

**LAW AND POLICIES IN INDIA FOR  
REHABILITATION AND RESETTLEMENT OF  
DAM OUSTEES: A HUMAN RIGHTS APPROACH**

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Babasaheb Bhimrao Ambedkar University, Lucknow  
in Fulfillment of Requirement for the Award of Degree of  
**Doctor of Philosophy**

**in Law**



BY  
**Shailesh Mishra**  
**Enrolment No. 1400/18**

**Supervisor**  
**Prof. (Dr.) Sanjeev Kumar Chadha**

**DEPARTMENT OF LAW  
SCHOOL OF LEGAL STUDIES  
BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY  
(A CENTRAL UNIVERSITY)  
LUCKNOW-226025**

**2022**

## **DEDICATION**

**THIS THESIS IS DEDICATED TO MY  
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हे 'जननी' सर्वस्व है तू,

इस धरा पे,

इकलौती धरोहर मेरी,

नमन तुझे, नमन तुझे, नमन तुझे...

# **DECLARATION**



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(केन्द्रीय विश्वविद्यालय)

विद्या विहार, रायबरेली रोड, लखनऊ-226025

**BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY**

(A Central University)

Vidya Vihar, Raebareli Road, Lucknow-226025

I, **SHAILESH MISHRA** declare that the thesis titled “**LAW AND POLICIES IN INDIA FOR REHABILITATION AND RESETTLEMENT OF DAM OUSTEES: A HUMAN RIGHTS APPROACH**” has been prepared by me under the supervision of **Prof. (Dr.) Sanjeev Kumar Chadha**, Department of Law, School of Legal Studies, Babasaheb Bhimrao Ambedkar University (A Central University) Lucknow, 226025. No part of this thesis has formed the basis for the award of any degree, diploma or fellowship previously.

Further, I declare that the material embodied in the present work is based on original research work and the indebtedness to others has been duly acknowledged at relevant places. I also declared that the thesis is essentially free from all kinds of plagiarism.

*Shailesh Mishra*

**Shailesh Mishra**

Enrolment No.- 1400/18

Department of Law, School of Legal Studies

Babasaheb Bhimrao Ambedkar University,

Lucknow, Uttar Pradesh-226025

DATE: *22/03/2022*



बाबासाहेब भीमराव अम्बेडकर विश्वविद्यालय

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**BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY**

(A Central University)

Vidya Vihar, Raebareli Road, Lucknow-226025

Letter No.....

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## **CERTIFICATE**

This is to certify that the thesis titled "LAW AND POLICIES IN INDIA FOR REHABILITATION AND RESETTLEMENT OF DAM OUSTEES: A HUMAN RIGHTS APPROACH" submitted by Mr. SHAILESH MISHRA is an original research work and has not been previously submitted in part or full for the award of any other degree or diploma to this or any other university.

The thesis submitted to Babasaheb Bhimrao Ambedkar University, Lucknow satisfies all the requirements as stipulated in the *Doctor of Philosophy (Ph.D.) Regulation 1999 as amended in 2016* and it is fit for submission and evaluation for the award of the Degree of Doctor of Philosophy of the university.

Sanjeev 22/3/22

Prof. (Dr.) Sanjeev Kumar Chadha

Head, Department of Law, School of Legal Studies

Babasaheb Bhimrao Ambedkar University,

Lucknow-226025

Date: 22/3/22

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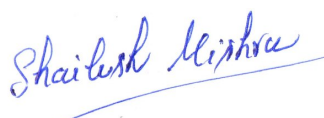
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**SHAILESH MISHRA**

## **LIST OF ABBREVIATIONS**

ADB	Asian development Bank
AIR	All India Reporter
Art. /Arts.	Article/Articles
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CWC	Central Water Commission
DFDR	Development Caused Forced Displacement and Resettlement
FDST	Forest Dwelling Scheduled Tribes
HCR	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICOLD	International Commission on Large Dams
IDPs	Internally Displaced Persons
IFC	International Finance Corporation
ILO	International Labour Organization
ISWDA	Interstate Water Disputes Act
IUCN	International Union for Conservation of Nature
LAA	Land Acquisition Act 1894
LARR Act	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013
NGO	Non-Governmental Organization
NPRR	National Policy on Rehabilitation and Resettlement for Project Affected Families, 2004
NRLD	National Register of Large Dam
NRRP	National Rehabilitation and Resettlement Policy, 2007
OD 4.30	World Bank's Operational Directive 4.30

OP 4.12	World Bank's Operational Policy 4.12 on Involuntary Resettlement
OTFD	Other Traditional Forest Dwellers
PPP	Public Private Partnership Projects
R & R	Rehabilitation and Resettlement
s./ss.	Section/Sections
SCC	Supreme Court Cases
ST	Scheduled Tribes
UDHR	Universal Declaration of Human Rights
UN	United Nations
WCD	World Commission on Dams

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# CHAPTER-I

## INTRODUCTION

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### 1.1 INTRODUCTION

*Like becoming a refugee, being forcibly ousted from one's land and habitat by a dam, reservoir or highway is not only immediately disruptive and painful, it is also fraught with serious long-term risks of becoming poorer than before displacement, more vulnerable economically, and disintegrated socially.*

**Michael Cernea**<sup>1</sup>

Displacement is one of the major areas of concern for the nations across the world. In most of the cases affected people have been compelled to move by the authorities whether they wanted to or not. There are many causes of displacement like natural calamities, war, armed conflict, riots etc. but development projects are the most common cause for displacement. In the 1950s and 1960s the concept of development was introduced by the modernization theory which aimed to transform simple and traditional world into a modern and complex westernized one. According to this theory development projects make future brighter and better. However, development does not make everyone's future bright and better, there are many people who have to pay heavy costs for it. Among its costs, the greatest cost has been the involuntary displacement of millions of vulnerable people.<sup>2</sup> Michael Cernea<sup>3</sup>, a sociologist, pointed out the same by stating "those displaced forcefully from one's land and habitat always incur risk of becoming poorer than before displacement."<sup>4</sup>

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<sup>1</sup> Michael Cernea, *Bridging the Research Divide: Studying Refugees and Development Oustees (English)*, (World Bank reprint series; No. 481, 1996).

<sup>2</sup> Ashirbani Dutta, *Development Induced Displacement and Human Rights 1* (Deep & Deep Publication, New Delhi, 2007).

<sup>3</sup> Worked as the World Bank's senior adviser for 'Sociology and Social Policy' until 1997. He has published on a wide range of the effects of development, including social change, social forestry, participation, grassroots organizations and population resettlement. He is an author of the term 'development-induced displacement and resettlement'.

<sup>4</sup> Michael Cernea, "Bridging the Research Divide: Studying Development Oustees", in: T. Allen (edn.), *In Search of Cool Ground: War, Flight and Homecoming in Northeast Africa* 304 (James Currey, London, 1996).

The United Nations Committee on Economic, Social and Cultural Rights asserted in its second General Comment about harmful consequences of unplanned development that is “development cooperation activities do not automatically contribute to the promotion of respect for economic, social and cultural rights, highlighting that many activities undertaken in the name of development have subsequently been recognized as ill-conceived and even counter-productive in human rights terms.”<sup>5</sup>

There are many development projects which are responsible for the displacement like road, wildlife sanctuaries, defence base cities, power plants, mines, heavy industries, transportation corridor, national park, large dams etc. On the practical basis it is not possible to cover all causes of development-induced-displacement, that is why it is necessary to select any one of them for effective research. In this research the researcher has selected the area of large dams because dams are responsible for the large number of displacements compared to other development project.

According to the World Bank estimate, which was made in 1994, 10 million people were displaced every year in developing countries only by three economic sectors that is hydropower, urban and transport which means 100 million people displaced per decade.<sup>6</sup> For 2001-2010, the estimate was that 15 million people were displaced every year that was 150 million people displaced in the first decade of 21<sup>st</sup> century (for this decade along with hydropower, urban and transport, economic sector also included).<sup>7</sup> For 2011-2020, the estimated magnitude of force displacement was likely to be 20 million people per year, which means 200 million people or even more will suffer the dilemma of displacement in second decade of 21<sup>st</sup> century.<sup>8</sup>

According to the report of the World Commission on Dams,<sup>9</sup> 30-40 percent of irrigation land worldwide now depends upon the dams and the more than 19 percent of

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<sup>5</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 2: International Technical Assistance Measures*, E/1990/23, (Feb. 2 1990), art. 22.

<sup>6</sup> Michael M. Cernea and Julie K. Maldonado (eds.), *Challenging the Prevailing Paradigm of Displacement and Resettlement: Risk, Impoverishment, Legacies, Solutions* 4 (Routledge, New York, 2018).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Hereinafter WCD

world's electricity demand is also fulfilled by the said dams.<sup>10</sup> Due to such immediate benefit from the dams, a huge amount that is more than \$2 trillion dollar investments were made in dam projects.<sup>11</sup>

But the truth is that benefits are just one side of the coin. Like every other development project, dams are also responsible for displacement, in fact, dams are more responsible for displacement when compared to other development projects that is why large dams are emerging as the biggest and most serious concern for the governments across the globe.

According to McCully, campaigns director of the California-based International Rivers Network, 60 million people have been displaced by large dams.<sup>12</sup> The WCD also raised its concern in this regard and has made estimates that between 40-80 million people were displaced by dam projects worldwide.<sup>13</sup>

The above data clearly shows the trend of rapid acceleration in displacement by development projects which do not portray a healthy sign for any nation and is quite scary too. The plight of dam oustees can be easily identified because of their number, it being huge and is on the rise with every passing day. They are facing many ill effects due to development projects like dam. It can be seen as the sorrow of the oustees for the betterment of other people. They cannot be left alone, their right must be recognised and protected by the concerned government.

United Nation<sup>14</sup> is also aware about this issue that is why in 1986, the UN General Assembly adopted a Declaration on the Right to Development, which states that “every human person and all people 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.”<sup>15</sup>

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<sup>10</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 52 (Earthscan, New York, 2013).

<sup>11</sup> *Id.*

<sup>12</sup> Patrick McCully, *Silenced Rivers: The Ecology and Politics of Large Dams* 74 (Zed Books, London, 2001).

<sup>13</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 97 (Earthscan, New York, 2013).

<sup>14</sup> Hereinafter UN

<sup>15</sup> UN General Assembly, *Declaration on the Right to Development*, G A Res 41/128, GAOR, UN Doc A/Res/41/128 (Dec. 4, 1986), art. 1.

## 1.2 DAM-INDUCED-DISPLACEMENT: POSITION IN INDIA

India is a land of rivers, having huge potential for construction of large dams. Pandit Jawaharlal Nehru, the first Prime Minister of India, had a vision to make India a developed nation. He had very positive view regarding dams and considered ‘Large Dams’ as “the temple of developmental progress”.<sup>16</sup> The desires and thoughts of Pt. Nehru are easily identified on the ground. According to WCD, India is placed on the third position after Republic of China and U.S.A. in terms of number of dams.<sup>17</sup> Both the countries that is Republic of China and India together build around 57 percent of the world’s large dam and also have the largest numbers of dam oustees.<sup>18</sup>

According to the Central Water Commission<sup>19</sup>, at present there are 5701 large dams in India in which 5264 completed and 437 large dams are under construction. Following Table (Table 1.1) is giving the details of the large dams in India:<sup>20</sup>

**Table 1.1: Large Dams in India**

S. No	State	UP TO 1900	1901 To 1950	1951 To 1960	1961 To 1970	1971 To 1980	1981 To 1990	1991 To 2000	2001 To Beyond	Year of Construc tion not available	Total comp leted dams	Under Constr uction	Total
1.	Andaman & Nicobar Islands					1			1		2		2
2.	Andhra Pradesh	1	6	9	11	24	15	9	21	46	142	25	167
3.	Arunachal Pradesh								1		1	3	4
4.	Assam						2		1		3	1	4
5.	Bihar	1		1	8	5	5	1	3		24	2	26
6.	Chhattisgarh		11	1	18	51	99	37	30	1	248	10	258

<sup>16</sup> IndiaInfoline, Prime Ministers of India, Jawaharlal Nehru, available at: <http://www.indiainfoline.com/prime-ministers-of-india/jawaharlal-nehru> (last visited on Jan. 21, 2020).

<sup>17</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 97 (Earthscan, New York, 2013).

<sup>18</sup> *Id.*

<sup>19</sup> Hereinafter CWC.

<sup>20</sup> Government of India, “National Register of Large Dams” (Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation), available at: <http://cwc.gov.in/national-register-large-dams> (last visited on Dec. 21, 2020).

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7.	Goa						3	2			5		5
8.	Gujrat	6	57	59	85	151	155	57	45	5	620	12	632
9.	Himachal Pradesh				1	2	1	1	12	2	19	1	20
10.	Haryana								1		1		1
11.	Jammu and Kashmir					2	2	1	6	3	14	3	17
12.	Jharkhand			9	5	11	22			3	50	29	79
13.	Karnataka	6	24	11	39	49	54	17	14	16	230	1	231
14.	Kerala	1	1	9	15	11	10	10	4	0	61	1	62
15.	Madhya Pradesh	3	86	35	66	220	301	93	67	28	899	7	906
16.	Maharashtra	21	38	24	156	615	455	378	382	0	2069	285	2354
17.	Manipur					1		1	1		3	1	4
18.	Meghalaya			1	2	2		1	2		8		8
19.	Mizoram											1	1
20.	Nagaland										1		1
21.	Odisha	2	2	4	8	54	77	35	13	4	199	5	2014
22.	Panjab			1			4	6	3		14	2	16
23.	Rajasthan	17	14	33	23	29	37	26	22	8	209	2	211
24.	Sikkim							1	1			2	2
25.	Tamil Nādu	0	10	10	26	26	17	8	19		116	0	116
26.	Telangana	6	29	6	13	9	13	6	3	78	163	21	184
27.	Tripura										1		1
28.	Uttar Pradesh	4	24	21	22	16	14	11	3		115	15	130
29.	Uttarakhand				5	4	2	1	4		16	9	25
30.	West Bengal			1	1	4	16	2	5		29	1	30
	GRAND TOTAL	68	302	235	504	1288	1304	705	664	194	5264	437	5701

No doubt that government of India has established a great infrastructure of large dams in India which are serving multiple purposes like Power generation, Water supply, stabilize water flow, irrigation, Flood prevention etc. but as discussed earlier they bring the dilemma of displacement along. It was estimated that 16 to 38 million people have

been displaced by dams in India since independence.<sup>21</sup> Vijay Paranjape, also made an estimate that due to dams at least 21.6 million people have been displaced.<sup>22</sup>

Well-known Indian author and activist Arundhati Roy while arriving at identical figures in her essay ‘The Greater Common Good: The Human Cost of Big Dams’ asserts:

“According to a detailed study of 54 large dams done by the Indian Institute of Public Administration, the average number of people displaced by a large dam is 44,182. Admittedly 54 dams out of 3,300 is not a big enough sample. But it’s all we have... let’s err on the side of abundant caution and take an average of just 10,000 people per large dam. 33 million... that’s what it works out to... What about those that have been displaced by the thousands of other Development Projects? Fifty million people... I feel like someone who’s just stumbled on a mass grave.”<sup>23</sup>

Following table (Table 1.2) is showing the numbers of dam oustees displaced by some large dams in India by which the dilemma of dam induced displacement can be easily understood and also why it is one of the biggest concerns for India as a nation:<sup>24</sup>

**Table 1.2: Dam Ousteers Displacement by Some Large Dams in India**

S. No.	Name of Dam	State	River	Year of Construction	No. of Persons Displaced
1)	Hirakud (Longest Dam in India)	Odisha	Mahanadi	1957	11,00,000
2)	Gandhi Sagar	Madhya Pradesh	Chambal	1960	52,000
3)	Rihand	Uttar Pradesh	Rihand	1962	60,000

<sup>21</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 53 (Earthscan, New York, 2013).

<sup>22</sup> Vijay Paranjape, *Evaluating Tehri Dam: An Extended Cost Benefit Appraisal* (Indian National Trust for Art and Cultural Heritage, New Delhi, 1988).

<sup>23</sup> Arundhati Roy, “The Greater Common Good: The Human Cost of Big Dams” 16(11) *Frontline* (May-June, 1999).

<sup>24</sup> Harish Kumar Verma, *Rights of Dam Ousteers: A Critical Study of the Project Affected People of Kol Dam in Himachal Pradesh* 12 (2011) (Unpublished Ph.D. thesis, Department of Laws, Himachal Pradesh University Summer Hill, Shimla -171 005).

4)	Bhakra Nangal	Himachal Pradesh	Satluj	1963	36,000
5)	Pong	Himachal Pradesh	Beas	1974	1, 50,000
6)	Tehri (Highest Dam in India)	Uttarakhand	Bhagirathi	1978	1, 05,000
7)	Bhima	Maharashtra	Bhima	1980	57,000
8)	Rengali	Odisha	Brahmani	1980	80,000
9)	SardarSarovar	Gujrat	Narmada	1987	3, 20,000
10)	Bargi	Gujrat	Narmada	1990	113,600
11)	RanjitSagar	Punjab	Ravi	2000	20,0005
12)	Yeleru	Andhra Pradesh	Yeleru	On going	11009
13)	Durgavati	Bihar	Durgavati	On going	3368
14)	Kosarteda	Chhatisgarh	Kosarteda	2013	3695
15)	Karjan	Gujrat	Karjan	1987	8025
16)	Supa	Karnatka	SoudgarNala	1987	8500
17)	Omkareshwar	Madhya Pradesh	Narmada	2008	9028

Displacement caused by large dams in India is a significant part of the total displacement caused by all development projects together. It was estimated by WCD that large dams are alone responsible for the displacement of 77 percent people of the total displacement by all development projects together in India.<sup>25</sup>

The exact number of dam oustees is not known and probably may never be. It is the sad reality that there are no reliable official statistics about number of dam oustees since Independence, probably because the governments have never kept these records nor have, they attempted to do so because it causes more harm than it provides any benefits.

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<sup>25</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 98 (Earthscan, New York, 2013).

## **1.3 TYPES OF DISPLACEMENT**

Whenever any development project is started, especially a large dam project, as discussed it causes the displacement of millions of people. In this context displacement can be defined as forcing the people to vacate their native places in the name of development projects which leads to the deterioration of their social as well as personal life. Apart from this, it is viewed as the violation of human rights which is protected under the various international covenants. There are mainly two types of displacement.<sup>26</sup>

### **1.3.1 Direct-Displacement**

Direct displacement refers to that displacement where the installation and commissioning of development projects leads to the direct displacement of people whose generations have been living near these sites. Direct displacement refers to those displacement where people directly affected by the development projects. There is a direct relation between displacement of people and large dam projects. These large dam projects need large amount of land, which is acquired by authorities directly from the native people by displacing them. Most of the time displacement would be a forced one. The estimated magnitude of force displacement is likely to be 20 million people per year in second decade of 21<sup>st</sup> century.<sup>27</sup> It was estimated that 16 to 38 million people have been displaced by dams in India since independence.<sup>28</sup>

### **1.3.2 Indirect-Displacement**

Whenever any development project is installed, it requires two things; firstly, the authorities acquire a large portion of land, secondly project authority excavates natural and environmental resources for their consumption, which leads to scarcity of natural resources in the project affected area. In most of the cases people depend upon natural and environmental resources for their livelihood which are available in their

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<sup>26</sup> N. S. Negi, S. Ganguly, "Development Projects Vs. Internally Displaced Populations in India: A Literature Based Appraisal" 6-7 (Centre for Migration, Citizenship and Development, 2011), *available at*: <https://www.ssoar.info/ssoar/handle/document/42201> (last visited on Sep. 7, 2020).

<sup>27</sup> Michael M. Cernea and Julie K. Maldonado (eds.), *Challenging the Prevailing Paradigm of Displacement and Resettlement: Risk, Impoverishment, Legacies, Solutions* 4 (Routledge, New York, 2018).

<sup>28</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 53 (Earthscan, New York, 2013).

locality. Whenever the availability of such resources is reduced, the habitants are forced to move beyond their habitat for a better living life. In this case development projects are not directly responsible but they are responsible for the scarcity of natural and environmental resources which force people to move away from project affected area.

## **1.4 THE IMPACT OF DISPLACEMENT BY DEVELOPMENT PROJECTS**

“What is the impact of displacement?” is one of the most relevant questions of the dilemma of displacement by development projects. Some researchers who have done ethnographic case studies of displacement, from 1950 onwards, introduced a horrifying picture of the oustees who were displaced by development projects including large dams.<sup>29</sup> The oustees found themselves summarily removed without sufficient compensation to make way for development project which were imposed upon them in the name of national interest by the State.<sup>30</sup>

Rural and urban both communities have to bear the cost of displacement by development projects. In rural communities, displaced people have to lose their agricultural land, forest, fishing grounds, water resource, livelihood and most important their socio-cultural feature. In urban areas People lose their income source and social networks which leads to impoverishment and loss of their social identity. The urban poor are more affected by displacement compared to better-off urban community.<sup>31</sup> There are more grim impact of displacement in urban areas compared to rural because high population density magnifies the impact of acquisition even when a small portion of land is acquired for development projects.<sup>32</sup>

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<sup>29</sup> Susanna Price, “Prologue: Victims or Partners? The Social Perspective in Development-Induced Displacement and Resettlement” 10(4) *The Asia Pacific Journal of Anthropology* 267 (2009).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> D. Koenig, “Urban Relocation and Resettlement: Distinctive Problems, Distinctive Opportunities”, in A. Oliver-Smith (eds.), *Development and Dispossession: The Anthropology of Displacement and Resettlement* 119-140 (School for Advanced Research Press, Santa Fe, 2009).

Although there are different parameters of impact in urban and rural area but in both the case displacement by development project potentially undermine or destroy the community assets, social service, social status and social network of the oustees.<sup>33</sup>

The impact of displacement exists for a long time.<sup>34</sup> Even though development projects are intended for positive benefits, in most the cases oustees have to pay heavy costs for it. There are many social researches conducted to show how displacement by development project affect the life of oustees even though the land is acquired through regulatory measure. Alexander, who has done research on the Lahanan of the Batang Balui, a small longhouse dwelling group impacted by logging and then displaced distantly by state construction of a reservoir in Sarawak, has presented a post-resettlement picture of the oustees. In his research he finds that, “minimal consultation had resulted an inappropriate longhouse design, confusing compensation payments and failed livelihood programmes, forcing the oustees towards urban area in search of income.”<sup>35</sup> He further pointed out that oustees lose their forest, fishing mainstay, river etc. Ousteas has to experience social and economic disarticulation. Over the period of time oustees lose their social identity too.<sup>36</sup>

Displacement by development projects is intended to beneficial outcome as they are a deliberate process of State and for national growth yet the oustees have to bear the pain of displacement. Ousteas have no choice to remain, they have to leave their habitat.<sup>37</sup> There are some other detailed case studies of displacement by development project which show that the State left oustees to a series of impoverishment risk because it failed to mitigate the effect of displacement<sup>38</sup> and some scholars argue that

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<sup>33</sup> Susanna Price, “Prologue: Victims or Partners? The Social Perspective in Development-Induced Displacement and Resettlement” 10(4) *The Asia Pacific Journal of Anthropology* 267-268 (2009).

<sup>34</sup> T. Scudder, “Resettlement Theory and the Kariba Case: An Anthropology of Resettlement”, in A. Oliver-Smith (eds.), *Development and Dispossession: The Anthropology of Displacement and Resettlement* 119-140 (School for Advanced Research Press, Santa Fe, 2009).

<sup>35</sup> J. Alexander, “The Lahanan of the Balui (1963-2006)” 39 *Borneo Research Bulletin* 122 (2008).

<sup>36</sup> Id at 122-123.

<sup>37</sup> Susanna Price, “Prologue: Victims or Partners? The Social Perspective in Development-Induced Displacement and Resettlement” 10(4) *The Asia Pacific Journal of Anthropology* 269 (2009).

<sup>38</sup> M. M. Cernea and C. McDowell (eds.), *Risks and Reconstruction: Experiences of Resettlers and Refugees* (The World Bank, Washington D.C. 2000).

displacement by development projects is a violation of human rights because it is involuntary.<sup>39</sup>

Michael Cernea argues, “The outcome is an unjustifiable repartition of development’s cost and benefits: some people enjoy the gains of development, while others bear the cost”.<sup>40</sup> Cernea has mentions eight risks affecting consequences of displacement which are faced by the oustees however this list is not exhaustive. These are:

- 1) Landlessness
- 2) Joblessness
- 3) Homelessness
- 4) Marginalization
- 5) Food insecurity
- 6) Increased morbidity and mortality
- 7) Loss of access to common property
- 8) Social disintegration

Apart from this there are some additional consequential risks of displacement are given by some authorities. For example, T. Downing<sup>41</sup> and others have added few more risks like loss of access to services, disruption of formal education activities, and loss of civil and human rights.<sup>42</sup>

There are numerous development projects which are responsible for displacement but dams belong to those categories of projects which are most evasive and displace the entire community. Colson, a researcher, began her analysis of the

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<sup>39</sup> B. R. Johnson and C. Garcia-Downing, “Hydroelectric Development on the Bio-Bio River”, *Chile: Anthropology and Human Rights Advocacy*, available at: [http://www.idrc.ca/en/ev-645332011-DO\\_TOPIC.html](http://www.idrc.ca/en/ev-645332011-DO_TOPIC.html) (last visited on Nov. 2020).

<sup>40</sup> Michael Cernea, “Risks, Safeguard and Reconstruction: A Model for Population Displacement and Resettlement”, in Michael Cernea and C. McDowell (eds.), *Risks and Reconstruction: Experiences of Resettlers and Refugees* 12 (The World Bank, Washington DC, 2000).

<sup>41</sup> T. Downing, *Avoiding New Poverty: Mineral-Induced Displacement and Resettlement* (Mining, Minerals and Sustainable Development and International Institute for Environment and Development, 2002).

<sup>42</sup> Prabir Kumar Pattnaik, “Development Induced Displacement and Resettlement: Analysis of Judicial Policy” 55(3) *Journal of the Indian Law Institute* 348 (2013).

impact of the Kariba hydro-electric dam on the Gwembe Tonga in Central Africa with the following words:<sup>43</sup>

“Massive technological development hurts. This is a fact largely ignored by economic planners, technicians and political leaders. In planning drastic alterations in environment that uproot populations or make old adjustments impossible, they count the engineering costs but not the social costs”.

## **1.5 STATEMENT OF PROBLEM**

The object of development is to promote economic growth, ease poverty and also improve the living standards of people. But the construction of dam involves displacement of a large number of people from the dam area and dam oustees have to face many impoverishment risks, most of them ending up worse off before displacement which is against the basic object of development. The debate around the dam inducement displacement is mainly related to equity, governance and justice. The core issue is the problem faced by humanity.

Dams are a means to an end, not an end in themselves. The end of any dam project must be sustainable improvement of human welfare that is human development on the basis of social and economic equality. If dams mean to such end, then dams' existence should be supported by people. But in reality, dams are now days synonymous to displacement. Dams are responsible for displacement of large number of people which is getting bigger day by day.

There are two main fundamental reasons for dam induced displacement as a problem. Firstly, it is compulsory and involuntary, and secondly; it is rare that fair compensation is awarded. Whenever displacement occurs, families have to move toward the resettlement locations into temporary dwellings waiting for their houses to be constructed. Thayer Scudder, an American social anthropologist, terms this waiting period as a 'transitional stage' and argues that it is a difficult stage because it involves

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<sup>43</sup> E. Colson, *The Social Consequences of Resettlement: The Impact of the Kariba Resettlement on the Gwembe Tonga* 1 (Manchester University Press, Manchester, 1971).

dealing with multidimensional stress that includes psychological and sociological components.<sup>44</sup>

Another aspect which is associated with dam projects is acquisition of land. Land is considered to be a necessary colourway for such development project. Only thing incumbent for the authorities after such acquisition is compensation which may be any amount but not any illusory one. Those depending on such land hesitate to part with their property and when they are forcefully removed, they are displaced. Though the State promises to rehabilitate them but to a minimum extent.

Dam oustees have to pay a very heavy price for example quality of life and potential for physical and emotional growth is dormant; family and community life are almost totally destroyed; the opportunity for cultural activity hardly exists and the right of movement is highly restricted. Right to privacy is a myth for those who are living in rehabilitation camps. Basic health care for all and education of children are virtually non-existent. Their right to participate and contest in the political processes is difficult. Such consequences lead to the requirement of legislations that address not only the issue of compensation but also of resettlement, rehabilitation and participation in negotiation.<sup>45</sup>

But Indian government did not introduce any policy or law for more than five decades of its planned development. In the mid-1980s, a draft of a rehabilitation policy which would be applicable to all future dam projects, industrial, mining and other development related projects was mooted. It went through plenty of changes for about two decades.<sup>46</sup> The draft rehabilitation policy by N.C Saxena in the 1990s did not pass through, despite its many positive aspects. The subject gradually faded into oblivion until 2003 when the draft National Rehabilitation Policy was notified by the National Democratic Alliance government. This policy came into effect in February 2004 as the National Policy on Rehabilitation and Resettlement for Project Affected Families. The National Advisory Council unsatisfied with this and sent its own revised policy draft to the government. The bureaucracy then brought out a revised version of the 2003 Policy

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<sup>44</sup> T. Scudder "Development-Induced Relocation and Refugee Studies: 37 Years of Change and Continuity Among Zambia's Gwembe Tonga", 6 *Journal of Refugee Studies* 132 (1993).

<sup>45</sup> Nalin Singh Neg and Sujata Ganguly, "Development Projects Vs. Internally Displaced Populations in India: A Literature Based Appraisal" *Bielefeld University Germany* 6 (Dec. 9, 2010).

<sup>46</sup> Ramaswamy R. Iyer, "Towards a Just Displacement and Rehabilitation Policy" *Economic and Political Weekly* 1443 (Jan. 2007).

in the year 2006 which became the National Rehabilitation and Resettlement Policy of 2007.<sup>47</sup>

In November, 2013 the “Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 was passed by Indian Parliament to curb the issue of displacement. But this Act has also many controversial and arbitrary provisions, apart from this many Indian States have passed law to bypass this central legislation according to their convenience with the prior permission of president.

## **1.6 OBJECTIVES OF THE RESEARCH**

Every research has some objective and without objectives the study will not be complete. The objectives of the study provide proper outline to the research and confined research within its domain. Objectives are the dominating force to find out the cause-and-effect relationship in research. In view of the importance of objective the present study focuses upon the dam oustees.

The main objective of research is not only to study the issue of displacement by large dam projects and the violation of the human rights of dam oustees, but it also involves the issue of Rehabilitation and Resettlement. The main deciding factor for dam oustees families have been Rehabilitation and Resettlement. India has never looked upon this matter seriously and has failed to protect the rights of dam oustees. Following are the main objective of the research:

- 1) To find out the negative impact of displacement on native people caused by dam induced displacement.
- 2) To study the human rights violation of dam oustees in the course of displacement.
- 3) To study the international institution’s response to rights of dam oustees.
- 4) To study the legal protection available to dam oustees whose human rights are violated by dam projects.
- 5) To study the resettlement and rehabilitation laws of India and existence of gap between laws and their implementation in relation to dam oustees.

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<sup>47</sup> *Id.*

## **1.7 REVIEW OF LITERATURE**

In order to understand the above raised questions, properly, it would be desirable to review the existing literature pertinent to our research problem. In the context of the present study, it is important to take cognizance of some of the studies, related to our research problem.

### **1.7.1 The Development Dilemma: Displacement in India<sup>48</sup>**

The studies presented in this book throw the light on the dilemma of development induced displacement in India. This book has been divided into three part and in twelve chapter. Part-I that is from chapter-1 to chapter-3 deals with Introduction, methodological issue and resettlement and rehabilitation policy practices in India. Part-II (from chapter-4 to chapter-9) analyse in depth six major cases of development induced-displacement in different part of the India. Authors shed light on several sectors of India's economy and allow a long-term view on resettlement's effects with the benefits of hindsight. The cases discussed in this volume are more or less characteristic for developments in the industrial, energy, irrigation, and mining sectors of India, though the author does not claim statistical representativeness.

There is also considerable displacement in India in sectors that are not covered in this book. The picture of displacement in the country is much larger than this book has covered. Such as displacements are those currently caused by urban projects, highway construction projects, park conservation projects, defence-related projects, and others are not covered by this book. Overall, this book has given a good account of displacement and provides considerable data for providing a better understanding to the researcher.

### **1.7.2 Internal Displacement: Conceptualization and its Consequences<sup>49</sup>**

This book is concerned with the process of making a difference; normatively, legally, and operationally. As its title suggests, this book gives a good account of the

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<sup>48</sup> S. Parasuraman, *The Development Dilemma: Displacement in India* (Tata Institute of Social Sciences, Bombay, 1999).

<sup>49</sup> Thomas G. Weiss and David A. Korn, *Internal Displacement: Conceptualization and Its Consequences* (Routledge, New York, 2006).

history, structure, and concrete activities of efforts in the post-Cold War era to address the phenomenon of internal displacement. Authors have accomplished a formidable task in this book that is to intellectually challenge the customary principle of state authority by examining the evolution in ideas related to internally displaced persons<sup>50</sup> that comprises two components. First, by studying the changing ‘ideas’ toward assisting and protecting IDPs. Second, it analyses the dynamics of how ideas can change law, norms, and even institutional frameworks.

This book has been divided into seven chapters, chapters 1 and 2 provide the historical backdrop for what follows. The following three chapters (chapter 3-5) focus on the critical next half-decade, until 1998. Chapter 6 and chapter 7 together provide an overview of the last half-decade of Deng’s tenure and the adaptation of the PID to new needs and demands and the last chapter that is Chapter 8 deals with the concept of “Whither and Whether, Inside-Outsiders or Outside-Insiders?”

This book opens intellectual doors to possibilities of affecting necessary changes for protecting people in our times.

### **1.7.3 Development-Induced Displacement and Human Rights<sup>51</sup>**

This book has been divided into seven chapters and deals with various aspects of development induced displacement and a myriad of human rights questions that assume importance given the problems and predicaments that such people face, especially in the present globalised world.

The whole book has been written considering all the difficulties and hardship faced by the victim, and is written in a very simple language for the benefit of the displaced population by development projects. In this book the author has dealt with history, magnitude and consequences of development induced displacement. Apart from this the author has tried to find out what are the actions taken at the international platform and the role of the international financial institutions like world bank, to safeguard human rights of the project affected and displaced person.

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<sup>50</sup> Hereinafter IDPs.

<sup>51</sup> Ashirbani Dutta, *Development-Induced Displacement and Human Rights* (Deep & Deep PVT. LTD., New Delhi, 2007).

Chapter-III has given a good account of a critical evaluation of the Indian national Laws and Policies relating to Resettlement and Rehabilitation so as to find out how far laws and policies in India fulfil the constitutional command of a welfare State. This chapter also deal with the role of Indian judiciary in protection of the rights of project affected person.

This book has also given a critical evaluation of the Alternative Approaches given by the NGOs and extent of their adequacy in answering the democratic deficit suffered by laws and policies in India.

The treatment of every chapter is very much to the point and brief. There is much to commend the organization of the subject in the book which is properly presented, coherently linked chapter and cases. Overall, the book is useful to the entire academic community particularly to teacher, and students and as well as to legal practitioners as ‘development induced displacement’ is emerging as an area of legal importance. The book, however, seems to be overly priced.

#### **1.7.4 Development: Ethics, Rights and Responsibilities<sup>52</sup>**

This book mainly focuses upon to “explore the role that development ethics might play in moving beyond”. Apart from that in this book authors have raised the issue of exclusion of displaced population in decisions making process of displacement, resettlement and compensation as well as up to what stage does development become morally acceptable. This book is divided in to four parts and 12 chapters. Part-I deal with fundamental like definition and problem etc. Part-II talk about the ethical limitation and rights of displaced people. Part-III deals with ethical outcomes as well as international responsibilities and rights of displaced population etc. and the last part that is part-IV deal with the responsibilities and future direction.

Most important part of this book is chapter-IV, which deals with the ethical limitation of deciding displacement issues and arguing that what is good for the group or for the society may not be good for an individual group member.

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<sup>52</sup> Peter Penz and Jay Drydyk, *et.al.*, *Development: Ethics, Rights and Responsibilities* (Cambridge University Press, U.K., 2011).

### **1.7.5 Resettling Displaced People: Policy and Practice in India<sup>53</sup>**

Development induced displacement is one of the most concerning areas for any nation and effective resettlement policies play an important role in reducing its impact. This book contains fifteen essays which deal with various aspects of the displacement and resettlement in India. The book is divided into five sections, each and every section deal with different issues related to resettlement and rehabilitation governance and also given solution for an alternative approach to resettlement.

In this book, author, Hari Mathur raised the concern about the resettlement policy making mechanism in India and adopted the reformist managerial approach and also focuses on management of impoverishment risks, and generation and sharing of benefits.

Apart from this, some papers of this book also raised several important concerns including the ones by Felix Padel and Samarendra Das on the gap between resettlement policy and practice in Orissa, by Medha Chandra (Page.267-298) and Abhijit Guha on the political-economy of an urban displacement project and on the action group intermediation role of civil society against land acquisition for special economic zones in West Bengal. These studies try to criticise current development interventions by recognising power, institutions, and limited abilities of the displaced to stake a claim on their interests against the combined forces of State and market. Apart from this Jayantha Perera seeks to come out with a rights-based approach to resettlement. The inadequate treatment of gender in the R&R literature is also given in the collection.

Overall, the collection of this book has given great informative value and an ideal reference material in the field of R&R.

### **1.7.6 Development And Its Human Cost: Land Acquisition, Displacement and Rehabilitation of Tribals<sup>54</sup>**

Studies on the social impact of development projects suggest that indigenous people including tribal and women are disproportionately affected. The Scheduled

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<sup>53</sup> Hari Mohan Mathur (ed.), *Resettling Displaced People: Policy and Practice in India* (Routledge, New Delhi, 2011).

<sup>54</sup> Anthony Dias, *Development and Its Human Cost: Land Acquisition, Displacement and Rehabilitation of Tribals* (Rawat Publications, Jaipur, 2012).

Tribes constitute about 8.2 percent of the total population of the country according to 2011 census but they also constitute 55.16% of total displaced people indicating victimization of the tribals. Development for the nation has meant displacement, pauperization, or, at its very best, peonage for the tribal.<sup>55</sup>

This book has highlighted the meaningful issues of the human displacement problems. In this book the author has discussed that concept of economic development would have enhanced its value, after all, largescale of displacement of human settlement is the result of development activity. Author has also suggested the cost-benefit analysis for resettlement but its practicable application is doubtful. In this book author has made an attempt to postulate an alternative mode of development without human displacement which is more stimulating and rewarding.

### **1.7.7 Sociology of Displacement: Policies and Practice<sup>56</sup>**

The dilemma of development induced displacement and resettlement is quite complex and challenging. Home is the final destination and nothing is more uncomplicated than return to one's home. The sociological knowledge of development induced displacement improve the formulation of policies and operational procedures. This book carries a quality of essays divided into three sections, which reflect on the nature of research that has been done and can be done.

The editors claim to 'Bordieuxian' framework to understand economics of development in India from a sociological perspective which is sounds confusing. For example, Pierre Bourdieu has tried to maintain equidistance from the opposing poles of overemphasis on agency, on the one hand, and a one-sided focus on structures, on the other. Another contrary thing is that this book is focused only on the structural dimensions. In this book authors also explicitly uses the Marxist perspective to interpret the relation between development induced displacement and resettlement.

Apart from this, articles written by Walter Fernandes take us through a quantitative excursion on tribal displacement and land loss with particular reference to the scenario in under researched north-eastern States. The general trend of neglecting

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<sup>55</sup> Naresh C. Saxena, "Policies for Tribal Development Analysis and Suggestions" *RePEc*, 9-10 (2005).

<sup>56</sup> Sakarama Somayaji and Susmita Dasgupta (eds.), *Sociology of Displacement: Policies and Practice* (Rawat Publications, Jaipur, 2013).

gender (and relatedly children) issues in DIDR studies is also reflected in the volume. The article by M. Gopinath Reddy and others on NALCO's bauxite-mining-induced displacement in a scheduled district of Odisha is noteworthy for its sound empirical base. But policy analysis in the paper remains inadequate with palpable omissions like Odisha Scheduled Areas Mining Lease Policy and ORISED Act.

Even though some chapters are not desirable but this book is a bold attempt to give account of policies and practices.

### **1.7.8 Challenging the Prevailing Paradigm of Displacement and Resettlement: Risks, Impoverishment, Legacies, Solutions<sup>57</sup>**

This book is divided into two parts and fourteen chapter. Most important thing about this book is that it is itself edited by Michal Cernea, who has worked as the World Bank's Senior Adviser for Sociology and Social Policy until 1997. Part-I of the book examines in detail various constitutive parts of the Development caused forced displacement and resettlement<sup>58</sup> process, provides alternative ideas, and reports on original experiences, which is also supported by empirical study. On the other hand, Part-II of this volume focuses on exploring new or seldom- practiced better solutions to the problems put forward in Part I. The section provides case studies from around the world that illustrate lessons learned toward creating a new paradigm for DFDR that is able to replace the current impoverishment outcomes with a model able to achieve "resettlement with development."

This book has given the desirable recommendations and propose better solutions towards the formulation and introduction of a new resettlement paradigm.

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<sup>57</sup> Michael M. Cernea and Julie K. Maldonado (eds.), *Challenging the Prevailing Paradigm of Displacement and Resettlement: Risks, Impoverishment, Legacies, Solutions* (Routledge, New York, 2008).

<sup>58</sup> Hereinafter DFDR.

### **1.7.9 Development-Induced Displacement: Problems, Policies and People<sup>59</sup>**

This book is divided into eight chapters which give a good account of the issue of development-induced displacement along with examining the policy and problems faced by displaced people. This book is the outcome of a project done by University of Oxford. Chapter 3 to 6 in this book are the outcome of the reports of this research. Chapter 1 and 2 defined the issue and forced migrant. The last chapter of this book has given the useful recommendations and suggestions for the future research.

This book has summarised the topic adequately and also highlighted the issue in a very simple language which makes it a unique collection. Each chapter of this book contains the specific concept of displacement and defines them in a very systematic manner. Overall, this book has given a good account of development-induced displacement as well as recommendations and suggestions for the dilemma of displacement.

### **1.7.10 Development-Induced Displacement and Resettlement: Causes, Consequences and Socio-Legal Context<sup>60</sup>**

This book is an outstanding work on development-induced resettlement, with particular emphasis on the humanitarian, legal and social aspects of this issue and focused on the socio-legal analysis of the causes of development-induced displacement and resettlement worldwide. This book has been divided into twenty chapters. The analyses presented in this book are based on a combination of two concepts: displacement and resettlement. The first is the socio-economic phenomenon associated with being cut off from resources or their significant reduction. The second is focused on the long-term process of change of the place of residence and progressive adaptation to new realities.

The book, as one of the very few publications of this type, is useful for any researcher who wishes to understand the social determinants of contemporary international development and the problems of people for whom the word

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<sup>59</sup> Chris de Wet (eds.), *Development-Induced Displacement: Problems, Policies and People* (Berghahn Books, New York, Oxford, 2005).

<sup>60</sup> Bogumil Terminski, *Development-Induced Displacement and Resettlement: Causes, Consequences and Socio-Legal Context* (Ibidem Press, Stuttgart 2015).

“development” is associated who are forced to displaced from their homes, lands and resources.

### **1.7.11 Rights of Oustees<sup>61</sup>**

This article has raised the concern of oustees who were displaced by the large development projects around the world. In this article authors have given the number of people displaced by development projects and raised concerns that people displaced by lower profile project are not known. Apart from this in this article authors have given the account of rights related to oustees, which are denied by the authorities in the name of development.

In this article authors pointed out that, ‘The present model of development considers displacement as an inevitable consequence of the development process. The right of the people to participate in the decisions concerning the projects that displace them should be reasserted. There should be weightage for the consent of the affected people in the process.’<sup>62</sup> This article has summarised the dilemma of oustees in very comprehensive manner.

### **1.7.12 Involuntary Displacement: A Few Encounters<sup>63</sup>**

In this article the author has discussed the rehabilitation and resettlement programmes for the people of development induced displacement. One of the most desirable discussions is “Development vs Displacement” which makes it clear that development must be substantiable one. Author has discussed many aspects such as intensity of involuntary displacement of people from their productive assets and its effects, induced urbanisation and the role of funding organisations and NGOs. Author also looks at voluntary displacement, which has resulted in the depletion of large tracts of productive land.

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<sup>61</sup> Antony Dias, Sara Chanda, *et.al* “Rights of Oustees” 35(47) *Economic and Political Weekly* 4066-4156 (Nov. 18-24, 2000).

<sup>62</sup> *Id.*

<sup>63</sup> R. N. Sharma, “Involuntary Displacement: A Few Encounters” 38(9) *Economic and Political Weekly* 907-912 (Mar. 1-7, 2003).

### **1.7.13 Rehabilitation or Re-Exclusion?<sup>64</sup>**

In this paper author has critically examined the issue of dam induced displacement through a new concept. In this article the author has raised concern as to how the indigenous people have been re-excluded in Indian context from their original homeland. This article also explains that how Indian Welfare State is ignoring the welfare of the marginalized sections, and re-excluding them as dam displaced people, without providing proper rehabilitation. This paper has also argued that social re-exclusion, which loaded with miseries of the re-excluded people leads to resistance against the State. Further, article concludes that State should include the excluded rather than re-exclude them through providing proper rehabilitation facilities for their full-fledged inclusion.

### **1.7.14 Development Induced Displacement and Resettlement: Analysis of Judicial Policy<sup>65</sup>**

In this article author has analyse the various judgment of Supreme Court of India which are related to the development induced displacement. The author has pointed out that “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.” In this article the author has also critically examined the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 and discussed its important feature as well as concern of this act.

### **1.7.15 Development - Induced Displacement in 21<sup>st</sup> Century India<sup>66</sup>**

In this article the author has tried to explore the politics of social movements waged by people in relation to ‘development project’. This article started with a brief review of the movements in Orissa during the last two decades of 20<sup>th</sup> century, further examined the displaced people resistant in response to development induced

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<sup>64</sup> K. Rama Krishna Reddy, “Rehabilitation or Re-Exclusion?” 69(3) *The Indian Journal of Political Science* 505-518 (July - Sept. 2008).

