

DEVELOPMENT INDUCED DISPLACEMENT AND RESETTLEMENT: ANALYSIS OF JUDICIAL POLICY

Abstract

Apart from conventional causes, development induced displacement has emerged as a major factor of human displacement in India. Even if Cernea's Impoverishment Risks and Reconstruction (IRR) model generated interest for several other researchers, yet in reality, they were seldom resolved. The Supreme Court of India has delivered several innovative judgments with respect to development induced displacement and resettlement but they were never appreciated by the displaced persons specially the farmers and the tribals. It is unclear as to why the state and the corporate sector are not showing positive attitude towards formulation of a sound rehabilitation and resettlement policy for displaced persons. Currently, corporate social responsibility is considered as an alternative model for resettlement of displaced persons. But, in the absence of uniform legal guidelines this alternative has failed to yield any result. The perspective of development induced displacement and resettlement policy will not change unless the state restructures its legal framework and the ethical practices and national commitment of the corporate sector.

I Introduction

MOST ANCIENT civilizations and regimes like Olmec, Nabateans, Aksumite Empire, Mycenaean, Khmer Empire, Cucuteni-Trypillian Culture, Clovis, Minoans, Anasazi, Indus Valley, and Mayan civilization mysteriously vanished without any valid logical explanations. But, the historian mostly considers war, disease, and natural calamities to be the common causative factors of human displacement and disappearance. Traditionally, water and fertile land have always been considered as two important magnetic factors that attract human settlement. But there are two others factors—security and economic prosperity—that also attracts people to settle down in a specific human settlement. But in recent years, economic development that has magnetic properties to attract humans can suddenly change its polarity and cause human displacement.

Bogumil Terminski¹ reports that at least fifteen million people each year are forced to leave their homes following big development projects (dams, irrigation projects, highways, urbanization, mining, conservation of nature, *etc.*) Anthony Oliver-

¹ B. Terminski, *Environmentally-Induced Displacement. Theoretical Frameworks and Current Challenges*, (Liege, 2012).

Smith and Michael M. Cernea are also estimating that current scale of development induced displacement risk (DIDR) amounts to 15 million people per year.²

II Analysis of theoretical models of displacement

Different theoretical models have been advanced to study DIDR. Scudder and Colson advanced a four-stage model such as recruitment, transition, potential development, and handing over or incorporation to study the response of the displaced persons and socio-cultural systems to resettlement. The Scudder³-Colson⁴ model focused on the different behavioural tendencies common to each of a series of stages through which resettlers passed. At first, the model was formulated to explain the stages of voluntary settlement, and was later applied to some cases of involuntary resettlement.

In the 1980s and 1990s, the mounting evidence of involuntary resettlement schemes that failed to pass through all four stages suggested that a new model was necessary to explain the consequences of involuntary relocation. In particular, it was recognized that a new theory was necessary to model what was increasingly seen as predictable impoverishment in forced resettlement schemes.⁵

Cernea advanced impoverishment risks and reconstruction (IRR) model in the 1990s. Cernea⁶ identified *inter alia* eight interlinked potential risks intrinsic to displacement that includes i) landlessness; ii) joblessness; iii) homelessness; iv) marginalization; v) food insecurity; vi) increased morbidity and mortality; vii) loss of access to common property; viii) social disintegration.

The IRR model does not attempt to identify different stages of relocation, but rather aims to identify the impoverishment risks intrinsic to forced resettlement and the processes necessary for reconstructing the livelihoods of displaced. In

2 M.M. Cernea, "Development-induced and Conflict-induced IDPs: Bridging the Research Divide" in A. Oliver-Smith (ed.), *Forced Migration Review* 25-27, Special Issue (Dec 2006); *Development & Dispossession: The Crisis of Forced Displacement and Resettlement* (School for Advanced Research Advanced Seminar), 2009.

