement Bill 2007", [http://www.doccentre.net/edocs/comments\\_on\\_the\\_rehabilitation.pdf](http://www.doccentre.net/edocs/comments_on_the_rehabilitation.pdf).
19. Kumar, Jeevan, "Rights of Internally Displaced Persons in the Light of the Guiding Principles of Internal Displacement", [http://repository.forcedmigration.org/show\\_metadata.jsp?pid=fmo:3044](http://repository.forcedmigration.org/show_metadata.jsp?pid=fmo:3044).
20. Mahendra P. Lama, "Internal Displacement in India: Causes, Protection and Dilemmas", <http://www.fmreview.org/FMRpdfs/FMR08/fmr8.9.pdf>.
21. Marks, Stephen P., "Emerging Human Rights: A New Generation for the 1980's?", 33 Rutgers L. Rev.435 (1981).

22. Marks, Stephen, "The Human Right to Development: Between Rhetoric and Reality", <http://www.law.harvard.edu/students/orgs/hrj/iss17/marks.pdf>.
23. Menezes, Arul, "Compensation for Project Displacement: A New Approach", Economic and Political Weekly, Vol. 26, No. 43 (Oct. 26, 1991).
24. Menon, Ajit and V. Saravanan, "Displacement and Rehabilitation Policies: Case of the Kolli Hills Hydroelectric Project", Economic and Political Weekly, Vol. 31, No. 43 (Oct. 26, 1996).
25. Modi, Renu, "Sardar Sarovar Oustees: Coping with Displacement", Economic and Political Weekly, Vol. 39, No. 11 (Mar. 13-19, 2004).
26. Modi, Renu, "Sardar Sarovar Oustees: Coping with Displacement", Economic and Political Weekly, Vol. 39, No. 11 (Mar. 13-19, 2004).
27. Mooney, Erin, "Realizing National Responsibility for Internally Displaced Persons", Roundtable on the Protection of Internally Displaced Persons (December 2004). [http://www.brookings.edu/speeches/2004/1209humanrights\\_mooney.aspx](http://www.brookings.edu/speeches/2004/1209humanrights_mooney.aspx).
28. Mooney, Erin, "The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern," Refugee Survey Quarterly, Vol. 24, No. 3, (2005).
29. Parasuraman, S., "Development Projects, Displacement and Outcomes for Displaced: Two Case Studies", Economic and Political Weekly, Vol. 31, No. 24 (Jun. 15, 1996).
30. Penz, Peter, "The Ethics of Development Induced Displacement", Refuge, Vol. 16, No. 3 (August 1997).



31. Pettersson, Bjorn, "Development Induced Displacement: Internal Affair or International Human Rights Issue", The Forced Migration Review, <http://www.fmreview.org/FMRpdfs/FMR12/fmr12.6.pdf>.
32. Rajapogal, Balakrishnan, "Human Rights and Development", World Commission on Dams, Thematic Review, Working Paper, Vol. 4 (2000), [http://www.internationalrivers.org/files/world\\_commission\\_on\\_dams\\_final\\_report.pdf](http://www.internationalrivers.org/files/world_commission_on_dams_final_report.pdf).
33. Ramanathan, Usha, "Displacement and the Law", Economic and Political Weekly, Vol. 31, No. 24 (Jun. 15, 1996).
34. Robinson, W. Courtland, "Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement", The Brookings Institution-SAIS Project on Internal Displacement, Washington DC (May 2003).
35. Roger Zetter and Camillo Boano, "Planned Evacuations and the Right to Shelter during Displacement", [http://www.brookings.edu/~media/Files/rc/papers/2010/0119\\_internal\\_displacement/0119\\_internal\\_displacement\\_Ch5.pdf](http://www.brookings.edu/~media/Files/rc/papers/2010/0119_internal_displacement/0119_internal_displacement_Ch5.pdf).
36. Roy, Arundhati, "The Greater Common Good", [www.narmada.org/gcg/gcg.html](http://www.narmada.org/gcg/gcg.html).
37. Sah, D. C., "Development and Displacement: National Rehabilitation Policy", Economic and Political Weekly, Vol. 30, No. 48 (Dec. 2, 1995).
38. Sahae, Roopee, "National Rehabilitation Policy: Many Loopholes", Economic and Political Weekly, Vol. 38, No. 6 (Feb. 8-14, 2003).
39. Sangvai, Sanjay, "Narmada Displacement: Continuing Outrage", Economic and Political Weekly, Vol. 37, No. 22 (Jun. 1-7, 2002).
40. Sangvai, Sanjay, "Re-Opening Sardar Sarovar Issue: Significant Gain of Narmada Struggle", Economic and Political Weekly, Vol. 30, No. 11 (Mar. 18, 1995).