<sup>65</sup> Prabir Kumar Pattnaik, “Development Induced Displacement and Resettlement: Analysis of Judicial Policy” 55(3) *Journal of the Indian Law Institute* 346-360 (2013).

<sup>66</sup> Bikram Keshori Jena “Development Induced Displacement in 21st Century India” 75 *Proceedings of the Indian History Congress* 1183-1191 (2018).

displacement, specifically in the context of post-1991 neo liberalization of Indian economy. Author has tried to understand the critiques of the people on ‘development project’ and their movement challenging the ideas associated with what can be called the agenda of the ‘corporatist state-market-civil society’ combined to implant ‘compulsory modernization’. This article has given a good account of the burning issue of displacement.

### **1.7.16 Forced Displacement: A Gendered Analysis of the Tehri Dam Project<sup>67</sup>**

This article has been dealing with the consequences of displacement cause by Tehri Dam project. This article has been written by the author on the basis of empirical research. In this article author has tried to find out the impact of displacement on women and has collected the data of women who were affected by the Tehri dam project. This article has been written in very a simple language and examine the live experience of displaced women by Tehri dam based on the empirical finding of research work.

### **1.7.17 Development Projects and Involuntary Population Displacement: The World Bank’s Attempt to Correct Past Failures<sup>68</sup>**

In this article the author has examined some of the consequences of development induced forced migration. Author has discussed the World Bank’s past failures to provide adequate policies in its old projects in Africa. After that the author has analysed the World Bank’s new Operational Policy on Involuntary Displacement and then evaluated in a retrospective manner of how it could have solved the population displacement problems in one of projects, the Nangbeto Dam in Togo, West Africa. Lastly, the author has concluded that the Operational Policy could be an effective tool to tackle development induced population displacement and that it still needs a few more reformative amendments as a good policy instrument.

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<sup>67</sup> Vandana Asthana, “Forced Displacement: A Gendered Analysis of the Tehri Dam Project” 47(48) *Economic and Political Weekly* 96-102 (2012).

<sup>68</sup> Kevin J. A. Thomas, “Development Projects and Involuntary Population Displacement: The World Bank’s Attempt to Correct Past Failures” 21(4) *Population Research and Policy Review* 339-349 (2002).

### **1.7.18 Prologue: Victims or Partners? The Social Perspective in Development-Induced Displacement and Resettlement<sup>69</sup>**

In this article the author has examined the interface between anthropology and development-forced displacement and resettlement. The author has tried firstly to analyse the social consequences of displacement and seeks attention to its social costs as well as on the complexity of the resettlement process. Apart from this the author has tried to bring attention to advocacy for those displaced by articulating the policy and practical changes necessary to mitigate the damage. Authors has also tried to examine the law which governs the land acquisition in India. In sum, this article is good account of social perspective in development induced displacement and resettlement.

## **1.8 RESEARCH QUESTIONS**

Research questions must be frame because they are helpful in finding the facts. When the researcher is aware with his research objectives and problems then he frames such kind of ‘fact-finding’ question before starting his research. Following are the principal question which has been considered relevant for the present study:

- 1) What are the extent and harmful consequences of displacement consequentially following dam projects?
- 2) What are the resettlement and rehabilitation laws and policies of India and existence of gap between laws and their implementation?
- 3) What are the international protections available to dam oustees and whether International human rights laws, conventions and principles governing rights of dam oustees have been integrated in to domestic laws and policies dealing with the issue of dam oustees?
- 4) Whether Indian judiciary is playing its role effectively in protecting the human rights of dam oustees?
- 5) Whether there is any alternative to the current process of development and whether the current process of ‘development’ is sustainable to the dam oustees?

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<sup>69</sup> Susanna Price Prologue: Victims or Partners? The Social Perspective in Development-Induced Displacement and Resettlement, 10(4) *The Asia Pacific Journal of Anthropology* 266-282 (2009).

## **1.9 HYPOTHESES**

A hypothesis is an assumption about the relationship between variables. It is a tentative explanation of the research problem or guess about the research outcome.<sup>70</sup> Hypotheses play significant role in the investigation of research problem/question because, they provide the right direction for the researcher to know what kind of facts to look for and to search order within facts. According to “Teodorson and Theodorson, “a hypothesis is a tentative statement asserting a relationship between certain facts.”<sup>71</sup> The present research study has also formulated certain hypotheses given below:

- 1) The existing international and national laws as well as policies on the issue of dam-induced-displacement are not sufficient to protect the basic human rights of dam oustees.
- 2) Tribals are the one whose human rights are most affected by dam-induced-displacement, have been progressively alienated from their native place due to large dams.
- 3) Justice to dam oustees has not been effectively delivered.

## **1.10 RESEARCH METHODOLOGY**

The study is based on doctrinal research. Data required for doctrinal study is based on secondary sources of data collection. The sources of data collection are mainly the library sources including books, articles, case laws, journals, reports as well as the internet resources.

## **1.11 UTILITY OF RESEARCH**

The central aim of this research is to provide guidance to those who are charged with researching, drafting and commenting on domestic laws and policies addressing the right of dam oustees and to suggest changes in domestic and international framework of laws and policies existing on the issues of development, displacement,

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<sup>70</sup> Ram Ahuja, *Research Methods* 70 (Prem Rawat for Rawat Publication, Jaipur, 2018).

<sup>71</sup> George A. Theodorson and A.G. Theodorson, *A Modern Dictionary of Sociology* 191 (Thomas Y Crowell Co., New York, 1989).

rehabilitation and resettlement from human rights standpoint to better protect the rights of dam oustees.

## **1.12 FRAMEWORK OF THESIS**

This thesis is divided in to seven chapters. Chapter-1 is ‘Introduction’ and deals with the introductory part of this thesis. This chapter has given introduction of the issue related to Dam-Induced-Displacement. The Chapter has also given the objectives of the present research, research questions, hypothesis and review of literature and utility of research.

Chapter-2 titled as “Dam Induced Displacement in India: Risks and Challenges” in this chapter the researcher has studied history, meaning, concept as well as various other aspects of Dam induced displacement. This part of research has made one thing crystal clear that the issue of dam induced displacement is not an illusionary one, it is real and making oustees life vulnerable. Tribals are the one who are suffering the most. Post displacement situation is showing that rehabilitation and resettlement laws and policies are not helping dam oustees. In the name of national interest, they are forced to leave their well settled natural habitat. Ethical aspect of displacement is clearly showing that policy maker is justifying displacement on insufficient grounds.

Chapter-3 “Dam Ousteas and Human Rights” has covered the important part of this research that is human rights violation of dam oustees. This chapter has given a detailed study of available human rights to dam oustees and tries to find out land’s rights in International human rights law. The main concern of international human rights law is, its implementation which is also discussed under this part. Apart from this researcher tries to locate the human rights concept in the Indian legal system.

Chapter-4 titled as “International Institutions Concern on Dam Induced Displacement” in this chapter researcher has studied the concern of the international institutions; United Nation, World Banks, World Commission on Dams and Asian Development Bank. After analyses of their declaration, guidelines and policies, researcher has reached on the conclusion that dam induced displacement remains a relatively undeveloped area of international law and enforcement machineries are very weak, which makes these instrument ineffective and useless even though States are ratifying them. In this chapter, researcher has also studied the shortcomings of

guidelines, policy etc. which would help to make them better than before. Next chapter will deal with national laws and policies of India in relation to R & R of dam oustees.

Chapter-5 titled as “Rehabilitation and Resettlement of Dam Ousteers: Study of National Law and Policies” in this chapter researcher has studied Indian legislation in regard to R & R of oustees who is displaced by development projects including by large dams and also researcher has tries to examine all Indian national laws and policies which deal with land acquisition and R & R of dam oustees. Most important part of this chapter is findings of the loops holes in respective legislations which are used by government to misuse these legislations which mean to be support people rights.

Chapter-6 deals with the various Judgments, orders and directions of the Supreme Court of India in respect to human rights of dam oustees along with it the decisions that helped in legitimizing government’s abuse of power. This chapter has shown the concern of Indian Judiciary on dam induced displacement and deals with various judgment of court on rehabilitation and resettlement of dam oustees.

Chapter-7 deals with “Conclusion and Suggestions” in this chapter researcher has made concluding remark on this research work which is titled as “Law and Policies in India for Rehabilitation and Resettlement of Dam Ousteers: A Human Rights Approach”. Apart from this this chapter deals with the significance of the findings in relation to the research objective and final result of the hypothesis. The researcher has put forward some suitable suggestions and recommendations in this chapter.

## CHAPTER-II

# DAM INDUCED DISPLACEMENT IN INDIA: RISKS AND CHALLENGES

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### 2.1 PRELUDE

Large dams are no more icons of development in developed countries where people generally enjoy sufficient supply of water and electricity. However, there are many developing countries like India, which even today believe large dams to be a key of modern development. Dam induced displacement is the biggest concern across the globe even though developing countries are not willing to discard the option of dam as development.<sup>1</sup>

Dam induced displacement has occurred in both developed as well as developing countries. For example, in the United States, the Norris Dam, completed in 1936 as the first dam under the Tennessee Valley Authority, displaced more than 3,500 households. The Sup'ung Dam, built between 1937 and 1944 on the border of Manchuria and Korea (then a colony of Japan) under the auspices of the Japanese colonial government, induced resettlement of approximately 15,000 households and 70,000 people on both sides of the river. In Ghana, the Akosombo Dam displaced about 80,000 people, as the new country demanded electricity and industrial development for economic independence.<sup>2</sup>

After the second world war many developing countries got political freedom from foreign authority and attained the status of sovereign State. Large dams require huge capital investments. According to World Commission on Dams<sup>3</sup> there was worldwide investment of at least two trillion US dollars in the construction of large dams over the last century. During the 1990s, an estimated \$32–46 billion was spent

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<sup>1</sup> Ryo Fujikura and Mikiyasu Nakayama (eds.), *Resettlement Policy in Large Development Projects* 1 (Routledge, New York, 2015).

<sup>2</sup> *Id.*

<sup>3</sup> Hereinafter WCD.

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annually on large dams all over the world and four-fifths of it in developing countries.<sup>4</sup> According to WCD approximately two thirds of the world's existing large dams are in developing countries.<sup>5</sup> There are more than 45000 large dams around the world.<sup>6</sup>

To mitigate the adverse effect of dam induced displacement concerned authorities need have to come forward with the effective resettlement plan. As resettlement experience has shown 'poor preparation of resettlement plans, it becomes to be the single most important cause for failure of resettlement component in dam projects. Poor preparation of resettlement leads to delays, increased cost, foregone benefits and several negative impacts on oustees like, severe human suffering arising out of psychological, social, and cultural disruption along with the economic impoverishment of oustees.<sup>7</sup>

In recent years, authorities have focused upon improving the resettlement planning and fixing it but planning alone cannot ensure success in resettlement, as there is problem of implementation of resettlement policies also. Even the best resettlement plan fails if not implemented properly.<sup>8</sup> According to WCD 40 to 80 million people are displaced by dam projects worldwide<sup>9</sup> and 16 to 38 million displaced in India since Independence by large dam.<sup>10</sup>

The outcome of any dam project must be the sustainable improvement of human development on the basis of economic viability and social equality. If large dams are way to achieve this goal, then dam's existence should be accepted by people but if there is any other better option available to people then other option should be supported by people over the large dam. Thus, the debate around dams depends upon how humans develop and manage their water resource. The nature and magnitude of the impact of large dam on oustees has now become the core issue of debate worldwide.

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<sup>4</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 87 (Earthscan, New York, 2013).

<sup>5</sup> *Id* at 83.

<sup>6</sup> *Id* at 52.

<sup>7</sup> Hari Mohan Mathur, "Making Resettlement Work: Policy, Planning and Management" in Hari Mohan Mathur (eds.), *Resettling Displaced People: Policy and Practice in India* 26-74 (Routledge, New Delhi, 2011).

<sup>8</sup> *Id*.

<sup>9</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 97 (Earthscan, New York, 2013).

<sup>10</sup> *Id* at 53.

## **2.2 HISTORY OF DAMS**

Most of the world civilization were born and brought-up near some or the other river basin that is why river basins are also known as the cradle of human civilization. Throughout the human civilization history communities depend upon the river and try to control the flow of the river to control and use river water according to their will. For that end, humans have started making dams on rivers. Damming the river is not a new engineering, remaining of Mesopotamia irrigation canals are oldest evidence of river engineering, it is nearly eight-thousand-year-old.<sup>11</sup>

Historical records suggested that the idea of construction of a dam for irrigation and water supply is more than thousand years old. There is a more than five-thousand-year-old dam found in Jordan, Egypt. This dam is more than five-thousand-year-old and belongs to year of 3000 BC. Remains of earth embankment dam build for diverting water to large community reservoir can still be found in Sri Lanka and Israel.<sup>12</sup> There is a 2200-year-old dam still in operation in China for Dujiang irrigation project which provides water for 800000 hectares of land.<sup>13</sup> Dams which were used by Roman to supply drinking water exist still today. The first dam which was used for hydropower generation was made in 1890.<sup>14</sup>

In ancient times authorities were making dam for many purposes and it has many uses too but most of the dams had a single purpose. Following table (Table number 2.1) shows the ancient world dams' detail across the world and their purpose along with their present status:<sup>15</sup>

**Table 2.1: Ancient Dams Across the World and their Functionalities**

<b>S. No.</b>	<b>Name of Dam</b>	<b>Country</b>	<b>Period</b>	<b>Purpose</b>	<b>Present Status</b>
1.	Almansa	Spain	16 <sup>th</sup> Century	Flood Protection and Irrigation	Functional

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<sup>11</sup> *Id* at 82.

<sup>12</sup> *Id* at 97.

<sup>13</sup> *Id*.

<sup>14</sup> *Id*.

<sup>15</sup> Vasudha Sharma, *Dams Induced Displacement and Resettlement in India: A Case Study of Ranjit Sagar Dam, Punjab 2* (2011) (Unpublished Ph.D. thesis, Department of Geography, Panjab University, Chandigarh).

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2.	Kosheish	Egypt	2900 B.C	Water Supply, Flood Protection and Irrigation	Diminished
3.	Moeris	Egypt	2300 B.C	Water Supply, Flood Protection and Irrigation	Diminished
4.	Jawa	Jordan	3000 B.C	Irrigation	Diminished
5.	Homs	Syria	1300 B.C	Water Supply	Functional
6.	Proserpina	Spain	2nd A.D	Water Supply	Functional
7.	Kaerumataike	Japan	162 A.D	Multi-purpose	Functional
8.	Kallanai	India	2 B.C	Irrigation	Functional
9.	Manaoke	Japan	701-704	Irrigation	Unknown
10.	Sayamaika	Japan	12thA.D	Irrigation	Diminished
11.	Tonur Kere	India	12thA.D	Irrigation	Functional
12.	Sadd-e-Kobar	Iran	10thcentury	Flood protection	Functional

### **2.3 HISTORICAL PERSPECTIVE OF THE INDIAN DAMS**

In India, dams are commissioned mainly for fulfilling irrigation demand, flood control, hydroelectric requirement and for water supply. Till the end of the 19<sup>th</sup> century, there were only 42 dams identified in India. 1901 to 1950 witnessed 250 more dams and at the end of 1970 number of dams had reached a new high that was nearly 1000. Next two decades were very intensified and the number of dams increased sharply. From 1990 to 2000, due to bad economic health of the country, Indian government had commissioned only 250 large dams.<sup>16</sup> Currently in terms of dams, India holds the third position in the world.<sup>17</sup> There are nearly 5701 large dams existing in India in which 437

<sup>16</sup> Sharad K. Jain, Pushpendra K. Agarwal, *et.al.*, *Hydrology and Water Resources of India* 940 (Springer Netherlands, 2007).

<sup>17</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 97 (Earthscan, New York, 2013).

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are under construction.<sup>18</sup> These numbers are showing the huge ancient legacy of dams in India. There were many dams which were built by Indian ancestors for the purpose of irrigation and to provide drinking water to their people.

*Kautilya's Arthashastra* has pointed out the importance of dam by stating that king should construct 'Setu' and fill them with water.<sup>19</sup> The chronicle of Kashmir *Raj-Tarangani*, written by Kalhana had given a detailed account of dams which were made by Kashmiri rulers who ruled between 8-12 century.<sup>20</sup> Apart from this *Junaghad* rock inscription had given a good account of *Sudharshana* lake, build by *Pushyagupta* who was governor of *Chandagupt Maurya* build between 322 BC to 298 BC, for the purpose of checking floods.<sup>21</sup> This lake was created by an embankment across the river *Palasini* and *Suvarnasikata-II*. *Kallanai* dam which is also known as 'Grand Anicut' is one of the oldest dams in world build around 2<sup>nd</sup> century AD by the Tamil King *Karigalan* who belonged to the Chola dynasty upon *Kaveri* River in *Tiruchirappalli* district Tamil Nadu. It is a marvelous example of an ancient Indian dam which is still in use.<sup>22</sup>

Following table (Table 2.2) gives the detailed information of some important ancient Indian Dam along with their current status:<sup>23</sup>

**Table 2.2: Oldest Dams of the India**

Sr. No.	Name of Dam	State	River	Operational Since	Dam Height (mtr.)	Status
1.	Kallanai (Grand Anicut)	Tamil Nadu	Kaveri	1 A.D	5.4	Functional
2.	Thonnur Tank	Karnataka	Thonnur Halla	1000	24.38	Functional

<sup>18</sup> Government of India, "National Register of Large Dams" (Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation), available at: <http://cwc.gov.in/national-register-large-dams> (last visited on Dec. 21, 2020).

<sup>19</sup> Sumanta Bid, Giyasuddin Siddique, *et.al.* "Dam: Historical Perspectives and an Overview of India" 7(8) *International Journal of Scientific Research and Review* 391 (2018).

<sup>20</sup> C. Zutshi, "Past as Tradition, Past as History: The Rajatarangini Narratives in Kashmir's Persian Historical Tradition" 50(2) *The Indian Economic & Social History Review* 203, 205 (2013), available at: 10.1177/0019464613487119.

<sup>21</sup> Dilip K. Chakrabarti, *India, an Archaeological History: Palaeolithic Beginnings to Early Historic Foundations* 294, 295 (Oxford University Press, 1999).

<sup>22</sup> Vijay P. Singh and Ram Narayan Yadav (eds.) *Water Resources System Operation: Proceedings of the International Conference on Water and Environment* 508 (Allied Publishers, 2003).

<sup>23</sup> Vasudha Sharma, *Dams Induced Displacement and Resettlement in India: A Case Study of Ranjit Sagar Dam, Punjab* 66 (2011) (Unpublished Ph.D. thesis, Department of Geography Panjab University, Chandigarh).

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3.	Cumbhum	Andhra Pradesh	Gundlakamma	1500	18	Functional
4.	Chandra Prabha	Uttar Pradesh	Chandraprabha	1666	20.12	Unknown
5.	Rajsamand	Rajasthan	Gomti	1671	17.8	Functional
6.	Barwa	Uttar Pradesh	Barwa Nala	1694	21.03	Functional
7.	Pachwara Lake	Uttar Pradesh	Local Drain	1694	13.72	Functional
8.	JaioSamand	Rajasthan	Gomti	1730	42	Unknown
9.	Rush	Maharashtra	Local Nala	1800	11.31	Functional
10.	Vihar	Maharashtra	Vihar	1859	25.6	Functional
11.	Madaga Tank (Old)	Karnataka	Veda	1867	15.5	Functional
12.	Bhadkha	Gujarat	Kotar	1868	14	Unknown
13.	Pashan (Private)	Maharashtra	Dev	1870	16	Functional
14.	Ekrukh	Maharashtra	Adela Nalla	1871	23.16	Functional
15.	Chandrana	Rajasthan	Banganga	1871	18.3	Functional
16.	Mayani	Maharashtra	Chand	1872	18	Functional
17.	Mukti	Maharashtra	Mukti Nalla	1873	21.2	Functional
18.	Kharagpur Lake	Bihar	Mani	1876	26.53	Functional
19.	Rankala	Maharashtra	Local Nala	1877	13.5	Functional

## 2.4 LARGE DAMS: MEANING AND DEFINITION

The purpose of dams is to store water for controlling floods, irrigation, water supply for human, energy generation etc. Dams have made an important contribution in humans' development and serve considerable benefits to human along with considerable losses also like displacement of people on a large scale. Dams are artificial structure that control and regulate the flow of water in the river and divert the water of the river to a in desirable area for example irrigation, to generate electricity etc.

There are numerous definitions are available of large dams and each of them based on different objective and criteria. According to the U.S. Fish and Wild Life Service there are three types of Dams that is small, intermediate and large dams. According to it:

- 1) **Small Dams** are structures that are less than 40 feet high or that impound less than 1,000 acre-feet of water;

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- 2) **Intermediate Dams** are structures that are 40 to 100 feet high or that impound 1,000 to 50,000 acre-feet of water; and
- 3) **Large Dams** are structures that are more than 100 feet high or that impound more than 50,000 acre-feet of water.<sup>24</sup>

The Central Water Commission<sup>25</sup> of India in its “Guidelines for Safety Inspection of Dams” has given different definitions of dams on the basis of different size, gross storage and hydraulic head.<sup>26</sup> On the other hand, the Planning Commission of India has categorized all reservoirs in three categories that is large, medium and small, in irrigation schemes on the basis of the area irrigated. According to the Planning Commission a large irrigation project is the one designed for irrigating more than 10,000 hectares of land.

According to National Register of Large Dam,<sup>27</sup> Large dams have been defined as per the definition of International Commission on Large Dams<sup>28</sup> (The most recent, yet widely accepted definition of large dams is given by the ICOLD). But in year 2018 the definition of large dam has been modified by ICOLD and as per the modified definition, dams which fall into the following criterion are considered to be large dams:<sup>29</sup>

- 1) A dam with a height of 15 metres or greater from lowest foundation to crest.
- 2) A dam between 5 metres and 15 metres impounding more than 3 million cubic metres of water.

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<sup>24</sup> U S Fish and Wild Life Services, “Dam Safety Program Description, Definitions and Standards”, available at: <https://www.fws.gov/policy/361fw2.html> (last visited on Jan. 05, 2021).

<sup>25</sup> Hereinafter CWC.

<sup>26</sup> Government of India, “Guidelines for Safety Inspection of Dams” (Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation), available at: <http://cwc.gov.in/sites/default/files/guidelines-for-safety-inspection-of-dams-june-2017.pdf> (last visited on Dec. 21, 2020).

<sup>27</sup> ‘National Register of Large Dam’ is a collective information of the large dams in India and prepared according to the information given by the State Government / Authority concerned. Hereinafter NRLD.

<sup>28</sup> Hereinafter ICOLD.

<sup>29</sup> Government of India, “National Register of Large Dams” (Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation), available at: <http://cwc.gov.in/sites/default/files/nrld06042019.pdf> (last visited on Jan. 11, 2021).

However, NRLD will follow the earlier definition of large dams as mention below:<sup>30</sup>

- 1) A large dam is classified as one with a maximum height of more than 15 metres from its deepest foundation to the crest.
- 2) A dam between 10 and 15 metres in height from its deepest foundation is also included in the classification of a large dam provided it complies with one of the following conditions:
  - a) length of crest of the dam is not less than 500 metres or
  - b) capacity of the reservoir formed by the dam is not less than one million cubic metres or
  - c) the maximum flood discharge dealt with by the dam is not less than 2000 cubic metres per second or
  - d) the dam has especially difficult foundation problems, or
  - e) the dam is of unusual design

## **2.5 WHO ARE DAM OUSTEES?**

The term oustees denotes displacement of people from their natural habitat by the intervention of State. Another terminology used for oustees is ‘Forced Resettlers’ or ‘Involuntary Resettlers’ they are ‘development induced displacement persons’ who have been allocated a specific area within their own country in which to resettle and who have been provided with at least a minimum of resources and services in order to re-establish their lives.<sup>31</sup> The term oustees is taken from the Indian literature on forced population displacement. It is commonly used in reference to people who taken are out from their natural habitat by government intervention, generally for the purpose of land acquisition which is required for development projects for example, road, wildlife sanctuaries, defence base cities, power plants, mines, heavy industries, transportation corridor, national park, large dams etc.<sup>32</sup>

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<sup>30</sup> *Id.*

<sup>31</sup> Chris de Wet (eds.) *Development-Induced Displacement: Problem, Policies and People* 14 (Berghabn Books, New York, Oxford, 2005).

<sup>32</sup> V. Lassailly-Jacob, “Reconstructing Livelihoods Through Land Settlement Schemes: Comparative Reflections on Refugees and Ousteas in Africa”, in M. M. Cernea and C. McDowell (eds.), *Risks and Reconstruction: Experiences of Resettlers and Refugees* 108-123 (World Bank, Washington DC, 2000).

According to Prof. Mathur, “forced population displacement by development projects is usually defined as occurring when people lose either their house or their land or both. Simultaneously by the act of a government. They are forced to leave the ‘right of way’ to the development project.”<sup>33</sup>

The General Comment No. 7 of the Committee on Economic, Social and Cultural Rights defines forced eviction as the, “permanent or temporary removal against the will of individuals, families or communities from their homes or land, which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”<sup>34</sup>

So, in the light of the above discussion the term ‘Dam Oustees’ can be summarised as “the people who has been displaced involuntary or forced to migrant from their home or land or from their natural habitat or place of livelihood, because of land acquisition by State for the purpose of the dam projects and re-allocated to specific area within their own country to resettle with at least a minimum of resources and services in order to re-establish their lives.

## **2.6 DISTINCTIONS BETWEEN DAM OUSTEES AND REFUGEES**

It is necessary to differentiate between dam oustees and refugees because there are many similarities between them and researchers as well as scholars generally try to apply the refugee laws upon dam oustees which is inappropriate.

There are mainly two reasons for such confusion. *First*, both the communities have are forced to move from their native place and to face the challenges of post displacement. *Second* one is that both the community can be seen as revealing

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<sup>33</sup> Michael M. Cernea, “Broadening the Definition of ‘Population Displacement’: Geography and Economic in Conservation Policy” in Hari Mohan Mathur (eds.), *Resettling Displaced People: Policy and Practice in India* 85-119 (Routledge, New Delhi, 2011).

<sup>34</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, E/1998/22 (May 20, 1997) para. 4.

underlying contradictions in the ideology of the Nation-State as the dominant political organizing principle of the modern world.<sup>35</sup>

Following are the key differences between ‘refugees’ and ‘dam oustees’:

- 1) Refugees are those people who have left their own country, unable or unwilling to return because of persecution and violence.<sup>36</sup> On the other hand, dam oustees are the people who are involuntarily displaced from their natural habitat to some other new places within their country due to dam projects. Dam oustees comes under the domain of internally displaced population.
- 2) Under the UN Refugee Convention, a person could claim refugee status where there was a ‘well-founded fear’ of persecution.<sup>37</sup> However, the triggers of internal displacement are not always identical to those of refugees. For example, dam projects are not recognised as triggers of refugee status, but it may trigger internal displacement and leave dam oustees without adequate protection in a hazardous situation.
- 3) Refugees have a chance to return to their homes if in future the hostile condition ends, but there is no hope of returning home again in case of dam oustees and in most of the cases dam oustees displacement is pre-planned.
- 4) Refugee law generally deal with violent conflict or politically motivated persecution.<sup>38</sup> Whereas, they are not essential characteristic of dam induced displacement.
- 5) There are many strong international laws concerning the plight of refugees and protecting their basic rights in a host country.<sup>39</sup> There are very limited number of protections given to dam oustees which have not been transformed in to legally binding rule.

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<sup>35</sup> Elizabeth Colson, *Coping in Adversity*, (Unpublished paper presented at the Gwendolen Carter Lectures, Conference on Involuntary Migration and Resettlement in Africa, University of Florida, Gainesville, March, 1991).

<sup>36</sup> Chris de Wet (eds.) *Development-Induced Displacement: Problem, Policies and People* 14 (Berghabn Books, New York, Oxford, 2005).

<sup>37</sup> UN Refugee Convention, 1951, art. 1(2).

<sup>38</sup> Chris de Wet (eds.) *Development-Induced Displacement: Problem, Policies and People* 72 (Berghabn Books, New York, Oxford, 2005).

<sup>39</sup> India has not ratified the refugees’ international treaties/convention that is why in India refugees cannot claim any international protection.

- 6) Refugee law deals with specific kind of protection to the foreigners who are facing survival issues in their host country and awards limited intergenerational rights to them. The rights that refugees receive includes basic socio-economic rights that provide then basic protection to survive in a foreign country but they don't have citizenship rights.<sup>40</sup> Whereas dam oustees are the person who are involuntary displaced in their own country and expect to be 'rehabilitation and resettlement'<sup>41</sup> for their displacement on the name of national interest and they are citizen of the country.

Even though, refugees and dam oustees are sharing some common characteristic but both are different concept. Above discussion has made very clear distinction between them. Understanding both as the same is nothing but conceptual mistake.

## **2.7 DAMS AS DEVELOPMENTAL TOOL AND PROBLEM ASSOCIATED WITH IT: A DEBATE**

Dams have been always promoted as a tool of development and important means of meeting required needs of water and energy. The supporters of dam have cited its benefit in terms of regional development, job creation, electricity generator, irrigation uses etc. The Dams have made an important contribution in human development and serve considerable benefits. During the 20<sup>th</sup> century, large dams emerged as one of the magnificent tools for the management of water resource, which can be identified by their number that is there are more than 45000 large dams around the world.<sup>42</sup>

Between 1930's to 1970's, the large dams became synonymous to development which was at its peak in 1970. During that period of time on average two or three dam were commissioned each day around the world. At present, there are 5701 large dams in India.<sup>43</sup> China which has only 22 large dams before 1949, now it has more than 22000

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<sup>40</sup> Geneva convention relating to the status of Refugees, arts. 17-24, 27,28.

<sup>41</sup> Hereinafter R & R.

<sup>42</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 52 (Earthscan, New York, 2013).

<sup>43</sup> Government of India, "National Register of Large Dams" (Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation), *available at*: <http://cwc.gov.in/national-register-large-dams> (last visited on Dec. 21, 2020).

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large dams.<sup>44</sup> U.S. has 6390 large dams. These three countries Republic of China, India and U.S. have together built around 80 percent of the world's large dams and are also having largest numbers of dam oustees.<sup>45</sup>

These above number are showing the dependency of human civilization upon the dams. Most of the large dams are used for the irrigation purposes and to produce of electricity. The WCD has made an estimate that between 30 to 40 percent of irrigated land gets water from dams and 19 percent of world electricity demand is produced by the large dams.<sup>46</sup>

Following points are showing large dams as an important tool of development:

- 1) More than half of world's large dam were primarily built for irrigation purposes and more than 30 to 40 percent of irrigation lands worldwide rely on large dams.<sup>47</sup> In India also dams are playing considerable part in irrigation, dams are providing water for more than 30 percent of the irrigated land.<sup>48</sup> India being an agricultural country highly depends on them, which increase the importance of dams.
- 2) Large dams are producing more than 19 percent of electricity produced by the world and used in more than 150 countries. Which represent more than 90 percent of total national electricity supplied in 24 countries and over 24 percent in 63 countries.<sup>49</sup>
- 3) More than 75 percent of countries are managing their flood problem by making large dams. It was estimated by WCD that 13 percent of all large dams in world have flood management functions.
- 4) Industries and urban center are also depending upon large dams because of their huge water requirement. It was estimated that 12 percent of all large dams are designated as water supply dams.<sup>50</sup>
- 5) Some dams are also utilized for fish farming, those people who lost their land and job due to dams the government provides them an opportunity to continue with fish farming in dam and also provide minimum support for this purpose.

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<sup>44</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 82 (Earthscan, New York, 2013).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 82.

<sup>47</sup> *Id.* at 88.

<sup>48</sup> *Id.* at 89.

<sup>49</sup> *Id.* at 92.

<sup>50</sup> *Id.* at 90.

No doubt that large dams are playing important role in the economic development of country along with other benefits in 21<sup>st</sup> century but it has many problems also, which are discussed as follows:

**1) Biodiversity Impact:** Most of the world's large rivers are fragmented and transformed by large dams. More than two thirds of large rivers worldwide are fragmented, threatening fresh water, biodiversity, river integrity, and the services that fresh water ecosystems provide for human populations around the globe.<sup>51</sup> Human's activities are threatening to the sustainability of services provided by ecosystems and some of the planetary boundaries for sustainable use have already been exceeded. Rivers are a classic example of this situation. They are providing significant services to the society, sheltering a large part of the globe biodiversity, but at present they are at high risk.

Functioning of the river ecosystems depends on the conservation of aquatic habitats and of natural flow of rivers.<sup>52</sup> There are many factors leading to the degradation of watershed ecosystems but dams are the main physical threat to it. Watershed are responsible for many ecosystem functions as ranging from nutrient recycling, water purification to soil replenishment, flood control etc. The world's 40 percent fish species are found in watershed and at least 20 percent of the world's (more than 9000) fresh water fish species have become extinct, threatened or endangered due to large dam.<sup>53</sup> Forest loss due to direct submergence and habitat degradation from dam building could lead to the loss of 22 angiosperm and 7 vertebrate taxa by 2025.<sup>54</sup>

**2) Inequitable Development:** Most of the development projects, including large dams leads to inequalities. The larger potation of benefits concentrated in the hands of rich and powerful people and the condition of poor people either worsens or does

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<sup>51</sup> Kim Birnie-Gauvin, Jan Nielsen, *et.al.*, "Catchment-Scale Effects of River Fragmentation: A Case Study on Restoring Connectivity" *Journal of Environmental Management* 264 (2020), available at: <https://doi.org/10.1016/j.jenvman.2020.110408>.

<sup>52</sup>A. Elozegi and S. Sabater, "Effects of Hydromorphological Impacts on River Ecosystem Functioning: A Review and Suggestions for Assessing Ecological Impacts." *Hydrobiologia* 129–143 (2012), available at: <https://doi.org/10.1007/s10750-012-1226-6>.

<sup>53</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 96 (Earthscan, New York, 2013).

<sup>54</sup> M. K. Pandit and R. E. Grumbine, "Potential Effects of Ongoing and Proposed Hydropower Development on Terrestrial Biological Diversity in the Indian Himalaya" 26 (6) *Conservation Biology* 1061 (2012).

not improve. The goal of development is on growing GDP, not the equal distribution of benefit to the needy people.<sup>55</sup>

Most of the people in the world depends on the natural environment for their livelihood. Constructing large dams almost invariably involves appropriating natural spaces from “communities whose livelihoods they have supported for centuries.”<sup>56</sup> Whenever the dam oustees are displaced from their natural habitat, they are also separated from their livelihood and forced to find alternative incomes source as low-wage laboring.<sup>57</sup>

Large dams just not only affect the dam oustees, it also adversely affects the people who are living downstream. They have to face unpredictable flooding which causes reduction in water quality and also adversely affects life and property.<sup>58</sup> Those who bear the cost of large dams and are worse affected are getting very less benefit or nothing. For example, the electricity generated by large dams generally utilized by mega cities or industries and revenue generated from electricity goes to State or developer or both.<sup>59</sup>

There is no doubt that large dams are beneficial but this speculation is exaggerated, as Goldsmith and Hildyard stated, “those who stand to gain politically and financially from the building of a large dam are willing to go to inordinate lengths to ensure that it will be built.”<sup>60</sup> Sachs also made similar observation that, “the pursuit of classical development has led many Third World governments to sacrifice the vital interests of half of their populations.”<sup>61</sup>

**3) Nature Becomes Natural Resources:** Modern development concept views nature as a natural resource and value it as an input to production. Those areas which are

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<sup>55</sup> Scott W.D. Pearse Smith, “The Return of Large Dams to the Development Agenda: A Post-Development Critique” 11 *Consilience: The Journal of Sustainable Development* 126 (2014).

<sup>56</sup> Vandana Shiva, “Resources” in Wolfgang Sachs, *The Development Dictionary* 228–242 (London, UK: Zed Books, 2 ed., 2010).

<sup>57</sup> Katie Jenkins, Lyndia McGauhey, *et.al.* “Voices from the Margin: Economic, Social and Cultural Rights in Northeast Thailand: Pak Mun Dam” *Pak Mun, Thailand: Peace and Human Rights Center of Northeast Thailand* (2008).

<sup>58</sup> A. Wyatt and I. G. Baird, “Transboundary Impact Assessment in the Sesan River Basin: The Case of the Yali Falls Dam” 23(3) *International Journal of Water Resources Development* 427–442 (2007).

<sup>59</sup> Scott W.D. Pearse-Smith, “The Return of Large Dams to the Development Agenda: A Post-Development Critique” 11 *Consilience: The Journal of Sustainable Development* 126 (2014).

<sup>60</sup> E. Goldsmith and N. Hildyard, *The Social and Environmental Effects of Large Dams* (Cornwall, U.K: Wadebridge Ecological Centre, online ed., 1984).

<sup>61</sup> W. Sachs, “Environment” in Wolfgang Sachs, *The Development Dictionary* 34–37 (Zed Books, London, UK, 2 ed., 2010).

not covered by the development program are identified as unproductive and miss opportunity of economic growth. River being a part of nature, also seen as a natural resource in the premises of modern development concept. According to so called modern development concept, being a part of natural resource if rivers water is not utilizing by making dam on it, it would be considered as a missed opportunity of economic growth. Here authorities are measuring rivers utility in terms of production which is illogical.<sup>62</sup>

Being a part of nature, rivers have their own eccentric value. It is not only humans who depend on river but there are lots of species who directly or indirectly depend on the rivers. The native people who live around the river depend on it by many different for example, livelihood, cultural values, social bond etc.

The economic analysis of large dams always ignores the value of nature to people who depends on it. Such analysis often does not include the small scale of activity that exist outside of the formal economy.<sup>63</sup> Rivers are not a natural resource; they are beyond that. They are part of nature. They are nature itself.

**4) Social Impact:** Whenever any dam is commissioned, it requires large portion of land which directly or indirectly leads to displacement of people at a large scale. Whenever displacement occurs, government introduces rehabilitation schemes for oustees but the truth is that, as proved by many empirical studies, these rehabilitation policies are never implemented properly. Inadequate rehabilitation policies account for more undesirable problems and sometimes bring corruption too.

Whenever force displacement occurs, people are forced to leave their home, job, land etc. They lose their social identity and their cultural practices. They are forced to live in an alien environment. Those who bear the cost of displacement, they never forget its evil effects on their life. Michael Cernea<sup>64</sup>, a sociologist, pointed out that “those displaced forcefully from one’s land and habitat have always the risk of

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<sup>62</sup> Scott W.D. Pearse Smith, “The Return of Large Dams to the Development Agenda: A Post-Development Critique” 11 *Consilience: The Journal of Sustainable Development* 125 (2014).

<sup>63</sup> *Id.*

<sup>64</sup> worked as the World Bank’s Senior Adviser for Sociology and Social Policy until 1997. He has published on a wide range of the effects of development, including social change, social forestry, participation, grassroots organizations, and population resettlement. He is an author of the term “development-induced displacement and resettlement”.

becoming poorer than before.”<sup>65</sup> That is why now national as well as international level social activists are demanding social assessment program before the implementation of displacement policies.

- 5) **Displacement:** Displacement is one of the major negative impacts of large dams. Dams and displacement of people are synonymous to each other. There is not a single large dam which does not causes displacement. According to WCD, anything between 40-80 million people displaced by dam projects worldwide.<sup>66</sup> Condition is worse in India, it was estimated by WCD that 16 to 38 million people have been displaced by dams in India since independence.<sup>67</sup> These number itself prove that displacement of people by large dams is the biggest negative outcome of large dams and raised several questions on dam’s existence.
- 6) **De-politization and Disempowerment:** modern development is an example of de-politicize development decision and disempowers its real beneficiaries. On the name of development policy makers are making large dams and damming the free flow of river for the production of electricity and fulfill the demand of irrigation which is required too. Policy makers always represent dam building as a scientific and economic decision.<sup>68</sup> Pandit Jawaharlal Nehru, the first Prime Minister of India, considered ‘Large Dams’ as “temple of developmental progress”.<sup>69</sup> By making this type of presentation, policy makers are representing political decision as an apolitical one.

The data given by science and economics field are represented as rational and indisputable which close all doors for debate from the side of dam oustees who are opposing large dam on their legitimate ground.<sup>70</sup> This politics of policy maker,

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<sup>65</sup> Michael Cernea, “Bridging the Research Divide: Studying Development Ousteers”, in: T. Allen (edn.), *In Search of Cool Ground: War, Flight and Homecoming in Northeast Africa* 304 (James Currey, London, 1996).

<sup>66</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 97 (Earthscan, New York, 2013).

<sup>67</sup> *Id* at 53.

<sup>68</sup> Scott W.D. Pearse Smith, “The Return of Large Dams to the Development Agenda: A Post-Development Critique” 11 *Consilience: The Journal of Sustainable Development* 127 (2014).

<sup>69</sup> IndiaInfoline, Prime Ministers of India, Jawaharlal Nehru, available at: <http://www.indiaonline.com/prime-ministers-of-india/jawaharlal-nehru> (last visited on Jan. 21, 2020).

<sup>70</sup> M. Kakonen and P. Hirsch, “The Anti-Politics of Mekong Knowledge Production” in F. Molle, T. Foran and M. Kakonen (Eds.), *Contested Waterscapes in the Mekong Region: Hydropower, Livelihoods and Governance* 333–365 (London, UK: Earthscan, 2009).

making political debate into apolitical, excluding the local people from participating in development planning and policy for their rehabilitation and resettlement.

- 7) Decommission of Dam:** Every infrastructural project has some life span. During the period of time infrastructure become old and weak, which is known as ageing of infrastructure. The same concept of ageing is also applied upon dams. Ageing of dam includes increasing cases of dam failures, progressively increasing cost of dam repair and maintenance, increasing reservoir sedimentation, and loss of a dam's functionality and effectiveness.<sup>71</sup>

According to one of the UN reports, most of the large dam commissioned between 1930 to 1970 with the average lifespan of 50 years or 100 years if maintained properly. The report said that 55 percent of the world's large dams are found in China, India, Japan, and South Korea, a majority of which will reach the 50-year threshold relatively soon.<sup>72</sup>

According to CWC, at present there are 5701 large dams in India in which 5264 completed and 437 large dams are under construction.<sup>73</sup> By 2021, more than 1000 large dam in India would turn 50 years old or older.<sup>74</sup> They are a threat to human safety as well as to the environment, for example, if Mallaperiyar dam (situated in Kerala) would fail then approximately 3.5 million people would lose their life.<sup>75</sup>

Ageing of dam is now a big issue. Once the dam which considers as a temple of development, is now threatening to human life and property. Government has to pay a very heavy price for decommission. After the end of their lifespan, dams become a threat as well as liability.

The above discussion shows both the arguments that is 'dams as development tool and problem associated with large dams.' This is an attempt to give positive as well

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<sup>71</sup> D. Perera, V. Smakhtin, *et.al.*, "Ageing Water Storage Infrastructure: An Emerging Global Risk" 11 *UNU-INWEH Report Series 5* (UN University Institute for Water, Environment and Health, Hamilton, Canada, 2021).

<sup>72</sup> *Id.*

<sup>73</sup> Government of India, "National Register of Large Dams" (Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation), *available at:* <http://cwc.gov.in/national-register-large-dams> (last visited on Dec. 21, 2020).

<sup>74</sup> D. Perera, V. Smakhtin, *et.al.*, "Ageing Water Storage Infrastructure: An Emerging Global Risk" 11 *UNU-INWEH Report Series*, (UN University Institute for Water, Environment and Health, Hamilton, Canada, 2021).

<sup>75</sup> Arnab Roy Chowdhury, "Decommissioning Dams in India: A Comparative Assessment of Mullaperiyar and Other Cases" 23(2) *Development in Practice* 293 (2013), 292-298, *available at:* 10.1080/09614524.2013.772563

as negative impact of large dams. On one hand people requires the benefit which shows the need of large dams and on the other hand there are people who are bearing the cost without any benefit or minimum benefit. It is true that benefits come along with cost like life comes with death. But the question is, those who are bearing the cost, do they deserve it?

## **2.8 RESISTANCE TO LARGE DAMS IN INDIA**

As discussed, earlier dams have more than 5000 years old history. they have many benefits as well as problems too. Whenever any dam proposed it has to face protest by the native people who live around the proposed dam. The history of resistance to dams is as old as the history of dams that is more than 5000 years old. Research about any large dam cannot be completed without reference to the resistance to dam by native people.

One of the voices increasing today is that of people displaced by large dam projects. Uprooting and displacement have been among the central experience of modernity. People are choosing to resist in the hope that this will prove more effective in protecting their interest and rights.<sup>76</sup> Resistance to large dams arises because of the perception that local people are forced to share an unfair burden of the cost of dam project and their human rights will be violated by the authorities.<sup>77</sup> People also resist because of the ineffective rehabilitation and resettlement laws and their improper implementation which they had learnt from other dam projects.<sup>78</sup> Resistance to dam is not limited to native people only whose lives are directly affected by dam project, such resistance is also supported by (local, regional, national, international) non-governmental organization, private union or societies etc. around the world.<sup>79</sup>

Colson, a researcher, began her analysis of the impact of the Kariba hydro-electric dam on the Gwembe Tonga in Central Africa, in her research she found that “Dam oustees opposed the dam not simply because it represented change but because

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<sup>76</sup> Chris de We (eds.) *Development-Induced Displacement: Problem, Policies and People* 141 (Berghabn Books, New York, Oxford, 2005).

<sup>77</sup> *Id* at 143.

<sup>78</sup> Alessia Vecchietti, Manuela Cecconi, *et.al.*, “Seismic Vulnerability of a Rockfill Dam through Different Displacement-based Approaches” *Journal of Earthquake Engineering* 168 (2019), available at: [10.1080/13632469.2019.1662346](https://doi.org/10.1080/13632469.2019.1662346)

<sup>79</sup> Chris de Wet (eds.) *Development-Induced Displacement: Problem, Policies and People* 145 (Berghabn Books, New York, Oxford, 2005).