3 T. Scudder, 'Development-induced impoverishment, resistance and river-basin development' in C. McDowell (ed.), *Understanding Impoverishment: The consequences of development-induced displacement* 49-74. (Oxford: Berghahn Books, 1996).

4 E. Colson, 'From welfare to development: A conceptual framework for the analysis of dislocated people' in A. Hansen and A. Oliver-Smith (eds.), *Involuntary Migration and Resettlement: The problems and responses of dislocated people* 267-87 (USA: Westview Press, 1982).

5 Available at: <http://www.forcedmigration.org/research-resources/expert-guides/development-induced-displacement-and-resettlement/the-consequences-of-development-induced>. (last visited on 10 Sep. 2013).

6 Michael Cernea, "Why Economic Analysis is Essential to Resettlement: A Sociologist's View" in Michael Cernea (ed.), *The Economics of Involuntary Resettlement: Questions and Challenges* (Washington, DC: World Bank 1999) .

particular, it stresses that unless specifically addressed by targeted policies, forced displacement can cause impoverishment among displaced by bringing about landlessness, joblessness, homelessness, marginalization, food insecurity, loss of access to common property resources, increased morbidity and mortality, and community disarticulation.

Downing⁷ and others have added few more risks like loss of access to public services, disruption of formal education activities, and loss of civil and human rights. The IRR model has been used as a framework for a number of studies. Mahapatra⁸ uses the model to examine India's experience with involuntary resettlement from 1947-97, examining each of the IRR risks in turn. Thangaraj⁹ employs the model to analyse resettlement operations in two Indian projects – the Upper Indravati Hydroelectric Project and the Orissa Water Resources Consolidation Project.

Lassailly-Jacob¹⁰ looks specifically at land-based resettlement strategies in African dam projects, arguing that such strategies must include not only land on which to resettle, but also common lands, adequate productive farmland, full title for lands (rather than tenant arrangements), and resettler-directed (rather than top-down imposed) development programs.

Colchester¹¹ provides an overview of the adverse impact of dam projects throughout the world on indigenous populations and ethnic minorities. It highlights that these groups make up a disproportionately large percentage of those whose livelihoods are adversely affected by development projects – for example, despite constituting only 8 per cent of India's population, Adavasis (tribal peoples) are estimated to make up 40-50 per cent of those displaced by development projects in the country. Some studies have shown that women often experience the adverse

7 T. Downing, *Avoiding New Poverty: Mineral-Induced Displacement and Resettlement*. (Mining, Minerals and Sustainable Development and International Institute for Environment and Development, 2002).

8 L.K. Mahapatra, "Testing the Risks and Reconstruction model on India's resettlement experiences" in M. Cernea (ed.), at *supra* note 6 at 189-230.

9 S. Thangaraj, "Impoverishment Risks analysis: A methodological tool for participatory resettlement planning" in C. McDowell (ed.), *supra* note 3 at 223-32. (Oxford: Berghahn Books, 1996).

10 V. Lassailly-Jacob, 'Land-based strategies in dam-related resettlement programmes in Africa' in C. McDowell (ed.), *supra* note 3 at 187-99. (Oxford: Berghahn Books, 1996); V. Lassailly-Jacob, "Reconstructing Livelihood Through Land Settlement Schemes in Africa. Comparative Reflexions on Refugees and Oustees". Paper presented at the conference 'Reconstructing Livelihoods: Towards new approaches to resettlement'. University of Oxford, Refugee Studies Programme, Oxford, UK, 13 Sep 1996.

11 M. Colchester, *Dams, Indigenous People and Vulnerable Ethnic Minorities Cape Town, South Africa: Thematic Review* (World Commission on Dams, 2000).

consequences of forced resettlement more strongly than men. For example, compensation payments are usually paid to the heads of households, which can concentrate the cash value of family assets in male hands, leaving women and children at higher risk of deprivation.