41. Sen, Jai, "Displacement and Rehabilitation: Some Points towards Changing Course of Current Thinking", Economic and Political Weekly, Vol. 30, No. 17 (Apr. 29, 1995).
42. Sharma, R. N., "Involuntary Displacement: A Few Encounters", Economic and Political Weekly, Vol. 38, No. 9 (Mar. 1-7, 2003).
43. Sinha, B. K., "Draft National Policy for Rehabilitation: Objectives and Principles", Economic and Political Weekly, Vol. 31, No. 24 (Jun. 15, 1996).
44. Sitta, Alessandro, "The Role of the Right to Development in the Human Rights Framework for Development", See, [http://www.capabilityapproach.com/pubs/5\\_1\\_Sitta.pdf](http://www.capabilityapproach.com/pubs/5_1_Sitta.pdf).
45. Stanley, Jason, "Development Induced Displacement and Resettlement", <http://www.forcedmigration.org/guides/fmo022/>.

#### **WEBSITES:**

1. <http://www.unhcr.org/43ce1cff2.html>.
2. [http://www.capabilityapproach.com/pubs/5\\_1\\_Sitta.pdf](http://www.capabilityapproach.com/pubs/5_1_Sitta.pdf).
3. <http://www.law.harvard.edu/students/orgs/hrj/iss17/marks.pdf>.
4. [http://www.brookings.edu/~media/Files/rc/papers/2010/0119\\_internal\\_displacement/0119\\_internal\\_displacement\\_Ch5.pdf](http://www.brookings.edu/~media/Files/rc/papers/2010/0119_internal_displacement/0119_internal_displacement_Ch5.pdf).
5. <http://www.fmreview.org/FMRpdfs/FMR08/fmr8.9.pdf>.
6. <http://www.unhcr.org/479498992.html>.
7. [http://www.doccentre.net/edocs/comments\\_on\\_the\\_rehabilitation.pdf](http://www.doccentre.net/edocs/comments_on_the_rehabilitation.pdf).
8. <http://nandinisundar.blogspot.com/2010/05/rehabilitation-plan-for-dantewada-and.html>.

9. <http://www.unhcr.org/refworld/docid/4900944a2.html>.
10. <http://www.unhcr.org/refworld/docid/4900944a2.html>.
11. [http://www.brookings.edu/~media/Files/rc/papers/2004/spring\\_humanrights\\_cohen/20040504.pdf](http://www.brookings.edu/~media/Files/rc/papers/2004/spring_humanrights_cohen/20040504.pdf).
12. [http://www.internaldisplacement.org/8025708F004BE3B1/\(httpInfoFiles\)/C753862FA2CF8B7CC1257115004752ED/\\$file/Protection%20from%20module%20handout%20development%20displacement.pdf](http://www.internaldisplacement.org/8025708F004BE3B1/(httpInfoFiles)/C753862FA2CF8B7CC1257115004752ED/$file/Protection%20from%20module%20handout%20development%20displacement.pdf).
13. <http://www2.ohchr.org/english/issues/development/right/index.html>.
14. <http://www.ielrc.org/content/c9502.pdf>.
15. [http://nca.gov.in/forms\\_pdf/Rehabilitation%20%20Policy.pdf](http://nca.gov.in/forms_pdf/Rehabilitation%20%20Policy.pdf).
16. <http://www.fmreview.org/FMRpdfs/FMR12/fmr12.6.pdf>.
17. [http://repository.forcedmigration.org/show\\_metadata.jsp?pid=fmo:3044](http://repository.forcedmigration.org/show_metadata.jsp?pid=fmo:3044).
18. [http://www.brookings.edu/speeches/2004/1209humanrights\\_mooney.aspx](http://www.brookings.edu/speeches/2004/1209humanrights_mooney.aspx).
19. [http://www.brookings.edu/~media/Files/rc/reports/2002/04humanrights\\_kaelin/RecentCommentariesGPs.pdf](http://www.brookings.edu/~media/Files/rc/reports/2002/04humanrights_kaelin/RecentCommentariesGPs.pdf).
20. <http://www.citizen-news.org/2010/05/jabalpur-high-court-acts-on-complaint.html>.
21. [http://www.internationalrivers.org/files/world\\_commission\\_on\\_dams\\_final\\_report.pdf](http://www.internationalrivers.org/files/world_commission_on_dams_final_report.pdf).
22. <http://www.forcedmigration.org/guides/fmo022/>.
23. [http://www.sscac.gov.in/p\\_reha.html](http://www.sscac.gov.in/p_reha.html).
24. <http://dolr.nic.in/RRBill2007.pdf>.
25. <http://www.nationsencyclopedia.com/Asia-and-Oceania/IndiaMIGRATION.html>.
26. [http://mospi.nic.in/rept%20%20pubn/ftest.asp?rept\\_id=430&type=nss0](http://mospi.nic.in/rept%20%20pubn/ftest.asp?rept_id=430&type=nss0).