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it represented unacceptable change. It was a threat to the native people's basic securities and comes to them in the form of command from outside. People did not understand the rationale behind dam yet they were expected to make major sacrifices on behalf of a nation-state with which they did not identify.”<sup>80</sup>

The resistant to dams also known as ‘anti-dam movement’ defined as “a set of opinion and belief in population which represents preferences for changing some elements of the social structure and / or reward distribution of society.”<sup>81</sup> Oldest record of resistance to dam was from 17<sup>th</sup> century where Scottish fishermen tried to destroy a newly completed dam.

There are many examples from the past which are related to resistance to dam for example, Kabiba dam which were situated on Zambezi River on the border of Zambia and Zimbabwe in Africa, where native people that is Tanga people resisted to move and colonial government ordered their army to fire on them. In which eight people of Tanga tribe was died and 30 were injured.<sup>82</sup> Another example related to Migacle Aleman dam, situated on Papaloapan river in Mexico, in this case also native people were not ready move. In this response the Popaloapan river commission had set fire to the house of native people in which many people were burnt alive.<sup>83</sup> Similar incident happen in Bakolori dam protest, police had fired at protesters who were blocking the road against the dam project.<sup>84</sup>

Resistance to large dam in India is also quite historical but not as seen in other parts of the world. There may be reason behind it that they were not reported or unknown. The first known resistance to dam in India was identified in 1927 against the Mulshi dam. It was a hydroelectric project, situated in western India, in the Mulshi taluka administrative division of the Pune district of Maharashtra State. This dam was

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<sup>80</sup> E. Colson, *The Social Consequences of Resettlement: The Impact of the Kariba Resettlement on the Gwembe Tonga* 3 (Manchester University Press, Manchester, 1971).

<sup>81</sup> John D. McCarthy and Mayer N. Zald, “Resource Mobilization and Social Movements: A Partial Theory” 82(6) *American Journal of Sociology* 1217 (1977).

<sup>82</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 100 (Earthscan, New York, 2013).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

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accountable for more than 11000 people displaced. Oustees protested to stop the work but they failed to do stop the construction. This protest lasted for two and half years.<sup>85</sup>

Hirakud dam, commissioned in 1946, was first larger river valley project in India. When this dam was commissioned, people started protesting at the large scale and mainstream politician of that time Dr. Ram Manohar Lohiya had actively participated in this protest in 1963-64. But the protest could not sustain for a long time and slowly ended.

Silent valley movement was the first Indian anti-dam movement, situated in Kerala, which was successful. The native people had seen their displacement and started protest which was also supported by international organization like World Wild Life Fund and the International Union for Conservation of Nature. As a result, the government of India has stopped the project in 1983. The success of Silent Valley protest has set the example which was adopted by people in other parts of India.

The most celebrated anti-dam protest in India is ‘Sardar Sarovar dam project’ which comprised of a chain of 30 major and 135 medium dams, which were being planned over Narmada River. This project was financed by world bank but authorities failed to provide adequate rehabilitation and resettlement which lead to protests on a large scale. A number of protests were held under the leadership of activist Medha Patkar in 1988 onwards. This protest was named as ‘*Narmada Bachao Andolan*’. This protest got the attention of the world in 1993 when world bank withdraws its support from the project. *Narmada Bachao Andolan* hugely inspired the other dam resistance and led to the withdrawal of *ra tho chu* project in Sikkim 1997 and Bedthi project in 1998.<sup>86</sup> It also had impacted on Tehari dam and Koel Karo project in term of reviewing of their rehabilitation package for oustees.

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<sup>85</sup> Arun Kumar Nayak, “Big Dams and Protests in India: A Study of Hirakud Dam” 45(2) *Economic and Political Weekly* 71 (2010), available at: <https://www.jstor.org/stable/25663992>.

<sup>86</sup> *Id.*

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Following table (Table 2.3) is giving the information of some important anti-dam movements in India:

**Table 2.3: Important Anti-Dam Movements in India**

S. No.	Dam & Year	Details of Anti-Dam Movement
1.	Mulshi Dam (1927-1930)	Senapati Bapat was leader of this movement and this anti-dam movement was started in Pune (Maharashtra). This dam has seen aggressive resistance more than 750 tribal and farmers protest against this dam's construction.
2.	Save Silent Valley (1973)	This protest was started in 1973 to protect Silent Valley, initiated in Kerala by an NGO 'Kerala Shashtra Sahitya Parishad'. It was a hydro dam project. Poem "Marathinu Stuthi" written by Sugatha kumari become symbol for protest. Indigenous people have also joined this protest.
3.	Koel Karo Movement (1976- 2001)	The koel karo movement was focused struggle of adivasis and responded strongly to displacement. The object project was to build two hydroelectric dam and produce 710 megawatts of power. With the formation of the Koel Karo Jan Sangathan protests against the Koel Karo project have halted the construction of the project. Despite the protests, the dam project is going on.
4.	Tehri dam (1978-2004)	Tehri dam is tallest dam in India. This dam project has also seen protest because it being built in a highly seismic zone. This protest was led by 'Tehri Band Virodh Sangharsh Samiti' led by 'Sunderlal Bahuguna'.
5.	Narmada Bachao Andolan (1989-2018)	Narmada Bachao Andolan' was started in 1980. It was a mass protest lead by Medha Patkar against the buildings of dams in Narmada River. In spite of the resistance shown by many the dam was constructed but the agitations continue and inaugurated by P.M. Modi in 2017. Oustees of various projects like the Indira Sagar and Omkareshwar dam (2015), Bargi (2018) have peacefully protested in the form of 'jalsatyagrah' to ask for their pending dues of resettlement.
6.	Lower Subansiri Hydroelectric Power Project (2003- 2012)	This dam project was located on Subansiri River in Assam. The construction was started in 2005 and yet not completed. Anti-dam protest was started by Subansiri Bachao Committee along with 20 other organizations They were protesting against the project on account of its severe repercussions on the seismically sensitive area and its losses to people in terms of common property resources etc.
7.	Teesta Dam Project (2007)	Affected native people of Teesta had a hunger strike against the hydro projects in the geologically sensitive State of Sikkim.

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8.	Haora river Dam (2018)	The government had planned two dams at Belfang and Champabari in Jirania, where the Haora River originated. Many families of Tripura have protested against the dams that are being planned on river Haora. Citing the case of failure of resettlement in the dam's areas the displaced of 15 villages have rejected the idea of construction of the dam.

Above are the examples of dam resistance which came into light apart from this there are many other projects which could not come into light. Anti-dam movement is a sign of fight against the human rights violation, principle among these are the rights to self-determination and control of one's own life and future. Since anti-dam movements are against the powerful forces like government, industrialist, businessman etc., it involves risks also. The people who are involved in such kind of protest have to pay considerable costs. This cost may be in terms of serious personal risk or may be economic one.

The experience of anti-dam movement from time to time has proved instructive in the struggle to alter approaches to development. People resistance to large dam projects bounds authorities to adopt sustainable and democratic development process.

### **2.9 DAMS AND TRIBAL OUSTEES IN INDIA**

*"I am most unhappy that development projects displace tribal people from their habitat, especially as project authorities do not always take care to properly rehabilitate the affected population. But sometimes there is no alternative and we have to go ahead in the larger interest..."*

*Indira Gandhi, 1984*<sup>87</sup>

In India, the indigenous people that are tribals, popularly known as *Adivasi*, are forest dependent people.<sup>88</sup> Tribals are an integral part of the Indian civilization. They belong to the earliest inhabitants of India and are also mentioned in *Vedas, Puranas*,

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<sup>87</sup> Letter from Indira Gandhi to Baba Amte, August 30, 1984, Cited in Smitu Kothari, "Whose Nation? The Displaced as Victims of Development" 31(24) *Economic and Political Weekly* 1476 (1996).

<sup>88</sup> Indigenous World 2020: India, available at: <https://www.iwgia.org/en/india/3601-iw-2020-india.html> (last visited on July 22, 2021).

*Ramayana and Mahabharata*.<sup>89</sup> They belong to the marginalised groups and their deprived condition was recognised by the Constitution makers that is why tribals were protected by the Constitution of India and they were recognised as Scheduled Tribes<sup>90</sup> by the Constitution of India.<sup>91</sup> There are 705 ethnic groups in India which belong to schedule tribes or tribals. According to 2011 census, tribals represent 8.6 percent of the total population of India.<sup>92</sup>

**Who are Schedule Tribes?** ST is nowhere defined in Constitution of India? according to Article 366(25) of the Constitution of India Scheduled Tribes means “such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution”.<sup>93</sup>

The Constitution does not define as to who are the persons who belong to schedule tribes. However, Article 342 empower the President of India to draw the list of tribes. The President after consultation with the governor of the concerned State. Any inclusion or exclusion in such list only can be done by the parliament by law.<sup>94</sup>

### **2.9.1 Impact of Large Dams on Tribal People**

Most of the large dam projects have invariably come up in tribal areas and causes displacement of tribals. However, tribals represents 8.6 percent of total population of India<sup>95</sup> even though almost 40 percent of dam oustees belong to the tribal communities.<sup>96</sup> In some States, up to 100 percent of the dam oustees are tribals.<sup>97</sup>

These displacement processes affect the tribal’s social and economic freedom, their cultural identity, violate their basic human rights and eventually downgrade them

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<sup>89</sup> L.P. Vidyarthi And B.K. Rai, *The Tribal Culture of India* 26 (Concept Publishing Company, New Delhi, 1976).

<sup>90</sup> Hereinafter ST.

<sup>91</sup> The Constitution of India, arts. 15, 16, 19, 46, 243D, 243T, 330, 332, 334, 335, 338A, 342, 366.

<sup>92</sup> Census 2011, *Office of the Registrar General*, India.

<sup>93</sup> The Constitution of India, art. 366(25).

<sup>94</sup> *Id*, art. 342.

<sup>95</sup> Census 2011, *Office of the Registrar General*, India.

<sup>96</sup> Ministry of Tribal Affairs, “Annual Report 2016-17: Socio-Economic Activities for Tribal Development” 47 available at: <https://tribal.nic.in/Statistics.aspx> (last visited on July 22, 2021).

<sup>97</sup> D. Gupta and P.K. Singh, “The Hidden Cost of Development: A Review of Mental Health Issues of Displaced Tribal Populations in India” 26 *Journal of Public Health* 718 (2018), available at: <https://doi.org/10.1007/s10389-018-0913-9>

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to the margins of society.<sup>98</sup> Outside their traditional, historic habitat, they are like fish out of water. It is seen that tribals have deep connection with their land.<sup>99</sup> They want a river for river and a forest for forest, but they are forced to leave their land in the name of development and national interest.

Singh states, precisely what is the impact of large dams upon oustees in India,

“Displacement caused by large dams has actually resulted in transfer of resources from the weaker sections of the society to the more privileged. Large dams do little to alleviate the existing social inequalities, on the contrary, they further aggravate the already skewed social structure in favour of socially, economically and politically powerful.”<sup>100</sup>

McCully, pointed out the impact of displacement on tribals as:

“In almost all of the resettlement operations for which reliable information is available, the majority of oustees have ended with lower incomes; less land than before; less work opportunities, inferior housing; less access to the resources of the commons such as fuel-wood and fodder; and worse nutrition and physical and mental health.”<sup>101</sup>

Following table (Table 2.4) is giving the detail information of some large dams and percentage of tribal oustees in India along with total oustees status:<sup>102</sup>

**Table 2.4: Large Dams and Percentage of Tribal Ousteers in India**

S.N.	Project	State	Total no. Ousteers	Percent of tribal ousteers
1.	Hirakud	Orissa, Madhya Pradesh	110,000	18.34 %
2.	Bhakra	Himachal Pradesh	36,000	34.76 %
3.	Pong	Himachal Pradesh	80,000	56.25 %
4.	Ukai	Gujrat	52,000	18.92 %

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<sup>98</sup> *Id* at 717.

<sup>99</sup> Malcolm King and Alexandra Smith, et al., “Indigenous Health Part 2: The Underlying Causes of the Health Gap.” 374 (9683) *The Lancet* 76 (2009), available at: [10.1016/S0140-6736\(09\)60827-8](http://dx.doi.org/10.1016/S0140-6736(09)60827-8).

<sup>100</sup> Satyajit Singh, *Taming the Waters: The Political Economy of Large Dams in India* 203 (Oxford University Press, Delhi, 1997).

<sup>101</sup> McCully, *Silenced Rivers: The Ecology and Politics of Large Dams* 77 (Zed Books, London, 1996).

<sup>102</sup> Amrita Patwardhan, “Dams and Tribal People in India: Prepared for Thematic Review I.2: Dams, Indigenous People and Vulnerable Ethnic Minorities” contributing paper no. 126, 34-35 (World Commission on Dams, 2000), available at: [http://files.rsamuel.webnode.com/200000303-a85b1a9550/Dams\\_and\\_tribal\\_people\\_of\\_India-1.pdf](http://files.rsamuel.webnode.com/200000303-a85b1a9550/Dams_and_tribal_people_of_India-1.pdf).

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5.	Lalpur	Gujrat	11,300	83.20 %
6.	Daman Ganga	Gujarat	8,700	48.70 %
7.	Karjan	Gujarat	11,600	100 %
8.	Icha	Orissa	30,800	80 %
9.	Manas	Bihar	3,700	31 %
10.	Chandil	Bihar	37,600	87.92 %
11.	Povalam	Madhya Pradesh, Andhra Pradesh	1,50,000	52.90 %
12.	Tittuli	Maharashtra	13,600	51.61 %
13.	Upper Indravati	Orissa	20,000	43.76 %
14.	Machkunda	Orissa	16,200	51.1 %
15.	Subarnarekha	Bihar	64,000	67.29 %
16.	Kabini	Karnataka	20,000	30 %
17.	Mandira	Orissa	n.a.	68.18 %
18.	Masanjor	Bihar	16,000	Mostly tribal
19.	Bansagar	Madhya Pradesh	1,42,000	75 %
20.	Mahi Bajaj Sagar	Rajasthan, Madhya Pradesh	35,000	76.24 %
21.	Kadana	Rajasthan, Gujarat	30,000	100 %
22.	Bisalpur	Rajasthan	70,000	70 % (SC+ST)
23.	Bargi	Madhya Pradesh	35,000	43 %
24.	Maithan and Pachet	Bihar, West Bengal	93,874	53.46 %
25.	Nagarjun Sagar	Andhra Pradesh	25,490	36 %
26.	Srisaillam	Andhra Pradesh	100,000	81% (SC+ST)
27.	Rihand	Uttar Pradesh, Madhya Pradesh	47,500	Mostly tribal
28.	Upper Kolab	Orissa	50,771	52 %
29.	Narmada Sagar	Madhya Pradesh	1,70000	20 %
30.	Sardar Sarovar	Gujarat, Maharashtra, Madhya Pradesh	2,00000	56 %
31.	Kulku	Orissa	14,000	Mostly tribal
32.	Surya	Maharashtra	7290	100 %

The overall percentage of rehabilitated oustees is very less that is nearly 25 percent of the total oustees. This is quite concerning because in this light tribals will be the one who are suffering the most.

Above discussion is making clear that tribals have been progressively alienated from their native place due to large dams which leads to violation of their human rights on a massive scale.

## **2.10 ADDRESSING ETHICAL ASPECTS OF DAM INDUCED DISPLACEMENT**

Development is always associated with massive infrastructure projects like large dams etc. seen in light of economic growth in terms of GDP. The purpose of development is to bring prosperity to the nation, to their people and make life of citizens easy. But whenever any developmental project is commissioned somewhere it causes displacement of people at a massive scale, for example large dam projects like India's Narmada dam project and China Gorge dam project and after displacement majority of oustees never get adequate rehabilitation and face the risk of impoverishment.<sup>103</sup> Apart from impoverishment there are many other risks like landlessness, joblessness, loss of civil and human rights etc.<sup>104</sup>

Typically, past experiences show that oustees are never compensated substantially, regardless of whether or not provision for compensation existed, *de facto* oustees losses were treated as their contribution to national development. Thus, dam induced displacement involve a fundamental dilemma, one side dam projects are associated with economic development to improve people's life and on the other side it is associated with forced displacement of people and make their life vulnerable.<sup>105</sup>

Development ethics is question about priorities and procedures, rights and responsibilities. The ethical issues are that, why oustees suffer the cost of development? What about their human rights? Why oustees are subjected to impoverishment if there are rehabilitation policies? These questions make development morally objectionable and require justification of it.

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<sup>103</sup> Michael M. Cernea, "The Risks and Reconstruction Model for Resettling Displaced Populations" in Maritta Koch Weser and Scott Guggenheim (eds.), *Social Development in the World Bank: Essays in Honor of Michael M. Cernea* 235 (Springer, 2021).

<sup>104</sup> Prabir Kumar Pattnaik, "Development Induced Displacement and Resettlement: Analysis of Judicial Policy" 55(3) *Journal of the Indian Law Institute* 348 (2013).

<sup>105</sup> Centre for Refugee Studies, "Ethics of Development-Induced Displacement Project", *Centre for Refugee Studies*, 5 (York University, 322 York Lanes, 2004), available at: <https://hdl-bnc-idrc.dspacedirect.org/bitstream/handle/10625/28418/120583.pdf>

**Now, what is the justification of displacement by large dam projects?** There are mainly three justifications given by the policy maker to justify the displacement by development projects specially in regard to dam projects.<sup>106</sup> They are:

- 1) First, development induced displacement occurs in public interest.
- 2) It is based on the principle of self-determination.
- 3) Development projects reduce inequality and based on the principle of equality.

These three broad justifications must be analysed as whether they are really justifications or not? **First** justification is that development induced displacement occurs in ‘public interest’, does it so?

The basis of public interest perspective is cost-benefit analysis, that is the negative side effects of projects (including displacement) are treated as costs and benefits of the project are treated as benefit.<sup>107</sup> The argument against this justification is that, at the time of analysis of cost of project the policy makers does not include the negative effect of displacement on oustees like risk of impoverishment, violation of basic human rights etc.<sup>108</sup> Policy makers only count compensation asserted by land valuation on market price along with some rehabilitation support amount as cost which would be awarded by government. Policy maker never recognise post displacement risks as costs of development project, which helps to show projects as a profitable one for government. Moreover, Politian justifies it by saying that “If you are to suffer, you should suffer in the interest of the country.”<sup>109</sup>

So, this justification is a political one, even though policy makers are aware of the post displacement risks but they are not ready to include it in cost of development and trying to justifying it in national interest.

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<sup>106</sup> Peter Penz, “Development, Displacement and Ethics” in Marion Couldrey and Tim Morris, *Dilemmas of Development-Induced Displacement* 4-5 (Forced Migration Review, Refugee Studies Centre, 2002), available at: <https://www.fmreview.org/development-induced-displacement>.

<sup>107</sup> Michael M. Cernea, “Why Economic Analysis is Essential to Resettlement: A Sociologist’s View” 34(31) *Economic and Political Weekly* 2150 (1999), available at: <https://www.jstor.org/stable/4408255>.

<sup>108</sup> *Id* at 2152.

<sup>109</sup> Jawaharlal Nehru, India’s first Prime Minister, speaking to villagers who were to be displaced by the Hirakud

Dam, 1948 as cited in Peter Penz, “Development, Displacement and Ethics” in Marion Couldrey and Tim Morris, *Dilemmas of Development-Induced Displacement* 4-5 (Forced Migration Review, Refugee Studies Centre, 2002), available at: <https://www.fmreview.org/development-induced-displacement>.

**Second** justification of development induced displacement is ‘self-determination’ which emphasizes that, it is the people who decide what is good or bad for them, what they need.<sup>110</sup> In our case oustees are the one who should have the right to decide, whether they need development or not.

As discussed earlier, displacement is always involuntary or forced one, which is against the principle of self-determination. On this point policy makers give the argument that, displacement is not forced one as government provides adequate compensation to the oustees before taking their land. They are not displaced but move voluntarily from the project affected area with their consent in lieu of adequate compensation from the government.<sup>111</sup> Ultimately policy makers try to say that there is consent on behalf of oustees hence there is no force or coercion hence their right to self-determination is not violated by government.

But, if the above argument of policy makers is true then why so much protest takes place against the development projects for example Narmada Bachao Andolan against the *Sardar Sarovar* dam project.<sup>112</sup> Apart from this there is also an issue of inadequate compensation and ineffective rehabilitation policy. This justification is also not correct.

**Last one**, ‘equality; the policy maker claims that development induced displacement is also justified because development projects bring prosperity and helps to make countries economically better, which ultimately leads to reduce the poverty of citizen and also provide livelihood opportunities to people.<sup>113</sup>

This claim is also based on insufficient evidences. There are a lot of researches done by various scholars which clearly show that, in most of the cases post displacement oustees suffer many physical and mental trauma. Ousteers have to pay the cost of development even though they never get any benefit or nominal benefit from

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<sup>110</sup> Joanne Barker, “Self-Determination” 1(1) *Critical Ethnic Studies* 11 (2015).

<sup>111</sup> Peter Penz, “Development, Displacement and Ethics” in Marion Couldrey and Tim Morris, *Dilemmas of Development-Induced Displacement* 4-5 (Forced Migration Review, Refugee Studies Centre, 2002), available at: <https://www.fmreview.org/development-induced-displacement>.

<sup>112</sup> John R. Wood, “India’s Narmada River Dams: Sardar Sarovar under Siege” 33(10) *Asian Survey* 968 (1993).

<sup>113</sup> P. Penz, “The Ethics of Development-induced Displacement” 16(3), *Refuge: Canada’s Journal on Refugees* 40 (1997), available at: <https://doi.org/10.25071/1920-7336.21926>

development projects.<sup>114</sup> Apart from this whenever the dam oustees are displaced from their natural habitat, they also separate from their livelihood and are force to find alternative income source as low-wage laboring.<sup>115</sup> These evidence-based researches outcome clearly denying the third justification.

**Now question arises that, what is the response to displacement?** Because development projects are also essential and ‘right to development’ is also a fundamental right. Peter Penz and Jay Drydyk, et.al have identified four basic principle that may be used to decide the ethics of displacement:<sup>116</sup>

- 1) Right to non-victimization that is people have a right to be free from ‘net losses’ resulting from displacement.
- 2) Right to the benefits of development that is people have “a right to share equitably in the benefits of the development that has displaced them.”
- 3) Right of ‘reason’ which suggests that people may be displaced if they have the opportunity to engage in fair deliberation about the values that distinguish worthwhile development from maldevelopment.
- 4) Right of equitable empowerment that is people have a right to achieve equitable outcomes (defined primarily in relation to rights 1 and 2).

Ethical analysis to dam induced displacement helps to mitigate the impact of displacement and makes rehabilitation process more successful. Outcome of ethical analysis suggest some useful possibilities which are justifying development induced displacement if certain conditions meet.

Development agencies should have taken into consideration the post displacement condition of oustees and included it in cost benefit analysis. There is pre-existing coercion or force in development which cannot be justified but by executing adequate rehabilitation and resettlement policies it can be reduced and people’s right to self-determination would be protected. Dam projects could only be synonymous with

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<sup>114</sup> Scott W.D. Pearse Smith, “The Return of Large Dams to the Development Agenda: A Post-Development Critique” 11 *Consilience: The Journal of Sustainable Development* 126 (2014).

<sup>115</sup> Katie Jenkins, Lyndia McGauhey, et.al., “Voices from the Margin: Economic, Social and Cultural Rights in Northeast Thailand: Pak Mun Dam” *Pak Mun, Thailand: Peace and Human Rights Center of Northeast Thailand* (2008).

<sup>116</sup> Peter Penz and Jay Drydyk, et.al., *Development: Ethics, Rights and Responsibilities* 211 (Cambridge University Press, U.K., 2011).

equality if dams make oustees life also better and secured their livelihood too. The end of development must be the happiness of all not only a handful people.

## **2.11 REHABILITATION AND RESETTLEMENT: MEANING AND CONCEPT**

The construction of the large dam projects inevitably involves rehabilitation and resettlement<sup>117</sup> of huge population from the affected area. A ‘bad’ R & R component can discolor the repopulation of the project. The importance of R & R policy is that it can mitigate the negative impact of displacement and also create development opportunities for project affected people, that is why government should to focus upon the R & R policy and as much as possible to make it adequate and effective.

The first requirement of R & R policy is that there will be a reasonable estimate of the number of people who would be affected but in most of the cases the number of projects affected people is not available.<sup>118</sup> M.H. Mathur states that “poor preparation of re-settlement plans is the single most important reason for failure of resettlement components in development project.”<sup>119</sup> According to WCD, 75 percent of the people displaced by the dam in India have not been rehabilitated and impoverished.<sup>120</sup>

Before discussing the term R & R, it is important to understand term ‘displacement’. Displacement implies not only physical evidence from dwelling, it is also described status quo in which some people are deprived of their productive lands or of other income-generated resources without being physically evicted from their home.<sup>121</sup>

Now discussion on the term R & R. The researchers outside India use the term ‘involuntary resettlement’ which is a combination of ‘displacement’ and ‘resettlement’, which emphasis on involuntariness which connotes directly the forced displacement.<sup>122</sup>

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<sup>117</sup> Hereinafter R & R.

<sup>118</sup> Hari Mohan Mathur, “Making Resettlement Work: Policy, Planning and Management” in Hari Mohan Mathur (eds.), *Resettling Displaced People: Policy and Practice in India* 26-74 (Routledge, New Delhi, 2011).

<sup>119</sup> *Id* at 30.

<sup>120</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision Making - The Report of the World Commission on Dams* 260 (Earthscan, New York, 2013).

<sup>121</sup> S. Parasuraman, *The Development Dilemma: Displacement in India* 3 (Tata Institute of Social Sciences, Bombay, 1999).

<sup>122</sup> *Id*.

But in Indian context, the term ‘involuntary resettlement’ does not use by policy maker as well as researchers. The conceptualization of these two (displacement and resettlement) sets of processes is slightly different. In India the government use official terminology at the place of ‘involuntary displacement’ is “rehabilitation and resettlement”. This government preferred terminology has influenced the many researchers in India as well. Why does government use it? It has two observations:

- 1) This official terminology avoids the explicit reference to ‘displacement’ which shows the socioeconomic hardship and losses.
- 2) This official terminology also suggest that the post-displacement phase consists of two different process that is:
  - a. *Rehabilitation* connotes the restoration of lost economic and social ability.
  - b. *Resettlement* refers only physical relocation of oustees.

R & R expression sounds more natural and may be politically more convenient compare to ‘involuntary resettlement’ which is a combination of ‘displacement and resettlement’. Both terminologies are nearly the same. Displacement is a harsh terminology that is why government prefers to avoid the use of involuntary displacement. But by avoiding the ‘involuntary displacement’ terminology, government neither enhances conceptual precision nor makes the real problem disappear. On the other hand, perhaps separating the two ‘R’s is useful refinement, because it calls attention to their distinctiveness and to the unfortunate fact that people can be resettled without being ‘rehabilitated’.

In fact, many scholars from India who are doing research on R & R have proved by empirical studies that government agencies are focusing more on ‘resettlement’ without the proper ‘rehabilitation’ of oustees.<sup>123</sup>

## **2.12 MODELS OF REHABILITATION AND RESETTLEMENT PROCESS: AN ANALYSIS**

R & R is a process of transformation of oustees that is displacing native people and rebuilding their livelihood. It is a transformation of social relation, social behavior and the adoption of totally alien environment by oustees. The primary goal of any R &

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<sup>123</sup> *Id* at 4.

R process is to prevent impoverishment and to improve the livelihood of oustees.<sup>124</sup> The purpose of doing the analysis of stages of R & R is to find out the answer to “how people part of the wider social-cultural system responds to R & R.” The understanding of stages of R & R is related to ‘process of social transformation of oustees’, it has no relation with operational stages of implementation of R & R policy.

There are many scholars and researches who have analyzed the specific stages of R & R and most of them did this from the point of view of socio-economic transformation of oustees after displacement. But following two models are the most acceptable as well as practicable one. Both models are deal with the dam induced displacement and other type of situation as well:<sup>125</sup>

- 1) **First one:** Four-stage model given by T. Scudder and E. Colson,
- 2) **Second one:** Cernea’s impoverishment risk construction model.

Detail study of the both models are following:

### **2.12.1 T. Scudder and E. Colson’s Four Stage Model**

This four-stage model of R & R given by T. Scudder and E. Colson, exclusively deal with process of R & R in connection with DID. According to T. Scudder this model is behavioral and focuses on the theory as to how the majority of oustees can be expected to behave during successful R & R process.<sup>126</sup> According to this model, there four main stages of Resettlement process:

- 1) **First Stage:** Planning and Recruitment,
- 2) **Second Stage:** Adjusting and Coping,
- 3) **Third Stage:** Community Formulation and Economic Development,
- 4) **Fourth Stage:** Handing Over and Incorporation.

The first stage, *Planning and Recruitment*, deals with the opening process of R & R. This stage focuses on initial process of planning of R & R for example, population identification, displacement, rehabilitation and development.<sup>127</sup> In most of the cases of

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<sup>124</sup> Michael M. Cernea, “Why Economic Analysis Is Essential to Resettlement: A Sociologist’s View” 34(32) *Economic and Political Weekly* 2149 (1999), available at: <https://www.jstor.org/stable/4408255>.

<sup>125</sup> Thayer Ted Scudder, *The Future of Large Dams: Dealing with Social, Environmental, Institutional and Political Coasts* 31 (Earthscan, London, 2005).

<sup>126</sup> *Id* at 32.

<sup>127</sup> *Id* at 34.

displacement native people are not involved by authorities in planning and decision making, which is a wrong practice. For the better R & R process it is necessary that those who are going to be displaced must be given the chance to participate in planning and decision making.<sup>128</sup> Native people participation in planning and decision making could make R & R process more successful and also may reduce the stress of people who are going to be displaced by the project as they themselves prepared their R & R process. One more thing must be taken in to consideration when authorities making R & R plan that oustees people must get development opportunities and project benefits as beneficiaries rather than compensation.

Second stage, *Adjusting and Coping*, this stage deals with the physical displacement of native project affected people from project area to rehabilitation sites. This process of physical relocation/displacement may take years (sometime two to five years) depending upon the size of affected population.

This stage has two specific characteristics, first one is that decline in the living standard of oustees and other one is change in their behaviour, they start behaving conservatively. Ousteas standard of living declined due to many reasons for example, oustees have to adopt new habitat, they have to live with new neighbours, also have to start new economic activity, some time they face issues related with land fertility and many more other reasons. In this adjusting period oustees have to adjust and copy a new physical and biotic environment along with new neighbour and frequent government intervention.<sup>129</sup>

The problems associated with this stage can be minimized if there is cooperation between oustees and authorities responsible for R & R process. The effective cooperation with R & R agencies, transparency in land acquisition and R & R process and satisfaction of necessary economic demand can minimise the evil effect of this stage.

Third stage, *Community Formulation and Economic Development*, this stage deals with socio-economic transition of oustees in the initial years of displacement from

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<sup>128</sup> Bogumil Terminski, *Development-Induced Displacement and Resettlement: Causes, Consequences and Socio-Legal Context* 480 (Ibidem Press, Stuttgart 2015).

<sup>129</sup> Thayer Ted Scudder, *The Future of Large Dams: Dealing with Social, Environmental, Institutional and political costs* 34 (Earthscan, London, 2005).

their native place. In their initial year of displacement, oustees are usually associated with the process of adoption to the alien environment and deterioration of their economic situation. If this process of adoption and their economic condition, both are not managed rapidly and properly then it would lead to impoverishment.<sup>130</sup>

The only remedy is that oustees have to change their behaviour radically towards the rehabilitated site and have to adopt it as their home. Along with it they have to form communities in new area like farmer union, association, cooperative society etc. They have to change their social behaviour too. Apart from this, R & R agencies should help oustees to improve their economic condition and provide them opportunities for development.<sup>131</sup>

Last stage that is fourth one, *Handing Over and Incorporation*, this stage ends the process of R & R. This stage involves the second generation of oustees.<sup>132</sup> This stage of process is related to socio-economic and political intergeneration of oustees in re-located territory. The term intergeneration can be understood as a full unification of oustees with the socio-economic and political system of re-located territory.

For bringing the R & R process to a successful ending, three conditions must be satisfied:

- 1) Handing over of project assets to settler institution, to the private sector or to NGOs,
- 2) Ousteas living standards must continue to improve at least in line with improvements in neighbouring areas,
- 3) Ousteas must have the institutional and political strength to compete for their fair share of national resources.

This four-stage model has been given for a successful R & R process. Every stage has their particular phase of transition along with some specific condition which must be followed to make R & R successful.

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<sup>130</sup> *Id* at 35.

<sup>131</sup> Bogumil Terminski, *Development-Induced Displacement and Resettlement: Causes, Consequences and Socio-Legal Context* 481 (Ibidem Press, Stuttgart 2015).

<sup>132</sup> Thayer Ted Scudder, *The Future of Large Dams: Dealing with Social, Environmental, Institutional and political costs* 40 (Earthscan, London, 2005).

### **2.12.2 Cernea's Impoverishment Risk Construction Model**

Michael M. Cernea was a full-time sociologist and anthropologist. He was the one who introduced sociological and anthropological methods into the World Bank. Most of his work related to the development induced displacement and resettlement. According to him, "impoverishment of Oustees is the primary risk of involuntary displacement by development project."<sup>133</sup> He again pointed out that the large majority of oustees never got adequate rehabilitation and face 'impoverishment risks and these risks inherent in involuntary displacement by development project.<sup>134</sup> These risks have variable intensities. These are: Landlessness, Joblessness, Homelessness, Marginalization, Food insecurity, Increased morbidity and mortality, Loss of access to common property, social disintegration.

Apart from this there are some additional consequential risks are given by some authorities. For example, T. Downing<sup>135</sup> and others have added few more risks like loss of access to services, disruption of formal education activities, and loss of civil and human rights.<sup>136</sup>

This model of R & R process is based on three theoretical and practical questions that are:

- 1) How does impoverishment through displacement occur?
- 2) How can it be prevented?
- 3) how can the livelihood of displaced people be reconstructed?

According to Cernea, impoverishment is not inevitable. It is the unavoidable cost of development. But its evil socio-economic impact may be reduced by adopting Socially responsible resettlement that is resettlement guided by an equity "compass" can counteract lasting impoverishment and generate benefits for both the regional and

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<sup>133</sup> Michael M. Cernea, "The Risks and Reconstruction Model for Resettling Displaced Populations" in Maritta Koch-Weser and Scott Guggenheim (eds.), *Social Development in the World Bank: Essays in Honor of Michael M. Cernea* 235 (Springer, 2021).

<sup>134</sup> *Id.*

<sup>135</sup> T. Downing, *Avoiding New Poverty: Mineral-Induced Displacement and Resettlement* (Mining, Minerals and Sustainable Development and International Institute for Environment and Development, 2002).

<sup>136</sup> Prabir Kumar Pattnaik, "Development Induced Displacement and Resettlement: Analysis of Judicial Policy" 55(3) *Journal of the Indian Law Institute* 348 (2013).

for the local economy.<sup>137</sup> This model can serve various social actors of resettlement processes namely: policy makers, project designers, social researchers and of course the Resettlers.

The key message of the both the models is that it is not necessary to concern too much about displacement, but that one must find ways and means to minimise physical, economic, social and psychological impacts of physical displacement, by creating opportunities and avenues for those displaced to participate in development interventions, so that they could benefit from them. Both models stress that development interventions trigger growth and benefit not only the displaced persons and communities, but also national or regional populations. For this, vigorous planning is vital and it is the responsibility of project authorities to formulate resettlement plans and implement them in consultation with oustees. Thus, both models are essentially planning tools. They claim that through better policies and laws, and planning tools such as ‘reconstruction’ plans, resettlement experiences could be transformed into development opportunities.

However, one important difference between the two models is oustees perceptions of their fate. The Four Stage Model pays attention to how displaced people feel about their displacement and resettlement. Initial fear of change helps Resettlers, according to the Four Stage Model, to reconstitute their lives after a major insult to their physiological, psychological and socio-cultural well-being. On the other hand, Impoverishment Risk Construction Model is not concerned with how displaced people feel about the trauma caused by involuntary displacement and resettlement; instead, it expects oustees to be patient until the project authorities convert the physiological, psychological and socio-cultural trauma generated by development interventions into development opportunities.

Both models use ‘resettlement’ instead of ‘displacement’ as their key concept. The word ‘displacement’ carries certain historical realities, such as forced eviction or practices of acquisition without compensation. But the two models avoid ‘displacement’ not because of its association with historical realities, but to avoid

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<sup>137</sup> Michael M. Cernea, “The Risks and Reconstruction Model for Resettling Displaced Populations” in Maritta Koch-Weser and Scott Guggenheim (eds.), *Social Development in the World Bank: Essays in Honor of Michael M. Cernea* 237 (Springer, 2021).

addressing of human rights such as the right to shelter, decent living and property, which are intrinsically associated with physical displacement.

## **2.13 ADDRESSING IMPORTANT ASPECTS OF ADEQUATE PLANNING OF R & R**

One the primary goal of R & R is to minimize the adverse effect of involuntary displacement and to provide environment to dam oustees for post displacement development. Whenever displacement occurs, it involves a large number of people and the policy on R & R requires an effective action plan. But the irony is that till 2004 India did not have any policy on R & R.

History of displacement shows that most of the R & R plan failed due to bad preparation. According to World Bank, inadequate R & R plan will fail to prevent impoverishment after displacement.<sup>138</sup> The first and most important requirements of any R & R plan is to identify that who is going to be displaced by the project but in most of cases this information is not available. Morse and Berger, while reviewing the Sardar Sarovar Dam Project, finds that “The World Bank and Government of India both failed to find out adequate assessments of R & R and also failed to determine the impacts of displacement due to Sardar Sarovar Dam, leads to an inadequate understanding of the nature and scale of resettlement.”<sup>139</sup>

R & R is primarily a management issue. Whenever people are involuntary displaced to some new place, they have to leave their well settled proper habitat and relocate to an unsettled new place. At the re-located place, they have everything temporary until they successfully rehabilitate. They need permanent house, electricity, water, religious places, transportation services, school and many other basic things as soon as possible for their better rehabilitation.

There are several planning and implementation issues of R & R, which are often neglected by the policy makers. Some of them are followings:

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<sup>138</sup> World Bank, *Resettlement and Development: The Bankwide Review of Projects Involving Involuntary Resettlement* (Washington DC, The World Environment Department, 1994).

<sup>139</sup> Bradford Morse & Thomas R. Berger, “Sardar Sarovar: Report of the Independent Review” 9 (Resource Futures International, Ottawa, 1992), available at: <https://www.ielrc.org/content/c9202.pdf>.

### **2.13.1 Social Impact Assessment**

As discussed earlier, the primary purpose R & R plan is to mitigate the adverse impact of involuntarily displacement. The major problem of R & R is that proper study of adverse effect of project is not conducted. When the impact is not identified appropriately at planning stage then it becomes difficult to eradicate the adverse effect of the project at the later stages. According to Maninder Gill, “the planning process of many dams is based on an inadequate assessment of adverse impacts. There have been instances where entire categories of impact were not identified. While it is relatively easy to survey those whose land, house and other assets are taken for the dam, others, who might be using the river and its catchment for collecting forest products, seasonal fishing, grazing and similar activities, are easy to miss.”<sup>140</sup>

There are many reasons which make social impact assessment a difficult task, for example, remoteness of project sites, census, socio-economy survey of affected people etc. if social impact assessment has not been done properly, it will influence the project throughout the life of that project. That is why social impact assessment should be treated as a distinct project preparation activity and should be done on priority basis.

### **2.13.2 Participation**

Right to participation is one of the most fundamental rights of dam oustees. Those who are affected by dam project must be allowed to participate in the policy making process. Dam projects bring compulsory displacement which cannot be avoided. Participation in R & R process by dam oustees will definitely help in mitigating the impact of displacement, because they are the sufferer and they know their best interests. What would be good for dam oustees, should be decided by them. But irony is that in most of the cases of dam induced displacement oustees know about the project when they get the notice of eviction.

There are many evidence-based researches which suggest that whenever affected people participate in policy making process then it was found that R & R

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<sup>140</sup> Maninder Gill, “Large Dam Resettlement: Planning and Implementation Issues”, in Hari Mohan Mathur (eds.), *Managing Resettlement in India: Approaches, Issues, Experiences* 173-194 (Oxford University Press, New Delhi, 2006).

outcome was more successful.<sup>141</sup> The participation approach served the purpose of combating tendencies toward sullen and resentful dependency, which often beset the people whose lives are already controlled by other.

### **2.13.3 Special Focus on Tribal People and Other Vulnerable Groups**

In India displacement caused by large projects have resulted in a transfer of resources from the weaker sections of society to more privileged ones. Particularly large dams, which are responsible for displacement of tribals at large scale, who never share the benefits of development.<sup>142</sup> McCully, pointed out the impact of displacement on tribals as:

“In almost all of the resettlement operations for which reliable information is available, the majority of oustees have ended with lower incomes; less land than before; less work opportunities, inferior housing; less access to the resources of the commons such as fuel-wood and fodder; and worse nutrition and physical and mental health.”<sup>143</sup>

Government documents recognize the problem associated with cash compensation, particularly in case of tribal people. In tribal areas, where the displaced persons are given only cash compensation, the tendencies to spend the compensation amount by buying consumer goods and becoming destitute are common. In most of the projects, the tribal oustees become listless wanderers without a mooring.<sup>144</sup> Despite this, paying of cash compensation is continue.

Tribal people suffer the dilemma of dam induced displacement more than any other community and in most of the cases they are not able to claim their compensation properly because of their poor education qualifications. All of these are important reasons, why they should get extra attention from government and special treatment in R & R policy.

Like tribal people, Vulnerable groups other than tribals, are also critically affected by dam induced displacement. They are women, children, sick, old age people,

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<sup>141</sup> Scott Guggenheim, “Mexico Hydroelectric Project” in World Bank, *The World Bank Participation Sourcebook*, 71-72 (World Bank, Washington DC, 1996).

<sup>142</sup> Biswaranjan Mohanty, “Displacement and Rehabilitation of Tribals” 40(13) *Economic and Political Weekly* 1318 (2005).

<sup>143</sup> McCully, *Silenced Rivers: The Ecology and Politics of Large Dams* 77 (London: Zed Books, 1996).

<sup>144</sup> Smitu Kothari, “Whose Nation? The Displaced as Victims of Development” 31(24) *Economic and Political Weekly* 1477 (1996).

physically or mentally handicap etc. Vulnerable people are at the same footing as tribal, they are also not able to claim advantage of R & R process due to their Vulnerability.<sup>145</sup>

### **2.13.4 Adequate Compensation**

According to Black's Law Dictionary adequate compensation means, "a payment by government for property taken under eminent domain- usually the property's fair market value, so that the owner is theoretically no worse off the taking."<sup>146</sup> However, compensation alone cannot lead to R & R process successful. According to Mr. Cernea, "compensation alone cannot prevent impoverishment: it must be enhanced to be fairer, and it must be supplemented by investment for development. If used alone, its corollary is impoverishment, not development."<sup>147</sup> Compensation may be in form of cash, land, employment or self-employment.<sup>148</sup>

Followings are some important points which must be taken in to account when it is awarded:

- 1) Compensation is given only to those people who have ownership rights and ignore them who are directly or indirectly dependent on lands or their surroundings. For example, landless workers, agricultural labour, forest dweller, most of the tribals etc. Government should recognise them and include such people in the R & R process.
- 2) Sometime oustees would not get enough compensation to buy another piece of land at the new place. The circle rate of lands does not same at every place. Land price is decided by locality and surroundings. Same size of land has different-different rate at different places. Whenever oustees would get compensation for their land they get according to their land locality and when they try to purchase same piece of land outside the affected area then they have to pay extra price for it. Due to lack

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<sup>145</sup> International Finance Corporation, *Handbook for Preparing a Resettlement Action Plan* 15 (IFC, Washington DC, 2002).

<sup>146</sup> Black's Law Dictionary 322 (9th ed. 2009).

<sup>147</sup> Michael M. Cernea, Hari Mohan Mathur (eds.), *Can Compensation Prevent Impoverishment? Reforming Resettlement Through Investments and Benefit-sharing* 91 (Oxford University Press, New Delhi, 2008).

<sup>148</sup> Hari Mohan Mathur, "Making Resettlement Work: Policy, Planning and Management" in Hari Mohan Mathur (eds.), *Resettling displaced people: Policy and practice in India* 26-74 (Routledge, New Delhi, 2011).

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of money most of the oustees becomes landless. So, whenever government awards compensation for land then they should take notice of such situation.

- 3) In most of the cases oustees will get compensation after a long time. Some time they have to wait more than 3 to 5 years, which leads to impoverishment. Compensation amount should be given to oustees in due course of time. Until they received the full amount, they should not be moved to resettlement areas.<sup>149</sup>
- 4) Getting compensation amount from the authorities is a very hard task, even though compensation was released by the government oustees have to put many efforts to get it. Most of the oustees have to give bribe to get their compensation amount. There are very few oustees who get their compensation without any deduction.<sup>150</sup>
- 5) Whenever oustees get cash compensation, they would develop the false sense of richness and in this false sense of behaviour they lose their money. Most the oustees have never seen such a huge amount of cash before that is why, sudden cash flow makes them confused. They don't know how to spend their money. Most of them spend their compensation money in gambling or drinking.<sup>151</sup>
- 6) Barter of land is more successful way of compensation compare to cash compensation scheme. But this procedure has also its flaw, for example, fertility of land is not universal. In many cases oustees will get less fertile or infertile land. Fertility of land is essential aspect of agriculture which cannot be ignored.<sup>152</sup>
- 7) Sometime oustees get new land too far from their old habitat, in that case they would prefer to move elsewhere and choose not to stay at the resettlement site. So, these types of flaws also need attention from the government when land for land is awarded as compensation.<sup>153</sup>

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<sup>149</sup> World Bank, "Report No. 17538: Recent Experiences with Involuntary Resettlement: Overview", 8-9 (The World Bank Operational Evaluation Department, Washington DC, 1998).