Agnihotri¹² exposes another form of gender discrimination in compensation criteria in Orissa, where entitlement to land compensation for unmarried persons is set at age 18 for men and age 30 for women. In rural areas, women can be more adversely affected because they are often more dependent than men on common property resources for income sources. Participatory methods of resettlement planning can also expose the ways in which women can be prevented from shaping and/or benefiting from projects.¹³

Cernea¹⁴ further reports that resettlement often interrupts schooling. In many households, owing to drops in income and living standards, children may never return to school, instead being drafted into the labour market earlier than might otherwise have occurred. Other groups, such as the elderly and the disabled, might also face higher risk intensities in the displacement and resettlement processes, although, as for the other groups, the conditions of the project, resettlement procedure, and resettlement site play a role in determining which groups, if any, experience different and more intense risks.

III Displacement: issues and challenges

According to an estimate, between 1951 and 1990, 8.5 million members of scheduled tribes were displaced by developmental projects. Representing over 40 per cent of all the displaced people, only 25 per cent of them were rehabilitated.¹⁵

In a recent report entitled “Development Challenges in Extremist Affected Areas” the Planning Commission of India Expert group¹⁶ points out thus:

12 A. Agnihotri, “The Orissa Resettlement and Rehabilitation of Project-Affected Persons Policy, 1994: An analysis of its robustness with reference to the Impoverishment Risks Model” in A.B. Ota and A. Agnihotri (ed.), *Involuntary Resettlement in Dam Projects*, (New Delhi: Prachi Prakashan, 1996).

13 S. Guggenheim, “Peasants, planners, and participation: Resettlement in Mexico” in S. Guggenheim and M. Cernea (eds.), *Anthropological Approaches to Resettlement: Policy, Practice, and Theory* 201-28 (Oxford: Westview, 1993).

14 “Risks, safeguards, and reconstruction: A model for population displacement and resettlement” in M. Cernea and C. McDowell (ed.), *Risks and Reconstruction: Experiences of Resettlers and Refugees* 11-55 (Washington, D.C.: World Bank, 2000).

15 Ajay K. Mehra, “Maoism in a globalizing India” in Jorge Heine & Ramesh Thakur (ed.), *The Dark Side of Globalization* (United Nations University Press, 2011).

16 *Report of an Expert Group to Planning Commission, Government of India* (New Delhi, Apr, 2008).

The development paradigm pursued since independence has aggravated the prevailing discontent among the marginalized sections of the society. The development paradigm as conceived by policy makers has always imposed on these communities. Causing irreparable damage to these sections. The benefits of this paradigm have been disproportionately cornered by the dominant sections at the expense of the poor, who have borne most of the costs. Development which is insensitive to the needs of these communities has inevitably caused displacement and reduced them to a sub-human existence. In the case of tribes in particular it has ended up in destroying their social organization, cultural identity and resource base which cumulatively makes them increasingly vulnerable to exploitation. The pattern of development and its implementation has increased corrupt practices of a rent seeking bureaucracy and rapacious exploitation by the contractors, middlemen, traders and the greedy sections of the larger society intent on grabbing their resources and violating their dignity.

The Supreme Court of India in *Nandini Sundar v. State of Chattisgarh*¹⁷ commenting on logics of development and rationalization of displacement opined thus:¹⁸

[T]he root cause of the problem, and hence its solution, lies elsewhere. The culture of unrestrained selfishness and greed spawned by modern neo-liberal economic ideology, and the false promises of ever increasing spirals of consumption leading to economic growth that will lift everyone, under-gird this socially, politically and economically unsustainable set of circumstances in vast tracts of India...

The justification often advanced, by advocates of the neo-liberal development paradigm, as historically followed, or newly emerging, in a more rapacious form, in India, is that unless development occurs, via rapid and vast exploitation of natural resources, the country would not be able to either compete on the global scale, nor accumulate the wealth necessary to tackle endemic and seemingly intractable problems of poverty, illiteracy, hunger and squalor. Whether such exploitation is occurring in a manner that is sustainable, by the environment and the existing social structures, is an often debated topic, and yet hurriedly buried. Neither the policy makers nor the elite in India, who turn a blind eye to the gross and inhuman suffering of the displaced and the dispossessed, provide any credible answers. Worse still, they ignore historical evidence which indicates that a

17 (2011) 7 SCC 547.