## **ANNEXURE I**

### **Narmada Valley and the Villages around the Valley**



**The Beautiful Narmada Valley**



**The villages around the valley: Some families which are yet to be rehabilitated are still residing there. (In this Picture: Village Jalsindhi)**

**ANNEXURE II**  
**Sardar Sarovar Dam**



**Sardar Sarovar Dam (Initial Stages)**



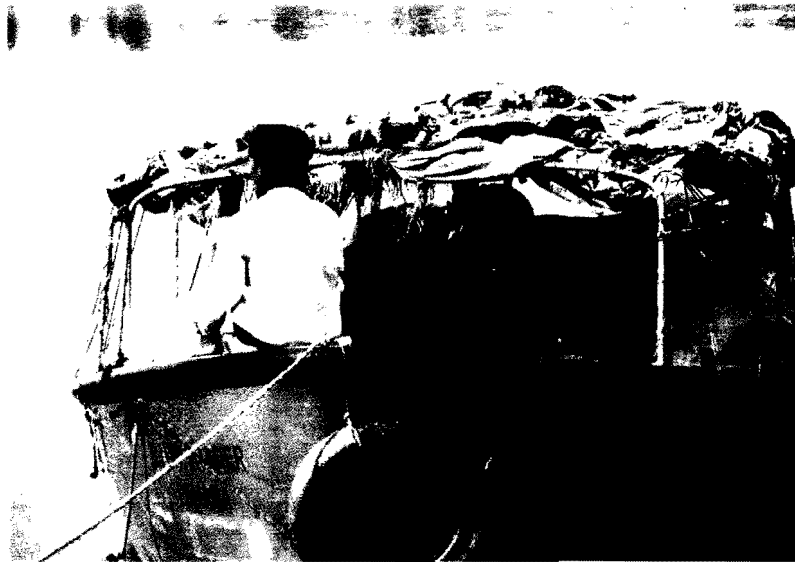
**Sardar Sarovar Dam (Present Height of the Dam)**

### ANNEXURE III

#### Tribals Raising their Voice



Tribals holding a Protest at Jantar Mantar, Delhi: Finally they spoke



Providing Relief to the Displaced

## **ANNEXURE IV**

### **Tribal Men, Women and Children**



**(In this Picture: Village Bhadal)**



**Fishery: One of the Main Sources of Income for tribals besides  
Agriculture.**

**(In this picture: Village Bhadal)**

## ANNEXURE VI

### DISTRIBUTION OF DISPLACEDS BY CAUSE OF DISPLACEMENT IN WORLD BANK PROJECTS (ACTIVE IN 1993) WITH RESETTLEMENT

<b>Table: Distribution of displaceds by cause of displacement in World Bank projects (active in 1993) with resettlement</b>				
Cause	Projects	Percentage	People	Percentage
Dams, irrigation, canals	46	31.5	1,304,000	66.4
Urban infrastructure, water supply, sewerage, transportation	66	45.2	443,000	22.6
Thermal (including mining)	15	10.3	94,000	4.8
Other	19	13.0	122,000	6.2
Total World Bank	146	100	1,963,000	100

Source: Jason Stanley, Development Induced Displacement and Resettlement,

<http://www.forcedmigration.org/guides/fmo022/>, (Accessed on 5.5.2010).



## ANNEXURE VII

### QUESTIONNAIRE

**National Law School of India University  
Nagarbhavi, Bangalore**

Name:

Age:

Sex:

Occupation:

Village:

**Topic: Development Induced Displacement, Rehabilitation and Resettlement: A  
Case Study of Narmada Valley**

1. Whether any survey was conducted before the Government started building the Dam?
  - (a) Yes
  - (b) NoIf No, when was it actually conducted?
  
2. Whether survey was conducted properly taking each household into consideration?
  - (a) Yes
  - (b) NoIf No, kindly elaborate.
  
3. Did you smell any heavy handedness on the part of the government and middle men in dealing with the issue?
  - (a) Yes
  - (b) NoIf Yes, kindly elaborate.
  
4. Have you ever been tortured, abused, illegally detained or forced to evict your place?
  
5. How do you feel leaving your own household and shifting somewhere else?

6. Every country wants to progress further. Do you think it is appropriate to displace people in order to develop? What, according to you, is the appropriate solution?

7. (A) FOR THOSE WHO HAVE SHIFTED TO THE REHABILITATED SITES:

(i) Do you think government has fulfilled the promises it made and has been able to rehabilitate you properly?

(a) Yes

(b) No

If No, kindly elaborate.

(ii) Do you face any hardships at the alternate place?

(a) Yes

(b) No

If Yes, kindly elaborate.

(B) FOR THOSE WHO ARE YET TO BE RESETTLED AND REHABILITATED:

What is the reason for not moving to an alternate place?

(a) Government is ignorant

(b) Alternate place is not good.

(c) Do not want to leave original place.

(d) Any other, please specify.

Any Comments:

Thanks.

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