<sup>150</sup> S. Punya Srivastav, "Population Displacement Associated with Industrial Development: The Case of Bhiwadi", in Hari Mohan Mathur (eds.), *The Resettlement of Project-Affected People: Proceeding of Training Seminar*, 111-119 (The HCM Rajasthan State Institute of Public Administration, Jaipur, 1995).

<sup>151</sup> Jagdish Pokharale, "Population Displacement and Compensation Planning in Kulekhani Hydroelectric Project, Nepal", In Hari Mohan Mathur and M. Cernea (eds.), *Development, Displacement and Resettlement: Focus on Asian Experience*, 139-550 (Vikas Publishing House, New Delhi, 1995).

<sup>152</sup> Catherine Caufield, *Master of Illusion: The World Bank and Poverty of Nation* (Macmillan, London, 1997).

<sup>153</sup> Hari Mohan Mathur, "Making Resettlement Work: Policy, Planning and Management" in Hari Mohan Mathur (eds.), *Resettling displaced people: Policy and practice in India* 26-74 (Routledge, New Delhi, 2011).

8) In self-employment compensation scheme, generally a oustees get totally different job, for example, farmer gets the post of manager. Which make oustees uncomfortable and in most of the cases due to work hesitation they leave the job. So, whenever government provides job as compensation, it should take in to consideration the skill and knowledge of the oustees.<sup>154</sup>

The fact that most of the compensation scheme is drafted in a hurry without the proper research and the participation of oustees, leads to high rate of failure.

### **2.13.5 Relocation and Income Restoration**

Relocation of dam oustees after displacement is one of the principal tasks. Most the cases of displacement are always forced one. Ousteas always resist the process of relocation because of their social and cultural tie to their native places. Ousteas have to start their life from the beginning after the relocation, they have to seek new job, livelihood etc. The WCD has observed “Resettlement sites are often selected without reference to the availability of livelihood opportunities or the preference of displaced persons themselves.”<sup>155</sup>

For making relocation process successful, it is necessary that authorities which are responsible for relocation provide all necessary information like suitability of relocation area, livelihood opportunity, quality of fertility of agricultural land and other important things, provided to oustees.<sup>156</sup>

After the relocation, next important thing is to restore the income of oustees as it was before displacement or better than that. Even though there is a growing concern over the fate of dam oustees, the history shows that income-restoration programmes remain mostly unsatisfactory. According to World Bank, “income restoration is the weakest part the of resettlement planning.”<sup>157</sup> Income restoration scheme should be included in every R & R policy and there should be special mechanism to administer it.

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<sup>154</sup> *Id.*

<sup>155</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 107 (Earthscan, New York, 2013).

<sup>156</sup> F. Davidson, M. Zaaijer et.al., *Relocation and Resettlement Manual: A Guide to Managing and Planning Relocation* (IHUD, Rotterdam, 1993).

<sup>157</sup> World Bank, “Report No. 17538: Recent Experiences with Involuntary Resettlement: Overview”, 48 (Washington DC: The World Bank Operational Evaluation Department, 1998).

### **2.13.6 Oustees as Project Partner and Benefit Sharing**

Oustees as project partner or get share in profit, is a new approach to resettlement. Evidences showing that these two approaches are far better from the compensation in cash for the land loss.<sup>158</sup> In customary practices oustees are getting compensation for their acquired land, which is never adequate to improve their living standard.

These new approaches recognised land as share, oustees contributed their share in form of land hence they need to be recognised as shareholders. Apart from this the project generates many benefits which should also be shared with oustees equitably.

But this new approach has problem too. It is not necessary that all projects flourished and gain benefits. There is chance that project may be go in to loss. In that case oustees would suffer. To protect oustees from such situation, it is necessary that the project should have a sufficient guarantee of profitability. Otherwise, it will expose the oustees to risks of displacement. So, it would be best to avoid oustees to make share holder or benefit sharer in risks-based projects.

## **2.14 SUM-UP**

In this chapter, the researcher has studied history, meaning, concept as well as various other aspects of Dam induced displacement. From the forgoing discussion one thing is clear that the issue of dam induced displacement is not an illusionary one, it is real and making oustees life vulnerable. Tribals are the ones who are suffering the most. After displacement trauma is showing that rehabilitation and resettlement law and policies are not sufficient. Oustees are paying heavy price for development on the name of national interest, they are forced to leave their well settled native places and it is also proved by evidences they are not getting adequate compensation, some time they have to give bribes for the release of their compensation amount. Ethical aspect of displacement is clearly showing that policy makers are justifying displacement on insufficient grounds.

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<sup>158</sup> Michael M. Cernea and Hari Mohan Mathur, *Can Compensation Prevent Impoverishment? Reform Resettlement Through Investments and Benefit-Sharing* (Oxford University Press, New Delhi, 2008).

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In short, oustees basic human rights are violated by the State in process of dam induced displacement, which need to be identified and protected by the national and international institutions both. The dilemma of dam induced displacement needs immediate concern and rapid actions by authorities.

# CHAPTER-III

## DAM OUSTEES AND HUMAN RIGHTS

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### 3.1 PRELUDE

“Human rights are foreign to no culture and native to all nations; they are universal.”

*Kofi A. Annan<sup>1</sup>*

There is a very close relationship between dams and displacement. Dams are commissioned for development, which mean to enrich the citizen of the country but unfortunately ends up with displacing native people from their native places leading to massive violation of their human rights. Human rights violation is one of the most important aspects of the study of dam induced displacement and without fixing the human rights concern this study will not be completed.

The concept of human rights is one of the most debated areas since the second half of the last century. The last century had seen two side of human civilization, *one side* was events of deprivation, inequalities, exploitation, human killing etc. *On the other side*, there were attempts to protect humanity, rights, equality, liberty and many other human values. The concept of human rights related to second side of domain had become popular in national as well as international world. In 1948, United Nations<sup>2</sup> General Assembly has adopted Universal Declaration of Human Rights,<sup>3</sup> which is considered as the official beginning of human rights moment of modern times.<sup>4</sup>

The modern concept of human rights has developed in three generation, namely, first generation, second generation and third generation. *First generation* human rights, also known as ‘blue rights’, deal with civil and political liberties and were developed during US and French revolution. These rights are adopted in UDHR (Article 3 to 21)

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<sup>1</sup> Former Secretary-General of the United Nations, Address at the University of Tehran on Human Rights Day (Dec. 10, 1997).

<sup>2</sup> Hereinafter UN.

<sup>3</sup> Hereinafter UDHR.

<sup>4</sup> Sarbani Guha Ghosal, “Human Rights: Concept and Contestation” 71(4) *The Indian Journal of Political Science* 1103 (2010), available at: [www.jstor.org/stable/42748940](http://www.jstor.org/stable/42748940).

and ICCPR. *Second generation* human rights deal with economic and social rights and developed from Russian revolution and working-class people struggle during 19<sup>th</sup> century. They are recognised in UDHR (Article 22 to 28) and the International Covenant on Economic, Social and Cultural Rights<sup>5</sup>. *Third generation human rights* deal with collective rights, also known as ‘solidarity rights’ or ‘green rights.’<sup>6</sup>

Most of the rights of dam oustees fall under the third generation of human rights. Third generation human rights are including; Right to participation in cultural heritage, right to self-determination, right to economic and social development, Group and collective rights, right to natural resources, right to a healthy environment, right to communicate and communication rights and rights to intergenerational equity and sustainability.<sup>7</sup> It is to be noted that collective rights are evolved from the first and second generation human rights, especially which are mentioned in UDHR and two international covenants. Thus, it will not be incorrect to state that third generation rights have their roots in the International Bill of Human Rights.<sup>8</sup>

According to Michael M. Cernea, “impoverishment of Oustees is primary risk of involuntary displacement by development project.”<sup>9</sup> He again pointed out that the large majority of oustees have face ‘impoverishment risks and these risks inherent in involuntary displacement by development project.’<sup>10</sup> These are: Landlessness, Joblessness, Homelessness, Marginalization, Food insecurity, Increased morbidity and mortality, Loss of access to common property, social disintegration.

Dam projects lead to massive displacement and violate a number of basic human rights. It is State responsibility, who is human rights bearer, to protect the human rights of oustees as specified in Article 2 of Declaration on the Right and Responsibility “Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia , by adopting such steps as may be necessary

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<sup>5</sup> Hereinafter ICESCR.

<sup>6</sup> Priyanca Mathur Velath, “Development and Displacement: Rights Based Theoretical Analyses”, In Renu Modi (eds.), *Beyond Relocation: The Imperative of Sustainable Resettlement* 63-82 (SAGE Publications, India, 2009).

<sup>7</sup> *Id.*

<sup>8</sup> H.O. Agrawal, *Human Rights* 171 (Central Law Publication, Prayagraj, 16<sup>th</sup> edn., 2018).

<sup>9</sup> Michael M. Cernea, “The Risks and Reconstruction Model for Resettling Displaced Populations” in Maritta Koch-Weser and Scott Guggenheim (eds.), *Social Development in the World Bank: Essays in Honor of Michael M. Cernea* 235 (Springer, 2021).

<sup>10</sup> *Id.*

to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.”<sup>11</sup> In theory, oustees as rights holders should be able to enjoy basic human rights which belong to third generation human rights.

### **3.2 WHAT ARE HUMAN RIGHTS?**

Earth has many species; humans are one of them but humans are graced by mother nature with some extraordinary abilities like intelligence and conscience which makes them different from other species. It is believed that human race is a civilised one. Human civilization is based on the principle of respect and reverence for the intrinsic value of human life.<sup>12</sup> Humans are rational beings, by virtue of being human they possess certain basic inalienable rights which cannot be denied, these rights are known as human rights.<sup>13</sup>

The concept of human rights declares that every individual has a legitimate claim for some essential freedoms and benefits from his or her society.<sup>14</sup> The preamble of UDHR emphasises that “...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...”.<sup>15</sup> The idea of human rights is a political one which has moral foundations. It implies that every government has limitation and that limitation must be followed by government in every circumstance, including limits on what can be done to individual even for the public interest.<sup>16</sup> These rights are not guaranteed by any government rather being a human, humans are entitled to them.

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<sup>11</sup> UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, A/RES/53/144 (March 8, 1999).

<sup>12</sup> S.D.K. Singh, “Evolution and Enforcement of Human Rights” 47(4) *Indian Bar Review* 238 (2020).

<sup>13</sup> H.O. Agrawal, *Human Rights 2* (Central Law Publication, Prayagraj, 16<sup>th</sup> edn., 2018).

<sup>14</sup> Louis Henkin, “The Universality of the Concept of Human Rights” 506 *The Annals of the American Academy of Political and Social Science* 11 (1989).

<sup>15</sup> Universal Declaration of Human Rights, 1948, Preamble.

<sup>16</sup> *Id*

### **3.2.1 Definition of Human Rights**

Now a days, majority of scholars have agreed that every human being is entitled to some basic rights. 'Human rights' is a generic term and include all civil and political rights as well as economic, social and cultural rights. Therefore, the term human rights cannot be defined precisely.

According to the world conference of human rights "all human rights derived from the dignity and worth inherent in the human person and that person is the central subject of human rights and fundamental freedom and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms."<sup>17</sup>

Amartya Sen describes human rights as "ethical demand and further asserted that it can included significant and influenceable economic and social freedom."<sup>18</sup>

According to The Protection of Human Rights Act, human rights mean "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India".<sup>19</sup>

D.D. Basu defines human rights as "human rights are those minimum rights which every individual must have against the State or other public authority by virtue of his being a member of human family, irrespective of any other consideration."<sup>20</sup>

In conclusion, human rights include civil and political rights, which primarily protect individuals from State power and economic, social and cultural rights, which require government to use all available resources to gradually achieve them. They are the basic rights and freedoms to which everyone, everywhere is entitled, including dam oustees.

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<sup>17</sup> World Conference on Human Rights, *Vienna Declaration and Programme of Action* (25 June, 1993), available at: <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>.

<sup>18</sup> Amartya Sen, "Element of a Theory Human Rights" 32 *Philosophy and Public affair* 315 (2014).

<sup>19</sup> The Protection of Human Rights Act, 1993 (Act 10 of 1994), s.2(d).

<sup>20</sup> D.D. Basu, *Human Right in Constitutional Law*, 5 (Lexis Nexis; 3<sup>rd</sup> edn., 2008).

The need for the protection of human rights of dam oustees has arisen because of the inevitable increase in the control over men's action by the government which by no means can be justified.

### **3.3 HUMAN RIGHTS OF DAM OUSTEES**

For the analysis of human rights of dam oustees it is necessary to analyse general human rights conventions as well as specific conventions such as UN Declaration on the Right to Development 1986 and United Nations Declaration on the Rights of Indigenous Peoples 2007 which are adopted by international communities, specially United Nations. These various international conventions have recognised many effective rights which can be used as effective tools for the protection of dam oustees. Human rights of dam oustees can be identified in following two heads:

- 1) First one is human rights other than land rights and
- 2) Second is land rights as human rights.

#### **3.3.1 Human Rights of Dam Oustees Other Than Land Rights**

Following are some important human rights of dam oustees other than land rights:

##### **3.3.1.1 Right to Life, Liberty and Security**

Right to Life, Liberty and Security is basic human right which cannot be denied to any human being including victims of dam induced displacement. There various international instruments which has given recognition to these rights like Article 3 of UDHR expressly provides that "everyone has the right to life, liberty and security of person".<sup>21</sup> Again, Article 6 of the International Covenant on Civil and Political Rights<sup>22</sup> recognize right to life of person and also asserted that it shall be protected by law as well as it cannot be deprived arbitrarily".<sup>23</sup> Article 9 of the same convention also gives protection to the right to liberty and security of person.<sup>24</sup>

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<sup>21</sup> Universal Declaration of Human Rights, 1948, art. 3

<sup>22</sup> Hereinafter ICCPR.

<sup>23</sup> International Covenant on Civil and Political Rights, 1966, art. 6 para 1.

<sup>24</sup> *Id*, art. 9 para 1.

### **3.3.1.2 Right to Participation**

Participation of native people in development projects helps in increasing the benefit of project as well as it helps to reduce the negative effect of displacement. Participation provides key information to planners about the expectation, belief and knowledge system of the people for whom they are planning, which can help to reduce chance of error in planning. The right to participation is recognized by the International Bill of Human Rights for example, Article 25 of ICCPR.<sup>25</sup> Apart from this, International Labour Organization Convention Concerning Indigenous and Tribal Peoples, 1989, specifically emphasizes its importance and stipulates that “indigenous and tribal people shall participate in the formulation, implementation and evaluation of national and regional development plans that affect them.”<sup>26</sup>

### **3.3.1.3 Right to Self-Determination**

Right to Self Determination is not an individual right rather it is the right of people to decide their own destiny. This is modern concept of human rights is based on the principle of collective choice, emphasizes that it would be the people who will decide what would be form of economic, cultural and social development for them. In light of this right, dam oustees have right to decide, whether they need dam projects or not? What would be the mode and process of their development and resettlement. Article 1 paragraph 2 and Article 55 of UN Charter based on the principle of equal rights and self-determination of people.<sup>27</sup> The International Indian Treaty Council<sup>28</sup> has also argue and demanded this right before UN for the protection of indigenous people’s rights who bear the utmost cost of development.

### **3.3.1.4 Right to Equality**

Right to equality is one of the most basic essential human rights of the modern world. In case of dam induced displacement, the right to equality come in to question in relation of distribution of benefits and cost of dam projects. It is the dam oustees who

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<sup>25</sup> *Id*, art. 25.

<sup>26</sup> Indigenous and Tribal Peoples Convention, 1989, art. 7.

<sup>27</sup> United Nations Charter, 1945, arts. 1 para 2, 55.

<sup>28</sup> The International Indian Treaty Council is an organization of Indigenous Peoples from North, Central, South America, the Caribbean and the Pacific working for the Sovereignty and Self Determination of Indigenous Peoples and the recognition and protection of Indigenous Rights, Treaties, Traditional Cultures and Sacred Lands

suffer the cost of dam projects and in return they get nothing or nominal compensation.<sup>29</sup> The principle of equality emphasis on equality of status and of opportunity to all, then why only dam oustees be made to suffer alone and refrained from the benefit. This argument shows the importance of right to equality and also signifies that why it should be protected.

Article 1 of the UDHR, Article 26 of ICCPR and Article 2(2) of ICSCR recognizes the principle of equality. This puts the displaced persons at par with other human beings with respect to having a dignified life.

### **3.3.1.5 Right Against Discrimination**

The principle of non-discrimination is a part of the foundation of rule of law. Discrimination can be a cause of poverty as well as a hurdle in alleviating poverty.<sup>30</sup> Discriminatory rights can be very useful to protect the right and interest of dam oustees, particularly oustees belong to vulnerable group like women, children etc. The right against discrimination is one of the most basic human rights guaranteed to all including the dam oustees. According to the Article 1 paragraph 3 UN Charter, founding document of the UN, one of the purposes of the UN Charter is, “to achieve international assistance in solving international problems and promoting human rights and fundamental freedom for all without any distinction as to sex, race, language or religion”<sup>31</sup>. This has also further been recognized under Article 2 of UDHR and in Article 2, paragraph 1 of the ICCPR. Besides, right against discrimination forms the fundamental code in the Convention on the Elimination of all Forms of Discrimination Against Women, 1979,<sup>32</sup> where Article 1 intricately defines discrimination against women and Article 2 imposes obligation upon the State parties to condemn discrimination against women in all its forms.<sup>33</sup> There are special protection against

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<sup>29</sup> Scott W.D. Pearse Smith, “The Return of Large Dams to the Development Agenda: A Post-Development Critique” 11 *Consilience: The Journal of Sustainable Development* 126 (2014).

<sup>30</sup> HRW, Discrimination, Inequality, and Poverty: A Human Rights Perspective, *available at* <https://www.hrw.org/news/2013/01/11/discrimination-inequality-and-poverty-human-rights-perspective>

<sup>31</sup> United Nations Charter, 1945, art. 1, para 3.

<sup>32</sup> Hereinafter CEDAW

<sup>33</sup> Convention on the Elimination of All Forms of Discrimination against Women, 1979, arts. 1, 2.

discrimination which can be also provided to the children displaced by dam projects under Article 2 of the Convention on the Rights of the Child, 1989.<sup>34</sup>

### **3.3.1.6 Right Against Forced Eviction**

The Committee on Economic, Social and Cultural Rights in 1997 adopted General Comment 7, confirming that forced eviction violates the Covenant on Economic, Social and Cultural Rights. In 1991, the Committee was able to convince the Government of Dominican Republic to desist from a plan that would have forced the eviction of 70,000 slum dwellers in a Santo Domingo community. The government had begun to remove thousands of slum dwellers, without providing them with alternative housing facilities, in order to build a national monument. Based on the information provided by Geneva-based NGO Center for Housing Rights and Evictions, the Committee declared that the forced evictions violated Article 11 of the Covenant, and persuaded the government to stop the forced evictions. As a result of the efforts of the NGOs and the Committee, the community in Santo Domingo has received more secure tenure and better social services. This is particularly relevant to the involuntary resettlement policies in many countries, which provide scant protection to squatters and informal dwellers, particularly in urban areas. Their rights to housing and decent livelihood are still to be incorporated into national laws and involuntary resettlement policies of international donor agencies.

### **3.3.1.7 Right to Sustainable Development**

The right to sustainable development can be viewed as the sum of all civil, cultural, economic, political and social rights, with particular focus on the right to a healthy environment. The United Nations' Stockholm Declaration, 1972 and Rio De Janeiro Declaration, 1992 recognise that the State has the right to exploit its own resources pursuant, however, to its own environmental policies. Rational planning in this regard constitutes an essential tool for recognizing any conflict between the needs of development, and the need to protect and improve the environment. Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature. In order to achieve sustainable

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<sup>34</sup> Convention on the Rights of the Child, 1989, art. 2, Hereinafter CRC.

development, environmental protection shall be an integral part of the development process, and cannot be considered in isolation from it.

### **3.3.1.8 Right to Freedom of Residence**

Right to freedom of residence within the boundary of one's own State has been guaranteed to all persons including dam oustees. But irony is that it is very often in case of dam induced displacement that this right has been exceptionally violated. Nearly in all cases of dam project people are forced to leave their native land or habitat without any prior consent. This right has been fundamentally safeguarded under Article 13 of the UDHR<sup>35</sup> and Article 12 of the ICCPR, which guarantees everyone including the project displaced persons, the freedom to choose his residence.<sup>36</sup>

### **3.3.1.9 The Right to Adequate Housing**

The right to adequate housing does not mean that housing for all by the State rather it implies that there should be adequate measures taken by the State to prevent homelessness, prohibit involuntary eviction, non-discrimination, legal security of tenure as well as ensuring social security to all citizen and the guarantee that everyone's housing is adequate.<sup>37</sup>

Globally, there are more than 1.8 billion people have not adequate housing and more than 1 billion people are force to live in inappropriate settlement. The things do not stop here, more than 150 million people are homeless and it is estimated that 15 million people are evicted involuntarily every year.<sup>38</sup>

International human rights law has given great importance to the right to adequate housing as it is necessary for the adequate standard of living. The UN Special Rapporteur on adequate housing has defined the human right to adequate housing, as:

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<sup>35</sup> Universal Declaration of Human Rights, 1948, art. 13.

<sup>36</sup> International Covenant on Civil and Political Rights, 1966, art. 12.

<sup>37</sup> UN Habitat, "Right to Adequate Housing" fact sheet no. 21/Rev.1, *OHCHR* 6 (Geneva, 2014), available at: [https://www.ohchr.org/\\_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf&action=default&DefaultItemOpen=1](https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Publications/FS21_rev_1_Housing_en.pdf&action=default&DefaultItemOpen=1).

<sup>38</sup> United Nations Statistics Division. (n.d.): *SDG Indicators*. UNSD, available at: <https://unstats.un.org/sdgs/report/2019/goal-11>, (last visited on September 9, 2021).

“The right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity.”<sup>39</sup>

The right to housing is inscribed in several key international human rights instruments. These are recognized under Article 11(1) of the ICESCR,<sup>40</sup> Article 27, para. 3 of the CRC<sup>41</sup>, and the non-discrimination provisions found in Article 14, paragraph 2 (h) of CEDAW,<sup>42</sup> and Article 5 (e) of International Convention on the Elimination of All Forms of Racial Discrimination, 1965.<sup>43</sup> Apart from this, Article 25 of the UDHR includes the right to housing as part of the larger right to an adequate standard of living. Hence, the right to housing is often qualified as a right to adequate housing.<sup>44</sup> Despite the adequate recognition in various convention people are not getting protection of these rights, including the victims of dam induced displacement.

### **3.3.1.10 Right to Development**

The term ‘development’ includes the overall development of human being in terms of economic, social and political process. UN Declaration on the Right to Development 1986, defines development as a “comprehensive economic, social, cultural and political process, which aims at continuous improvement of the well-being of the entire populace and of all individuals on the basis of their active free and meaningful participation and in the fair distribution of benefits resulting therefrom.”<sup>45</sup> Thus, the ultimate objective of development is to provide maximum degree of freedom to human beings. Therefore, human beings in case of dam projects are dam oustees who would be the ultimate beneficiary of right to development.

The declaration on right to development makes the right to development itself a human right.<sup>46</sup> This right has been also recognized under Principle 3 of the Rio

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<sup>39</sup> Economic and Social Council, Report of The Special Rapporteur on Adequate Housing as A Component of The Right to an Adequate Standard of Living, (2006), E/CN.4/2006/41.

<sup>40</sup> International Covenant on Economic, Social and Cultural Rights 1966, art. 11(1).

<sup>41</sup> The Convention on the Rights of the Child, 1989, art. 27, para. 3

<sup>42</sup> Convention on the Elimination of All Forms of Discrimination against Women, 1979, art. 14, paragraph 2 (h)

<sup>43</sup> International Convention on the Elimination of All Forms of Racial Discrimination 1965, art. 5 (e), Hereinafter ICERD.

<sup>44</sup> Universal Declaration of Human Rights, 1948, art. 25.

<sup>45</sup> United Nations Declaration on the Right to Development 1986, preamble para-2.

<sup>46</sup> *Id.*, art. 1.

Declaration on Environment and Development<sup>47</sup>, under ICCPR, ICESCR along with Article 7 of ILO Convention no. 269 of 1989<sup>48</sup> and Articles 19 to 24 of the UN Draft Declaration on Indigenous Rights.<sup>49</sup>

### **3.3.1.11 Right to Access to Information**

Right to information as a human right is now a well-accepted right around the globe. It is an integral part of the fundamental right of freedom of expression. Any type of restriction on the access to information, especially between government and citizen leads to the failure of democratic values and developmental scheme.<sup>50</sup> This right has been expressly recognized by resolution 59 of the UN General Assembly adopted in 1946, as well as by Article 19 of the UDHR.<sup>51</sup>

Despite this, the oustees would willfully deprive of having any access to information about the dam projects. Whatever little they come to know about the dam project, is either unofficial declaration of the officers coming for surveys or from forest guards or other low-grade governmental officials/employees.<sup>52</sup> Which is gross violation of the right to information of the oustees even though this right is guaranteed to them under the national as well as international law.

### **3.3.1.12 Right to Compensation/Remedy**

Compensation is the price of property which is acquired by government for development purposes. It can be in cash or kind or both, based on valuation recognized by law. It helps the oustees to rebuild their life.<sup>53</sup> The World Commission on Dams has also recognized the importance of compensation as “often, due to the nature of the development process, the project-affected peoples come to know about actions that

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<sup>47</sup> Rio Declaration on Environment and Development, 1992, principle 3.

<sup>48</sup> Convention concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989.

<sup>49</sup> United Nations Declaration on the Rights of Indigenous Peoples, sept. 13, 2007,

<sup>50</sup> Ashirbani Dutta, *Development Induced Displacement and Human rights* 37 (Deep & Deep PVT. LTD., New Delhi, 2007).

<sup>51</sup> United Nations and The Rule of Laws, *available at*: <https://www.un.org/ruleoflaw/thematic-areas/governance/freedom-of-information/>.

<sup>52</sup> *Id.*

<sup>53</sup> Hari Mohan Mathur, “Making Resettlement Work: Policy, Planning and Management” in Hari Mohan Mathur (eds.), *Resettling Displaced people: Policy and Practice in India* 26-74 (Routledge, New Delhi, 2011).

have been taken without their knowledge or consent. Therefore, they need a quick and efficacious remedy that can halt on-going violations and prevent future ones.<sup>54</sup>

Thus, right to compensation is crucial to all development projects including dam projects and it should be protected.” The right to remedy has found place under Article 8 of UDHR<sup>55</sup> and under Article 2 of ICCPR<sup>56</sup>.

### **3.3.1.13 Right to Safe Environment**

The right to clean and safe environment is a collective right. There is a strong relationship between human rights and environment. Human rights are derived from the inherent dignity of the human person; environment law lays down the means by which human dignity may be maintained. It is not possible for human being to preserve their dignity in polluted environment. A human being living in a polluted environment cannot imagine of his physical as well as mental health and happiness.

In *Rural Litigation and Entitlement Kendra v. State of UP*,<sup>57</sup> the Supreme Court of India held that “the right to decent environment is included in the concept of the right to life along with right to food, right to clothing and a reasonable accommodation to live in. These are the basic necessities which a human being must possess. Right to live with human dignity becomes illusory in the absence of humane and healthy environment.”<sup>58</sup>

The Stockholm Declaration adopted at the United Nations Conference on the Human Environment 1972, states that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations...”<sup>59</sup> But the right to environment does not found place neither in UDHR nor in its two covenants. It is the

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<sup>54</sup> Balakrishnan Rajapogal, Human Rights and Development (*World Commission on Dams, Thematic Review V. 4, Working Paper 11* (2000), available at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.194.7417&rep=rep1&type=pdf>.

<sup>55</sup> Universal Declaration of Human Rights, 1948, art. 8.

<sup>56</sup> International Covenant on Civil and Political Rights, 1966, art. 2 para 3.

<sup>57</sup> A.I.R. 1988 SC 2187.

<sup>58</sup> *Rural Litigation and Entitlement Kendra v. State of UP* A.I.R. 1988 SC 2187. *M. C. Mehta v. Union of India* A.I.R. 1987 SC 965. *M.K. Balakrishnan v. Union of India*, (2009) 5 S.C.C. 511.

<sup>59</sup> The United Nations Conference on the Human Environment 1972, principle 1.

duty of world community to protect and provide safe environment for mankind including dam oustees.

### **3.3.2 Land Rights as Human Rights**

Even though the land rights are one of the most important rights for forcefully displaced people specifically for dam oustees but has not found place in UDHR, nor in its two covenants. In fact, there is no international convention which recognised land rights as a human right. Land rights are a group of right which contains in itself variety of rights related to land, for example; right to retain land, right to enjoyment, restrict or exclude others from land, transfer, sale, purchase, lease, rent and all others' rights which are directly or indirectly associated with land.

However, in reality land right are the key human right issues in all development projects in which displacement occurs, particularly in case of large dam projects. There is no single large dam project which is not responsible for displacement, nearly every large dam project around the world had seen protests by native people demanding their human rights including land rights.

The basis of denial of land rights by the State is the concept of eminent domain, which emphasis that State is owner of the land and State has power to acquire it in public interest, when it thinks fit to do so.<sup>60</sup> Denial of land rights is an instrument of oppression and colonisation because land rights constitute the basis for access to food, housing and development. Denial to land rights leads to impoverishment.

In the past few years, there were several movements can be seen around the world including India for the demand of land rights. In this response several countries have passed legislation to give recognition to land rights, for example; parliament of India has passed 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013', which comes into effect from 1<sup>st</sup> January 2014.<sup>61</sup>

Supreme Court of India pointed out the importance of land as:

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<sup>60</sup> Patricia E. Salkin and Lora A. Lucero, "Community Redevelopment, Public Use, and Eminent Domain" 37(2) *The Urban Lawyer* 202 (2005), available at: <https://www.jstor.org/stable/27895532>.

<sup>61</sup> The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No. 30 OF 2013), s.1(3).

“India being a predominantly agricultural society, there is a strong linkage between the land and the personal status in the social system. The tip of land on which they till and live, assumes them equal justice and dignity of their person by providing to them a near decent means of livelihood.”<sup>62</sup>

Despite the core importance and demand of land rights as human rights, land rights are largely absent from the International Human rights law domain but it does not mean that land rights are not human rights, there has been several attempts taken by international institutions to identify land rights as human rights. Following are some key points which are addressing land rights as human right:

### **3.3.2.1 Land Rights as Property Right**

The term property generally means the sum total of a man’s fortune. It is ownership over a thing or things. Land is also an example of property. Bentham sates that property means “right of ownership in a material object such as a watch, land, horse etc.”<sup>63</sup> In 18<sup>th</sup> century ‘US Bill of Right’<sup>64</sup> had given recognition to right to property and keeps it at same footing as to right to life. Same recognition and protection to right to property is also given by French ‘Declaration of the Rights of the Man and of the Citizen’<sup>65</sup>

In India right to property was also recognised by Constitution makers, initially it was a part of fundamental rights but latter by 44<sup>th</sup> Constitutional Amendment Act it was placed under Article 300A as ordinary legal rights which reduces its importance.<sup>66</sup> Right to property also found place under international human rights law, which shows its importance. Article 17 of UDHR<sup>67</sup>, Article 5 of ICERD<sup>68</sup> and Article 16 of CEDAW<sup>69</sup> gives clear recognition to it and also impose obligation upon State to protect it.

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<sup>62</sup> *Waman Rao v. Union of India* AIR 1981 SC 271.

<sup>63</sup> Bentham, *Principles of legislation*, 231.

<sup>64</sup> United States Bill of Rights, the fourth amendment (1787-88).

<sup>65</sup> Declaration of the Rights of the Man and of the Citizen, 1789, art. 17.

<sup>66</sup> Initially right to property was included as a ‘Fundamental Right’ under art. 19(1)(f) and art. 31 in Part III but by Constitution 44<sup>th</sup> Amendment it converted into an ordinary legal right under art. 300-A.

<sup>67</sup> Universal Declaration of Human Rights, 1948, art. 17.

<sup>68</sup> The International Convention on the Elimination of All Forms of Racial Discrimination 1965, art. 5.

<sup>69</sup> Convention on the Elimination of All Forms of Discrimination against Women, 1979, art. 16.

Through above discussion it is clear that right to property is important right and land is also a property. Thus, despite not clear identification of land rights as human right, it can be associated with human rights as property right.

### **3.3.2.2 Land Rights as Indigenous People's Cultural Rights**

Indigenous people or tribal people are those who lived in isolated community distinct from other sections of society. They have very a strong bond with their land that is why they always demanded that their right to land must be protected so that they can protect their culture.

The relationship between cultural rights and land rights has been identified by the Human Rights Committee<sup>70</sup> in its interpretation of Article 27 of the ICCPR, which concerns cultural rights for minorities. Article 27 does not allude to land rights per se, but HRC has developed a specific protection for indigenous peoples' land rights by acknowledging that indigenous people have a particular way of life which is associated with the use of their lands. In an often-quoted general comment on Article 27 the HRC stated:

“With regard to the exercise of the cultural rights protected under Article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of Indigenous people. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.”<sup>71</sup>

The very similar jurisprudential essence was also adopted by the UN in Declaration on the Rights of Indigenous Peoples, 2007, Article 25 of the declaration states that:

“Indigenous people have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.”<sup>72</sup>

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<sup>70</sup> Hereinafter HCR

<sup>71</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 23: Article 27 (Rights of Minorities), CCPR/C/21/Rev.1/Add.5 (April 8, 1994) para 7.

<sup>72</sup> UN in Declaration on the Rights of Indigenous Peoples, 2007, art. 25.

Article 13 of The International Labour Convention No. 169 on the Rights of Indigenous and Tribal People also adopted human rights-based approach to land rights and declare that:

“Governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.”<sup>73</sup>

This discussion makes it clear that Land rights are important human rights for tribal people. Their cultural rights are depended upon it and it should be necessary to protect land rights to protect cultural rights.

### **3.3.2.3 Land Rights as Instrument of Gender Equality**

Women belonging to the vulnerable class of society. There are number of cases of discrimination against them, one of them is the denial of land rights to them. For example, in India as per the study done by Lahoti et al. it is estimated that the percentage of women who are landowners and it was found that only 6.5 percent women in the greater than or equal to 18 age group (averaged across states) own agricultural land in landowning rural households, with southern and western India doing better than other regions.<sup>74</sup> Another similar study done by Bina Agrawal et.al., found that “only 16 percent women owned land average across the State in which 8 percent of these households also had male owners, while 84 percent had no female owners at all.”<sup>75</sup>

Violation of land rights to women can be seen as gender injustice and violation of their human rights, which can be protected by adopting supportive majors and law reforms. The problem of gender injustice is identified by UN special Rapporteur on Adequate Housing as:

“In almost all countries, whether ‘developed’ or ‘developing’, legal security of tenure for women is almost entirely dependent on the men they are associated with.

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<sup>73</sup>The International Labour Convention No. 169 on the Rights of Indigenous and Tribal Peoples, art. 13.

<sup>74</sup>R. Lahoti, J. Y. Suchitra, J. Y. and H. Swaminathan, “Not in Her Name: Women’s Property Ownership in India” 51(5) *Economic and Political Weekly* 17-19 (2016).

<sup>75</sup>Bina Agarwal, Pervesh Anthwal and Malvika Mahesh “How Many and Which Women Own Land in India? Inter-gender and Intra-gender Gaps” *The Journal of Development Studies* 7 (2021), available at: 10.1080/00220388.2021.1887478.

Women headed households and women in general are far less secure than men. Very few women own land. A separated or divorced woman with no land and a family to care for often ends up in an urban slum, where her security of tenure is at best questionable.”<sup>76</sup>

Article 14(2)(g) of CEDAW, recognises the land right for women specially women belong to rural area.<sup>77</sup> Apart from this Article 16 of same convention imposes obligation on State parties to ensure equal land right for both spouses, even though Article 16 does not specifically mention the term ‘land’ but it could be identified as property.<sup>78</sup>

#### **3.3.2.4 Land Rights as Adequate Housing**

The right to adequate housing finds place in various international conventions like ICESCR, CRC, CEDAW, ICERD.<sup>79</sup> Land is the primary need of housing, and no one can imagine a house in the space. Land is closely and intrinsically linked. The committee on CESC in its general comment no. 4 clearly pointed out that lack of access to land leads to infringement of right to adequate housing and it is the obligation of State to protect it.<sup>80</sup>

Miloon Kothari, the former UN Special Rapporteur, pointed out that, land rights are a central aspect of the right to housing and it is necessary to recognize land rights

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<sup>76</sup> Economic, Social and Cultural Rights, “Women and Adequate Housing: Study by The Special Rapporteur on Adequate Housing as A Component of The Right to An Adequate Standard of Living, And on The Right to Non-Discrimination” 9 (2003) E/CN.4/2003/55.

<sup>77</sup> Convention on the Elimination of All Forms of Discrimination against Women, 1979, art. 14(2)(b), 16.

<sup>78</sup> The Committee on the Elimination of Discrimination against Women has specifically highlighted such a connection in its General Recommendation No. 21 on “Equality in Marriage and Family Relations”, which largely focuses on art. 16.

<sup>79</sup> The right to housing is inscribed in several key international human rights instruments. These recognized under art. 11, para. 1 of the ICESCR, art. 27, para. 3 of the CRC, and the non-discrimination provisions found in art. 14, paragraph 2 (h) of CEDAW, and art. 5 (e) of ICERD. Apart from this, art. 25 of the UDHR includes the right to housing as part of the larger right to an adequate standard of living. Hence, the right to housing is often qualified as a right to adequate housing.

<sup>80</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant) E/1992/23 (Dec. 13, 1991) para 8(e).

as human right under international human rights law to protect right to adequate housing.<sup>81</sup>

### **3.3.2.5 Land Rights as Right to Food**

There is also a direct connection between land rights and right to food like above discussed human rights. Food is the most essential thing for life, without food no human being can survive. It is such an important aspect of human life that is strongly affirmed by many international human rights laws.<sup>82</sup>

Article 11(2)(a) of ICESCR is basis of relationship between land rights and right to food, which states that, “improve methods of production, conservation and distribution of food . . . by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources.”<sup>83</sup>

In its general comment 12, on right to food, UN CESCR has mentioned ‘land rights’ many times. Which itself shows strong connection between land rights and right to food.<sup>84</sup> CESCR pointed out that the main cause of hunger and malnutrition is the lack of access to available food, not lack of food.<sup>85</sup> Here availability refers to “the possibilities either for feeding oneself directly from productive land or other natural resources...”<sup>86</sup> It is the landless persons and other poor people who suffer the most and need special attention.<sup>87</sup>

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<sup>81</sup> Miloon Kothari, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context 2006*, E/CN.4/2006/41 (March 14, 2006) para 29.

<sup>82</sup> Art. 25 of the UDHR reads that everyone has the right to an adequate standard of living, ‘including food’. Art. 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) makes special reference to the right to food by expressly affirming the right of everyone to an adequate standard of living “including adequate food”. Art. 11(2) proclaims the “fundamental right of everyone to be free from hunger”, with art. 11(2)(a) requiring States “to improve methods of production, conservation and distribution of food”, in particular reforming agrarian systems to achieve the most efficient use of natural resources; and art. 11(2)(b) requiring the implementation of “an equitable distribution of world food supplies”.

<sup>83</sup> International Covenant on Economic, Social and Cultural Rights 1966, art. 11(2)(a).

<sup>84</sup> United Nations, General Comment No. 12: The Right to Adequate Food (art. 11 of the Covenant), *Economic and Social Council* (May 12, 1999) para 6.

<sup>85</sup> *Id* at para 5.

<sup>86</sup> *Id* at para 12.

<sup>87</sup> *Id* at para 13.

CESCR is also putting obligation on State parties to ensure access to food for all people by guaranteed access to economic resources to all equally which includes right to inheritance and ownership of land.<sup>88</sup>

The UN Special Rapporteur on the Right to Food, 2002, pointed out some important relationship between land and right to food:

- 1) Access to land could be the key strategy to protect right to food.<sup>89</sup>
- 2) Access to land would help world to eradicate hunger.<sup>90</sup>
- 3) Due to landlessness most of the rural people suffer hunger and are not able to feed themselves.<sup>91</sup>
- 4) Access to land and agrarian reform must be a fundamental part of right to food.<sup>92</sup>
- 5) Right to land should be recognise by State parties because it would be helpful in protection of right to food.<sup>93</sup>

The purpose of this discussion is to locate land rights as human rights in the domain of international human rights law. In this study it has been found that even though land rights are not directly mentioned in international human rights law though it can be identified by interpretation and connection with the other human rights.

Human rights-based approach to land rights would help to protect the right of dam oustees because in every case of dam induced displacement, land becomes a direct issue. In simple word, land rights are rights and have equal respect and recognition in limit of international human rights law.

### **3.4 JUS COGENS: PEREMPTORY NORMS OF INTERNATIONAL LAW**

There are some core human rights, which are so much important that without them human life cannot be imagined. These core human rights are classified as *jus*

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<sup>88</sup> *Id* at para 26.

<sup>89</sup> Jean Ziegler, *Report of The Special Rapporteur of The Commission on Human Rights on The Right to Food 2002*, A/57/150 (Aug. 27, 2002) para 6.

<sup>90</sup> *Id* at para 22.

<sup>91</sup> *Id* at para 23.

<sup>92</sup> *Id* at para 30.

<sup>93</sup> *Id* at 32.

*cogens*.<sup>94</sup> The concept of *Jus cogens* is based upon an acceptance of fundamental and superior values within the system and in some respects is akin to the notion of public order or public policy in domestic legal system. It is a class of rule rendering treaties void if they are derogatory to the fundamental international rules and legal order.<sup>95</sup> *Jus cogens* has a long history, highlighted in 2005, when European Court of First Instance has pronounced that even the UNSC is bound by the rules pertaining to that class.<sup>96</sup> In *Barcelona Traction Case*, the ICJ has pointed out that there are some forms of violation of human rights infringe obligations *erga omnes*,<sup>97</sup> a type of obligation which may *grosso modo* be equated with rules of *jus cogens*.<sup>98</sup> *Jus cogens* establishing worldwide network of responsibility.

There are mainly three theories in regard to origin of the rule of *jus cogens*; positivist, natural law and public order. According to positivist theory States are only bound by rule of *jus cogens* if they had given their prior consent to it otherwise not. There should be express agreement by States to give recognition to peremptory norms as customary international law. *Second one* is natural law theory, states that peremptory norms are existing since the beginning and there is no need of recognition by State through express agreement to recognise them. Peremptory norms have come from the God or nature hence they are superior norms and cannot be violated. Last one is public order theory, states that *jus cogens* is a part of public order and an important part of international law. According to this theory *jus cogens* has two main functions, to maintain the peace between international community and to reward normative commitments to the main international system.<sup>99</sup>

According to Article 53 of Vienna convention on the Law of Treaties 1969, any treaty if contrary to an existing *jus cogens* at the time of its conclusion then it would be

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<sup>94</sup> A Bianchi, "Human Rights and The Magic of *Jus Cogens*" 19 EJIL 471 (2008).

<sup>95</sup> U Linderfalk, "Normative Conflict and The Fuzziness of The International *Jus Cogens* Regime" 69 HJIL 961 (2009).

<sup>96</sup> Kadi case T-315/01, 21 September 2005, [2005] ECR II-3659.

<sup>97</sup> *Barcelona Traction (Belg. v. Spain)*, 1970 I.C.J. 3, paras 33, 34, (1970), available at: [http://www.worldcourts.com/icj/eng/decisions/1970.02.05\\_barcelona\\_traction.htm](http://www.worldcourts.com/icj/eng/decisions/1970.02.05_barcelona_traction.htm)

<sup>98</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, I.C.J. Reports 2007, para 81, available at: <https://www.icj-cij.org/public/files/case-related/91/091-20070226-JUD-01-00-EN.pdf>.

<sup>99</sup> Irawati Handayani, "Concept and Position of Peremptory Norms (*Jus Cogens*) in International Law: A Preliminary Study" 5(2) *Hasanuddin Law Review* 239-242 (2019).

void *ab initio*.<sup>100</sup> Article 64 again makes a declaration regarding emergence of a new *jus cogens* of general international law and its conflict with any pre-existing international treaty, any such conflict existing treaty would terminate from the date of emergence of new peremptory norm.<sup>101</sup> it would not be void *ab initio* as to the past act of the parties to conflict treaty.<sup>102</sup> Article 41(2) of the ILC's Article on State Responsibilities, 2001, provides that no State shall recognise as lawful a 'serious breach' of peremptory norms.<sup>103</sup> If the State signs any international treaty with reservation and that reservation offends the rule of *jus cogens* in that case such reservation would be unlawful.<sup>104</sup> Although the *jus cogens* norms are superior norms, they are also limited in nature. They are form a barrier to government but they do not compel affirmative action.

### **3.5 WHO HAS LEGAL OBLIGATION TO PROTECT HUMAN RIGHTS?**

*“The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international community.”*

#### **World Conference on Human Rights<sup>105</sup>**

One of the biggest challenges of international human rights convention/treaties like UDHR is lack of clarity about who is obligated to ensure the enforcement and protection of human rights which they declare. Human rights advocates have spent plenty of time in demand of human rights but no one has given sufficient time to fixing obligation that who is going to protect it. A right without claims is nothing.<sup>106</sup>

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<sup>100</sup> Vienna Convention on the Law of Treaties 1969, art. 53.

<sup>101</sup> *Id*, art. 64.

<sup>102</sup> *Id*, art. 72(2)(b).

<sup>103</sup> Responsibility of States for Internationally Wrongful Acts 2001, 41(2).

<sup>104</sup> North Sea Continental Shelf Case, ICJ reports, 1969, p. 3,97,182 and 248.

<sup>105</sup> Vienna Declaration and Programme of Action, 1993, para 4.

<sup>106</sup> James W. Nickel, “How Human Rights Generate Duties to Protect and Provide” 15(1) *Human Rights Quarterly* 77(Feb., 1993), available: <https://www.jstor.org/stable/762652>.