18 P. Romer, "Endogenous Technological Change" 98 (5) *Journal of Political Economy* 71-102 (1990).

development paradigm depending largely on the plunder and loot of the natural resources more often than not leads to failure of the State; and that on its way to such a fate, countless millions would have been condemned to lives of great misery and hopelessness...

Policies of rapid exploitation of resources by the private sector, without credible commitments to equitable distribution of benefits and costs, and environmental sustainability, are necessarily violative of principles that are “fundamental to governance”, and when such a violation occurs on a large scale, they necessarily also eviscerate the promise of equality before law, and equal protection of the laws, promised by Article 14, and the dignity of life assured by Article 21.

From the above judicial view points it is clearly establishes that senseless and nonsense approach of the successive governments towards DIDR is worse than even our former colonial masters. Frankly speaking, development of these kinds creates more problems than it was expected to solve. It is seen that the social cost of the DIDR is proportionately higher than the revenue generated from such development projects. It seems, the tax payers are paying heavy cost just to enrich selective band of corporate socialists.

IV Displacement and rehabilitation policy

Some of the noted researchers of ‘endogenous development’ like Romer,¹⁹ Grossman and Helpman,²⁰ Aghion and Howitt,²¹ Jones,²² Segerstrom,²³ and Young²⁴ agree that technological innovations can restructure the developmental policy of the state. Any economic development which is dependent upon natural resources is bound to trigger human displacement. Since displacement and development are related by consanguinity, the issue of rehabilitation policy cannot be addressed in

19 G. Grossman and E. Helpman, *Innovation and Growth in the Global Economy* (Cambridge: MIT Press 1991).

20 P. Aghion, and P. Howitt, “A Model of Growth Through Creative Destruction” 60 (2) *Econometrica* 323-352 (1992).

21 C. Jones, “R&D-Based Models of Economic Growth” 103 (2) *Journal of Political Economy* 759-84 (1995).

22 P. Segerstrom, “Endogenous Growth without Scale Effects” 88(5) *American Economic Review* 1290-1310 (1998).

23 A. Young, “Growth Without Scale Effects” 106 (1) *Journal of Political Economy* 41-63. (1998).

24 *State of U.P. v. Smt. Pista Devi*, AIR 1986 SC 2025; *Narpat Singh v. Jaipur Development Authority*, AIR 2002 SC 2036; *Special Land Acquisition Officer, U.K. Project v. Mahaboob* (2009) 14 SCC 54; *Mahanadi Coal Fields Ltd. v. Mathias Oram*, JT (2010) 7 SC 352; and *Brij Mohan v. Haryana Urban Development Authority* (2011) 2 SCC 29.

isolation. Therefore, both state and the entrepreneur must formulate the rehabilitation policy keeping all displacement issues in right perspective.

The judicial approach towards rehabilitation policy in India has been quite complex. The Supreme Court of India in several of its decisions²⁵ views thus:

It is desirable for the authority concerned to ensure that as far as practicable persons who had been living and carrying on business or other activity on the land acquired, if they so desire, and are willing to purchase and comply with any requirement of the authority or the local body, be given a piece of land on terms settled with due regard to the price at which land has been acquired from them. However, the State Government cannot be compelled to provide alternate accommodation to the oustees and it is for the authority concerned to consider the desirability and feasibility of providing alternative land considering the facts and circumstances of each case. In certain cases, the oustees are entitled to rehabilitation. Rehabilitation is meant only for those persons who have been rendered destitute because of a loss of residence or livelihood as a consequence of land acquisition. The authorities must explore the avenues of rehabilitation by way of employment, housing, investment opportunities, and identification of alternative lands. "A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the Constitution hardly ever reach the most marginalised citizens.;" For people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic.

While the apex court recognizes the fundamental right of the farmer to cultivation is a part of right to livelihood. However, in case of land acquisition, the Supreme Court ruled that the plea of deprivation of right to livelihood under article 21 is unsustainable.²⁶

With respect to property rights of the displaced the court has consistently held that article 300-A is not only a constitutional right but also a human right.²⁷ However, in *Jilubhai Nanbbhai Khachar v. State of Gujarat*²⁸ the Supreme Court held thus:

²⁵ *Chameli Singh v. State of U.P.*, AIR 1996 SC 1051; and *Samatha v. State of A.P.*, AIR 1997 SC 3297.

²⁶ *Lachhman Dass v. Jagat Ram* (2007) 10 SCC 448; and *Amarjit Singh v. State of Punjab* (2010) 10 SC 43).

²⁷ *State of M.P. v. Narmada Bachao Andolan* (2011) 7 SCC 639 at para 62.

²⁸ AIR 1995 SC 142.

Thus, it is clear that right to property under Article 300-A is not a basic feature or structure of the Constitution. It is only a constitutional right...The principle of unfairness of the procedure attracting Article 21 does not apply to the acquisition or deprivation of property under Article 300-A giving effect to the directive principles...

In *Narmada Bachao Andolan – I*²⁹ case the apex court speaking about displacement observed thus:

The displacement of the tribals and other persons would not per se result in the violation of their fundamental or other rights. The effect is to see that on their rehabilitation at new locations they are better off than what they were. At the rehabilitation sites they will have more and better amenities than those they enjoyed in their tribal hamlets. The gradual assimilation in the mainstream of the society will lead to betterment and progress.

Similarly, in *State of Kerala v. Peoples Union for Civil Liberties, Kerala State Unit*³⁰ the apex court held as under:

Article 21 deals with right to life and liberty. Would it bring within its umbrage a right of tribals to be rehabilitated in their own habitat is the question? If the answer is to be rendered in the affirmative, then, for no reason whatsoever even an inch of land belonging to a member of Scheduled Tribe can ever be acquired. Furthermore, a distinction must be borne between a right of rehabilitation required to be provided when the land of the members of the Scheduled Tribes are acquired *vis-a-vis* a prohibition imposed upon the State from doing so at all.

Thus, from the above judgments, it is evident that acquisition of land does not violate any constitutional/fundamental right of the displaced persons. However, they are entitled to resettlement and rehabilitation as per the policy framed for the oustees of the concerned project.

Rehabilitation policy decisions

In *State of Punjab v. Ram Lubhaya Bagga*³¹ the Supreme Court while examining the state policy fixing the rates for reimbursement of medical expenses to the

29 (2009) 8 SCC 46.

30 AIR 1998 SC 1703.

31 (1998) 4 SCC 117. See also, *Ram Singh Vijay Pal Singh v. State of U.P* (2007) 6 SCC 44; *Villianur Iyarkkai Padukappu Maayam v. Union of India* (2009) 7 SCC 561; and *State of Kerala v. Peoples' Union for Civil Liberties*, *supra* note 30.

government servants held:

When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.....For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority.....No State of any country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible.

With respect to rehabilitation and resettlement (R & R Policy) of the government, the court viewed that “judiciary cannot strike down a policy decision taken by the government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power.”²²

Therefore, considering the above judgments it emerges to be settled principles of law that the government has authority under law to change the R & R policy on the basis of ground realities. A public policy cannot be challenged through public interest litigation where the state government is competent to frame the policy and there is no need for anyone to raise any grievance even if the policy is changed. The public policy can only be challenged where it offends some constitutional or statutory provisions ‘as far as possible’.