There is absence of a strong mechanism which can protect and enforce human rights at international level. The human rights can only be protected if there is proper implementation of human rights. But it has many limitations, some of them are following:

- 1) It is State who can knock the door of international court of justice.<sup>107</sup> Individual are not authorised to seek justice from ICJ.
- 2) ICJ has a very limited jurisdiction, it can only decide the cases when both sides agree.
- 3) For the matter of convenience, suppose ICJ has given a judgment on violation of human rights against any State then problem of enforcement arises because it has no enforcement machinery like police. Yet, Security Council can take action against the culprit State who does not follow the obligation under the judgment of ICJ but it rarely happens due to world politics.<sup>108</sup>
- 4) The General Assembly of the United Nation comprising delegates from all the existing member States but its resolutions are not legally binding save for certain of the organs of the United Nation for certain purpose.<sup>109</sup>
- 5) In order to acknowledge the basic principle of equality and sovereignty of States underlined in the UN charter, international law generally recognises that State should be allowed to solve their international problems according their legal system before international mechanism can be invoked.<sup>110</sup>

The above limitation makes it clear that it is a very hard task to protect and implement human rights at the international level. There is only one effective way to implement and protect the human rights that is, by adopting international human rights principles in domestic laws by many States. But there is also a problem with it, strength of conventions/treaties fundamentally depend on a number of ratifications among States. Treaties/convention are binding on State parties only after when State ratifies them and whenever State ratifies any treaty, it would follow the principle of reservation. The primary reason a State would place reservation on its ratification status is “to exclude or to modify the legal effect of certain provisions of the treaty in their

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<sup>107</sup> Statute of The International Court of Justice, 1945, art. 34

<sup>108</sup> P. Sands and P. Kelein (eds.), *Bowett's Law of International Institutions* chapter 23 (London, 5<sup>th</sup> edn. 2001).

<sup>109</sup> The Charter of the United Nations, 1945, art. 17(1).

<sup>110</sup> *Id.*, art 2 para 7.

application to that State.”<sup>111</sup> Treaty/Convention laws are regulated by the “Vienna Convention on the Law of Treaties, 1969”, which allow government to enter reservation at the time of ratification so long as the text of treaty in question does not expressly prohibit terms of reservation and reservation itself is not incompatible with the object and purpose of treaty.

Sometimes international human rights convention contains standard of rights which are beyond the domestic law, in such case government of respective States by entering in to reservation reduces the standard of human rights according to their convenience. Which leads to degradation of human rights protection.<sup>112</sup> So, it is also a hard task for international institutions like UN to make States perform their obligation in regard to protection and implementation of human rights of people including dam oustees in line of international conventions.

Now the question arises, *how would human rights of dam oustees would be realised?* Dam oustees cannot be ignored on peril and if it happens then it will amount to failure of UN. **Answer is;** even though countries like India do not recognise dam induced displacement as violation of human rights, the UN can use its existing mechanism by asking culprit States to provide information of involuntary dam oustees and put pressure on States to protect their human rights. Most of the States have ratified important convention like UDHR, ICCPR, IECSCR, ICERD etc.<sup>113</sup>

States are the one, who are under the obligation to protect the human rights of people in their jurisdiction.<sup>114</sup> In order to implement the human rights provided in the international conventions parliament of the country is required to be in conformity with the provision of the international treaties. Treaties may be transferred into the domestic laws so that individuals may invoke them in securing or defending their rights in cases where this does not automatically flow from ratification, thus, treaties are required to

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<sup>111</sup> Vienna Convention on the Law of Treaties, 1969, art. 2(1)(d), also see arts. 19,20,21,22,23.

<sup>112</sup> Jr. Daniel W. Hill, “Avoiding Obligation: Reservations to Human Rights Treaties” 60(6) *The Journal of Conflict Resolution* 1134 (2016), available at: <https://www.jstor.org/stable/24755941>.

<sup>113</sup> OHCHR, View the ratification status by country or by treaty, available at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN)

<sup>114</sup> UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, A/RES/53/144 (8 March 1999), also see preamble of ICCPR, ICESCR.

be implemented through legislation. Basu says that “no treaty which has not on the implemented by legislation shall be binding municipal courts.”<sup>115</sup>

In many cases it has been held by the Indian courts that legislation would be expressly required to give effect to a treaty. In *Birma v. State of Rajasthan*,<sup>116</sup> the Court held that “Treaties which are part of International Law do not form part of the law of the land unless of expressly made by the legislative authority”. Thus, ratification of the human rights treaties alone is not enough for the courts to enforce the provisions of the conventions. They are required to be transformed into the law of the land. As long as enactments do not take place conventions shall not be enforceable before the courts. No doubt. India has ratified number of human rights conventions and thus has shown to the world its intention to provide human rights to the people, it has not enacted enabling legislation in respect of all the ratified Conventions.

If on a particular point legislation does not exist at all but at the same time there is an international commitment of the country, it becomes the duty of the judges to interpret the other existing legislations in such a way so that the deficiencies in the domestic law may be overcome. They are required not to wait for the new legislation to be enacted. In *Sunil Batra v. Delhi Administration*,<sup>117</sup> Krishna Iyer, J. observed that, “of course, new legislation is the best solution, but when law makers take for too long for social patience to suffer, as in this very case of prison reform, courts have to make do with interpretation and carve on wood and sculpt on stone ready at hand and not wait for away marble architecture.”

In the absence of domestic legislation, Indian Courts, in a few cases, have applied the doctrine of incorporation.<sup>118</sup> In *Vishakha and others v. State of Rajasthan*,<sup>119</sup> the Supreme Court stated that, “The Government of India has ratified the Convention

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<sup>115</sup> This view is based on Article 253 of the Constitution which says that Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, made at any international any country or countries or any decision conference, association or other body.

<sup>116</sup> AIR (1951) Rajasthan 127. In *Magan Bhai v. Union of India*, the Supreme Court observed that, “the obligations arising under agreement or treaties are not by their own force binding upon Indian nationals The power to legislate in respect of treaties lies with the Parliament under Entries 10 and 14 of List of the Seventh Schedule.”

<sup>117</sup> AIR 1980 SC 1579.

<sup>118</sup> Doctrine of incorporation says that in the absence of domestic legislation courts have treated the treaties as to have been incorporated into domestic law so far as it is not inconsistent with the domestic law

<sup>119</sup> AIR 1997 SC 3011.

on the Elimination of All Forms of Discrimination Against Women but that is not material in the present context. International Conventions and norms shall be of significance and regard must be had to them for construing domestic law when there is no inconsistency between them and there is a void in domestic law.”

International human rights law cannot be realised unless there is a check and balance on signatory States. For that purpose, there are many human rights conventions which have a mechanism to set-up the committees to monitor and check the human rights violation on signatory States and ask them to follow their obligations under international conventions like Human right committee by ICCPR, Committee on Economic, social and cultural rights by ICESCR, Committee on Racial Discrimination by the ICERD etc.<sup>120</sup> These committees are always in dialogue with State parties in regard to protection and implementation of international human rights in their respective State jurisdiction. As part of periodic reporting and reviewing process of the implementation of ratified convention, the UN can demand the data of dam oustees and ask the party States to protect the rights of dam oustees. For example, India is also a State Party to the CERD. It should thus be asked to explain to the Committee on the Elimination of Racial Discrimination why 40 to 100 percent people of the dam oustees are Adivasi when *they are* only 8 percent of the Indian population.<sup>121</sup> Like this UN can ask about other human rights violation of dam oustees and protect them.

But here is also an issue with the above process that is, the periodic reports are submitted by States and no State will disclose about the violation of human rights in their territory and hence submit manipulated reports before the committees. That is why now, UN along with State reports also consider private NGOs report to make it clear that whether report submitted by the State is correct or manipulated.

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<sup>120</sup> These are some important conventions which have set up to committees to monitoring state's parties' obligation toward ratified convention; Human right committee by ICCPR, Committee on Economic, social and cultural rights by ICESCR, Committee on the Elimination of Discrimination Against Women by CEDAW, Committee on Right of the Child by CRC, Committee on Racial Discrimination by the ICERD, Committee on the Rights of Person with Disabilities by the CRPD, Committee on The Protection of All Person from Enforced Disappearance.

<sup>121</sup> D. Gupta and P.K. Singh, “The Hidden Cost of Development: A Review of Mental Health Issues of Displaced Tribal Populations in India”. 26 *Journal of Public Health* 718 (2018), available at: <https://doi.org/10.1007/s10389-018-0913-9>. Also see Annual Report 2016-17, Ministry of Tribal Affairs, Government of India, 47 available at: <https://tribal.nic.in/Statistics.aspx> (last visited on July 22, 2021).

### **3.6 LOCATING THE CONCEPT OF HUMAN RIGHTS IN INDIA**

The purpose of human rights is providing protection to rights of citizens from being harmed by their own sovereign governments. Human rights are the fundamental entitlements that all persons enjoy as protection against State conduct prohibited by international law or custom.<sup>122</sup> As discussed earlier, international human rights cannot be realised unless they are not incorporated in domestic laws of signatory states, that is why it is important to locate human rights in the Indian legal system.

The idea of human rights is not a new concept to India. It can be traced from the ancient traditional literatures, the ancient text of Vedas, Agamas and Upanishad are giving the evidence of the existence of morality, wisdom and importance of duties toward others. They stress on the sincere fulfilment of one's responsibilities while practicing selfless concern for those who are in pain and have compassion for the deprives and victimized people. In last century, Indian people had protested against the colonial government and demanded their basic rights and freedom.<sup>123</sup>

Post-independence, India has given high respect to human rights, that is why the architects of the Indian Constitution adopted the many important human rights within part III and Part IV of the Indian Constitution. Part III of Indian Constitution that is 'Fundamental Rights', guarantees certain important rights to individuals, incorporates various civil and political rights which are also given in UDHR and ICCPR. Following tables (Table 3.1 and 3.2) has shown the different Article of UDHR and ICCPR along with the corresponding provision of Indian Constitution:

**Table 3.1: Provisions of UDHR along with Corresponding Provisions in Constitution of India.**

S.N.	Brief Description of Human Rights	UDHR	Constitution of India
1.	Equality and equal protection before law	Article 7	Article 14
2.	Remedies for violation of Fundamental Rights	Article 8	Article 32

<sup>122</sup> Sunil Khosla and M.M. Semwal, "Human Rights Jurisprudence in Indian Constitution Right to Equality And Life: Concept and Substance" 72(4) *The Indian Journal of Political Science* 928 (2011), available at: <https://www.jstor.org/stable/41856528>.

<sup>123</sup> *Id* at 930.

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3.	Right to Life and personal liberty	Article 9	Article 21
4.	Protection in respect for conviction of offences	Article 11(2)	Article 20(1)
5.	Right to freedom of conscience and to practice, profess and propagate any religion	Article 18	Article 25(1)
6.	Freedom of speech	Article 19	Article 19(1)(a)
7.	Equality in opportunity of public service	Article 21(2)	Article 16(1)
8.	Protection of minorities	Article 22	Article 29(1)
9.	Right to education	Article 26(1)	Article 21A

**Table 3.2: Provisions of ICCPR along with Corresponding Provisions in Constitution of India.**

S.N.	Brief Description of Human Rights	ICCPR	Constitution of India
1.	Right to life and liberty	Article 6(1) & 9(1)	Article 21
2.	Prohibition of trafficking and forced labour	Article 8(3)	Article 23
3.	Protection against detention in certain cases	Article 9(2), (3) and (4)	Article 22
4.	Freedom of movement	Article 12(1)	Article 19(1)(d)
5.	Right to equality	Article 14(1)	Article 14
6.	Right not to be compelled to be a witness against own self	Article 14(3)(g)	Article 20(3)
7.	Protection against double jeopardy	Article 14(7)	Article 20(2)
8.	Protection against ex-post facto law	Article 15(1)	Article 20(1)
9.	Right to freedom of conscience and to practice, profess and propagate any religion	Article 18(1)	Article 25(1) & 25(2)(a)
10.	Freedom of speech and expression	Article 19(1) & (2)	Article 19(1)(a)
11.	Right to assembly peacefully	Article 21	Article 19(1)(b)
12.	Right to form union/ association	Article 22(1)	Article 19(1)(c)
13.	Equality in opportunity of public service	Article 25(c)	Article 16(1)
14.	Equality and equal protection before law and no discrimination on the basis of any ground such as race, colour, sex, language, religion etc.	Article 26	Article 14 & 15(1)
15.	Protection of interests of minorities	Article 27	Article 29(1) & 30

Like UDHR and ICCPR, many rights given in ICESCR are also incorporated in Indian Constitution by the drafting committee under part IV that is ‘Directive Principles of State Policy’, which deals with certain principles which are applied by the State in

making laws.<sup>124</sup> Following tables (Table 3.3) is showing the different Article of ICESCR along with the corresponding provision of Indian Constitution:

**Table 3.3: Provisions of ICESCR along with Corresponding Provisions in Constitution of India.**

S.N.	Brief Description of Provision	ICESCR	Constitution of India
1.	Right to work	Article 6(1)	Article 41
2.	Equal Pay for equal work	Article 7(a)(i)	Article 39(d)
3.	Right to living wage and descent standard for life.	Article 7(a)(ii) & (d)	Article 43
4.	Humane conditions of work and maternity leave.	Article 7(b) and 10(2)	Article 42
5.	Faculties and opportunities to children for prevention against exploitation.	Article 10(3)	Article 39(f)
6.	Improving public health and raise level of nutrition and standard of living.	Article 11	Article 47
7.	Compulsory education for children	Article 13(2)(a)	Article 45
8.	Protection of interests of minorities	Article 27	Article 29(1) & 30

Further in 1993, Indian parliament had adopted ‘Protection of Human Right, 1993’ to implement international standard of human rights in India and by the same Act established the National Human Rights Commission to take complains of human rights violation.<sup>125</sup> Even though these principles cannot be enforceable by any court, nevertheless they are fundamental in the governance.<sup>126</sup> Apart from this India has ratified<sup>127</sup> a number of international conventions which are dealing with various types of rights other than those which are mentioned in the ‘International Bill of Human

<sup>124</sup> The Constitution of India, art. 37.

<sup>125</sup> N.S. Kamboj, “Human Rights and Judicial Activism” 41(1) *Journal of the Indian Law Institute*, 110-111 (1999), available at: <https://www.jstor.org/stable/43951701>.

<sup>126</sup> *Id.*

<sup>127</sup> According to Arts.2 (1) (b), 14 (1) and 16, Vienna Convention on the Law of Treaties, 1969; ‘Ratification’ means “the international act whereby a State indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case of bilateral treaties, ratification is usually accomplished by exchanging the requisite instruments, while in the case of multilateral treaties the usual procedure is for the depositary to collect the ratifications of all States, keeping all parties informed of the situation. The institution of ratification grants States the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty”.

Rights'.<sup>128</sup> Following are some important UN conventions which were ratified by India:<sup>129</sup>

**Table 3.4: UN Conventions Ratified by India**

S.N.	Name of Treaty	Date of ratification
1.	International Covenant on Civil and Political Rights	10 Apr 1979
2.	Convention on the Elimination of All Forms of Discrimination against Women	09 Jul 1993
3.	International Convention on the Elimination of All Forms of Racial Discrimination	03 Dec 1968
4.	International Covenant on Economic, Social and Cultural Rights	10 Apr 1979
5.	Convention on the Rights of the Child	11 Dec 1992
6.	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	30 Nov 2005
7.	Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography	16 Aug 2005
8.	Convention on the Rights of Persons with Disabilities	01 Oct 2007

Above discussion shows the concern of India towards the protection of human rights of its citizens and also shown to the world community that it has faith in promotion and protection of the human rights of its citizen. The ratification of these international conventions also signifies that India intends to be in the forefront of the worldwide human rights movement.

But the problem is that most of the rights of dam oustees are associated with third generation human rights which do not find place in Constitution of India as fundamental rights. Even there are many international treaties which are concerned with the rights of displaced people but such type of conventions is not ratified by India.

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<sup>128</sup> The International Bill of Human Rights consists of; the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols.

<sup>129</sup> OHCHR, View the Ratification Status by Country or By Treaty, *available at*: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN)

### **3.7 THE RIGHT NOT TO BE DISPLACED VERSES THE RIGHT TO BE R & R: IN WHICH DIRECTION HUMAN RIGHTS LAW SHOULD GO?**

It is the ILO Convention No. 169 which for the first time identified and raised the concern in regard to internal displacement. This convention is considered as the beginning of codification of international instruments which officially talk about the prevention and protection of people (mainly about indigenous and tribal people) from forced displacement due to any reason within the territory of State including displacement by development project like large dams etc.<sup>130</sup> After this key international document was the Guiding Principles on Internal Displacement which were adopted in 1998 by the United Nations. This convention also gives protection against internal displacement against any form, including force displacement by development project such as large dams.<sup>131</sup> Even though this document is declaratory and of non-binding nature, but many States have adopted the principle of convention in their domestic law.<sup>132</sup>

But it does not mean that before 1998, there weren't any provisions for the protection of rights of displaced people under international law. Oustees already has sufficient protection under various convention like UDHR, ICCPR, ICESCR etc. Though it was not directly included, it does not mean that involuntary or forced displacement was accepted before 1998.

'Right not to be displaced' in strict sense denied displacement due to any reason and stop all development activity which were responsible for displacement.<sup>133</sup> But this is not possible in the real world. World population is increasing day by day and to fulfil their social and economic demand, it becomes necessary that government will commission more development project. There are many development projects in which displacement cannot be avoided, for example, Narmada dam project, Tehri dam project

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<sup>130</sup> Indigenous and Tribal Peoples Convention No. 169, 1989, art. 5,6,7,8,9.

<sup>131</sup> UN Guiding Principles on Internal Displacement, 1998, principle 1.

<sup>132</sup> Bogumil Terminski, *Development-Induced Displacement and Resettlement: Causes, Consequences and Socio-Legal Context* (Ibidem Press, Stuttgart 2015).

<sup>133</sup> *Id.*

etc. These dam projects were important for the national development but accounted for large displacement.

It deemed that ‘right not to be displacement’ cannot be realised in its strict sense. It means that there is no comprehensive solution to counter the risk of displacement including dam induced displacement. If it is realised in strict sense then it will lead to stop all economic and other necessary activity. This right should be given liberal interpretation in light of human right based approach. As discussed earlier, displacement always leads to gross violation of human rights, along with physical loss of property.<sup>134</sup> It would be appropriate that “right not to be displaced” must be seen as right which provides mechanism for protection of rights of displaced people. This right provides protection from arbitrary, unplanned and unjustified displacement.<sup>135</sup> The codification of the ‘right not to be displaced’ guarantees to improving the condition of displaced people from development projects, including projects like large dam.

It is more in favour of adequate R & R, not on complete ban of development projects. The right to R & R is all about planned and humanely relocation at new places with adequate compensation. Amount of compensation should be decided in light of human rights violation and extended social mechanism.

The above discussion makes it clear that both the right ‘right not to be displaced’ and ‘the right to be R & R’ are associated with each other. ‘Right not to be displaced’ has a restrictive character which focuses on prevention, prohibition and elimination of negative consequences of force displacement and ‘the right to be R & R’ can be seen as right which emphasis to improve the condition of displaced people after displacement and during process of R & R. Both the rights should be adopted and implemented by every State of the globe to counter the dilemma of displacement, specially dam induced displacement.

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<sup>134</sup> B. R. Johnson and C. Garcia-Downing, “Hydroelectric Development on the Bio-Bio River”, *Chile: Anthropology and Human Rights Advocacy*, Available at: [http://www.idrc.ca/en/ev-645332011-DO\\_TOPIC.html](http://www.idrc.ca/en/ev-645332011-DO_TOPIC.html), (last visited on November 2020).

<sup>135</sup> Bogumil Terminski, “*Development-Induced Displacement and Resettlement: Causes, Consequences and Socio-Legal Context* (Ibidem Press, Stuttgart 2015).

### **3.8 SUM-UP**

This chapter has concluded an important part of this research that is human rights violation of dam oustees. This chapter has given a detailed study of available human rights to dam oustees as well as tries to find out land's rights in International human rights law. The main concern of international human rights law is, its implementation which is also discussed under this part. Apart from this researcher has tried to locate the human rights concept in Indian legal system.

There is sufficient mechanism available to minimise the risk of displacement but there is lack of political will on side of legislature of States as well as international bodies. One thing is clear that the evil effect of displacement can be minimised if proper mechanism is followed by responsible authorities. In cases of unavoidable circumstances, oustees must be awarded adequate compensation. Next chapter will deal with the concerns of international institutions on dam induced displacement.

# **CHAPTER-IV**

## **INTERNATIONAL INSTITUTIONS CONCERN ON DAM INDUCED DISPLACEMENT**

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### **4.1 PRELUDE**

In the long history of human development from cave to modern sky raper building, the idea of law has played a dynamic role. Rule of law, one of the most essential elements, is a tool for just and stable existence of society. Law is the key to regulate the society and maintain the public order and peace. Law consists of a series of rules, regulations, behavior and reflections, to some extent, the idea and preoccupations of the society within its functions.

Like the national law, international law has also controlled the behavior of community but the difference lies in the subject. The subject of international law is Nation-States, not individual citizen like national laws. International law has been developing since the middle of the last centuries. Law and communities are associated, law is the governing body of society and reflects the culture and tradition of society within it operates. The society evolves from a certain specific set of social, economic and political values which reflects on the existing legal frame work of that society. Similarly, the international law is the outcome of its environment.<sup>1</sup>

In modern world international law has immense importance. From the regulation of space expeditions to the question of the division of the ocean floor, and from the protection of human rights to the management of the international financial system, its involvement has spread out from the primary concern with the preservation of peace, to ember all the interests of contemporary international life.<sup>2</sup>

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<sup>1</sup> Malcolm N. Shaw, *International Law* 43 (Cambridge University Press, New Delhi, 6<sup>th</sup> edn., 2008).

<sup>2</sup> *Id* at 44.

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Together with evolution of individual human rights, the rise of international institutions like United Nations,<sup>3</sup> International Labour Organization,<sup>4</sup> World Bank and many others has marked perhaps the key distinguished feature of modern international law. International organizations have now been accepted as possessing rights and duties of their own and a distinctive legal personality.<sup>5</sup>

Over the past decade, different international legal entities and institutions have responded to the human rights impacts and risks of dam induced displacement by formulating a variety of guidelines, laws and best practices. This chapter of research will discuss the concern of international institution in this regard. Some of the most important international practices and role of various international organization on displacement by development project specifically by large dams are studied and analyzed by the researcher in this chapter.

### **4.2 ROLE OF UNITED NATION**

UN came in to being on 24 oct 1945, It is a pivotal organ of the world government. When the first world war had taken place, after seeing its impact on human civilization, the League of Nations was established to prevent a similar war in future but somehow it failed to keep its promise and the world had seen a horrifying second world war. Second world war had nearly affected every country negatively and witnessed a number of deaths as well as accounted for huge capital loss. After this event of world war, nations of the world had realised the need of a strong international body which could prevent the further wars and maintain peace and security among the nations, and this gave birth to UN.

Since its establishment UN promoting, protecting and maintaining the human rights of people worldwide. In this direction UN has done a tremendous work. UN has also taken various steps to protect the interest and rights of people who have faced the dilemma of displacement including those who are displaced by large dam projects that is dam oustees. Following are the important declarations, conventions and guiding principles adopted by the UN to protect the interest and rights of dam oustees:

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<sup>3</sup> Hereinafter UN.

<sup>4</sup> Hereinafter ILO.

<sup>5</sup> *Id* at 47.

## **4.2.1 Declaration on Right to Development**

In 1986, UN general assembly has adopted the Declaration on the Right to Development by resolution 41/128.<sup>6</sup> This declaration reaffirms the individuality and interdependence of all human rights and also lays down detailed guidelines for many other similar issues.<sup>7</sup> The right to development deemed to be an inalienable human right of all humans to participate in and enjoy economic, social, cultural and political development.<sup>8</sup> While States have the primary responsibility to create conditions which are favourable to its realisation<sup>9</sup> including duty to formulate international development policies to full realization of right to development.<sup>10</sup>

The textual analysis of right to development can be done in following heads:

### **4.2.1.1 Concept of Development**

The very first Article of this declaration talks about the concept of development and states that “The right to development is an inalienable human right by virtue of which every human person and all people 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”<sup>11</sup> This Article acknowledges three principles:

- 1) There is an inalienable human right, known as right to development. Here ‘inalienable’ term points out that right to development cannot be taken away or restricts in any manner.
- 2) There is a particular process of economic, social, cultural and political development by using such process of development all human right and fundamental freedom which are enumerated in UDHR and other convention of UN can be fully realised.
- 3) The right to development is a human right by virtue of which every human person and all people are entitled to participate in, contribute to and enjoy that

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<sup>6</sup> Declaration on the Right to Development, 1986.

<sup>7</sup> *Id*, art. 9.

<sup>8</sup> *Id*, art. 1.

<sup>9</sup> *Id*, art. 3.

<sup>10</sup> *Id*, art. 4.

<sup>11</sup> *Id*, art. 9.

particular process of development. It is duty of bearers that is States to protect and promote this right.

#### **4.2.1.2 Nature of Development**

Article 1 of this convention has used two terminologies that are ‘every human person’ and ‘all people’, which shows that this convention is acknowledging that even though right to development is collective right but it cannot be seen in contradiction from an individual or ‘every human person’ rights. Right to development is associated with realization of the right of people to self-determination.<sup>12</sup>

Article 2 states that the core purpose of development would be ‘human person’ which means it is the individual human who has ‘actively participated and is the beneficiary of development’ even though ‘peoples or collective of human persons’ would be entitled to some rights for example, full sovereignty over the natural wealth and resource in terms of territory.<sup>13</sup>

#### **4.2.1.3 The Process of Development**

Article 2, clause 3, talks about the process of development in which all human rights and fundamental freedom can be fully realised and states that “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 the benefits resulting therefrom.”<sup>14</sup> Article 8 elaborates this point again by stating that “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 development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.”<sup>15</sup>

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<sup>12</sup> *Id*, art. 1(2).

<sup>13</sup> *Id*, art 2.

<sup>14</sup> *Id*, art. 2(3).

<sup>15</sup> *Id*, art. 8.

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To realise this process of development, “All human beings have a responsibility for development...”<sup>16</sup> but it is the duty of the States to create favourable condition to development at national and international level.<sup>17</sup> Article 2 clause 3, imposes duty on States to create appropriate national policy on development and Article 8 states that “States should undertake all necessary measures at national level for realisation of right to development”.<sup>18</sup> Article 6 clause 3, requires that “States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic social and cultural rights.”<sup>19</sup>

The States are also expected to take resolute steps to eliminate the massive and flagrant violation of human rights resulting from apartheid, racial discrimination, colonialism, foreign domination and occupation etc.<sup>20</sup>

### **4.2.2 United Nation Guiding Principle on Internal Displacement**

20<sup>th</sup> century has seen the many civil wars which were accounted for the plight of displacement within the country. The convention relating to status of refugees does not apply to people who are victims of displacement within their country, this area of gap in international law has given birth to “The U.N. Guiding Principles on Internal Displacement, 1998”<sup>21</sup> Guiding principle was presented to the commission on human right in 1998. It was the first document which has addressed the international displacement because of any reason like war, natural disaster or by development projects etc. Guiding principle are related to rights of internally displaced person in light of international human rights law and humanitarian law.<sup>22</sup>

Dam oustees come under the category of internally displaced people because they are displaced by large dam projects which are part of development, hence guiding

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<sup>16</sup> *Id* art. 2(2), “All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.”

<sup>17</sup> *Id* art. 3.

<sup>18</sup> *Id*, art. 8.

<sup>19</sup> *Id*, art. 6(3).

<sup>20</sup> *Id*, art. 5.

<sup>21</sup> Guiding Principles on Internal Displacement, 1998 (hereinafter Guiding Principles).

<sup>22</sup> United Nations General Assembly, *Report of The Special Rapporteur on The Human Rights of Internally Displaced Persons* UN Doc A/HRC/38/39 (April 11, 2018), 5.

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principle will also apply on dam oustees. Following are the key feature of the guiding principle:

- 1) The guiding principles are non-binding in nature, even though they are accepted by international community substantially.<sup>23</sup>
- 2) There are thirty principles enumerated in guiding principle which deals with the internal displacement within country and provides guideline to all actors who are associated with the internal displacement of people. These actors may be anyone whether government, insurgent group, NGO's or international organization.<sup>24</sup>
- 3) Guiding principle defines, for the purposes of these Principles, internally displaced persons or groups of persons as "who have been forced or obliged to flee or to homes or places of habitual residence, in particular as a result of or avoid the effects of armed conflict, situations of generalized violence, of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border."<sup>25</sup>
- 4) These principles are applied to all phases of displacement and provides standards for protection against arbitrary displacement.<sup>26</sup>
- 5) These guiding principles have set forth standards for protection during displacement, tailoring the full range of civil, political, economic, social and cultural rights to the specified needs of internally displaced people.<sup>27</sup> These principles also provide guidelines for protection of displaced people during return, resettlement and reintegration.<sup>28</sup>
- 6) The guiding principle reflect the balance between State sovereignty and humanitarian imperatives and clearly recognising that State would be primary responsible for displacement of people due to any reason.<sup>29</sup>
- 7) This guiding principle also clarifies that offer of helps from international humanitarian organization shall not be regarded as an unfriendly act or an interference in State sovereignty. Consent for international aid is not to be arbitrarily

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<sup>23</sup> Roberta Cohen, "The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting" 10(4) *Global Governance* 459 (2004).

<sup>24</sup> Guiding Principles on Internal Displacement, 1998, Introduction- Scope and Purpose - 3.

<sup>25</sup> *Id*, Introduction- Scope and Purpose -2.

<sup>26</sup> *Id*, principle 6.

<sup>27</sup> *Id*, principle 10 to 24.

<sup>28</sup> *Id*, principle 28.

<sup>29</sup> *Id*, principle 3,25.

withheld, particularly when authorities concerned are unable or unwilling to provide the require assistant. Further emphasises that in providing assistance international institution or organization should protect human rights of displaced people.<sup>30</sup>

### **4.2.3 United Nation Declaration on the Rights of Indigenous People**

Generally, tribals live in isolated area, nearby water resources. Large dams and rivers are interconnected, these projects have invariably come up in tribal areas and affect them negatively. Even though, tribals represent 8.6 percent of the total population of India<sup>31</sup> but, almost 40 percent of dam oustees belong to the tribal communities.<sup>32</sup> In some States, up to 100 percent of the oustees are tribals.<sup>33</sup> Condition of tribals displacement is nearly similar all over the globe. They become easy victims of displacement because of their establishment and culture.

Since the establishment of UN, it has taken a number of actions to protect the human rights of people, the UN has also made special provisions to protect the interest of vulnerable class like indigenous and tribal people. In 1949, UN first time addressed the issue of indigenous people (on the proposal of Bolivian government) and invited sub commission. This sub commission was given a task to study the condition of American indigenous people. This sub commission was opposed by many States. Due this negative approach of States, UN has passed resolution to stop all similar studies unless affected member State requested to do so.<sup>34</sup>

In 1965, UN sub commission on ‘Prevention of Discrimination and Protection of Minorities’ appointed Mr. Hernan Santa, Special Rapporteur, to initiate a study on racial discrimination. Special Rapporteur in his last report has recommended that indigenous people are facing a number of discriminations and their human rights are

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<sup>30</sup> *Id*, principle 27.

<sup>31</sup> Census 2011, *Office of the Registrar General*, India.

<sup>32</sup> Ministry of Tribal Affairs, “Annual Report 2016-17: Socio-Economic Activities for Tribal Development” 47 available at: <https://tribal.nic.in/Statistics.aspx> (last visited on July 22, 2021).

<sup>33</sup> Gupta and P.K. Singh, “The Hidden Cost of Development: A Review of Mental Health Issues of Displaced Tribal Populations in India”. 26 *Journal of Public Health* 718 (2018), available at: <https://doi.org/10.1007/s10389-018-0913-9>.

<sup>34</sup> UN Department of Economic and Social Affairs Indigenous Peoples, *Study of the Problem of Discrimination Against Indigenous Populations: Final Report Submitted by the Special Rapporteur, Mr. Jose Martinez Cobo*, E/CN.4/Sub.2/476/Add.4 (July 30, 1981), 25-26.

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being violated continuously by State itself, and demanded their issue must be addressed comprehensively. This recommendation was accepted by the sub commission on 'Prevention of Discrimination and Protection of Minorities' in 1970 and in 1971 same sub commission has appointed Mr. Jose Martinez Cobo as Special Rapporteur to study and suggest protective measure to eliminate discrimination against indigenous people. Between 1981 to 1984 Mr. Cobo submitted his report in many parts in which he has given compressive issues of indigenous people and solutions of issues.<sup>35</sup> On the basis of these reports, sub commission has proposed for the creation of 'Working Group on Indigenous Population' in 1981. This proposal was accepted in 1982 and 'Working Group on Indigenous Population' came into existence. Due to continuing effort of this working group "The Declaration on Rights of indigenous peoples" was adopted in 2007 by UN.<sup>36</sup>

The Declaration on Rights of indigenous peoples, 2007, contains 46 Articles and the text of declaration is extensive, elaborated and contains 'well-accepted rights' for indigenous people in existing international law. The text is full of aspirational values which should be considered by States during drafting legislation and policies for indigenous people. Following are the salient feature of this declaration:

- 1) The Declaration notes that indigenous people have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognised in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.<sup>37</sup>
- 2) They have the right to self-determination<sup>38</sup> and, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.<sup>39</sup>
- 3) They further have the right to maintain and strengthen their distinctive political, economic, social and cultural characteristics, as well as their legal systems, while retaining the right to participate fully in the life of the State,<sup>40</sup> the right to a

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<sup>35</sup> *Id.*

<sup>36</sup> Malcolm N. Shaw, *International Law* 299 (Cambridge University Press, New Delhi, 6th edn., 2008).

<sup>37</sup> Guiding Principles on Internal Displacement, 1998, principle 1.

<sup>38</sup> *Id.*, principle 3.

<sup>39</sup> *Id.*, principle 4.

<sup>40</sup> *Id.*, principle 5.

nationality<sup>41</sup> and the collective right to live in freedom and security as distinct people free from any act of genocide or violence.<sup>42</sup>

- 4) They also have the right not to be subjected to forced assimilation or destruction of their culture, while States are to provide effective mechanisms for prevention of, and redress for, *inter alia* any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities.<sup>43</sup>
- 5) The Declaration also lists their rights to practise their cultural traditions, and to education, access to media and health practices, together with a range of rights concerning their distinctive relationship to the land.<sup>44</sup> The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialised agencies, including at the country level, and States are called upon to promote, respect for and full application of the Declaration.<sup>45</sup>

#### **4.2.4 United Nation Basic Principles and Guidelines on Development Based Eviction and Displacement, 2007**

This ‘Basic Principle and Guidelines on Development Based Eviction and Displacement, 2007’<sup>46</sup> addresses implications of displacement and eviction due to development activity. This UN Guideline, 2007 is the outcome of “The Practices of Force Evictions: Comprehensive Human Rights Guidelines on Development-Based Displacement, 1997”.<sup>47</sup>

UN Guideline, 2007 are applicable to all types of forced or involuntary displacement and provide umbrella protection to oustees against force eviction from their home. These guidelines emphasises that eviction may be allowed in ‘exceptional cases’ for the welfare of public at large, such eviction must be authorised by law and

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<sup>41</sup> *Id*, principle 6.

<sup>42</sup> *Id*, principle 7(2).

<sup>43</sup> *Id*, principle 8.

<sup>44</sup> *Id*, principle 3-37.

<sup>45</sup> *Id*, principle 42.

<sup>46</sup> Hereinafter UN Guideline 2007.

<sup>47</sup> UN, Basic Principles and Guidelines on Development-Based Evictions and Displacement, 2007, para 3.

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should be accordance with international human rights standers.<sup>48</sup> Oustees must award fair compensation and rehabilitation benefits.<sup>49</sup>

One of the most important parts of this guideline is that acknowledgment of operational procedure of an eviction; before, during and after, based on international human rights standard. Para 37 to 44 deals with the procedure before eviction and fixes the responsibility of government and other involved authorities to take necessary steps to protect human rights of oustees during eviction. These rights are; right to adequate housing, secure tenure of housing, right to resettlement, right to adequate compensation, equal right of women and men against forced eviction.<sup>50</sup>

Para 45 to 51 has contained the protective guidelines during eviction. Some of these guidelines are; government officer and observer must visit eviction site regularly, eviction should not take place in hostile situations like war, natural calamity, during children's exam period, on religious holidays etc., protection to oustees from gender-based discrimination, use of limited and reasonable force during eviction, oustees should not be forced to demolish their property.<sup>51</sup> According to these guidelines, it is duty of government and other involve authorities to implement and protect these rights of oustees.<sup>52</sup>

Last procedural part is procedure to protect oustees rights after eviction, para 52 to 58 deals with this part and imposes responsibility on the government and other involved authority to adopt this protective procedure. These are; to provide immediate adequate compensation and alternative accommodation, provide food, water, medical services, education to children and livelihood source, protection against discrimination among women, children, indigenous people, children and other vulnerable class etc.<sup>53</sup>

Another important feature of UN Guideline, 2007 is its monitoring procedure which gives the guarantee of implementation of these guidelines because without proper watchdog machinery things are never implemented properly, policy and guidelines become useless in the absence of proper implementation. Para 69 and 70 of

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<sup>48</sup> *Id*, para 13-20.

<sup>49</sup> *Id*.

<sup>50</sup> *Id* at para 37 to 44.

<sup>51</sup> *Id* at para 54 to 51.

<sup>52</sup> *Id*

<sup>53</sup> *Id* at para 52 to 58.

guidelines, 2007 deals with monitoring procedure and imposes duty on the government to appoint independent body to perform monitoring function and submit its report to government. Same report should be available in public domain for public inspection.<sup>54</sup>

UN has done tremendous work in the area of displacement specially by development projects like large dams etc. UN has adopted various declarations and guiding principles as discussed above, which shows its seriousness and concern regarding arena of displacement and has tried to give useful protective measures to protection human rights of displaced people due to development projects including large dams. The problem with these declaration and guiding principles is that they are of non-binding nature and cannot be enforced by courts. State is free to adopt these declaration and guiding principles, most of the States have not adopted these principles and guidelines, even though some States have adopted but not ratified them. There should be some mandatory declaration and guiding principles to protect the interest and human rights of dam oustees.

### **4.3 ROLE OF INTERNATIONAL LABOUR ORGANIZATION**

It is more than ten decades; ILO has served the marginalized section of the society. It came into existence as a part of treaty of Versailles in 1919. Samue Gompers, head of the American Federation of Labour, had drafted the Constitution of ILO. This organization has devoted itself to promote social justice and protect human and labour rights of international level.<sup>55</sup>

In 1926, ILO has created a committee of experts on native labour, resulting in adoption of serious of international labour conventions and recommendations concerning forced labour and recruitment practices of indigenous groups. In 1951, a second committee of expert on indigenous labour met for the first time to encourage the independent States to adopt the legislative provision for the betterment of indigenous people. Finally in 1953, ILO published a detailed book, entitled as “Indigenous Peoples: Living and Working Conditions of Aboriginal Population in

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<sup>54</sup> *Id* at para 69,70.

<sup>55</sup> ILO, available: <https://www.ilo.org/global/about-the-ilo/lang--en/index.htm> (last visited on Nov. 28, 2021).

Independent Countries.” This book contained a detailed study on Indigenous people through the globe and most important part of this book is that it has also given information of action taken by various States for the betterment of indigenous people.<sup>56</sup>

ILO has passed two conventions that is Convention No. 107 and Convention No. 169 in 1957 and 1986 respectively. Convention No. 169 is the revised version of Convention No. 107. Both the conventions have a limitation that is they only talk about the indigenous and tribal people. The good thing is that this limitation is not reducing its importance because indigenous and tribals are one of the most affected oustees by large dams and other development projects.<sup>57</sup>

#### **4.3.1 Analysis of Convention No. 169 And Comparison with Convention No. 107**

Most of the governments do not agree with the level of protection given to indigenous and tribal people by ILO.<sup>58</sup> Even those States who participated in the drafting of Convention No. 169 were confused about the outcome of the efforts of ILO in this regard. Some States believe that they have come too far and some believe that they have still not done enough for the interest of Indigenous and tribals,<sup>59</sup> this dilemma can be only understood by analysing and comparison between Convention No. 169 and 107:

- 1) The Convention No. 169 has replaced the ‘assimilationist orientation’ principle which was given in Convention No. 107. This replacement has given great protection to indigenous and tribal people as now it recognises their right to continue to live with their own institution, way of life, culture etc. with national population. Before this, they had to leave their social and cultural practices due to ‘assimilationist orientation’ if they had to be rehabilitated in to modern society.<sup>60</sup>
- 2) One the biggest change made by the new convention is change in terminology used to identify indigenous group is ‘indigenous people’. In the old convention

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<sup>56</sup> J.K. Das, *Human Rights and Indigenous Peoples* 45 (A.P.H. Publishing Corporation, New Delhi, 2001).

<sup>57</sup> Ministry of Tribal Affairs, “Annual Report 2016-17: Socio-Economic Activities for Tribal Development” 47 available at: <https://tribal.nic.in/Statistics.aspx> (last visited on July 22, 2021).

<sup>58</sup> James W. Colborn, “International Labour Organisation Convention Number 169: Celebrate the Differences” 2(1) *Willamette Bulletin of International Law and Policy* 3 (1994).

<sup>59</sup> *Id.*

<sup>60</sup> Indigenous and Tribal Peoples Convention No. 169, 1989, preamble para 5,6.

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‘indigenous people’ was not there, instead of it ‘indigenous population’ was used. It may seem as a minor change but it has a vital impact. By bringing this terminological change ILO has recognised the indigenous peoples’ rights to self-determination.<sup>61</sup>

- 3) Right to self-government of indigenous population is one of the key rights which is acknowledged by Convention No 169. This important right was not mentioned in Convention No. 107. This right was restricted by Article 7(2) of Convention No. 107 which stated that indigenous population could not own their custom and institution which are against the national legal system.<sup>62</sup>
- 4) The old definition of indigenous peoples which was given in ILO Convention No. 107 was not able to stop the arbitrary power of States to define who are tribal groups and who are not? State was the sole authority to identify which group would fall under the category of indigenous population.<sup>63</sup> But Article 1(2) of Convention No. 169 has given this right to indigenous population by adopting ‘self-identification’ as ‘fundamental criterion’.<sup>64</sup> Now, indigenous people have right to decide whether they come under the group of indigenous population or not, rather the government.<sup>65</sup>
- 5) The degree of participation allowed to indigenous peoples in decisions and policies affecting them is also addressed in a more effective manner in Convention No. 169. Convention No. 107 only required governments to seek the collaboration of these populations and their representative’s concerning application of the provisions that relate to the protection and integration of indigenous peoples.<sup>66</sup> Convention No. 107 did not require that government actually receive any collaboration nor did it define what constituted “seeking” collaboration
- 6) The Convention No. 169 requires that government should consult with the indigenous people before making any policy or administrative policy for them, which affects them directly or indirectly as well as such consultation must be in

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<sup>61</sup> James W. Colborn, “International Labour Organisation Convention Number 169: Celebrate the Differences” 2(1) *Willamette Bulletin of International Law and Policy* 5 (1994).

<sup>62</sup> Indigenous and Tribal Populations Convention No. 107, 1957, art. 7(2).

<sup>63</sup> *Id.*, art. 1.1(b).

<sup>64</sup> Indigenous and Tribal Peoples Convention No. 169, 1989, art. 1(2).

<sup>65</sup> *Id.*

<sup>66</sup> Indigenous and Tribal Populations Convention No. 107, 1957, art. 5(a).

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‘good faith’.<sup>67</sup> This procedure was absent from the old convention that is Convention No 107.

- 7) New convention, Convention No. 169, has given the right to indigenous people to challenge the proposed legislation for them.<sup>68</sup> This has given them power to examine the proposed legislation and its effect on them if it would become a law. By this the indigenous people can avoid the misuse of colourable legislation for them.
- 8) New convention has stated that as much as possible, indigenous people should have control over their own social, economic and cultural development.<sup>69</sup> Government cannot discriminate against them in providing financial and technical aid on ground that they don’t have control over the social, economic and cultural development of indigenous people.<sup>70</sup>
- 9) One of the biggest issues with old convention was that it failed to recognise and protect land rights of indigenous people whether previously occupied or currently used for resource.<sup>71</sup> Although it stated that government should recognise the right to ownership of traditionally occupied lands.<sup>72</sup> But Convention Co. 107 did not define what is traditionally occupied land? What land is traditionally used but not occupied? What is the remedy against compulsory acquisition of land by government in the name of national interest? Convention no. 169 has addressed these issues, for example;
  - a) Government has to take consent of indigenous people before taking their land. If it is necessary and in national interest then only government can acquire land without consent but there should be “appropriate procedure established by law of nation”.<sup>73</sup>
  - b) Right to return traditional land of indigenous and tribal peoples as soon the reason for relocation ceases to exist.<sup>74</sup>

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<sup>67</sup> Indigenous and Tribal Peoples Convention No. 169, 1989, art. 6.

<sup>68</sup> James W. Colborn, “International Labour Organisation Convention Number 169: Celebrate the Differences” 2(1) *Willamette Bulletin of International Law and Policy* 5 (1994).

<sup>69</sup> Indigenous and Tribal Peoples Convention No. 169, 1989, art. 7(1).

<sup>70</sup> *Id.*, art. 23(2).

<sup>71</sup> Indigenous and Tribal Populations Convention No. 107, 1957, art. 11.

<sup>72</sup> *Id.*

<sup>73</sup> Indigenous and Tribal Peoples Convention No. 169, 1989, art. 16(2).

<sup>74</sup> *Id.*, art. 16(3).

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- c) Land for land as compensation should be recognised where land cannot be returned or is acquired for eternity.<sup>75</sup>
  - d) This convention has also recognised sub-soil right over the land, adopted co-management and sharing of revenue and other mining benefit.<sup>76</sup>
- 10) New convention has also given importance to native language of indigenous people. In old convention this right was restricted and children were taught their mother language only to facilitate the transition to national language.<sup>77</sup> Instead of teaching the native language as a spring board for its replacement by the national language, the new convention has only required the government to take adequate measures to ensure that indigenous peoples have the opportunity to learn the national language.<sup>78</sup>

New convention, Convention No. 169, has brought many positive changes and empowered the social, economic and political rights of indigenous people. Most important change is ending the concept of ‘assimilationist’ policy of Convention no. 107 and give protection to indigenous and tribal people’s language, their forest home, culture and other customary rights. Now indigenous peoples have rights to define themselves as indigenous. Before it was government who had the power to define who will be indigenous. Indigenous peoples right to hold their land is acknowledged by the new convention. This new convention has brought many positive changes in area of indigenous and tribal people’s rights.