Interpreting the aforesaid phrase the court observed that “the phrase provides for flexibility, clothing the authority concerned with powers to meet special situations where the normal process of resolution cannot flow smoothly. The phrase can be interpreted as not being prohibitory in nature. The said words rather, connote a discretion vested in the prescribed authority. It is thus discretion and not compulsion. There is no hard and fast rule in this regard as these words give discretion to the authority concerned. Once the authority exercises its discretion, the Court should not interfere with the said discretion/decision unless it is found to be palpably arbitrary.”³³ Thus, it is evident that this phrase simply means that the principles are

32 *Iridium India Telecom Ltd. v. Motorola Inc.*, AIR 2005 SC 514; and *High Court of Judicature for Rajasthan v. Veena Verma*, AIR 2009 SC 2938.

33 *State of Kerala v. Peoples’ Union for Civil Liberties, Kerala State Unit* (2009) 8 SCC 46.

to be observed unless it is not possible to follow the same in the particular circumstances of a case.

Barter of land

On the question of allotment of land to the displaced the Supreme Court of India held thus:³⁴

We must also make it clear that while allotting land to the members of the Scheduled Tribes, the State cannot and must not allot them hilly or other types of lands which are not at all fit for agricultural purpose. The lands, which are to be allotted, must be similar in nature to the land possessed by the members of the Scheduled Tribes. If in the past, such allotments have been made, as has been contended before us by the learned counsel for the respondent, the State must allot them other lands which are fit for agricultural purposes. Such a process should be undertaken and completed as expeditiously as possible and preferably within a period of six months from

Similarly, in *Narmada Bachao Andolan v. Union of India*, the court observed thus:³⁵

[W]hen the removal of the tribal population is necessary as an exceptional measure, they shall be provided with land of quality at least equal to that of the land previously occupied by them and they shall be fully compensated for any resulting loss or injury. The rehabilitation package contained in the Award of the Tribunal as improved further by the State of Gujarat and the other States prima facie shows that the land required to be allotted to the tribals is likely to be equal, if not better than what they had owned.

It has been observed that during resettlement the displaced persons encounter several problems relating to the location, quality and quantity of land and other ancillary resources necessary for agricultural activities. Sometimes disputed lands are allotted and at times authorities take long time allocate land.³⁶

Payment of compensation

Mere payment of compensation to the displaced may not be enough. Where the displaced is not able to purchase the land after getting the compensation; it is

³⁴ *Supra* note 29, see also *Gramin Sewa Sanstha v. State of M.P.*, 1986 Supp SCC 578.

³⁵ (2000) 10 SCC 664. See also *Gramin Sewa Sanstha v. State of M.P.*, 1986 Supp SCC 578; *State of M.P. v. Narmada Bachao Andolan* (2011) 7 SCC 639; *State of Kerala v. Peoples' Union for Civil Liberties, Kerala State Unit* (2009) 8 SCC 46.

³⁶ *K. Krishna Reddy v. Sp. Dy. Collector, Land Acqn.*, AIR 1988 SC 2123.

like having nothing at all.

In *K. Krishna Reddy v. Spl. Dy. Collector, Land Acqn. Unit II, LMD Karimnagar*,³⁷ the Supreme Court of India expressed grave concern on the issue observing thus:

After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even half of it. It is a common experience that the purchasing power of rupee is dwindling with rising inflation.....The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated.

Many writers have reported several important issues relating to the parameters and modality of payment of compensation in India.³⁸ Compensation in the present context has to be understood in relation to right to property. The right of the displaced is protected only to a limited extent as enunciated in article 300-A of the Constitution of India. The tenure holder is deprived of the property only to the extent of land actually owned and possessed by him. This is, therefore, limited to the physical area of the property and this area cannot get expanded or reduced by any fictional definition of the word 'family' when it comes to awarding compensation. Compensation is awarded by authority of law under article 300-A of the Constitution read with the relevant statutory law of compensation under any law made by the legislature and for the time being in force, only for the area acquired.

Rehabilitation, on the other hand, is restoration of the status of something lost, displaced or even otherwise a grant to secure a dignified mode of life to a person who has nothing to sustain himself. This concept, as against compensation and property under article 300-A, brings within its fold the presence of the elements of article 21 of the Constitution of India. Those who have been rendered destitute, have to be assured a permanent source of basic livelihood to sustain themselves. This becomes necessary for the state when it relates to the rehabilitation of the already depressed classes like scheduled castes, scheduled tribes and marginal farmers in order to meet the requirements of social justice.

The rehabilitation has to be done to the extent of the displacement. The rehabilitation is compensatory in nature with a view to ensure that the displaced

³⁷ *Ibid.*

³⁸ M. Ghatak and D. Mookherjee, "Land Acquisition for Industrialization and Compensation for Displaced Farmers," Working Paper, Oct 2011, Institute for Economic Development, Boston University; M. Ghatak, S. Mitra, D. Mookherjee and A. Nath, "Land Acquisition and Compensation in Singur: What Really Happened?" Working Paper, Mar. 2012, Institute for Economic Development, Boston University; Ghatak and P. Ghosh, "The Land Acquisition Bill: A Critique and a Proposal" XLVI (41) *Economic and Political Weekly* 65-72 (Oct. 8 2011).

and his family are at least restored to the status that was existing on the date of the commencement of the proceedings under the Act 1894.

The right to fair compensation and transparency in land acquisition, rehabilitation and resettlement.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill 2013, was passed in the 2013 monsoon session of Parliament (the Lok Sabha passed the bill on 29 August 2013 and Rajya Sabha passed the bill on 4 September 2013). It received assent of the President of India on 27 September 2013. The bill has now become the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter Act). The Act replaces the colonial law of 1894. It contains 115 sections, 13 chapters and 4 schedules.³⁹

The aim of the Act is providing fair compensation to people whose land has been taken away for setting up the buildings, factories or developmental activities. The aim of the Act is to bring in more transparency to the process of land acquisition, thereby bringing assurance of rehabilitation to the affected people.

Some of the important features *inter alia* include:

- i) The quantum of compensation in rural areas would be calculated by multiplying market value by two and adding assets attached to the land or building and adding a solatium. In urban areas it would be market value plus assets attached to the land and solatium.⁴⁰
- ii) Projects are required to obtain consent of upto 80 per cent of people whose land is acquired for private projects. For Public Private Partnership (PPP) projects, the approval of 70 per cent of land owners is mandatory.⁴¹
- iii) The acquired land should be returned to original owner if it is not used in five years for the set purpose, subject to the refund of one-fourth of the compensation amount with interest from date of payment.⁴²
- iv) The government will not acquire land for private companies for private purpose.

39 Ch.-I “Preliminary”; ch.-II, “Determination of Social Impact and Public Purpose”; ch.-III, “Special Provisions to Safeguard Food Security”; ch.IV, “Notification and Acquisition”; ch. V, “Rehabilitation and Resettlement Award”; ch. V, “Procedure and Manner Of Rehabilitation and Resettlement”; ch.VII, “National Monitoring Committee for Rehabilitation and Resettlement”; ch.VIII, “Establishment of Land Acquisition, Rehabilitation and Resettlement Authority”; ch. IX, “Apportionment of Compensation”; ch. X “Payment”; ch. XI, “Temporary Occupation of Land Payment”; ch. XII, “Offences and Penalties”; ch. XIII, “Miscellaneous”.

40 Ss. 27, 28.

41 S. 2.

42 S. 102.

- v) Multi-cropped, irrigated land cannot be acquired unless it is for defence or emergency caused by natural calamity.
- vi) The Act mandates social impact assessment when government proposes acquisition of land over 40.46 ha, which should be conducted in consultation with the gram sabha (village council). It also provides for the appointment of an administrator for rehabilitation.⁴³
- vii) Both land acquisition and resettlement and rehabilitation provisions will apply to projects when government acquires land for its own use or on behalf of private companies for stated public purpose, including PPP projects. In case companies directly acquire over 40 ha from land owners, they will be responsible for resettlement and rehabilitation.
- viii) The Act also proposes amenities like schools, health centers and civic infrastructure in places where project-affected people are resettled.
- ix) The urgency clause should be exercised in the rarest of rare cases like national defense or for resettlement purposes. This means no land acquisition can proceed without public hearing.