The ILO Convention No. 107 and 169 has acknowledged a number of important rights of indigenous and tribal people but without proper implementation and watchdog machinery no right can be protected. That is why the ILO Constitution has adopted a procedure for governing body<sup>79</sup> and complaint procedures.<sup>80</sup> Governing body is authorised to request member States to submit annual report about the measures taken

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<sup>75</sup> *Id*, art. 16(4).

<sup>76</sup> *Id*, art 15(2).

<sup>77</sup> Indigenous and Tribal Populations Convention No. 107, 1957, arts. 23(1), 23(2).

<sup>78</sup> Indigenous and Tribal Peoples Convention No. 169, 1989, art. 29.

<sup>79</sup> ILO Constitution, 1919, art. 7; The Governing Body shall consist of fifty-six persons, twenty-eight representing governments, fourteen representing the employers, and fourteen representing the workers. *Government Representatives* consist of the twenty-eight persons representing governments, ten shall be appointed by the Members of chief industrial importance, and eighteen shall be appointed by the Members selected for that purpose by the Government delegates to the Conference, excluding the delegates of the ten Members mentioned above.

<sup>80</sup> *Id*, arts. 24,25.

by them to the implementation of the conventions.<sup>81</sup> This report would be submitted in International Labour Office.<sup>82</sup>

Article 24 and 25 of the ILO Constitution contains the complaint mechanism, if any local and international actor who is concerned about the violation of ILO convention approaches to the governing body.<sup>83</sup> After finding the complaint the governing body will approach the concerned government against whom complaint was recorded for the redressal of such complaint. Article 25 empowers the governing body to published the communication and replies related to complain if governing body is not satisfied with the government reply.<sup>84</sup>

#### **4.4 ROLE OF WORLD BANK**

“OUR DREAM IS A WORLD WITHOUT POVERTY.” It is written on the sign board of world entrance gate. The world bank is known as the protector of poor countries, lender of last resort and beacon of development.<sup>85</sup> World bank, international financial institution, is an association of three intergovernmental institution namely; the International Financial Corporation, the International Bank for Reconstruction and Development and the International Development Association. The main function of these three institutions is the promotion of economic development in the less developed countries and areas.<sup>86</sup>

World Bank is a central player in adopting promoting, protecting human rights norms and environmental and social standards. One of the main purposes of world bank is to promote economic development and alleviate poverty but the truth is that projects which are funded by world bank led to impoverishment and increasing inequality within and between countries.

The fact is that world bank is a leading public fund for development projects, specifically large dams that is why world bank must be held accountable for displacement of people and the violation of oustees human rights by such development

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<sup>81</sup> ILO Constitution 1919, art. 22.

<sup>82</sup> *Id.*

<sup>83</sup> ILO Constitution 1919, art. 24.

<sup>84</sup> *Id.*, art. 25.

<sup>85</sup> V. Ranganathan, “World Bank and India’s Economic Development” 38(3) *Economic and Political Weekly*, 236 (2003).

<sup>86</sup> Roy Blough, “The World Bank Group” 22 (1) *International Organization*, Winter, 152 (1968).

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projects. It should be the duty of world bank to implement the high standard policy and procedure to check the displacement dilemma. As T. Downing said, “when people are displaced by development projects, social impoverishment seems incongruous, if not grotesque.”<sup>87</sup>

By accepting their accountability with economic development mission world bank has gradually adopted a policy on resettlement and rehabilitation of development induced displacement including by large dams’ project. In 1979, world bank has prepared its policy 1979 and issued in 1980 as “Social Issues Associated with Involuntary Resettlement in Bank Finance Projects” also known as OMS 2.33. In 1986 this policy was revised and re-issued as “An Operation Note” also known OPN 10.08. First policy was descriptive platitudes while OPN 10.08 emphasises on sustainable goal of development.

In 1988 both policy OMS 2.33 and OPN 10.08, were merged into one integrated bank policy-cum-technical paper, intended as first public disclosure of world bank resettlement policy. However, the operational department of world bank treated OPN merely as recommendatory at the time of dealing with borrowers and did not take it seriously at the time of taking final decision which makes OPN useless.

It was only in 1990, the resettlement policy re-issued as World Bank’s Operational Directive 4.30.<sup>88</sup> Involuntary resettlement, which was adding compulsory requirement for every project that displaces people to expand country capacity for economic reconstruction of Resettlers’ livelihood.<sup>89</sup> But in reality, claim of OD 4.30 is totally different. The implementation was not proper and up to the mark. The bank allows itself to be flexible and bends backwards to accept the borrower’s certification which invariably declares that rehabilitation has been completed in a satisfactory manner.<sup>90</sup> However, even when the bank staff gets report from its own consultants that

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<sup>87</sup> Theodore Downing “Mitigating Social Impoverishment when People are Involuntary Displaced” in Christopher McDowell (eds.), II *Understanding Impoverishment: The Consequences of Development Induced Displacement 34* (Berghahn Books, New York, Oxford, 1996).

<sup>88</sup> Hereinafter OD 4.30.

<sup>89</sup> Michael M. Cernea and Julie K. Maldonado (eds.), *Challenging the Prevailing Paradigm of Displacement and Resettlement: Risks, Impoverishment, Legacies, Solutions 9* (Routledge, New York, 2008)

<sup>90</sup> Ashirbani Dutta, *Development-Induced Displacement and Human Rights 66* (Deep & Deep PVT. LTD., New Delhi, 2007)

the rehabilitation plans are non-existent or are woefully inadequate, the bank does not take any stern action.<sup>91</sup>

In most the cases world bank has deliberately given project authorities more and more time to comply with R & R policies which gives opportunity to governments and project authorities to manipulates R & R process which leads to suffering of oustees, for example; Sardar Sarovar Dam in India.<sup>92</sup> The major flaw in OD 4.3. was that the bank does not use its leverage cut-off funding early enough for ensuring successful rehabilitation.

The world bank OD 4.30 has been revised in the end of 2001. It was the fourth revision of resettlement policy by world bank since it was first issued in 1980. New revised policy was adopted in December 2001 as World Bank's Operational Policy 4.12 on Involuntary Resettlement<sup>93</sup> along with Bank Procedure 4.12, is perhaps the most progressive international legal document relating specifically to development induced displacement including displacement by large dams. OP 4.12 and BP 4.12 apply to all projects for which a project concept review take place on or after 1 January 2002.

#### **4.4.1 Analysis of the World Bank OP/BP 4.12 on Involuntary Resettlement**

Following are the detailed analysis of OP/BP 4.12 on Involuntary Resettlement:

##### **4.4.1.1 Objective of OP/BP 4.12 on Involuntary Resettlement**

The main objectives of OP/BP are:

- 1) To avoid or minimize the forceful displacement, specifically due to development projects.
- 2) All the projects in which displacement cannot be avoided the displaced people that is oustees must have an opportunity to participate in the design and implementation of R & R programs and in all those cases where resources are sufficient oustees should get opportunity to get a share of benefit of projects.<sup>94</sup>

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<sup>91</sup> *Id.*

<sup>92</sup> *Id* at 69.

<sup>93</sup>OP/BP 4.12, Involuntary Resettlement, were revised on April 2013 to take into account the recommendations in "Investment Lending Reform: Modernizing and Consolidating Operational Policies and Procedures" (R2012-0204 [IDA/R2012-0248]), which were approved by the Executive Directors on October 25, 2012. (Hereinafter OP 4.12).

<sup>94</sup> OP 4.12, para 3.

- 3) To provide an opportunity to oustees so that they improve their livelihood and standard of living or at least oustees gains their pre-displaced situation.<sup>95</sup>

#### **4.4.1.2 Salient feature OP/BP 4.12 on Involuntary Resettlement**

Following are the salient feature of OP/BP 4.12 on Involuntary Resettlement:

- 1) This policy covers all types of displacement which are caused by world bank financed projects and such displacement resulted due to involuntary acquisition of land by government or project authorities.<sup>96</sup> This policy covers both, physical as well as economic displacement.<sup>97</sup>
- 2) It also covers the involuntary restriction of access to legally designated parks and protected areas resulting in adverse impacts on livelihoods.<sup>98</sup>
- 3) This policy emphasis on avoidance or minimization of forced displacement and for that purpose suggesting to conduct a comprehensive assessment of all available alternatives and adopting that alternative which causes least displacement within the economic and technical parameters.<sup>99</sup>
- 4) This policy emphasis that when displacement is not avoidable or is absolute by necessary for development project then in that case resettlement must be planned,<sup>100</sup> there should be a provision of adequate compensation<sup>101</sup> and rehabilitation.<sup>102</sup>
- 5) These policy guidelines go beyond simple compensation scheme and require measures that actually restore the living standards of oustees, those who do not benefit fully from compensation would be rehabilitated in order to become established and economically self-sustaining or at least restore their formal standard of living.<sup>103</sup>

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<sup>95</sup> *Id.*, para 3(b).

<sup>96</sup> *Id.*, para 3.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*, para 25-30.

<sup>100</sup> *Id.*, para 6.

<sup>101</sup> *Id.*, para 6 (a) (iii).

<sup>102</sup> *Id.*, para 2(a).

<sup>103</sup> OP 4.12, para 27 (c).

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- 6) If the oustees are indigenous people then in that case if displacement is not avoidable then preference is given to land-based resettlement strategies for these peoples.<sup>104</sup>
- 7) The policy also states that oustees should get support during the transit period and such support should be reasonable to restore their livelihood and standard of living.<sup>105</sup> If possible oustees should be given a share in project benefit.<sup>106</sup>
- 8) This policy has acknowledged the right of oustees to participate in decision making process and by focusing on the inclusion of a planned resettlement operation,<sup>107</sup> deal with displacement situations that can be expected to provide the most guarantees for oustees. If government officially accepts that they are displacing people from their native place, then there would be greater likelihood that right of oustees would be respected and they would get a fair compensation.
- 9) The process of rehabilitation should be treated as an opportunity for development, for the new settlers by giving them infrastructural and service facilities and empowering them with training and aptitudes.<sup>108</sup>
- 10) Finally, the Bank policy has also spoke at length about the need to maintain the ethnic values and social relationships of the indigenous communities. It also talks about treating their informal customary rights to the land or other resources acquired for the project, as natural rights and hence to be compensated adequately.<sup>109</sup>

#### **4.4.1.3 Major Flaws in OP/BP 4.12 on Involuntary Resettlement**

World Bank policy, OP/BP 4.12 on Involuntary Resettlement is an important policy from the point of view of displacement especially due to development projects which require large scale of land but like other policies it has also some lacuna, some of them are important which must be addressed in future by the world bank. They are:

- 1) This policy does not cover the displacement which occurs prior to world bank involvement in projects. In most of the cases the world bank makes an entry in the

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<sup>104</sup> *Id*, para 9, 11.

<sup>105</sup> *Id*, para 6 (c) (i).

<sup>106</sup> *Id*, para 2(b)

<sup>107</sup> *Id*

<sup>108</sup> *Id*, para 6 (c) (iii).

<sup>109</sup> *Id*, para 8, 9, 11.

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project after the project has started, for example; in Sardar Sarovar Dam project in India, world bank had given loan in mid of project work and made itself accountable from the date of involvement. Which disabled many oustees from taking the benefit of this policy because they were already displaced before world bank involvement.

- 2) This policy covers only direct displacement and not talk about indirect displacement. In most of the cases the people depend upon natural and environmental resources for their livelihood which are available in their locality. Whenever availability of such resources is reduced, people are forced to move beyond their habitat for better human life. In this case development projects are not directly responsible but they are responsible for the scarcity of natural and environmental resources which force people to move from project affected area.
- 3) This policy does not cover temporary displacement and does not provide any remedy for it and also does not give any protection from restriction on accesses to natural resources available in project affected area on which oustees livelihood was dependent prior to displacement.
- 4) This policy talks about the sharing of project benefit to project affected people but this policy does not describe any clear mechanism by which a share in benefit of the project can be determine.
- 5) Last but not the least, this policy only covers cases of involuntary displacement but keeps silence on displacement which are voluntary in nature. In most of the cases government or project authorities take the consent by force or fraud or any other means and put such displacement in category of voluntary one which is violation of basic human rights of oustees. Due to this voluntary displacement should also be covered by such policies.

#### **4.4.2 World Bank's Inspectional Panel Mechanism**

World bank's inspection panel is an independent forum and it was established by the resolution no. 93-10 of the International Bank for Reconstruction and Development and by the identical resolution no. 93-6 of the International Development Association, both adopted by the Executive Directors of the respective institutions on

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22 September 1993.<sup>110</sup> It began to work in September 1994.<sup>111</sup> The motive of creating an independent panel is to make World Bank more transparent and accountable in order to achieve public confidence. The controversy around Sardar Sarovar Dam in India was examined by an independent committee that is Morse committee, was an important landmark in this direction.<sup>112</sup> Other examples of mismanagement also contributed to galvanising the Executive director to take concrete action in favour of greater accountability. This concept of independent panel inspires other financial institution to adopt similar provision to check human right violation by their funded project.

The inspection panel was established to ensure that World Bank operation adhere to the institution's policies and procedures. One of the most important features of these type of independent panel is that anyone who thinks that the World Bank supported project fail to abide by the policy and procedure then in that case the person can ask the panel to investigate the case. This was the first forum by which private parties were given the option to make accountable to an international organization for development induced displacement including by large dam project.<sup>113</sup>

In 1999, International Financial Corporation,<sup>114</sup> member of the world bank group, adopted a Compliance Advisor Ombudsman and also adopted operational guidelines for it in April 2000 which were recently revised in June 2021.<sup>115</sup> The operational guideline has given a detailed procedure, what is Ombudsman role, what procedure he would follow, what would be his jurisdiction etc. This post is independent in nature and its role is to examine the complaint made by the person who are affected by IFC funded projects.<sup>116</sup>

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<sup>110</sup> Chris de Wet (eds.), *Development-Induced Displacement: Problems, Policies and People* 89 (Berghabn Books, New York, Oxford, 2005).

<sup>111</sup> *Id* at 90.

<sup>112</sup> Bradford Morse & Thomas R. Berger, "Sardar Sarovar: Report of the Independent Review" (Ottawa: Resource Futures International, 1992), *available at*: <https://www.ielrc.org/content/c9202.pdf>.

<sup>113</sup> Chris de Wet (eds.), *Development-Induced Displacement: Problems, Policies and People* 89-90 (Berghabn Books, New York, Oxford, 2005)

<sup>114</sup> International Finance Corporation is the member of world Bank groups and promotes sustainable private sector investment in developing countries. (Hereinafter IFC).

<sup>115</sup> IFC/MIGA Independent Accountability Mechanism Policy, 2021, *available at*: <https://www.ifc.org/wps/wcm/connect/d3e7f1c4-fd6b-40fd-ae76-fb028916611d/IFC-MIGA-Independent-Accountability-Mechanism-CAO-Policy.pdf?MOD=AJPERES&CVID=nFDGwP2>.

<sup>116</sup> *Id*, s.1(3).

World bank is doing remarkable work since its establishment to protect the rights of oustees due to development projects including dam oustees. Being a financial institution, it has greater responsibility and accountability compared to other institution. Its latest operation policy on involuntary displacement is quite good compare to other institutional policies but there is always a scope for betterment, as discussed above there are some lacunas in this policy which must be addressed.

There is an ethical dilemma, as financial institutions function on the basic act of giving loan to borrowing countries, the world has legitimate reason for worrying that government will stop borrowing for controversial development projects in order to avoid high standards of accountability. The World Bank can maintain high standards and consequently run the risk that clients will turn less scrupulous or bank can lower its standard and ensure that its participation prevents risky projects from avoiding any international security.<sup>117</sup>

#### **4.5 ROLE OF WORLD COMMISSION ON DAMS**

Large dams and economic development are synonymous to each other, in modern developing world specially in developing countries. According to the report of the World Commission on Dams, 30-40 percent of irrigation land worldwide now depends upon the dams and more than 19 percent of world's electricity demand is also satisfied by the said dams.<sup>118</sup> Due to such ultimate benefits from the dams, a huge amount, more than \$2 trillion dollar investment is made in dam projects.<sup>119</sup> Dams are always surrounded by debates and protest. These protests are not only about large dams' efficiency and importance, it is also related to large displacement and suffering of oustees. The demand of dams is so high that there are more than 45000 dams around the world.<sup>120</sup> According to WCD 40 to 80 million people have been displaced by dam projects worldwide<sup>121</sup> and 16 to 38 million displaced in India since Independence by large dams.<sup>122</sup>

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<sup>117</sup> Chris de Wet (eds.), *Development-Induced Displacement: Problems, Policies and People* 89 (Berghabn Books, New York, Oxford, 2005).

<sup>118</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 52 (Earthscan, New York, 2013).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id* at 97.

<sup>122</sup> *Id* at 53.

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Whenever any dam is commissioned by any government, it involves a large share of public investment which gives a right to people to scrutinize the dam's efficiency, benefit and its negative impact. The World Commission on Dams<sup>123</sup> was a brilliant and unique step towards this scrutiny. The WCD was outcome of workshop done by International Union for Conservation of Nature<sup>124</sup> with the help of World Bank in Switzerland in 1997.<sup>125</sup> It was an independent body consisting of twelve commissioners. They have been appointed for two and a half years. Each member was serving in his individual capacity and none of them representing any institution or country.<sup>126</sup> WCD have two main objectives:

- 1) To review the development effectiveness of large dams and assess alternatives for water resources and energy development; and
- 2) To develop internationally acceptable criteria, guidelines and standards, construction, operation, monitoring and decommissioning of dams.

WCD has revised its report in year of 2000, titled as “Dams and Development, A New Framework for Decision-making - The Report of the World Commission on Dams”. In this report WCD has tried to give detailed information, experiences and different prospective of dams, on the basis of public dialogue by different delegates, scholars and researchers.<sup>127</sup> As discussed above there are more than 45000 large dams around the globe which makes it nearly impossible to examine each dam individually in its two year of tenure. For accomplishment of its task world bank has adopted four main methods:<sup>128</sup>

- 1) Thematical review;
- 2) Regional consultation;
- 3) The river basin or local dam case studies; and
- 4) Cross check survey.

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<sup>123</sup> Hereinafter WCD.

<sup>124</sup> Hereinafter IUCN.

<sup>125</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 14-15 (Earthscan, New York, 2013).

<sup>126</sup> *Id.*

<sup>127</sup> S. Parasuraman and Sohini Sengupta, “World Commission on Dams: Democratic Means for Sustainable Ends” 36(21) *Economic and Political Weekly* 1881 (2008).

<sup>128</sup> *Id.*

This method includes eight comprehensive case studies of large dams, country review for India and China, a briefing paper for Russia and newly independent States, cross-check survey of 125 existing dams, 17 thematic review papers, as well as the results of public consultations and more than 9000 submissions made available to the WCD.<sup>129</sup>

#### **4.5.1 Important Finding of WCD report “Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams”**

The WCD in its global review has examined the technical, financial and economic performance of dam along with their environmental and social performance. Following are the important finding of its report:

- 1) Nearly majority of the country in world, more than 140 countries, have significant number of dams and providing their services to their respective country. On global scale hydropower dams are providing 19 percent of electricity, accountable for 12 to 16 percent of food production, 12 percent of total dams of world providing water for domestic use as well as for industry and also providing flood control services in 75 countries.<sup>130</sup>
- 2) Whenever any project is commissioned then it is believed that it would work in its full capacity and it cannot be denied that there are some dams which are working with great efficiency. But it is also true that considerable number of dams are not working in their full capacity and many of them are not able to hit their financial and physical target.<sup>131</sup>
- 3) Most of the large dams of the world were never built on their fixed time which caused financial loses to countries, for example; Sardar Sarovar Dam in India which was founded in 1961 by Pt. Jawahar Lal Nehru and its construction was started in 1987 and it was completed after a long delay in 2007.<sup>132</sup> Construction of most of the large dams started without examining all aspects of its outcome as well as most

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<sup>129</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 53-54 (Earthscan, New York, 2013).

<sup>130</sup> *Id* at 90, 92, 93.

<sup>131</sup> S. Parasuraman and Sohini Sengupta, “World Commission on Dams: Democratic Means for Sustainable Ends” 36(21) *Economic and Political Weekly* 1885 (2008).

<sup>132</sup> *Id*

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of them have not any proper policy for compensation, rehabilitation, land acquisition, social impact assessment etc.

- 4) Large dams are generally accountable for loss of green forest, wild life, biodiversity and many other natural things. The WCD has founded in its report that project authorities always fail to revive the ecosystem which was destroyed by large dams. There are very few cases in which project authorities has succeed to revive the damaged ecosystem.<sup>133</sup>
- 5) Biggest problem associated with large dams are displacement. There is rarely any large dam project in which displacement does not occur. In most of the dam's projects R & R policy are not adequate and makes oustees life worse after displacement, they are subjected to impoverishment due to inadequate policy.<sup>134</sup> It was estimated by WCD that some 40 to 80 million people have been displaced due to large dam projects.<sup>135</sup>
- 6) The review also examined factors related to the physical sustainability of large dams and their benefits. As the stock of dams age, maintenance costs rise and climate change possibly alters the hydro- logical regime used as a basis for the design of dam spillways, ensuring dam safety will require increasing attention and investment. Of greater significance to countries with agrarian economies is the high rate of waterlogging and salinity affecting developed agricultural land in irrigation command areas of dams. Waterlogging and salinity affect one-fifth of irrigated land globally and have severe, long-term and often permanent impacts on land, agriculture and livelihoods where rehabilitation is not under- taken.<sup>136</sup>
- 7) The service delivery capacity of dams is compromised by sedimentation and consequently long-term loss of storage. This is currently a serious concern globally, and the effects will be particularly felt by basins with high geological or human-induced erosion rates, dams in the lower reaches of rivers and dams with smaller storage volumes.<sup>137</sup>

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<sup>133</sup> Alan Dessoff, "World Commission Seeks Consensus on Dams" 13(2) *Water Environment & Technology*, 30 (2001).

<sup>134</sup> *Id.*

<sup>135</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 97 (Earthscan, New York, 2013).

<sup>136</sup> S. Parasuraman and Sohini Sengupta, "World Commission on Dams: Democratic Means for Sustainable Ends" 36(21) *Economic and Political Weekly* 1885 (2008).

<sup>137</sup> *Id.*

8) In terms of the social impacts of dams, the commission found that the negative effects were frequently neither adequately assessed nor accounted for. The range of these impacts is substantial, including on the lives, livelihoods and health of the affected communities dependent on the riverine environment. Most development decisions involving displacement of people are made without a full assessment of social impacts. Despite greater awareness and improved policy guidelines, projects implemented even in the 1990s started without or inadequate assessment. Impacts on downstream livelihoods were, in many cases, not adequately assessed or addressed in the planning and design of large dams.<sup>138</sup>

#### **4.5.2 WCD Recommendation and framework for Decision-Making**

The WCD recommended a set of seven strategic priorities to provide a new frame work for decision making, minimizing negative impact of large dam and to protect the interest of oustees:

##### **1) Gaining Public Acceptance**

Gaining public acceptance, first priority, is the most important essence of any development project especially large dams. Public participation in decision making is necessary to minimize the consequence of displacement by large dam projects. People's consent must be free and they have a fair opportunity to access and examine all the information relating to the commissioned dam. Before giving consent and opinion people must have the opportunity to consult with the legal advisor and expert. Especially when dams are commissioned in tribal area in that case their special precautions must be taken. All this process must be transparent and achieved through open negotiation method.<sup>139</sup>

##### **2) Comprehensive Options Assessment**

Second priority is the comprehensive options assessment. First of all, authorities put forward development needs and objective. Once the need and objective is identified, it must be assessed through an open and participatory manner before large dam projects comes on ground. If any lacunas are found in policy or institutional framework then it

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<sup>138</sup> *Id* at 1186.

<sup>139</sup> *Id* at 1889.

must be addressed immediately to authorities and amended. Assessment authorities should give priority to social as well as environmental assessment programs and frame policies and guidelines accordingly.<sup>140</sup>

### **3) Addressing Existing Dams**

There are many large existing dams nearly in every country, some of them quite old. Before commissioning new dams, authorities must study pre-existing dams and evaluate its positive and negative outcomes. The study of pre-existing dams will be helpful to minimize the negative impact of dam projects especially social and environmental loss, as would as it will help to increase the efficiency of new dams.<sup>141</sup>

### **4) Sustaining River and Livelihood**

The fourth priority is to sustaining river and livelihood of dam oustees. Every river has its own ecosystem on whose surrounding many species develop and grow, these species are directly connected to the river's ecosystem. If rivers ecosystem is any how disturbed then in that case depended species are also disturbed and, in some cases, they become extinct.

Local communities specifically who are living around rivers are highly dependent upon the river for their very human existence, their livelihood, food, and their every other thing depends on river. Since large dams would bring change in river ecosystem and landscape. It is necessary to protect and restore the ecosystem at river basin level to foster equitable human development and the welfare of all species.<sup>142</sup>

Options assessment and decision making on river development must be a priority to avoid the negative impacts of dam, followed by the minimization and mitigation of harm to the health and integrity of the river systems.<sup>143</sup>

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<sup>140</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 458 (Earthscan, New York, 2013).

<sup>141</sup> Jamie Skinner and Lawrence J. Haas, "Report Part Title: The World Commission on Dams – approach and intent" International Institute for Environment and Development 24 (2014), *available at*: <https://www.jstor.org/stable/resrep18104.8>

<sup>142</sup> S. Parasuraman and Sohini Sengupta, "World Commission on Dams: Democratic Means for Sustainable Ends" 36(21) *Economic and Political Weekly* 1890 (2008).

<sup>143</sup> *Id.*

### **5) Recognizing Entitlement and Sharing of Project Benefit**

The purpose of development is to bring prosperity and happiness in people's life and make their life better than before. But as discussed earlier large dams always brings displacement and impoverishment to dam oustees and insufficient 'rehabilitation and resettlement'<sup>144</sup> policy makes it worse. Government or development authorities must ensure that oustees life become better than what it was prior to displacement. Development authorities must recognize and provide such entitlement which improve livelihood and quality of life and affected people get share in profits of the project.<sup>145</sup> Policies relating to R & R should be in compliance, as near as possible, with national and international laws and guidelines.

### **6) Ensuring Compliance**

The sixth priority is to ensure compliance. Before commission of any large dam project, it is necessary to gain affected people's trust and confidence. For this end it is necessary that development authorities must meet all their commitments which they made for the planning of R & R. Corrupt practices must be avoided and implementation process of policy be transparent and proper.<sup>146</sup>

### **7) Sharing River for Peace, Development and Security**

Last but not least, rivers are precious gift of nature to humans, many human civilizations were born on the banks of river. Rivers are serving humans since eternity without any discrimination. Every human being is entitled to the right to development, which is a collective human right and the end of development should be peace and security for all. Sometime transboundary rivers become a matter of dispute. Such dispute may be within or between the nations. If such situation arises within the country, then federal government of such country should intervene in the matter and should solve the dispute according to their law of land. And if dispute arises between two or more

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<sup>144</sup> Hereinafter R & R.

<sup>145</sup> *Id.*

<sup>146</sup> Jamie Skinner and Lawrence J. Haas, "Report Part Title: The World Commission on Dams: Approach and Intent" *International Institute for Environment and Development* 25 (2014), available at: <https://www.jstor.org/stable/resrep18104.8>

nations in that case international laws must apply and followed by all the nations. Rivers are for peace, security and development, not for war.<sup>147</sup>

WCD has done tremendous work in finding of dam hesitancy and giving useful finding and suggestions which must be adopted by every country whenever they commission any dam. But there are many authorities who are claiming that the report of WCD is 'anti-dam' because the guidelines and procedures which are recommended in part-II of its report are so stringent and cumbersome as to make it nearly impossible to build any dam in future.<sup>148</sup> Broadly speaking, report of WCD has shown the bad faith of government and money-making mind. Its finding, suggestion and guideline would be useful to improve planning and decision making for future dams if followed by any government. It has re-stressed the Dublin-Rio Principle of 'Stakeholder Consultation and Participation' and recommended the requirement of 'free, prior, informed consent'. It formulates a 'rights and risks' approach that transcends the old-style cost benefit analysis. It underscores the imperative of sustainability. It urges the consideration of options and alteration.

#### **4.6 ROLE OF ASIAN DEVELOPMENT BANK**

There are many regional development banks which have similar functions as to the World Bank group but they are focused on specific regions, some of them are; Inter-American Development Bank, European Bank for Reconstruction and Development, Asian Development Bank etc. Regional development banks have very limited funds that is why they finance limited number of projects within their specific reason.

The researcher's study is limited to India that is why it would be appropriate to study only Asian development Bank's policy and practically it would be not possible to study all regional banks. Like other development banks, Asian Development Bank<sup>149</sup> has adopted guidelines for involuntary displacement in development projects.

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<sup>147</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-Making - The Report of the World Commission on Dams* 509-510 (Earthscan, New York, 2013).

<sup>148</sup> *Id.*

<sup>149</sup> ADB was conceived in the early 1960s as a financial institution that would be Asian in character and foster economic growth and cooperation in one of the poorest regions in the world. A resolution passed at the first Ministerial Conference on Asian Economic Cooperation held by the United Nations Economic Commission for Asia and the Far East in 1963 set that vision on the way to becoming reality. The Philippines capital of Manila was chosen to host the new institution, which opened on 19 December 1966, with 31 members that came together to serve a predominantly agricultural region. Takeshi

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ADB has adopted its involuntary resettlement policy in 1994, which was formally introduced in 1994. ADB involuntary resettlement policy emphasizes that planning of involuntary resettlement is an integral part of development projects. One of the main objectives of ADB policy is to avoid forceful displacement in all possible manner and if it is unavoidable then in that case development authorities should focus on minimizing the harmful consequences of involuntary displacement.<sup>150</sup>

Whenever any development projects require land then in such case people whose lands are occupied by the acquiring authority for development projects the authorities must ensure that those peoples whose land have been acquired must be paid adequate compensation. There should be proper R & R plans with appropriate time limitation, action and budget.<sup>151</sup> All the projects which are financed by ADB must be accompanied by detailed information on resettlement and compensation options.<sup>152</sup> The resettlement plans should take into account the prospective of social and economic integration of oustees with the host communities.<sup>153</sup> The absence of formal legal title of land should not bar the oustees from getting compensation.<sup>154</sup> The total cost of compensation must be included in the presentation of costs and benefits of the project.<sup>155</sup>

The ADB policy on involuntary resettlement requires certain specific procedure which must be followed in all ADB funded development projects. They are; Social assessment of projects, Resettlement plans, Project processing, Project implementation, Application of policy, Monitoring and reporting, Resource implication.<sup>156</sup>

These were some important features of ADB. Being a regional development bank, ADB has very little funded projects as compared to World Bank but they have also similar scale of responsibilities to protect the right of displaced people including dam oustees.

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Watanabe was ADB's first President. During the 1960s, ADB focused much of its assistance on food production and rural development. (Hereinafter ADB).

<sup>150</sup>Asian Development Bank Policy on Involuntary Resettlement, 1995, para 34(i), 34(ii), *available at*: <https://www.adb.org/sites/default/files/institutional-document/32515/files/involuntary-resettlement.pdf>

<sup>151</sup> *Id* at para 34 (iv).

<sup>152</sup> *Id* at para 34 (v).

<sup>153</sup> *Id* at para 34 (vi).

<sup>154</sup> *Id* at para 34 (vii).

<sup>155</sup> *Id* at para 34 (viii).

<sup>156</sup> *Id* at para 37 to 52.

## **4.7 SUM-UP**

This has analyzed the concern of the international institutions; United Nation, World Banks, World Commission on Dams and Asian Development Bank. After analysis of their declaration, guidelines and policies, the researcher has reached on the conclusion that dam induced displacement remains a relatively undeveloped area of international law. There are many declarations, policy etc. available to protect the right of dam oustees. But they are not effective unless States do not ratify them and include them in their domestic legislation.

Another thing which the researcher found after analysis of international instrument under this chapter that enforcement machineries are very weak, which makes these instrument ineffective and useless even though States are ratifying them. Yet there are some independent committees like World Bank Inspection Panel which are doing quite good work in the field of enforcement of these instruments and acting like a watch dog, which is somehow helping to protect the human rights of dam oustees.

Almost all these international instruments have given similar provisions. These policies are also talking about the profit of project profit sharing with oustees but none of them have given a mechanism as to how it would be claimed by oustees or given to them and all of these polies makes profit sharing clause subjected to availability of natural resources which gives States means of escape to implement it. In this chapter, researcher has also given the lacuna in guidelines, policy etc. which would help to make them better than before. Next chapter will deal with national laws and policies of India in relation to R & R of dam oustees.

# **CHAPTER-V**

## **REHABILITATION AND RESETTLEMENT OF DAM OUSTEES: STUDY OF NATIONAL LAW AND POLICIES**

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### **5.1 PRELUDE**

As discussed in earlier chapters of this research work, large dam projects are icons of economic development in the dominant development paradigm. In India, power and irrigation project like the Tehri hydroelectric project, the Narmada Valley project, the Krishna River dams project etc. are already executed and many others are awaiting to be executed in future. These large dam projects require large portions of land and are accountable for huge displacement of the native people.

Debate of compulsory land acquisition is always surrounded by the issue of just and adequate compensation. Adequate compensation is necessary to reverse the negative impact of displacement but not sufficient condition to 'justice'. One of the most common justifications of compulsory land acquisition is the 'public purpose'.<sup>1</sup> Any type of compulsion is a threat to the fundamental rights of citizen in a democratic country including compulsory land acquisition on the ground of legitimacy and justice, it does not matter of such acquisition is permitted by law or not.<sup>2</sup>

The displacement of people from their land has been a part of India's history even before the British period. The use of land has been always defined by the needs of dominant groups and the displacement of oustees has been justified as legal and rational by the same dominant group.<sup>3</sup> The British period has seen major waves of displacement

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<sup>1</sup> S.M. Holtslag-Broekhof, R. van Marwijk, Beunen, *et al.*, "Perceived (In)justice of Public Land Acquisition" 29 *J Agric Environ Ethics* 168 (2016), available at: <https://doi.org/10.1007/s10806-015-9594-3>.

<sup>2</sup> *Id.*

<sup>3</sup> S. Parasuraman, *The Development Dilemma: Displacement in India* 36 (Tata Institute of Social Sciences, Bombay, 1999).

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in the first half of 19<sup>th</sup> century.<sup>4</sup> Britishers official agenda was to loot India and to fulfil the rapid industrial demand of the west, which directly leads to uncontrolled extraction of natural resources.<sup>5</sup>

In 1865, British government enacted the Forest Act, 1865 whose aims was to facilitate the acquisition of forest lands for building railway tracks. Again in 1878, British government passed Forest Act, 1878 which gave absolute monopoly of forest land to them and extinguishes the customary rights of the native people. Similarly, British Forest Policy 1894 which was based on Principle of ‘National Interest’ also recognised State monopoly over the forest land.<sup>6</sup>

In the year 1894, India saw its very first land acquisition legislation, Land Acquisition Act, 1894, this Act was another attempt of the British government to plundering of natural resources of India and to justify involuntary displacement of people. Land Acquisition Act 1894<sup>7</sup> was based on the concept of ‘eminent domain’<sup>8</sup>. This Act was full of flaws, gave discretionary power to State which led to massive displacement of people and violation of their basic human rights.<sup>9</sup> Irony is that even after independence this controversial colonial legislation was continued without any appropriate amendment until 2013.

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<sup>4</sup> Walter Fernandes and Vijay Pranjapye (eds.), “Hundred Year of Involuntary Displacement in India: Is the Rehabilitation Policy an Adequate Response?” in *The Rehabilitation Policy and Law in India: A Right to Livelihood* 6 (Indian Social Institute, New Delhi, 2007).

<sup>5</sup> S. Parasuraman, *The Development Dilemma: Displacement in India* 37 (Tata Institute of Social Sciences, Bombay, 1999).

<sup>6</sup> Walter Fernandes and Vijay Pranjapye (eds.), “Hundred Year of Involuntary Displacement in India: Is the Rehabilitation Policy an Adequate Response?” in *The Rehabilitation Policy and Law in India: A Right to Livelihood* 9 (Indian Social Institute, New Delhi, 2007).

<sup>7</sup> Hereinafter LAA

<sup>8</sup> The concept ‘eminent domain’, as we know it today, can be traced to the Latin term ‘Eminenes Dominium’, which referred to a government’s power to appropriate private property for the public’s use, with or without the property owner’s consent. As found in History of eminent domain and its abuse. It is an old concept that is seen to have been practised even in biblical times, when King Ahab of Samaria offered Naboth compensation for Naboth’s vineyard. As found in Eminent Domain-History, <http://law.jrank.org/pages/6423/Eminent-Domain-History.html> (Last updated on Dec. 15, 2021). In India, the Supreme Court in the case of *State of Bihar v. Kameshwar Singh*, AIR 1952 SC 458, defined eminent domain to be “the power of the sovereign to take property for public use without the owner’s consent upon making just compensation”.

<sup>9</sup> Ashirbani Dutta, *Development-Induced Displacement and Human Rights* 10 (Deep & Deep PVT. LTD., New Delhi, 2007)

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The first rehabilitation policy of India was prepared by N.C. Saxena in 1990 and notified by government of India in 2003 for public review. This policy was adopted by the NDA government and came into effect in February 2004, entitled as “National Policy on Rehabilitation and Resettlement for Project Affected Families”. This policy was applicable for all future large dam projects, mining as well as other development projects which involved displacement of people. This policy was again revised in 2007 and become the “National Rehabilitation and Resettlement Policy of 2007”.<sup>10</sup>

The year 2013 was a remarkable year for Indian history, due to continuously long protest and demand of the people of the India the Indian parliament passed the first legislation which contained the provisions of rehabilitation and resettlement along with other protective measure for land acquisition. This Act has replaced the more than 100-year-old colonial legislation that is Land Acquisition Act, 1894. This Act came in to force on Sept. 27, 2013 as “Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013”.

This chapter will analyse the national laws and policy of India which deals with rehabilitation and resettlement of displaced people specially who are displaced by large dam projects that is dam oustees.

## **5.2 CONSTITUTIONALITY OF LAND ACQUISITION LAWS**

India became free in 1947 after several long years of slavery. Immediately after independence, according to modern democratic principle, India also adopted its Constitution in 1949 which officially come into force in 1950<sup>11</sup> to preserve the democratic value and govern its society according to the ‘Rule of Law’.<sup>12</sup> In the word of Prof. Jennings, “All Constitutions are the heirs of past as well as the testators of

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<sup>10</sup> Ramaswamy R Iyer, “Towards a Just Displacement and Rehabilitation Policy” 42 (30) *Economic and Political Weekly* 30 (2007).

<sup>11</sup> The Constitution of India, Preamble, art. 394.

<sup>12</sup> Wormuth, Francis, *The Origins of Modern Constitutionalism* 28 (1949). The expression “the rule of law” is given by A. V. Dicey. The rule of law is fundamental to peace and security and political stability; to achieve economic and social progress and development; and to protect people’s rights and fundamental freedoms. It is foundational to people’s access to public services, curbing corruption, restraining the abuse of power, and to establishing the social contract between people and the State.

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future.”<sup>13</sup> Constitution, being a grundnorm gives validity to all other subordinate norms, in other words it is the Constitution from which other laws are deriving their validity or enforceability. If any legislation or its any provision, whether it is pre-Constitutional or post Constitutional, inconsistent with the any provision of part III of the Constitution of India<sup>14</sup> or any other provision of the Constitution<sup>15</sup> then it shall be declared void to extent of such inconsistency by ‘Supreme Court or High Courts of India’<sup>16</sup>.

Land acquisition laws are getting their Constitutional validity from article 31-A, 31-B and 9<sup>th</sup> schedule, which was added by the Constitutional First Amendment Act with retrospective effect from the date of commencement of the Constitution of India.<sup>17</sup> Article 31-A protects land acquisition laws on ground of inconsistency with article 14 or 19 of the Constitution of India<sup>18</sup> and validate given them by article 31-B, which stated that ‘Act and Regulation which are placed under 9<sup>th</sup> schedule will not be challenged in any court for its inconsistency with fundamental rights even they are inconsistent with article 14 or 19.’<sup>19</sup> But, any Act or Regulation which are not part of 9<sup>th</sup> schedule can be reviewed by courts on merits.<sup>20</sup>

In *Waman Rao case* Supreme Court held that article 31-A, 31-B and 9<sup>th</sup> schedule are Constitutionally valid but ‘the amendment made to Acts which are already placed in the 9<sup>th</sup> schedule are not automatically immunized from legal challenge, and hence their validity can be challenged even after their inclusion in the 9<sup>th</sup> schedule.’<sup>21</sup> Court also affirm that all the amendments made to the 9<sup>th</sup> schedule on or after the judgment of *Kesavananda Bharati case* would be open to challenge on the ground that they were

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<sup>13</sup>Professor Jennings, *Some Characteristics of the Constitution of India* 3 (3<sup>rd</sup> edn. 1946).

<sup>14</sup> The Constitution of India, art. 13.

<sup>15</sup> *Id*, art. 142.

<sup>16</sup> This power is given to SC as well as HC under article 32,142 and 226 respectively read with art. 13. This power known as ‘Power of Judicial Review’

<sup>17</sup> The Constitution 1st amendment was made in 1951, brings many alternations in to Part III that is fundamental rights of the Indian Constitution. It provided means to restrict freedom of speech and expression, validation of zamindari abolition laws, and clarified that the right to equality does not bar the enactment of laws which provide “special consideration” for weaker sections of society, *available at*: <https://legislative.gov.in/constitution-first-amendment-act-1951>.

<sup>18</sup> The Constitution of India, art. 31-A.

<sup>19</sup> The Constitution of India, art. 31-B and scheduler 9.

<sup>20</sup> *Sajjan Singh v. State of Rajasthan* AIR 1995 SC 845.

<sup>21</sup> *Waman Rao v. Union of India* AIR 1981 SC 71.

beyond the amending power of parliament for damaging the basic structure of the Constitution.<sup>22</sup>

The object of 9<sup>th</sup> schedule was to save land reform laws enacted by many States from being challenged in the court, which later became omnibus which must be avoided to preserve the spirit of Constitution. Later on in 1978, Parliament of India removed the article 19(f) and 31 by 44<sup>th</sup> amendment and abolished the ‘Right to Property’ as fundamental right and placed it under article 300-A of new chapter IV, which made right to property as ordinary Constitutional right and made land acquisition process easier for the government.

So, currently land acquisition laws are getting their validity from article 31-A, 31-B and 9<sup>th</sup> schedule and right to property (including land as property) has become an ordinary right.

### **5.3 LAND ACQUISITION ACT 1894: KEY FEATURE AND REASON FOR REPEAL (Shortcomings)**

Before discussing Land Acquisition Act, 1894, it is important to mention here that this Act was abolished and replaced by a new Act in 2013. Discussion of Land Acquisition Act, 1894 is important to show that government of India never gave adequate attention towards the rehabilitation and resettlement<sup>23</sup> of oustees. From the date of independence to the year of 2014, government of India has acquired large area of land at different-different places for development projects including large dam projects. One thing which is common in all this land acquisition process is the absence of adequate rehabilitation and resettlement programmes.

The LAA was brought by the colonial government to justify their economic exploitation and based on the concept of ‘eminent domain’ to justify the acquisition for ‘public interest’. before discussing the short comings of LAA it is important to discuss its main feature. Main feature of LAA is discussed below.

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<sup>22</sup> *Id* at 271.

<sup>23</sup> Hereinafter R & R.

### **5.3.1 The Main Features of Land Acquisition Act, 1894 (as amended in 1984) are Following**

Some of the important feature of LLA is following:

- 1) Public Purpose:** LAA was dealing mainly with the acquisition of land for public purpose by the appropriate government.<sup>24</sup> The appropriate government was authorised to acquire land not only for State or Central government or corporation owned by them but also for private companies.<sup>25</sup> This Act also mentioned some purposes as public purpose, some of them being; rural planning, town planning, residence for landless person and poor people, land for health infrastructure, land for educational institution and house planning, slum clearance scheme by appropriate government etc. The Act also provided land acquisition for the construction of some building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for public purpose.<sup>26</sup>
- 2) Notification:** The first step towards land acquisition was notice to public through official gazette in regard of government's intention to acquire of people's lands. Such notice must be published in two daily newspaper which are circulated in projected area for land acquisition and one of the newspapers must be in regional language. After the notice, the authorised officer would enter into the locality and conduct a survey without land owner's permission.<sup>27</sup>
- 3) Hearing of Objection:** After notification, any interested person who had any objection regarding the land acquisition could file objection within 30 days from the publication of notice.<sup>28</sup> If any objection was there then it would be heard by the collector.<sup>29</sup>
- 4) Declaration:** After hearing the objection and further inquiry, if necessary, the collector would prepare a report along with the recommendations on objection filed by people to government. The government would take action on such report if it thinks fit and the decision of government should be final.<sup>30</sup>

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<sup>24</sup> Land Acquisition Act 1894, s. 4.

<sup>25</sup> *Id.*, s. 4.

<sup>26</sup> *Id.*, s. 3 (f).

<sup>27</sup> *Id.*, s. 4.

<sup>28</sup> *Id.*, s. 5A (1).

<sup>29</sup> *Id.*, s. 5A (2).

<sup>30</sup> *Id.*

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After completing the procedure of objection, government would issue a declaration that government would acquire land for public purpose.<sup>31</sup> Such declaration must be issued within one year from the initial notification.<sup>32</sup>

- 5) Procedure for Compensation:** After completing the process of declaration, collector would identify the land and measure it,<sup>33</sup> along with the given information to the interested parties about the intention of government to acquire of land and invite them for claiming compensation.<sup>34</sup> After making an inquiry on claim, collector would make the award.<sup>35</sup> Such award had to be made within two year from the date of the declaration. If award is not made within two years, then entire proceeding shall be deemed to have lapsed.<sup>36</sup>

If any dispute arises as to compensation on ground of ‘amount of compensation, measurement of land, the person to whom it was payable’ then in that case interested person has a right to recourse a court.<sup>37</sup>

- 6) Determination of Compensation:** The compensation is awarded in lieu of acquired land by government. There are two type acquisition by government one is ‘general acquisition’ and other is ‘compulsory nature of acquisition’. In general acquisition, the compensation would be equivalent to market value of land at the time of initial notification<sup>38</sup>, plus 12 percent interest for the period between the publication of notification to date of award of compensation.<sup>39</sup>

In case of compulsory nature of acquisition, the compensation amount would be more than 30 percent of market value of at time of initial notification<sup>40</sup> and 12 percent per annum interest for the period between the publication of notification and date of award of compensation.<sup>41</sup>

There was also a provision for compensation on damage to crops or property if damage cause to them at time of taking possession of land. There was also a

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<sup>31</sup> *Id*, s. 6.

<sup>32</sup> *Id*, s. 6 proviso 2.

<sup>33</sup> *Id*, s. 8.

<sup>34</sup> *Id*, s. 9.

<sup>35</sup> *Id*, s. 11.

<sup>36</sup> *Id*, s. 11A.

<sup>37</sup> *Id*, s. 31(2).

<sup>38</sup> *Id*, s. 23.

<sup>39</sup> *Id*, s. 23 (1A).

<sup>40</sup> *Id*, s. 23 (2).

<sup>41</sup> *Id*, s. 23 (1A).

provision for payment of reasonable expenses incidental to the change of residence or place of business if such a change was necessitated by the acquisition.<sup>42</sup>

- 7) **Possession:** After passing the compensation possession of the land is taken by competent authority immediately, land would vest in government absolutely free from all encumbrances.<sup>43</sup> In case of urgency. Collector would take possession before awarding compensation.<sup>44</sup>
- 8) **Urgency Power:** Section 17 of LLA was authorised to government to acquire land in case of an urgency. In case of urgency collector had power to take possession without even awarding compensation.<sup>45</sup> This Act has not defined ‘what is urgent purpose?’ It is the government who has the discretion to declare what is a case of urgency? Government can use this power according to its sweet will.

### **5.3.2 Shortcoming of Land Acquisition Act, 1894 and Reason for Repeal**

India is a land of farmers and most of them have small holdings, compulsory acquisition of land makes them landless and leads to impoverishment.<sup>46</sup> In most of the cases oustees get cash compensation and due to mismanagement of cash life of oustees becomes vulnerable before the acquisition of their land.<sup>47</sup> This old land law was not able to protect the interest of oustees which led to its repeal, following are some important shortcomings of the Act which gives space for new legislation:

- 1) The LAA was brought by the British government in 1894 and their goal was to make profit not public welfare. The same legislation was being used by Indian government after independence with some minor changes for acquisition of land for various purposes.

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<sup>42</sup> *Id*, s. 23 (1).

<sup>43</sup> *Id*, s. 16.

<sup>44</sup> *Id*, s. 17.

<sup>45</sup> *Id*

<sup>46</sup> Michael Cernea, “Beidging the Research Divide: Studying Development Oustees”, in: T. Allen (edn.), *In Search of Cool Ground: War, Flight and Homecoming in Northeast Africa* 304 (James Currey, London, 1996).

<sup>47</sup> Jagdish Pokharale, “Population Displacement and Compensation Planning in Kulekhani Hydroelectric Project, Nepal”, In Hari Mohan Mathur and M. Cernea (eds.), *Development, Displacement and Resettlement: Focus on Asian Experience* 139-550 (Vikas Publishing House, New Delhi, 1995).

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- 2) The LAA has used the term ‘interested person’ and according to LAA section 3 (b) ‘interested person’ must have direct or indirect interest, it may be title or any other interest and if they have easement right then person is deemed to be interested. There were many interested person like agricultural labour, hunter, tenant etc. Most of them were not able to file their claim due to their social and economic condition. On the other hand, there were also some cases in which person from outside the project area had made back date loan agreement, mortgages, lease or tenant agreement to acquire the status of interested person.<sup>48</sup> Which had given undisputed abusive mechanism to dominant group.
- 3) Like most of the land acquisition law, LAA was also based on principle of ‘eminent domain’ which has given absolute power to government to deprive the people from their land without their consent. Apart from this LAA was come with ‘notwithstanding anything’ provision due to this, LAA had trespassed all legislations specially violating the Constitutional protection given to SC and ST.
- 4) This Act did not define what is public purpose? It was the government who declared that the project has public importance and it belong to public purpose which had given the government vast discretionary powers. Generally, government misused this power and acquired land for holiday homes and luxury hotels.<sup>49</sup>
- 5) The LAA did not recognise the right to objection of project affected persons, whose land government acquired to prevent alienation from their land. They only can file objection and it was the government who decided whether the objection was correct or incorrect. Government had also urgency power under section 17, by using this section government could acquire the land without hearing objection.<sup>50</sup>
- 6) Although the Act was recognising the compensation on the basis of market value but this process was inadequate and disadvantageous to oustees. The market value was determined on the basis of registered sale deeds and in order to save stamp duty in most of the cases price of lands were underquoted in the register of sale deeds. In most of the cases it was seen that compensation would

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<sup>48</sup> S. Parasuraman, *The Development Dilemma: Displacement in India* 83 (Tata Institute of Social Sciences, Bombay, 1999).

<sup>49</sup> *Id* at 43.

<sup>50</sup> The Land Acquisition Act 1894, s. 17.

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not compensate even 50 percent of acquired land.<sup>51</sup> This Act only recognised cash compensation. The payment of compensation was not the proper solution of displacement, in most cases oustees were not able to invest their cash compensation and by the time they lost all their money.<sup>52</sup>

- 7) Most of large dam projects are commissioned in tribal areas and tribals are the most affected by development projects, they are the ones whose lands are acquired by the government most.<sup>53</sup> Land own by tribals are undervalued because of the perception that their lands are less productive in terms of asset. Most important in tribal area market value of lands are unknown. Due to these reasons tribals were getting very low and inadequate compensation under LAA which was gross violation of tribals rights.<sup>54</sup>
- 8) The biggest drawback of this Act was that the total absence of rehabilitation and resettlement of oustees whose land were acquired by government under this Act. Provision of social impact assessment also did not find place; government notified acquisition without any social impact assessment program.

## **5.4 STUDY OF NATIONAL POLICY OF GOVERNMENT OF INDIA ON REHABILITATION AND RESETTLEMENT**

Post-independence economic development was based on large development projects and big industries which was accompanied by widespread displacement. That is why it became necessary to make a balance between the government acquisition of land and the rights of the oustees.<sup>55</sup> The law existing at that time, Land Acquisition Act,

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<sup>51</sup> Parasuraman S., *The Development Dilemma: Displacement in India* 83 (Tata Institute of Social Sciences, Bombay, 1999).

<sup>52</sup> Smitu Kothari, "Whose Nation? The Displaced as Victims of Development" 31(24) *Economic and Political Weekly* 1477 (1996). Also see, Jagdish Pokharale, "Population Displacement and Compensation Planning in Kulekhani Hydroelectric Project, Nepal", In Hari Mohan Mathur and M. Cernea (eds.), *Development, Displacement and Resettlement: Focus on Asian Experience*, 139-550 (New Delhi, Vikas Publishing House, 1995).

<sup>53</sup> Annual Report 2016-17, Ministry of Tribal Affairs, Government of India, 47 available at: <https://tribal.nic.in/Statistics.aspx> (last visited on July 22, 2021).

<sup>54</sup> Parasuraman S., *The Development Dilemma: Displacement in India* 85 (Tata Institute of Social Sciences, Bombay, 1999).

<sup>55</sup> Roopee Sahae, "National Rehabilitation Policy: Many Loopholes" 38(6) *Economic and Political Weekly* 510 (2003).

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1894 had given no scope of negotiation with the government and demand of fair compensation even oustees R & R rights were not recognised.

After independence, government of India had also focused on economic development and acquired large area of land for various development projects for this purpose government of India has adopted many legislations like the Anti Zamindari Act, the Tenancy Act, the Ceiling Act etc.<sup>56</sup> In this order, government of India has brought amendment in the Land Acquisition Act, 1894 in 1984 but instead of adopting oustees friendly legislation, government had made land acquisition process more easy and discriminatory.

Since the Independence, there was no policy adopted by the Indian government for the R & R of project affected people including those who are displaced by dam projects. In 2004, India had officially adopted its first policy on this issue. Before 2004, in the absence of national policy R & R of oustees was governed by 'ad hoc plans, resolution or order passed by many States, sometime projects authority made specific plan for R & R in case of requirement.<sup>57</sup>

Indian history of policy on R & R started from 1985, it was the first time when R & R policy was mooted by a committee of the ministry of welfare for the people who were displaced by development projects.<sup>58</sup> This draft of the policy was prepared by N. C. Saxena, went through long discussions of two decades and despite being a useful and sensible draft it was not adopted.<sup>59</sup> In 2004, NDA government lead by Bhartiya Janata Party had officially notified the draft of National Rehabilitation Policy which

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<sup>56</sup> *Id.*

<sup>57</sup> Different State governments and Ministries of Central government followed different policies on R & R in the absence of a National R&R Policy. The States such as Maharashtra, Madhya Pradesh and Karnataka had rehabilitation laws for persons displaced due to irrigation projects. Similarly, governments of Rajasthan, Orrisa and Madhya Pradesh had also promulgated various policies. Similarly Thermal Power Corporation a public undertaking of Central government promulgated its policy on R&R in 1993. The Coal India Limited another large Public Sector undertaking of Central government concerned with production of Coal in different parts of the country, mainly in Jharkhand, Orrisa, Madhya Pradesh and Uttar Pradesh has also promulgated its policy on resettlement and rehabilitation.

<sup>58</sup> Roopee Sahaee, "National Rehabilitation Policy: Many Loopholes" 38(6) *Economic and Political Weekly* 510 (2003).

<sup>59</sup> Ramaswamy R. Iyer, "Towards a Just Displacement and Rehabilitation Policy" 42(30) *Economic and Political Weekly* 3104 (2007).

came in to effect in February 2004. This policy was known as “National Policy on Rehabilitation and Resettlement for Project Affected Families, 2004”.<sup>60</sup>

The “National Policy on Rehabilitation and Resettlement for Project Affected Families”<sup>61</sup> had many loopholes and lacuna for example; this policy had limited applicability, provision for land for land, provision of social assessment was absent, participation of affected people in R & R process was not given, this policy was not tribal friendly and did not recognise tribal customary rights and many other provisions were also missing. Because of to all of these issues and problems, NPRR had faced many criticisms which lead to its replacement in 2007 by new policy known as “National Rehabilitation and Resettlement Policy, 2007”.<sup>62</sup>

#### **5.4.1 National Rehabilitation and Resettlement Policy, 2007: An Analysis**

The National Rehabilitation and Resettlement Policy, 2007 was notified on 31 October, 2007 by the government of India. Actually, this policy was a revised version of NPRR 2004. One of the main objectives of this policy was to control the evil consequence of displacement on oustees, to minimise displacement and promote non-displacement. The preamble of this policy clearly mentioned that the government should acquire, as near as possible, wasteland, unirrigated land or degraded land for development projects.<sup>63</sup> The introductory part of policy had concerns regarding the protection of human rights of displaced people by development projects, this policy had brought rays of hope in the dark arena of displacement.

##### **5.4.1.1 Salient Feature of the National Rehabilitation and Resettlement Policy, 2007**

Following are the salient feature of NRRP 2007:

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<sup>60</sup> Abhijit Guha, “Resettlement and Rehabilitation: First National Policy” 40(46) *Economic and Political* 4798 (2005).

<sup>61</sup> Hereinafter NPRR.

<sup>62</sup> Hereinafter NRRP.

<sup>63</sup> National Rehabilitation and Resettlement Policy, 2007, preamble.

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- 1) This policy covered all the cases of involuntary displacement caused by development projects including railway projects, housing projects, large dam projects etc. This policy also covered displacement caused by natural calamity.<sup>64</sup>
- 2) NRRP talk about not only the owner of property which is acquired by the government but also R & R of all people who are affected by development projects like tenant, non-agricultural or agricultural labour and any other types of dependents on acquired lands.<sup>65</sup>
- 3) Social impact assessment program was introduced by this policy which was not seen in the policy of 2003 and LLA. Chapter IV of NRRP provided that whenever government acquires a land for new development projects or existing projects and the project involves involuntary displacement of 400 or more families in plane area, or 200 or more families in tribal or hilly area, or area mention in V or VI schedule of Indian Constitution, then it would be mandatory for the government to conduct social impact assessment.<sup>66</sup>
- 4) Participation of oustees in decision making process would help in minimising the evil effect of displacement. NRRP was the first policy in India to acknowledge this unique feature.<sup>67</sup>
- 5) There was intensive demand from the oustees and social activist to government since ages to recognise land for land as compensation because people depend on land in many ways and in most of the cases it was seen that oustees mismanage their compensation which makes them poorer before displacement. This long-awaited demand was full filled by government of India in this policy.<sup>68</sup>
- 6) This policy has provided procedure for working opportunity to oustees in same development project due to which they were displaced. NRRP had promised to provide job security at least one member from each displaced family.<sup>69</sup>
- 7) NRRP also provided that if required, project authorities would provide training and skill development programme to oustees so that they would get suitable job for their livelihood.<sup>70</sup>

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<sup>64</sup> *Id*, preamble, para 1.7.

<sup>65</sup> *Id*, para 3 (b).

<sup>66</sup> *Id*, para 4.

<sup>67</sup> *Id*, preamble, para 1.2.

<sup>68</sup> *Id*, para 7.4.3.

<sup>69</sup> *Id*, para 7.13.1 (a).

<sup>70</sup> *Id*, para 7.13.1 (c).

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- 8) Grievance redressal mechanism of this policy had provided two committee for R & R of dam oustees if any grievance arises. One was at project level and another was at district level.<sup>71</sup> Apart from this there was provision for national monitoring committee to monitor R & R process. There was also a proviso for Ombuds man who would decide the grievances arising out of matters covered by this policy.<sup>72</sup>
- 9) NRRP, had adopted many provisions to protect the right of SC and ST who displaced by development projects. Some of them are; right to land for land if government land was available in displaced area, right to fishery in reservoir or hydro project dam, right to use forest produced, 25 percent extra compensation if they rehabilitated outside their native place and many more other important rights.<sup>73</sup>
- 10) Right to housing was another right which found place in NRRP. The same right is also available to those oustees who were directly or indirectly depended on acquired area for their livelihood and landless.<sup>74</sup>
- 11) The major reform of this policy was to protect the acquired land from misuse. NRRP provided that acquired land could not be used for any other purpose other than for which it was acquired. If the land remained unused for 5 years from the date of acquisition, then it would go back to original owner from whom it was acquired.<sup>75</sup>
- 12) Consultation with the concerned gram Sabha or the panchayat at appropriate level in schedule area under schedule V of the Constitution in accordance with provisions of the Panchayats (extension to scheduled area) Act, 1996.<sup>76</sup>
- 13) This policy had also made provision for periphery development and designated an authority charged with the responsibility for periphery development.<sup>77</sup>

**5.4.1.2 Criticism of the National Rehabilitation and Resettlement Policy, 2007**

NRRP, 2007 was introduced with the object of resolving the problems of oustees. Being an initial step of the Indian government towards the development of R & R laws and policy for displaced people by development projects, it had a useful

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<sup>71</sup> *Id*, para 8.1.

<sup>72</sup> *Id*, para 8.3.

<sup>73</sup> *Id*, para 7.21.

<sup>74</sup> *Id*, para 7.2 and 7.3.

<sup>75</sup> *Id*, para 6.24.2.

<sup>76</sup> *Id*, para 6.2 and 6.1.

<sup>77</sup> *Id*, para 7.24.

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procedure along with the scope of correction within it. NRRP had replaced the first central policy on R & R of 2004 and tried to adopt many important procedures to protect the basic human rights of R & R. No doubt that this policy was very useful but they were meaningless due to absence of laws mandating them.

This policy has acknowledged the oustees concern but did not make the right to informed consent explicit. Local body resolutions like panchayat, were not bound to ascertain the views of oustees. This policy had given recognition to public participation in displacement and in R & R process but the power of eminent domain envisages projects top-down and guarantee their approval and implementation without regard to local dissent.<sup>78</sup>

This policy did not cover the displacement caused by displacement projects before 2007. It has prospective application which has deprived millions of oustees from their basic human rights. It had also restricted application and applicable only on those projects in which 400 or more families in plain area, or 200 or more families in tribal or hilly area, or area mentioned in V or VI schedule of Indian Constitution, were displaced. It did not cover displacement which were less than above-mentioned numbers.

This policy was property centric and did not provide any specific protection to the loss of livelihood and access to common property resource by any compensation arrangement. The most attractive feature of this policy was provision for land for land as compensation but it had a limitation, this provision only applied when government had land in new area where it reallocates people.

This policy had promised to provide employment to one member of each displaced family due to development project but it was subjected to availability of government vacancies and person's eligibility. This condition made this promise nearly impossible because some time people had eligibility but there were no government vacancy and *vice-versa*.

The term 'family' was not appropriately defined, it was biased and did not include unmarried daughter, widow, deserted or divorced women. Hence, they were out of the R & R process and were not able to claim their basic human rights.

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<sup>78</sup> Preeti Sampat, "Limits to Absolute Power: Eminent Domain and the Right to Land in India" 48(19) *Economic and Political Weekly*, 43 (2013).

As discussed earlier tribal people are the most affected by large projects of development, sometimes their 100 percent population is displaced from development project affected area.<sup>79</sup> There were some procedures given under this policy for the protection of tribals basic human rights but it is also true that their many important rights were neglected, some of them were; right to use and access to forest produce, their community and social rights etc. Most of the time tribals were rehabilitated with modern population which made them uncomfortable and they could not live like their pre-displacement life.

In short, NRRP 2007 was not able to protect the right of dam oustees as it was required to protect and was unable to address the issue of R & R adequately. The conflict of land acquisition remained the same, power of eminent domain haunting the oustees as before. Therefore, parliament of India brought a new legislation to curb the issue of displacement of people due to development projects like large dams.

## **5.5 DETAILED STUDY OF INDIA'S FIRST LEGISLATION ON R & R OF OUSTEES DUE TO LAND ACQUISITION FOR DEVELOPMENT PROJECTS LIKE LARGE DAMS**

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 and became the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.<sup>80</sup> It contains 115 sections, 13 chapters and 4 schedules. This Act enforces from the date of 1 January 2014 and replaces the years old colonial law of 1894. Followings is the detailed analysis of this Act:

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<sup>79</sup> D. Gupta and P.K. Singh, "The Hidden Cost of Development: A Review of Mental Health Issues of Displaced Tribal Populations in India" 26 *Journal of Public Health* 718 (2018), available at: <https://doi.org/10.1007/s10389-018-0913-9>

<sup>80</sup> Hereinafter LARR Act.

### **5.5.1 Aim and Object of the Act**

This Act is the outcome of a long battle by Indian citizens specially farmers and other backward people. The preamble of the Act shows the aims and objectives of this Act which are reflected in its long title. Following are the main aims and objects of the Act:<sup>81</sup>

- 1) To make land acquisition process transparent;
- 2) To make land acquisition process informed consultation;
- 3) To adopt participative approach in land acquisition process;
- 4) To make whole process of land acquisition with least disturbance;
- 5) To provide adequate Rehabilitation and Resettlement;
- 6) To provide just and fair compensation;
- 7) To ensure that affected persons become partners in development leading to an improvement in their post-acquisition social and economic status.

### **5.5.2 Application of the Act**

Section 2 of the Act talk in detail about the applicability of the Act. The provisions of The LARR Act will be applicable when land is acquired by the government for its own use including for Public Sector Undertakings and for any ‘public purposes’ including strategic purposes,<sup>82</sup> infrastructure projects (including water harvesting and water conservation structures),<sup>83</sup> project for project affected families,<sup>84</sup> housing project,<sup>85</sup> project relating to urbanisation,<sup>86</sup> and for displaced persons or persons residing in areas affected by natural calamities.<sup>87</sup> This Act also applies when the land is acquired by the government for public private partnership projects<sup>88</sup> and by private companies for public purpose.

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<sup>81</sup> The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

<sup>82</sup> The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, s. 2(1)(a).

<sup>83</sup> *Id*, s. 2 (1)(b), 2(1)(b)(iv).

<sup>84</sup> *Id*, s. 2 (1)(c).

<sup>85</sup> *Id*, s. 2(1)(d).

<sup>86</sup> *Id*, s. 2(1)(e).

<sup>87</sup> *Id*, s. 2(1)(f).

<sup>88</sup> Hereinafter PPP

### **5.5.3 Salient Feature of the Act**

Following are the salient feature of the Act:

#### **5.5.3.1 Broadening the Concept of Interested Person**

LARR has made eligible many other persons as interested person who are not eligible to make claims in process of land acquisition by government under the old laws and policies. Under this Act there is a provision for compensation as well as for R & R. According to this Act ‘interested person’ means, “all persons whose land are acquired and are claiming compensation under this Act, persons who lost their forest right recognised under Forest Rights Act, 2006 persons who have any easement in acquired land, persons who have tenancy rights under the State law and any person whose livelihood is likely to be adversely affected by land acquisition process”.<sup>89</sup>

#### **5.5.3.2 Purpose of Land Acquisition Act**

According to this Act land will only be acquired by the government for ‘public purpose’ but this Act has not defined what is public purpose. This Act has given list of some activity which comes under the category of public purpose. Section 3 (za) says that ‘public purpose’ means activity which is given under section 2 (1) of this Act, section 2 (1) has listed many activities for which government can acquire the land. According to section 2 (1), government can acquire land for its own use, including public sector undertaking and for purpose and public purpose includes; strategic purpose like naval, military etc., infrastructural projects, projects related to agricultural development, projects for industrial corridors or mining activity, projects for water harvesting and conservation, projects for urbanisation, housing scheme and for many other important development projects too.<sup>90</sup>

This Act also empowers the government to acquire land for public private PPP and for private companies for public purpose but in both cases consent of affected

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<sup>89</sup> The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, s. 3(x).

<sup>90</sup> *Id.*, s. 2(1).

families is required.<sup>91</sup> Appropriate government cannot change the purpose or related purpose for which land is sought to be acquired.<sup>92</sup>

### **5.5.3.3 Provision For Consent**

In the old Act the consent provision was totally missing; old Act did not ask the government to take the consent of affected family before acquisition. Under this Act government can acquire land for himself, for PPPP and also for private companies. Whenever government will acquire land for PPPP or for Private companies then consent of affected families is necessary before the acquisition of land. Whenever government would acquire land for private companies, there must be prior consent from at least 80 per cent of the affected families and for PPP projects, prior consent of 70 percent of the affected families was required.<sup>93</sup>

But if government is acquiring land for itself for public purpose, then government need not require to obtain the consent of affected families for land acquisition.

### **5.5.3.4 Social Impact Assessment Study**

Social Impact Assessment helps to identify the major problems of land acquisition which leads to develop better R & R scheme. Section 4 of this Act made it mandatory to conduct SIA in affected area before acquiring the land.<sup>94</sup> This Act also made it compulsory that the report of SIA should be made public for that end report must be published in a local language in panchayat, municipalities or in municipal corporation as the case may be.<sup>95</sup>

The SIA should be completed within 6 months<sup>96</sup> and government should also ensure that public hearing must be held in the affected area.<sup>97</sup> Report of SIA is also evaluated by group of experts<sup>98</sup> and examine by a government.<sup>99</sup>

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<sup>91</sup> *Id*, s. 2(2).

<sup>92</sup> *Id*, s. 99.

<sup>93</sup> *Id*, s. 2(2).

<sup>94</sup> *Id*, s. 4.

<sup>95</sup> *Id*, s. 6.

<sup>96</sup> *Id*, sec, 4 (2) proviso II.

<sup>97</sup> *Id*, s. 5.

<sup>98</sup> *Id*, s. 7.

<sup>99</sup> *Id*, s. 8.

#### **5.5.3.5 Limitation Clause**

This Act has given special protection to multi-crop land and protected them from acquisition for development projects. But this limitation is not absolute in nature, as under exceptional circumstances appropriate government has power to acquire the multi-crop land at last resort.<sup>100</sup> After acquiring the multi-crop land government has to develop wasteland as agricultural land and the area of newly developed wasteland should be equal to acquired multi-crop land. If government fails to develop wasteland in agricultural land, then in that case government has to give value of acquired multi-crop land to appropriate government.<sup>101</sup>

This provision will not apply upon those cases where acquisition was made near to railways, highways, irrigation canals, major district roads etc.

#### **5.5.3.6 Rehabilitation and Resettlement**

History of development induced displacement shows that most of the R & R does not to achieve their goals due to its bad implementation and fails to prevent impoverishment.<sup>102</sup> LARR becomes the first legislation in India which has given detail procedure for R & R entitlements and imposes obligation on government to prepare R & R scheme and implement such scheme whenever government acquire lands for development projects.

One of the main objectives of this Act is to provide R & R to oustees. The benefits of R & R are given to all affected families whose land would be acquired by the government and also to those families whose livelihood primarily depends on acquired land. R & R is given in addition to compensation (compensation is given to those whose land is acquired and to tenants referred in section 3 (c) in a proportion to be decided by government).

This can be easily understood by following Table (Table 5.1):

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<sup>100</sup> *Id.*, s. 10 (2).

<sup>101</sup> *Id.* s. 10 (3).

<sup>102</sup> World Bank, *Resettlement and Development: The Bankwide Review of Projects Involving Involuntary Resettlement* (The World Environment Department, Washington DC, 1994).

**Table 5.1: Award of Compensation and R & R to Affected Family**

<b>Affected Family</b>	<b>Compensation</b>	<b>R &amp; R</b>
Owner of Land/Immovable Property	Yes	Yes
Scheduled Tribes and Other Traditional Forest Dwellers recognised under Recognition of Forest Rights Act, 2006	Yes	Yes
Owners of Assigned Land/Entitled to be granted Patta rights	Yes	Yes
Primary Source of Livelihood Affected – Agricultural labourers, tenants, share-croppers, artisans etc	No	Yes
Primary Source of Livelihood Affected – forests or water bodies – gatherers of forest produce, hunters, fisher folk, boatmen etc	No	Yes
Primary Source of Livelihood Affected – residing in urban area	No	Yes

#### **5.5.3.6.1 Process For Rehabilitation and Resettlement**

Four Chapters (V-VIII) and two Schedules (Second and Third) of this Act have been deal with the processes and entitlements for R & R. Following is the process:

- 1) The Act requires R & R has to be undertaken in every case of land acquisition by appropriate government. Once the preliminary notification for land acquisition is published under section 11 and if appropriate government has reasonable belief that such land acquisition may cause displacement, an Administrator shall be appointed.<sup>103</sup> The main task of administrator is to prepare the draft of R & R after conducting a survey and undertaking consensus of affected families.<sup>104</sup> This scheme of draft shall be discussed in the concerned Gram Sabha or in municipalities as the case may be.<sup>105</sup> Any objections to the R & R scheme shall be heard by the Administrator and submits its report to the Collector.<sup>106</sup> The Collector shall review the scheme and submit it to the Commissioner appointed for R & R.<sup>107</sup>

Once the Commissioner approves the R & R scheme and make it available in the local language in the affected area and also updates such scheme on website of

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<sup>103</sup> The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, s. 43.

<sup>104</sup> *Id.*, s. 16(1).

<sup>105</sup> *Id.*, s. 16 (4).

<sup>106</sup> *Id.*, s. 16 (6).

<sup>107</sup> *Id.*, s. 17.

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appropriate government,<sup>108</sup> then the government shall issue a declaration identifying the areas required for the purpose of R & R.<sup>109</sup> The Administrator shall then be responsible for the execution and monitoring of the scheme.<sup>110</sup> The Commissioner shall supervise the implementation of the scheme.<sup>111</sup>

- 2) In case of acquisition of land proposed is more than 100 acres, R & R Committee shall be established to monitor the implementation of the scheme at the project level.<sup>112</sup> National Monitoring Committee, if central government thinks necessary, is also appointed at the central level to monitor the implementation of the Rehabilitation and Resettlement schemes whether national or international projects.<sup>113</sup>
- 3) Process of R & R also apply in case where private company purchases land through private negotiation and the proposed land is equal to or more than the limits prescribed by the government. In this case an application must be filed with the Collector who shall forward this to the Commissioner for approval.<sup>114</sup> After the application has been approved, the Collector shall issue awards as per the R & R scheme.<sup>115</sup>

**5.5.3.6.2 Rehabilitation and Resettlement Entitlements**

Chapter V and the Second Schedule in particular outlines the R & R entitlement given to the affected families whether they are land owner or the families whose livelihood is primarily dependent on acquired land. This entitlement is given in addition to compensation to land owner as provided in first schedule. These includes:

- 1) Land for a house as per the Indira Awas Yojana in rural areas or a constructed house of at least 50 square metres plinth area in urban areas;<sup>116</sup>

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<sup>108</sup> *Id.*, s. 18.

<sup>109</sup> *Id.*, s. 19.

<sup>110</sup> *Id.*, s. 43 (3).

<sup>111</sup> *Id.*, sec 44 (2).

<sup>112</sup> *Id.*, sec 45(1).

<sup>113</sup> *Id.*, s. 48.

<sup>114</sup> *Id.*, s. 46(2).

<sup>115</sup> *Id.*, s. 46 (3).

<sup>116</sup> *Id.*, schedule II entry 1.

- 2) The option of choosing either mandatory employment in projects where jobs are being created or a one-time payment of Rs 5 lakh or an inflation adjusted annuity of Rs 2,000 per month per family for 20 years.<sup>117</sup>
- 3) A one-time allowance of Rs 50,000 for affected families;<sup>118</sup>
- 4) Apart from this government also offers 20 percent developed land in urbanisation project, transportation cost, 25 thousand rupees financial assistance to construct cattle shed or shop, land for land, fishing rights etc.<sup>119</sup>
- 5) Third Schedule is devoted to the provision of infrastructural amenities to secure a reasonable standard of community life in the new villages or colony which include roads, drainage, provision for drinking water, grazing land, banks, post offices, public distribution outlets, etc.<sup>120</sup> This can be understood by the following table:

**Table 5.2: Resettlement and Rehabilitation Benefits**

**Resettlement and Rehabilitation benefits to all affected families (in addition to compensation): -**

- R & R Package - Choice of employment/5 lakhs/Rs. 2000 per month for 20 years.
- One-time Resettlement Allowance: Rs. 50,000/
- Cattle shed/petty shops - Rs. 25,000/
- One time grant to artisan/traders/self-employed - Rs. 25,000/
- Fishing rights in reservoir
- Land for land – Irrigation projects (as far as possible) I acre of land (2.5 acres for SCs/STs in command area Displaced Families
- Housing in case of displacement – Rural Areas (IAY specifications); Urban areas (constructed house not less than 50 sq.mts in plinth area/min Rs. 1,50,000)
- Subsistence grant for all displaced families – Rs. 3000 per month for one year (additional Rs. 50,000/ for SCs/STs).
- Transportation grant for all displaced families - Rs. 50,000/ – All monetary rehabilitation grants and benefits are adjusted based on the Consumer Price Index.
- Stamp duty/registration to be paid by the requiring body

### **5.5.3.7 Retrospective Application of the Act**

This Act is prospective in nature and not applicable to any acquisition of land which was done before the commencement of LARR Act, 2013. But section 24 has

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<sup>117</sup> *Id.*, schedule II entry 4.

<sup>118</sup> *Id.*, schedule II entry 10.

<sup>119</sup> *Id.*, schedule II entry 2, 3,7, 9.

<sup>120</sup> *Id.*, sec 32, schedule III.

given some room for applicability of the new Act upon the acquisition done by government under the old Act.

Sub-section (1) of section 24 begins with ‘notwithstanding anything’, non-obstante clause, which gives an overriding effect to section 24 over the all provisions of new Act. it states; in clause (a) that where the land acquisition proceeding are initiated under the old Act and no award has been made according to section 11 of the same Act on the date of the commencement of the LARR Act, 2013 i.e. 1-1-2014 in that case provision of new Act shall be applied to determine the compensation.<sup>121</sup> Clause (b) of Section 24(1) states that where land acquisition proceedings have been initiated under old Act and award has been made under Section 11 of the same Act then such proceedings would not affected by new Act and provision of old Act apply on such acquisition as if old Act has not been repealed.<sup>122</sup>

Clause (b) of sub-section (1) is clear and does not create any controversy. But when clause (a) of sub-section (1) is read with Sub-section (2) of section 24 then, it creates a little dispute due to its terminology. Sub-section (2) of section 24 also start with non-obstante clause and has overriding effect over section 24(1), which states that *“Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act...”*<sup>123</sup>

The highlighted provision created controversy in 2018, when *Indore Development Authority v Shailendra (dead) Through LRS & Ors.*<sup>124</sup> overruled the decision of *Pune Municipal Corporation case.*<sup>125</sup> Both the cases were decided by a three judges’ bench.

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<sup>121</sup> *Id*, s. 24(1)(a).

<sup>122</sup> *Id*, s. 24(1)(b).

<sup>123</sup> *Id*, s. 24(2).

<sup>124</sup> (2018) 3 SCC 412, para 216.

<sup>125</sup> *Pune Municipal Corporation v. Harakchand Misirimal Solanki*, AIR 2014 SC 982.

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In *Pune Municipal Corporation case*,<sup>126</sup> court held in regard to section 24 (2) that; if land acquisition proceedings are initiated under the old Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied:

- i. Physical possession of the land has not been taken or
- ii. The compensation has not been paid (money in the government treasury will not be treated as a payment to a landowner).

such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate government still chooses to acquire the land which was the subject matter of acquisition under the old Act, then it has to initiate fresh proceedings under the new Act. This Judgment has benefited to land owners and given great relief to them.

*Indore Development Authority case* 2018, declared the above judgment ‘per incuriam’<sup>127</sup> and held if a landowner refuses to accept the compensation offered by the developer, they cannot take advantage of their own wrongdoing and have the acquisition proceedings lapse under the old law. This has given great relief for developers and given an upper hand to government.

This new judgment has opened a Pandora box and given space to reopen the all cases decided by various High Courts and Apex Court under the principle of *Pune Municipal Corporation case*. That is why matter has been referred to a 5 judges’ bench. In *Indore Development Authority v. Manoharlal*,<sup>128</sup> in this case court has cleared the interpretation of section 24 (2) and made the following point:

- 1) The word “or” used between possession or compensation in Section 24(2) will be read as “and”, in other words, in case possession has been taken and compensation has been not paid then proceeding under old Act would not lapse. Similarly, if compensation have been paid and possession has not been taken in that case also proceeding under old Act would not lapse.

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<sup>126</sup> *Id.*

<sup>127</sup> A judgment can be declared per incuriam if it does not follow a statutory provision or a binding precedent that may have been relevant. It literally translates to “through lack of care”. In such scenarios, a judgment can be declared to be without any legal force, and is then not treated as a valid precedent.

<sup>128</sup> (2020) 8 SCC 129.

- 2) The word “paid” shall include a deposit of compensation made in a court or treasury.
- 3) The proviso that in case compensation for the majority of land holdings has not been paid will only be read in a situation where there is no lapsing as per Section 24(2); therefore, it cannot be read with Section 24(1).

#### **5.5.3.8 Urgency Clause**

Urgency clause has given eminence power to the appropriate government to acquire land and is badly misused by authorities in land acquisition process. Similar provision has also been given in old Act.<sup>129</sup> But new legislation has imposed limitation on this power of government, now government can use urgency clause to acquire only “the minimum area required for the defence of India or national security or for any emergencies arising out of natural calamities or any other emergencies with the approval of the parliament.”<sup>130</sup> It is the collector who after the direction of appropriate government acquires the land without making any award after the expiry of 30 days’ notice.<sup>131</sup> But before taking possession of such land collector has to pay eighty percent of the compensation of land to the entitled person.<sup>132</sup>

Whenever government use urgency clause in that case if government think fit, it can ignore the provision of social impact assessment.<sup>133</sup>

#### **5.5.3.9 Return of Land**

Whenever government acquired land under this Act and land is unutilised for more than five years from the date of its acquisition, in that case land shall be returned to the original owner or if original owner cannot be found due to death etc. in that case land will give to the legal heirs of owner.<sup>134</sup>

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<sup>129</sup> Land Acquisition Act, 1894, s. 17.

<sup>130</sup> The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, s. 40(2).

<sup>131</sup> *Id.*, s. 40 (1).

<sup>132</sup> *Id.*, s. 40 (3).

<sup>133</sup> *Id.*, s. 9.

<sup>134</sup> *Id.*, s. 100.

### 5.5.3.10 Special Protection to Schedules Castes and Scheduled Tribes

This Act has given imminence protection to SCs and STs and clearly make restriction on acquisition of land in Scheduled Areas under section 41(1). But in case of last resort government can acquire such land.<sup>135</sup> Before acquiring such land government has to take prior consent of concern Gram Sabha, Panchayat or the autonomous District Council.<sup>136</sup> Apart from the other benefits following are some special protections given to them:

- 1) A development plan needs to be prepared and discussed in the Gram Sabha according to findings of SIA, where SCs or STs are going to be displaced and get approval. It should include the details of procedures for settling land rights, restoring titles of SCs and STs,<sup>137</sup> and also include a program for the development of alternate fuel, fodder and other forest produce to meet the demands of the tribal affected population.<sup>138</sup>
- 2) The provisions of Panchayat (Extension to Scheduled Areas) Act (PESA), 1996 are applicable to the project, if located in the Scheduled Areas.
- 3) The affected ST families are preferably to be settled in the same scheduled area as a compact block to maintain their ethnic, linguistic and cultural identity.<sup>139</sup>
- 4) Any alienation of tribal land in total disregard to applicable laws and regulations would be declared null and void.<sup>140</sup>
- 5) Affected tribal members would be given fishing rights in the reservoir of the water resources projects.<sup>141</sup>
- 6) If SC and ST families are relocated outside the district, they should be given additional twenty-five percent of R&R benefits and one time grant of fifty thousand in cash.<sup>142</sup>

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<sup>135</sup> *Id.*, s. 41(2).

<sup>136</sup> *Id.*, s. 41(3).

<sup>137</sup> *Id.*, s. 41(4).

<sup>138</sup> *Id.*, s. 41(5).

<sup>139</sup> *Id.*, s. 41(7).

<sup>140</sup> *Id.*, s. 41(9).

<sup>141</sup> *Id.*, s. 41(10).

<sup>142</sup> *Id.*, s. 41(11).

#### **5.5.3.11 Right to Avail Better Option**

If any State government frames any law or policy which provides higher compensation or other better benefits compared to this central legislation in that case affected person has option to elect a better one. Similarly in case of R & R affected person has option to avail better R & R entitlement under State law or policy instead under this Act.<sup>143</sup>

#### **5.5.3.12 Compensation**

One of the significant aspects of this legislation is provision for compensation in return of land acquisition. The LARR Act is providing compensation to owners of land and to tenants referred to in section 3(c) in proportion to be decided by appropriate government. The compensation amount of land is determined by the collector on market value.<sup>144</sup> Apart from the compensation this Act also provides award of solatium as well as interest on compensation amount. Solatium is given in addition to compensation amount and it is equivalent to 100 percent of compensation.<sup>145</sup> Similarly 12 percent per annum interest would be paid on award of compensation from notification of SIA under section 4 (2) and till the date of award or date of taking possession of land, whichever is earlier.<sup>146</sup>

Following would be the method of calculating the final award:<sup>147</sup>

##### **1) When Land is Acquired in ‘Rural Area’:**

Market value of acquired land (as determined under section 26) ✕ Factor 1.0 to 2.0 (as notified by appropriate government, generally 2.0) + value of assets attached to land or building (as determined according to section 29) + 100 percent solatium\*\*

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<sup>143</sup> *Id.*, s. 108.

<sup>144</sup> *Id.*, s. 26, 27.

<sup>145</sup> *Id.*, s. 30 (1).

<sup>146</sup> *Id.*, s. 30 (3).

<sup>147</sup> *Id.*, schedule I.

**2) When Land is Acquired in ‘Urban Area’:**

Market value of acquired land (as determined under section 26) ✕ Factor 1.0 +  
value of assets attached to land or building (as determined according to section 29) +  
100 percent solatium\*\*

**\*\*Solatium** = Market value of acquired land (as determined under section 26) ✕ Factor 1.0 to 2.0 (if Rural area) or Factor 1.0 (if Urban area) + value of assets attached to land or building (as determined according to section 29).

In short, generally, in rural area the final award of acquired land would be nearly four times and in urban area it would be two times of market value.

**5.5.3.13 Land Acquisition Process**

The LARR Act has given a very detailed process for land acquisition except in the cases of urgency. This Act has provided a detailed mechanism to acquire the land for public purpose. It is government’s responsibility to ensure that land is going to be acquired for legitimate and bona fide public purposes.<sup>148</sup> Before giving publication of primary notification for land acquisition under section 11, government has to complete pre notification requirements. In which government has to conduct the SIA as provided under section 4 and 6, after that final report of SIA would be examined by the independent multi-disciplinary expert group.<sup>149</sup> After this government will also examine the report of expert group on SIA and recommend such area of acquisition which would ensure minimum displacement.<sup>150</sup>

This process of SIA is also followed in the case of land acquisition for private company by government for public purpose or for PPPP but there should be consent of eighty percent affected families in case of private company and consent of seventy percent of affected families in case of PPPP.<sup>151</sup>

After the above process government will issue a preliminary notification as provided in section 11 along with the summary of SIA report and particulars of the

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<sup>148</sup> *Id.*, s. 8 (1).

<sup>149</sup> *Id.*, s. 7.

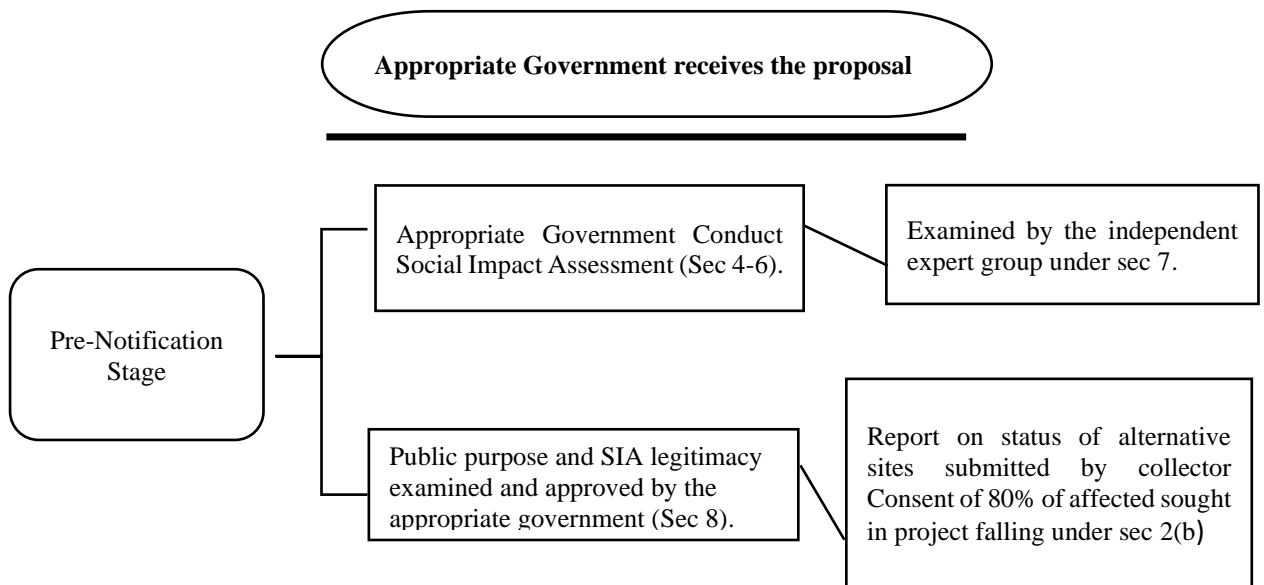
<sup>150</sup> *Id.*, s. 8.

<sup>151</sup> *Id.* s. 2 (2) (b).

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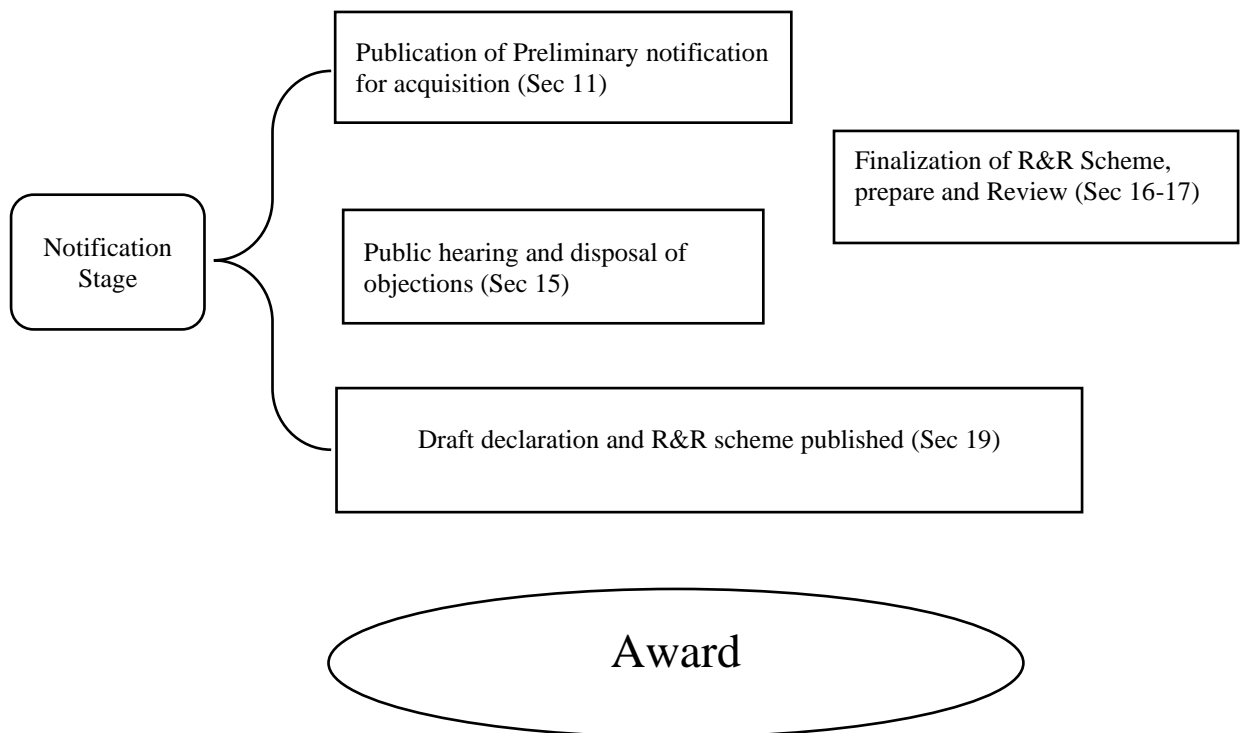
administrator appointed for the purpose of R & R under section 43.<sup>152</sup> The purpose of making publication of SIA report is to give people chance to raise objection if they have any in regard to SIA findings. If people have objections, then it will be here by government and government will take necessary action as it thinks fit on such objections. The decision of government would be final.