Some of the key concerns about the new law *inter alia*, include:

- a) the *gram sabha* and *basti sabha* have no legal competency to decide the nature of public purpose. As a result misuse of land may occur. Further, the role and consent of *gram* and *basti sabha* not required in case of linear projects such as railways, highways, major district roads, power lines, and irrigation canals.
- b) So far as acquisition for private and PPP projects are concerned, land reform activists apprehend that the state would again play a role of facilitators under garb of PPP project.
- c) The Act leaves it to the state governments to decide if non-irrigated, rain-fed, single-cropland can be acquired or not. India has 75% of the agricultural land as rain fed and most of it is single cropped. Such land is mostly held by *Dalits*, *Adivasis* and marginal farmers.
- d) Ministry retains the provisions for state land bank. The provision is likely to be misused as large-scale acquisition took place in the past and later the so acquired land parcels were illegally transferred to corporations for real estate and other purposes.

V Corporate social responsibility and DIDR

The first generation of corporate social responsibility (CSR) culture was associated with charity and philanthropy often driven by religious sentiments. The second generation of CSR followed the doctrine of 'trusteeship' advanced and inspired by Mahatma Gandhi. The public sector undertakings became the leaders

43 Ss.4,5,6,7,9,14.

of third generation CSR. These PSUs emphasized upon transparency, social accountability and regular stakeholder dialogues. After globalization and economic liberalization the fourth generation of CSR culture has emerged and the concept of CSR has undergone significant change.

Today, people question the character and credibility of the business enterprise. A company that makes astounding rate of profit at the expense of tears, blood, misery and exploitation of the common man is often referred as 'East India Company.' If a company is born, breathes, survives and excels with public resources; how the selective band enjoy the profit of the public investment?

Large scale industrialization in India is leading to mass displacement, raising issues related to the right model for resettling and rehabilitating these displaced communities, ensuring their quality of life. Simultaneously, companies are asked to apportion a certain percentage of profit for their CSR towards sustainable community development. At present, each corporate house has developed its own CSR policy but sadly the boards of directors and the investor have not demonstrated their positive attitude towards nation building through CSR. The corporate culture is still instinctive driven and unless b-school education changes this there will be no end to 'Uncle Scrooge Culture.'

Displacement is an economic synonym of development. But, in a democratic and developing country like India if development brings more human misery than welfare is senseless and must be reoriented. The corporate agenda of any enterprise must not violate the set objectives of the Constitution of India and if it is done, they have no right to continue their business activities being anti national. In the contest, the responsibility of the state and more particularly of the elected representative plays a significant role. The business houses are the social engineers and should not act as anti social elements.

VI Conclusion

Development and displacement are positively correlated. But, development with deprivation, exploitations and human misery is logically and practically unwarranted. In the context, how the conflicts between development and displacement are to be minimized is the primary concern. The United Nations and World Bank have issued guiding principles on internal displacement⁴⁰ but the state parties and the corporate players are yet to accept and actualize those principles. However, the need is to develop new technology that reduces the demand for land. The quantum of compensation and brute police power may silence some people for some time but it can not silence or satisfy all for all times to come. Law can provide guidelines and resolve the conflict between damage and compensation but unless new technologies are developed the pressure on land will never be minimized. In the past, we have experienced the hazards of unplanned development, displacement, rehabilitation

and resettlements. It is an admitted fact that it happened due to the unethical political collusion between the government and the corporate players. Therefore, all stake holders of development by principle must adopt new technologies to reduce pressure on land and develop alternative dispute resolution measures to resolve and minimize the conventional legal conflicts between the stake holders of the development.

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