After this plan of R & R is prepared through various process as discussed earlier. At the end final award would be given before twelve months from the date of declaration that land is needed for public purpose under section 19.<sup>153</sup> The final award would be determined according to the first schedule. This process can be understood by the following figure.



<sup>152</sup> *Id* s. 11 (3).

<sup>153</sup> *Id* s. 19.



#### **5.5.3.14 No Jurisdiction of Civil Courts**

LARR Act has barred the Jurisdiction of civil court in all the matters which are related to land acquisition in respect of which the collector or the authority is empowered and also states that no court has jurisdiction to grant injunctive relief in relation to such matters. But if anyone has issue with the land acquisition process or compensation and he has any kind of interest in such acquisition then he has a right to move the Supreme Court or High Court under article 32 and 226 respectively.<sup>154</sup>

Any interested person who is not satisfied with the final award may make an application to the collector and demand to refer the matter before authority who is appointed under section 51 for determination of their objections to award.<sup>155</sup>

If person is also not satisfied with the award passed by Authority, then he has the option to make an appeal to the High Court within 60 days from the date of Award by Authority.<sup>156</sup>

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<sup>154</sup> *Id*, s. 63.

<sup>155</sup> *Id*, s. 64.

<sup>156</sup> *Id*, s. 74.

### **5.5.3.15 Liability of Government Servant**

This Act has imposed liability on those government servants who are associated with the responsibility under or in-connection with this Act. If any government servant has done any *mala fide* Act in violation of the provisions of this Act and after inquiry, if he is found guilty then he shall be liable to punishment including fine which is decided by disciplinary authority.<sup>157</sup>

When the offence is committed by any company then the person who was in charge of the company for the conduct of the business and if he has knowledge or he does not exercise proper due diligence, he shall be deemed to be guilty of the offence and punished accordingly. Along with in charged person another involved person also be punished.<sup>158</sup>

Same principle also apply in case of offence committed by government department in this case head of department shall be deemed to be guilty of offence and punished accordingly.<sup>159</sup>

### **5.5.3.16 Institutional Mechanism**

The RFCTLARR Act provides for several new institutions; an Expert Group for evaluating the SIA,<sup>160</sup> an Administrator for the formulation, execution & monitoring of R & R;<sup>161</sup> the Commissioner for approving the R & R Scheme and ensuring their proper implementation through conduct of the post implementation social audit,<sup>162</sup> a R&R committee to monitor and review progress of R & R scheme for projects involving acquisition of more than 100 acres of land; a National Monitoring Committee/State Monitoring Committee for reviewing and monitoring the implementation of R & R schemes.<sup>163</sup> The Act has also given provision for the establishment of the LARR Authority for disposal of disputes relating to LARR and has barred the jurisdiction of civil courts (other than High Courts under article 226 or 227 of the Constitution.

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<sup>157</sup> *Id*, s. 84.

<sup>158</sup> *Id*, s. 86

<sup>159</sup> *Id*, s. 87.

<sup>160</sup> *Id*, s. 7.

<sup>161</sup> *Id*, s. 43.

<sup>162</sup> *Id*, s. 44.

<sup>163</sup> *Id*, s. 48, 50.

#### **5.5.4 Major Fault in LARR Act**

Following are some important shortcomings of this Act:

- 1) As discussed, many times before in earlier chapters that cash compensation is not a proper method to compensate (even though it may be many times compared to the actual value of land) because most of the oustees have never seen huge amount of cash. Oustees all of a sudden get cash in their hands and due to their inability to manage cash, they end up losing most of their cash compensation which makes them poorer than they were before the displacement. Whenever oustees get compensation, they would develop a false sense of richness and in this false sense of behaviour they lose their money. Most the oustees have never seen such huge amount of cash before that is why, sudden cash flow makes them confused. They don't know how to spend their money. Most of them spend their compensation money in gambling or drinking.<sup>164</sup>

This new Act is also promoting cash compensation in return of land acquired even for R & R Act is providing cash, section 26 to 30 and schedule I and II is giving most of the compensation and R & R entitlement in terms of cash. Oustees already lose their lands and once they would lose their money, they are left with no option except to move urban area for their livelihood and their life becomes miserable.

- 2) This Act has given broad definition of affected family under section 3 (c), in this definition there are some categories who finds difficulties to claim R & R benefits, for example;
  - a) Any family who has not any land in affected area but member or members of such family who may be tenant, labour etc in such area;<sup>165</sup> find difficulties to prove their claim for R & R because of prevalence of oral agreement with land lords.
  - b) Any family who is depended for their livelihood upon forest or water bodies for three years prior to land acquisition,<sup>166</sup> also faces difficulties in claiming R & R

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<sup>164</sup> Jagdish Pokharale, "Population Displacement and Compensation Planning in Kulekhani Hydroelectric Project, Nepal", In Hari Mohan Mathur and M. Cernea (eds.), *Development, Displacement and Resettlement: Focus on Asian Experience* 139-550 (Vikas Publishing House, New Delhi, 1995).

<sup>165</sup> The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, s. 3(C)(ii).

<sup>166</sup> *Id.*, s. 3(C)(iv).

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because their identification process is not clear and it is practically not possible that all of them identified unless their verification is done on ground level. Apart from this there are many families who are dependent less than three-year, question arises what happen to them.

Thus, the pro of this provision is the propaganda whereas con is the reality that is the implementation.

- 3) Section 3 (m) of Act gives definition of ‘family’ which does not include widow, divorcees and deserted women as well as unmarried daughter as a member of family and is silent about their R & R entitlement. Apart from this when affected family get house or land with cash compensation for house construction then such compensation may be registered in the joint name of spouses, but the Act is silent about the similar option with cash compensation.
- 4) The power to calculate of the compensation for the land acquired is given to the collector by this Act. He is the sole authority to determine compensation in accordance to section 26 to section 30 along with schedule I. This gives to the collector immense power and chance to make corrupt practices. It would be appropriate to replace collector with some commission or committee who will determine the compensation. It would be fairer and more appropriate.
- 5) This Act also talk about to compensate land for land in case of irrigational project. This benefit is limited to one acre for general category affected families and two-and-a-half for SC and ST families. When government acquire land for irrigation project then whose lands are acquired has been reduced to the status of marginalised farmers.<sup>167</sup> And section 3 (t) says marginalised farmers are those who have up to one-hectare (one hectare = 2.471 acres) un-irrigated land or one-half (1/2) hectare of irrigated land. Hence, the compensation of one acre land for land is a joke on general category farmers because even after compensation as one acre land they will still be marginalised farmers.
- 6) There is the general presumption about this Act that compensation amount would be four times in regular area and two time in urban area of the market value of acquired land but this is not true because schedule-I clearly mentions a sliding scale which would be fixes by the appropriate government. Multiplying factor for rural

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<sup>167</sup> *Id*, schedule II, entry 2.

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- area might range from 1-2 depending upon the distance from the urban area. Which means that farmer in rural area only get four times compensation if multiplying factor would be two which would rarely be adopted by the appropriate government.
- 7) No doubt that consent clause is one of the best reforms brought by this Act and it has given more power to people which was denied by old dogmatic law of arbitrary acquisition. However, there is no consent required by government if they acquire land for their own purpose.
  - 8) There is a provision for making objection to collector within 60 days from preliminary notice under section 11(1) for land acquisition.<sup>168</sup> When collector gets the objection then he conducts hearing on objection and makes a report which would be submitted to government. But it is appropriate government who would take the final decision on such objection, it is government discrimination to accept or reject objection.<sup>169</sup>
  - 9) Before taking possession collector gives a notice to the interested person that government has intention to acquire particular land and that claims to compensation and R & R for all interests in such land may be made to him.<sup>170</sup> The problem is that such notice is given on the website and other convenient places or near the land to be taken but there is no provision for personal notice. In absence of personal notice marginalised section like SC/ST, uneducated people, poor, labour, women etc. would be suffer and not able to make their claims.
  - 10) Section 24 of this Act allowed the retrospective implementation of this Act whose object was to undo the fault committed by the old colonial legislation, but SC by its judgment has limited the retrospective effect of this Act.
  - 11) Provision for urgency clause also finds place which was earlier there in the old Act too. Even though the new Act has placed restriction upon the government's power to acquire land by using urgency, even though government has sufficient room to misuse it. According to section 40(3) which gives power to appropriate government to bypass the procedure of chapter II and IV at the time of land acquisition.<sup>171</sup> At the time of land acquisition in urgency case appropriate government can avoid the

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<sup>168</sup> *Id.*, s. 15 (1) & (2).

<sup>169</sup> *Id.*, s. 15 (3).

<sup>170</sup> *Id.*, s. 21.

<sup>171</sup> *Id.*, s. 40 (3).

important step of SIA and participation of affected families in R & R process, which makes displacement pathetic as before.

- 12) Keeping in view the limited opportunity for land-for-land resettlement, it is most likely that majority of tribal affected families would have to adapt to non-land economic activities which might need new skills to adopt non-farm economic activities. Considering the socio-economic back ground and low literacy level, it would be a great challenge to help affected families acquire required skills and make them ready to face challenges in the market, both for raw material and the products.

## **5.6 DEVELOPMENT OF LARR ACT: POST 2013**

After a long battle of land rights people of India got their right to R & R and fair compensation in the form of LARR Act in 2013. Even though there are some loops in this Act but this Act is far better from the old legislation. There are many differences between old and new Act, key differences are; compensation, consent clause, social impact assessment and provision for R & R entitlement.

The new Act came in to force on 1<sup>st</sup> January 2014 and provides better procedure for land acquisition, compensation and rehabilitation of oustees. The main object of the new Act is to provide an Umbrella legislation for R & R to oustees, whenever land is acquired by the government for public purpose.

When this Act came in to force, it has given exemption to some Acts which are mentioned under the fourth schedule.<sup>172</sup> This exemption was not of permanent nature, it has a limited duration. Section 105 of this Act has used the word “shall” and imposed compulsory limitation on government to make notification within one year from the commencement of this Act that ***“the provision relating to determination of compensation in accordance with first schedule and R & R entitlement as specified in second and third schedule shall apply to the cases of land acquisition under the legislation mentioned in the fourth schedule.”***<sup>173</sup> The draft of said notice should be laid down before each house of parliament and it shall only be issued if both houses would agree on such draft otherwise not.<sup>174</sup>

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<sup>172</sup> *Id.*, s. 105 (1).

<sup>173</sup> *Id.*, s. 105 (3).

<sup>174</sup> *Id.*, s. 105 (4).

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Section 106 has given power to central government to amend the schedule including schedule IV but it has two conditions; first one is that such amendment should not reduce the compensation or dilute the provision relating to R & R of this Act and second condition is that before making any amendment draft of modification kept before both houses of parliament and it only modified if both houses agree otherwise not.<sup>175</sup>

In 2014, Bhartiya Janta Party came in to power with magic numbers of majority. According to the new government this Act is not development friendly and they wanted to amend some provisions of this Act. Hence, BJP government had brought an ordinance on 31 December 2014 to dilute the LARR Act. This ordinance has exempted five categories of projects upon which provision of SIA and consent would not apply. These projects are; Defence, Rural infrastructural, affordable housing, industrial corridors and infrastructural projects including PPP projects where the government own's the land.

This ordinance has made farmers unhappy, social activist and opposition started protesting against it. So, government brought amendment to adopt this amendment permanently for that end bill was introduced in Lok Sabha on 10 March 2015. But this bill was not passed in Rajya Sabha and opposed by opposition parties. Subsequently government has again issue ordinance 2015 (4 of 2015) to continue ordinance 2014. Again, on 30 May 2015, government has promulgated ordinance 2015 (5 of 2015) to continue ordinance 2015 (4 of 2015).

As per the article 123 of Constitution of India, ordinance must be laid before the both the houses of parliament and shall cease to operate, at the expiry of six weeks from the date of re-assemble of parliament unless a resolution disapproving it is passed by both houses before the expiration of six weeks.<sup>176</sup> Ordinance 2015 (5 of 2015) lapsed on 31<sup>st</sup> august, 2015 and affects the right of displaced people. So, to avoid the such dilemma, government has used the power of section 113 (1) of LARR Act and made order to remove these difficulties. This order has stated that 'provision of LARR

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<sup>175</sup> *Id*, s. 106 (2).

<sup>176</sup> The Constitution of India, art. 123.

Act would apply on the all of the thirteen legislation which are mentioned under the fourth schedule. This order came in to force on 1<sup>st</sup> September 2015.<sup>177</sup>

Now the current situation is that the procedure of LARR Act is applicable on all the 13 legislation of schedule IV. Even though land acquisitions are making any one this legislation but the affected person will get compensation and R & R under LARR Act.

## **5.7 MISUSE OF ARTICLE 254 (2) OF THE CONSTITUTION OF INDIA TO BYPASS PROVISIONS OF LARR ACT 2013**

Central government of India has used various means to dilute the LARR Act such as by promulgating ordinances and brought amendment many times but at the end it could not succeed in its intention. So, the government has adopted the another means and method to dilute the LARR Act. This time government has adopted the method of article 254 clause 2 of the Constitution of India. According to clause 2 if a State Law with respect to any of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by parliament, or an existing law with respect to that matter, then the State law if it has been reserved for the assent of the president and has received his assent, shall prevail notwithstanding such repugnancy.<sup>178</sup>

Prime Minister of India himself asked the State governments of India to bring amendment by using article 254 (2) of Constitution to make land acquisition process government friendly and to avoid the procedure of LARR Act.

Till date many States have made amendment to dilute land acquisition process, some of them are; Tamil Nadu, Gujarat, Jharkhand, Andhra Pradesh, Haryana etc. These States amendments are nearly in the line of ordinance of central government which was lapsed in 2015. Major changes are; exemption from SIA for certain projects,

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<sup>177</sup> Ministry of Rural development Order, No. 1834 (28 Aug. 2015, New Delhi).

<sup>178</sup> The Constitution of India, art. 254(2).

exemption from consent provision, payment of lump sum amount instead of R & R entitlement.<sup>179</sup>

Tamil Nadu mounded more ambitious and has completely trespassed the Act of 2013. In 2019 Tamil Nadu assembly has passed “The Tamil Nadu Land Acquisition Law (Revival of Operation, Amendment and Validation) Act 2019”, by this it has revived its three old laws which was became ineffective due to LARR Act. These old laws of Tamil Nadu are very similar to year old colonial law of Land acquisition. This amendment has got the assent of the president on Dec. 2, 2019 and is applicable to territory of Tamil Nadu with retrospective effect.<sup>180</sup> Madras High Court has declared this amendment as unconstitutional but Supreme Court of India has stayed the order of Hight Court and allowed the Tamil Nadu government to acquire the land under the old revived law.<sup>181</sup>

Apart from bringing amendment to bypass LARR Act, 2013, governments are misusing the delegated rule making power under the LARR Act and making rules which are different from the core provisions of LARR Act; for example, Karnataka government has asked to land owner that on returning unused land, land owner has paid the adequate value of land to government in return of land.

LARR Act was brought a with positive approach to support affected families. This new Act has many provisions which are already giving discretionary power to government but it cannot be denied that this Act compared with the old legislation is far better and talking about effective compensation and R & R entitlement. This Act has made land acquisition process little tough for government and transparent too, that is why governments are trying various means and method to trespass this Act and government are succeeding too in their way by promulgating ordinance and other backdoor procedures. This shows that government has learned nothing from the past and has no intention to protect the rights of oustees. They want to make people suffer in the name of development.

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<sup>179</sup> See various States amendment on Land acquisition after the commencement of LARR Act, 2013.

<sup>180</sup> The amendment inserted a new section 105A that said that provisions of the LARR would not apply to acquisitions carried out under three State laws; the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, the Tamil Nadu Highways Act, 2001.

<sup>181</sup> *G. Mohan Rao v. State of Tamil Nadu*, 2021 SCC OnLine SC 440, decided on June 29, 2021.

## **5.8 THE SCHEDULED TRIBES AND OTHERS TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006**

Schedule tribes are living in the forest since ages, even they are mentioned in Ramayana epic. They hugely depend on the forest for their livelihood and custom and their society is developed around the forest. They are using forest produce for their existence.

When Britishers came to India, their primary goal was to exploit and extract natural resources of India and send it to their own country to fulfil industrial demand, for that end British government had introduced Forest Act 1865. This Act was replaced by Indian Forest Act 1878, which gives Britishers absolute control over the forest. Again, in year of 1927, they brought Forest Act 1921, this Act recognised British government's supremacy over the forest resources and authority to use and exploit forest for industrial and commercial purpose.<sup>182</sup>

India got independence in 1947, even after independence, government of India instead of adopting *laissez-fair* policy followed the foot print of colonial government. In 1952, government of India has introduced its first forest policy, which claims that National interest is supreme. By citing the national interest government has side lined the interest of community who are living in or around the forest.<sup>183</sup>

In 1972, government of India came up with 'Wild Life (Protection) Act, 1972, to implement the principle of 'Stockholm Conference'. This Act was enacted to prevent hunting and to control trade in wild life products. In 1980, Forest (Conservation) Act, 1980 was passed whose aim was to check deforestation and to control forest land. This Act has made mandatory the State government to take prior consent of the Union government to use forest land for non-foresting purpose.

The 'Provisions of the Panchayats (Extension to the Schedule Area) Act, 1996 which has given extensive rights to Gram Sabha and Panchayat, and Indian National

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<sup>182</sup> Armin Rosencranz, "The Forest Rights Act, 2006: High Aspirations" 50(4) *Journal of the Indian Law Institute* 657 (2008)

<sup>183</sup> *Id.*

Forest Policy, 1988, both of these are somewhere tribal friendly but deliberately has not been implemented by governments in its true spirit and sense.

All these above discussed legislations along with LAA 1894 have become a tool to control and abuse the centuries old custom, practices and rights of STs and other forest dependent dwellers. To stop the misuse of these legislation and to protect the interest of STs, who are living in or around the forest, parliament has passed “the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 in year of 2006 after the immense demand and protest by forest dwellers. This Act has recognised STs and other forest dwellers legal rights over forest land and forest products and also ensures security to their home, land and livelihood. This Act is crucial to the rights of millions of STs and other forest dwellers spread across multiple places of India as it provides for restitutive deprived forest rights.

### **5.8.1 Aim and Object of the Forest Right Act**

The Primary aim and object of this Act is to protect and confer the right to livelihood upon Forest Dwelling Scheduled Tribes<sup>184</sup> and Other Traditional Forest Dwellers<sup>185</sup> and to undo the historic injustice caused to these people. They are dependent on forest since ages for leaves, firewood, medicinal herbs, fruits and grazing animals. In the absence of their rights over the forest their survival would not be possible. In the absence of this Act, forest resources were collected by private players under the license but this Act has given these rights to FDST and OTFD and secure their right and interest upon the forest.

### **5.8.2 Salient Feature of the Act**

Followings are the salient feature of this Act:

#### **5.8.2.1 Forest Rights**

This Act has recognised and provides various important rights to FDST and OTFD.<sup>186</sup> Section 3 of this Act has enumerated various forest rights, which can be for the purpose of study can be divided in four categories:

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<sup>184</sup> Hereinafter FDST.

<sup>185</sup> Hereinafter OTFD.

<sup>186</sup> The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, s. 4.

### **1) Right to Hold and Live upon Forest Land**

This Act has given FDST and OTFD the right to hold and live upon the forest land which has formed by them but it is subjected to four hectares.<sup>187</sup> This right is given only upon those lands which are already used for common occupation for habitation or self-cultivation for livelihood by concerned family or members of family. No new lands will be granted under the Act for this purpose. Right for conversion of *pattas* etc. on forest land which were issued by any local or State government to titles is also recognised by this Act.<sup>188</sup>

### **2) Right To Use of Minor Forest Produce**

FDST and OTFD have right of ownership, access to collect, use and dispose of minor forest produce,<sup>189</sup> fishing rights from water bodies<sup>190</sup> and with other community rights like Nishtar etc.<sup>191</sup> are also recognised under this Act.

### **3) Right to *in situ* Rehabilitation and Alternative Land**

This Act under section 3(1)(m) and 4 (8) provides right to *in situ* rehabilitation and alternative land in case of illegal eviction or force displacement of FDST and OTFD.

### **4) Right Relating to Forest Management**

This Act also recognises right to protect, regenerate, conserve or merge any community forest resource which they have been traditionally protecting and conserving for sustainable use.<sup>192</sup>

#### **5.8.2.2 Who can Claim These Rights?**

This Act recognises two types of beneficiaries who can claim forest rights given under this Act, they are:

- 1) Forest Dwelling Scheduled Tribes, and

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<sup>187</sup> *Id.*, s. 3(1) (a), 4 (6).

<sup>188</sup> *Id.*, s. 3 (g).

<sup>189</sup> *Id.*, s. 3(c).

<sup>190</sup> *Id.*, s. 3 (d).

<sup>191</sup> *Id.*, s. 3 (b).

<sup>192</sup> *Id.*, sec, 3 (i).

2) Other Traditional Forest Dwellers.

“Forest Dwelling Scheduled Tribes” are members of the schedule tribes who primarily reside in and depend on the forest or forest land for their bona fide livelihood needs including pastoralist communities of schedule tribes.<sup>193</sup> And “Other Traditional Forest Dwellers” are those people who primarily reside in or depend on forest land for their bona fide livelihood for at least three generation prior to 13<sup>th</sup> December 2005/

Notable point is that FDST have got recognition under the Constitution of India but OTFD have got recognition only under this Act.

### **5.8.2.3 The Procedure for Vesting of Forest Rights**

Section 6 of chapter IV deals with the procedure for vesting of forest rights. For this purpose, Gram Sabha is authorised to make recommendation that who has been cultivating forest land, from which period, list of minor forest produce which are collected by FDST and OTFD.<sup>194</sup> After this the recommendation of Gram Sabha will be examined by a committee at subdivisional level and district level. The district level committee has authority to take final decision.<sup>195</sup> After the final decision rights of these FDST and OTFD will established upon forest land. If any person has any objection in regard to resolution of Gram Sabha, then it would be here by sub-divisional level committee or district level committee.<sup>196</sup> Once the rights of people are established under this Act it cannot be sold or transferred to other people.<sup>197</sup>

### **5.8.2.4 Duties of Holders of Forest Rights**

These have been provided in section 5 of chapter III of the Act: The holders of any forest right are empowered to:

- 1) protect the wildlife, forest and biodiversity;
- 2) ensure that adjoining catchment areas, water sources and other ecological sensitive areas are adequately protected;

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<sup>193</sup> *Id.*, s. 2(c).

<sup>194</sup> *Id.*, sec 6 (1).

<sup>195</sup> *Id.*, sec 6(6).

<sup>196</sup> *Id.*, ss. 6 (2), 6(4).

<sup>197</sup> *Id.*, s. 4 (4).

- 3) ensure that their habitat is preserved from any form of destructive practices affecting their cultural and natural heritage;
- 4) ensure that the decisions taken in Gram Sabha's to regulate access to community forest resources and to stop any activity that adversely affects the wild animals, their habitat and biodiversity are complied with.

#### **5.8.2.5 Offences Under the Act**

Whenever any authority or committee or officer or member of such authority or committee of any committee, violates any provision of this Act or does anything contrary to this Act then he shall be deemed to be guilty of the offence under this Act and shall be punished with fine which may extend up to one thousand rupees. But if he proves that he was acted without any guilty intention or in exercise of due diligence to prevent the commission of such offence he would not be liable for any such penalty.<sup>198</sup>

#### **5.8.2.6 Nodal Agency**

Sec 11 of this Act declares that the ministry of the central government dealing with tribal affairs or any officer or authority authorised by the central government in this behalf shall be the nodal agency for the implementation of this Act.<sup>199</sup>

#### **5.8.2.7 Rulemaking Power**

Rulemaking power under this Act is vested in the central government. The central government may by notification make rule for the implementation of the provision of this Act.<sup>200</sup> Central government has power to give direction to every authority who is mentioned under chapter 4 of this Act to perform their respective duties and exercise their respective power for the proper implementation of the Act.<sup>201</sup>

### **5.8.3 Criticisms of Forest Dweller Act, 2006**

Following are some important criticisms of this Act:

- 1) This Act has recognised right to *in situ* rehabilitation and alternative land against illegal eviction or forced displacement.<sup>202</sup> But till 2013 there was no any procedure

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<sup>198</sup> *Id.*, s. 7.

<sup>199</sup> *Id.*, s. 11.

<sup>200</sup> *Id.*, s. 14.

<sup>201</sup> *Id.*, sec 12.

<sup>202</sup> *Id.*, s. 3(1)(m), 4 (8).

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to provide rehabilitation or compensation. In 2013 LARR Act was passed which provides umbrella legislation for R & R and this Act also recognises the rights given by Forest Dwellers Act, but the problem is that most of the States have already made legislation to bypass LARR Act which make again Forest Dweller Act ineffective as before 2013.

- 2) This Act has recognised the right of tribal persons over the forest land<sup>203</sup> but section 4 sub-section 6 of the Act put a limitation by stating that "...shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares"<sup>204</sup> This is major setback to tribals people rights because in most of the cases specially in north-east area, community access, control and management of forest tracts go much beyond four hectares.<sup>205</sup>
- 3) There are a large number of inconsistencies between the Forest Dweller Act and pre-existing policy for tribals at the national and State levels which need to be resolved. The Act supersedes previous laws as far as recognition of rights of forest dwellers is concerned, but it is ambiguous about the role of existing laws in regulating the exercise of those rights. Section 4 of the Act dealing with the recognition of rights begins with the words, "Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in..."<sup>206</sup> Thus, rights have to be recognized irrespective of the Act, the Forest Conservation Act, the Wildlife Protection Act etc. However, section 13 confuses the picture by stating that "Save as otherwise provided in this Act and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force."<sup>207</sup> Hence there must be subsidiary reforms to support of the implementation of this Act.

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<sup>203</sup> *Id*, s. 3(1)(a).

<sup>204</sup> *Id*, s. 6 (4).

<sup>205</sup> B.K. Roy Burman "Ambiguities, Incongruities, Inadequacies in Scheduled Tribes and Other Technical Forest Dwellers (Recognition of Forest Rights) Act, 2006: A Case for Constructive Engagement", 46 *Mainstream* 15 (2008).

<sup>206</sup> The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, s. 4.

<sup>207</sup> *Id*, s. 13.

- 4) The implementation of the Act remains the most difficult task, as environmental activities are not always in compliance with the law, unlawful encroachments have occurred, and claims have been wrongly denied because tribals do not constitute a significant block of voters in most States. Governments find it convenient to violate this Act or ignore it entirely in favour of monetary rewards. The forest bureaucracy, both at the Central and State levels, as well as huge corporations, have engaged in purposeful destruction. The forest bureaucracy is concerned that it will lose its vast control over land and people, while corporations are concerned that they will lose their low-cost access to precious natural resources. Apart from that, the Gram Sabha creates rough maps of community and individual claims, but it typically lacks technical know-how and is educationally incompetent. For illiterate tribals, the intensive process of documenting groups' claims under the Act is both tedious and terrifying.

## **5.9 SUM-UP**

This chapter is important on the point of Indian Legislation in regard to R & R of oustees who are displaced by development projects including by large dams. In this chapter the researcher has as near as possible examined all Indian national law and policies which deal with land acquisition and R & R of dam oustees. Most important part of this chapter is that the researcher has tried to find out the loops in respective legislations which are used by government to misuse these legislations which means to support people rights.

LARR Act has given new hope to dam induced displacement people including dam oustees but this new and people friendly Act has been neutralised by many States amendments. Governments are using their trick and tactics to make people suffer on the name of development. They are doing their best to make people suffer by approaching various means and method to bypass oustees friendly laws.

# **CHAPTER-VI**

## **APPROACH OF INDIAN JUDICIARY TOWARDS HUMAN RIGHTS OF DAM OUSTEES**

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### **6.1 PRELUDE**

India is a Sovereign Socialist Secular and Democratic Republic country based on quasi-federal structure of governance. Each and every organ of the government has their own domain to exercise their power and function and they are also supreme in their sphere. These organs are deriving their power from the Constitution. India is a Democratic Republic and the 'rule of law' is a core principle of democracy. If justice is not accessible to every citizen, then it is automatically a violation of rule of law. Whenever justice is denied to anyone, it become duty of court to protect their rights.

Alexander Hamilton,<sup>1</sup> while describing the role of the judiciary in relation to Constitution, observed: "The interpretation of laws is the proper and peculiar province of the courts. A Constitution is in fact and must be regarded by the judges as a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body."<sup>2</sup>

The Constitution of any country is the supreme fundamental law of that country. Constitution means the legal document which have special sanction and adopted by the people to govern the government of their country. The statute law, on the other hand, is supplementary because it organizes institutions which regulate the exercise of public powers through organs which the Constitution has recognized.<sup>3</sup> Logically Constitutional

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<sup>1</sup> One of the Co-founders of the Constitution of U.S.A.

<sup>2</sup> Alexander Hamilton, James Madison, *et. al.*, *The Federalist* 397 (Dutton Adult; Reprint edition, 1961).

<sup>3</sup> V. M. Bachal, "Judicial Interpretation of Article 21 of the Constitution of India, The Indian Journal of Political Science" 25 *Conference Number for XXVI Indian Political Science Conference 1964: Annamalainagar* 231-240 (1964).

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law is supreme and statutory law are subordinate to it reason behind is that they are deriving their force from the Constitution. According to Article 32, third organ of government is the judiciary which is the protector of Constitution.<sup>4</sup> If any issue arises in relation to interpretation of the any provision of the Constitution, then in such cases Supreme Court and High Courts has power to interpret it and resolve such conflict. But the Constitution also requires that the Court has to constitute larger benches, stating that at least five judges must decide any case “involving a substantial question of law as to the interpretation” of the Constitution.<sup>5</sup>

In a democratic country like India, where Constitution is supreme, it is the duty of court to protect the rights of individuals and time to time check governments arbitrary action.<sup>6</sup> Part III of the Constitution of India contains the fundamental rights, which was inspired by the Constitution of U.S.A. But the important thing is that Indian Constitution has safeguarding provision from Article 32 to 35, which are neither taken from U.S.A. nor from U.K.

In the words of Justice Das “In India, the position of the judiciary is somewhere in between the Courts of England and United States; while in the main, leaving our Parliament and State Legislatures supreme in their respective fields, our Constitution has, by some of the Articles, put upon the legislatures certain specified limitations the limitations imposed on the legislative powers, our Legislatures are supreme in their respective legislative authority to question the wisdom or the policy of appropriate legislatures.”<sup>7</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> Nick Robinson, Anjana Agarwal, et. al., “Interpreting the Constitution: Supreme Court Constitution Benches since Independence” *46 Economic and Political Weekly*, 27-31 (2011).

<sup>6</sup> V. M. Bachal, “Judicial Interpretation of Article 21 of the Constitution of India, *The Indian Journal of Political Science*” *25 Conference Number for XXVI Indian Political Science Conference 1964: Annamalainagar* 231-240 (1964).

<sup>7</sup> *A. K. Gopalan v. State of Madras S.C.R.* (1950), 286,287.

## **6.2 ARTICLE 21 OF CONSTITUTION OF INDIA AND RIGHTS OF OUSTEES**

In the absence of any law on rehabilitation and resettlement, it was expected that the judiciary will take a dynamic stance while interpreting Article 21 of the Constitution, and protect the human rights of the dam oustees. The main object of Article 21 is to protect the life and liberty of individual. Life of human being can't be imagined without some basic necessities like foods, clothing and shelter etc. and right to life includes the right to live with "Basic Human Dignity". Article 21 embodies all basic rights which are essential for the existence of human life.

Before the adoption of Article in its present form, it went through various debates and changes before the drafting committee of the Constitution. Finally adopted in November, 1949, it read as:

*"Article 21. Protection of Life and Liberty - No person shall be deprived of his life or personal liberty except according to procedure established by law"*

The words "except according to procedure established" were substituted for the words "without due process of law" by the Constituent Assembly but Justice Frankfurter, Judge of the U.S. Supreme Court; who advised B.N. Rau, Indian Constitutional adviser that the power of judicial review implicit in undemocratic and imposed an unfair burden.<sup>8</sup> That is why Indian Constitutional assembly has adopted the word "except according to procedure established" from the Constitution of Japan and denied the expression "without the due process of law" which was the part of U.S. Constitution.

No doubt Article 21 is very wide and contains a number of human rights. The concept of right to "life and liberty" expended by the apex court of India with the help of modern jurisprudence, especially after Maneka Gandhi case.<sup>9</sup>

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<sup>8</sup> Fali S. Nariman, "Fifty Years of Human Rights Protection in India - The Record of 50 Years of Constitutional Practice" Special Issue, *National Law School of India Review* 13-26 (2013).

<sup>9</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597: (1978) 1 SCC 248.

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Initially Indian courts restrained themselves from giving liberal interpretation of Article 21, but later they changed the character of the judicial process by allowing PIL and relaxing the Locus Standi rule.<sup>10</sup> The Supreme Court of India has played a vital role in the reform and protection of human rights by invoking Article 21 and 32. Adopting a judicial activist role, the apex court of India has put itself in a unique position to intervene whenever a court finds a violation of human rights.

Although Article 21 starts with a negative terminology but it contains numbers of rights in its ambit, which are necessary to protect the life and liberty of individuals.<sup>11</sup> This Article imposes a duty on the state to protect the “life and liberty” of individuals and also declares that any person shall only be deprived of his right and liberty if there is a procedure established by law. Such procedure must be just, fair and reasonable. The protection of Article 21 is given to citizens of India as well as to non-citizens as long as they are within the territory of India.<sup>12</sup> These rights have been given a paramount position by our courts.<sup>13</sup>

By giving a new interpretation to Article 21, the apex court of India, by invoking the concept of judicial activism, is protecting the basic human rights of oustees.<sup>14</sup> Article 21 is one of the important fundamental rights of the Constitution of India, the reason behind is that it is based on the principle of basic human rights for all human beings. The Indian apex court, by the interpretation of Article 21, invokes many important human rights. The right to be rehabilitated is the logical corollary of the right to live with dignity. In the absence of any enumerated right to be rehabilitated, the judiciary could correct the legislative error by recognizing the same as an unenumerated right under Article 21 and it did the same in *Narmada*.

However, it is important to contextualize the decision to ascertain whether the expansion of Article 21 has solved the problem at hand, that is, providing rehabilitation to

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<sup>10</sup> Prof. (Dr.) D.K. Bhatt, “Judicial Activism through Public Interest Litigation: Trends and Prospects” 15 *Indian Bar Review* (1998).

<sup>11</sup> Bhagwati, J. in *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

<sup>12</sup> *Chairman, Railway Board v. Chandrima Das*, AIR 2000 SC 988.

<sup>13</sup> *Kehar Singh v. Union of India*, (1989) 1 SCC 204.

<sup>14</sup> Dr. K. S. Rathore, “Historical Overview of Judicial Activism in India” 39 *Indian Bar Review* (2012).

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the displaced.<sup>15</sup> The Supreme Court in *Bandhua Mukti Morcha v. Union of India*,<sup>16</sup> has gone on to hold that “International Covenants which India had signed could be read into Municipal law for invoking socio-economic rights from Article 21.

In *Waman Rao v. Union of India*,<sup>17</sup> a Constitutional bench had observed that:

*“India being a predominantly agricultural society, there is a strong linkage between the land and the personal status in the social system. The tip of land on which they till and live, assumes them equal justice and dignity of their person by providing to them a near decent means of livelihood.”*

The judicial approach towards rehabilitation and resettlement policy in India has been quite complex. The Supreme Court of India in several of its decisions<sup>18</sup> has viewed that:

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*

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<sup>15</sup> Bulbul Khaitan & Nitya Priya, Rehabilitation of The Displaced Persons in India, 2 *NUJS L. Rev.* 111, (2009).

<sup>16</sup> AIR 1984 SC 802.

<sup>17</sup> AIR 1981 SC 271.

<sup>18</sup> *Chameli Singh v. State of U.P.*, AIR 1996 SC 1051, para 3,4,9 and *Samatha v. State of A.P.*, AIR 1997 SC 3297.

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*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 marginalized citizens.*<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup> However, in *Jilubhai Nanbhai Khachar v. State of Gujarat*<sup>22</sup> the Supreme Court held 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.”<sup>23</sup>

In the case of *Ram Chand v. Union of India*,<sup>24</sup> the Supreme Court stated that:

*“The power to acquire private property for public use is an attribute of sovereignty and is essential to the existence of a government. The power of eminent domain was recognized on the principle that the sovereign state can always acquire the property of a citizen for public good, without the owners’ consent. The right to acquire an interest in land compulsorily has assumed increasing importance as a result of requirement of such land more and more every day, for different public purpose and to*

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<sup>19</sup> *Id.*

<sup>20</sup> *Lachhman Dass v. Jagat Ram* (2007) 10 SCC 448; and *Amarjit Singh v. State of Punjab* (2010) 10 SC 43.

<sup>21</sup> *State of M.P. v. Narmada Bachao Andolan* (2011) 7 SCC 639, para 62.

<sup>22</sup> AIR 1995 SC 142.

<sup>23</sup> *Id.*

<sup>24</sup> 1994 SCC (I) 44.

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*implement the promises made by the framers of the Constitution to the people of India. The claims that the local population should be granted inalienable rights to their lands, where state access is subject to a mutually defined process of negotiation, are denounced.”*<sup>25</sup>

In Narmada Bachao Andolan,<sup>26</sup> case the apex court speaking about displacement observed:

*“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*,<sup>27</sup> State Unit the apex court held that:

*“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.”*

In *N.D. Jayal and another v. Union of India*,<sup>28</sup> the court held that:

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<sup>25</sup> *Id.*

<sup>26</sup> *Narmada Bachao Andolan v. Union of India*, AIR 2000 SC 3751.

<sup>27</sup> AIR 1998 SC 1703.

<sup>28</sup> (2004) 9 SCC 362.

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*“The right to development encompasses in its definition the guarantee of fundamental human rights. Thus, the courts have recognized the rights of the oustees to be resettled and right to rehabilitation has been read into Article 21.”*

In rejecting the petition of the people displaced by the Rourkela Steel Plant, their claims for employment of adult population and for a preferential right of employment in the case of *Buta Prasad Kumbhar v. SAIL*,<sup>29</sup> the Supreme Court laid down that:

*“Whose land was taken under the Land Acquisition Act; they were paid compensation for it. Therefore, the challenge raised on violation of Art 21 is devoid of any merit”. The Constitutional mandate that a deprivation of life, i.e., livelihood and dignity, will have to be only by the procedure established by law was believed to be fulfilled by applying the Land Acquisition Act.”*

In case of *Banwasi Seva Ashram v. State of Uttar Pradesh and Others*,<sup>30</sup> the initial purpose of evicting the residents of several villages by the state Government was the creation of a Reserve Forest. The Supreme Court ordered for appointment of a Committee to look into the claims of the locals. On finding that the Committee, so established, was biased, another order was issued to substitute that Committee with another one. In the meantime, the government thought of changing the entire purpose of the project to set-up a Thermal Power Plant (Rihand Super Thermal Power Plant), instead of creating a Reserve Forest, as proposed by the National Thermal Power Corporation (NTPC), on the lands which were subject matter of the writ petition. NTPC got itself impeded as a party in the writ petition and claimed that the completion of the project was a time-bound programme and the land earmarked for the project be made free from prohibitive directions of this court in the writ petition.

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<sup>29</sup> (1995) 2 SCC 225.

<sup>30</sup> On the basis of a letter received from Banwasi Seva Ashram operating in the Mirzapur District of Uttar Pradesh protesting against the non-observance of procedures established by law and for non-accommodation of interests of the local communities including tribals in the process, a Writ Petition (Criminal) No. 1061/82 under Article 32 of the Indian Constitution was registered, AIR 1992 SC 920, paragraph 1.

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While noting the importance of the forests as a national asset, the court agreed with the proposal of the government to embark upon a scheme to generate electricity as equally of national importance and to be taken up on a priority.

In *B D Sharma v. Union of India*,<sup>31</sup> it was held that:

“The overarching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of oustees. They should be rehabilitated as soon as they are uprooted.”<sup>32</sup>

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.

### **6.3 CONCEPT OF PUBLIC PURPOSE**

The underlying assumption behind land acquisition in India is the public purpose. To acquire land by virtue of the power of eminent domain, the government must satisfy the public purpose requirement.

The phrase public purpose does not have a static connotation which is fixed for all times. In *State of Bihar v. Kameshwar Singh*,<sup>33</sup> a Constitution Bench of the Supreme Court considered the expression ‘public purpose’. Mahajan, J. explained the expression ‘public purpose’ in the following manner:

“The expression ‘public purpose’ is not capable of a precise definition and not a rigid meaning. It can only be defined by a process of judicial inclusion and exclusion. In other words, the definition of the expression is elastic and takes its colour from the statute in which it occurs, the concept varying with the time and state of society and its needs. The point to be determined in each case is whether the acquisition is in the general

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<sup>31</sup> 1992 Supp (3) SCC 93.

<sup>32</sup> *Id.*

<sup>33</sup> AIR 1952 SC 252.

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interest of community as distinguished from the private interest of an individual.” In same case, S. R. Das, J. observed as:

“We must regard as public purpose all that will be calculated to promote the welfare of the people as envisaged in the Directive Principles of State policy whatever else that expression may mean.”<sup>34</sup>

In *Arnold Rodricks v. State of Maharashtra*,<sup>35</sup> Justice Wanchoo and Justice Shah dissenting from judgment observed that:

“There can be no doubt that the phrase ‘public purpose’ has not a static connotation, which is fixed for all times. There can also be no doubt that it is not possible to lay down a definition of what public purpose is, particularly as “the concept of public purpose may change from time to time. There is no doubt however that public purpose involves in it an element of general interest of the community and whatever furthers the general interest must be regarded as a public purpose.”

In *State of Gujarat v. Shantilal Mangaldar*,<sup>36</sup> Supreme Court lay down broad guidelines as to the public purpose as follows:

- 1) Whichever purpose is beneficial or useful even to a section of public or
- 2) When small concerns having less than 100 workmen require land for housing of workmen or
- 3) for erection of dwelling-houses for workmen of a company or for providing amenities not being public purpose but it is so for public utility or
- 4) If the work of “construction” is found to be of some benefit even to a section of public or
- 5) Government is bound by agreement to provide lands for various public utility concerns such as Railways, Electricity Supplies and Water Supply Corporation etc.

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<sup>34</sup> *Id.*

<sup>35</sup> (1966) 3 SCR 885.

<sup>36</sup> AIR 1969 SC 634.

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In *Bhim Singhji v. Union of India*,<sup>37</sup> as per Justice Sen, “The concept of public purpose necessarily implies that it should be a law for the acquisition or requisition of property in the interest of the general public, and the purpose of such a law directly and vitally subserve public interest.”

Broadly speaking the expression 'public purpose' would however include a purpose in which the general interest of the community as opposed to the particular interest of the individuals is directly and virtually concerned.

### **6.4 OUSTEES AND HUMAN RIGHTS: JUDICIAL PRONOUNCEMENT**

Following are some important judgments in which Supreme Court has recognized various Human rights of dam oustees:

#### **6.4.1 Right to Livelihood**

In *Olga Tellis v. Bombay Municipal Corporation*,<sup>38</sup> popularly Known as ‘pavement dwellers’ case, in this case SC has ruled that word ‘life’ in Article 21 includes the ‘right to livelihood’ also. The court held that:

*“It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the Constitutional right to life, the easiest way of depriving a person his right to life would be to deprive him of his means of livelihood. Articles 39(a) and 41 require State to secure to the citizens an adequate means of livelihood and the right to work, it*

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<sup>37</sup> (1981) 1 SCC 166.

<sup>38</sup> AIR 1986 SC 180. In this case the petitioners had challenged the validity of sections 312, 313 and 314 of the Bombay Municipal Corporation Act, 1888 are invalid as violating Articles 14, 19 and 21 of the Constitution.

would be sheer pedantry to exclude the right to livelihood from the content of the right to life.”

Apart from this in *Delhi Development Horticulture Employees’ Union v. Delhi Administration*,<sup>39</sup> *D. K. Yadav v. J.M.A. Industries*,<sup>40</sup> *LIC of India v. Consumer Education & Research Centre*,<sup>41</sup> and many other cases, in which SC of India has recognizes right to livelihood as fundamental rights of human being.

#### **6.4.2 Right to Shelter**

In *Chameli Singh v. State of Uttar Pradesh*,<sup>42</sup> SC has held that right to shelter is fundamental right under Article 21 of Constitution of India and treated it as basic human rights. The Supreme Court observed;

*“In any organized society, right to live as human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in various international human rights documents and under the Constitution of India cannot be exercised without these basic human rights.”*<sup>43</sup>

The Court further observed; *“Shelter for human being, therefore, is not mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, and other civic amenities like roads etc. so as to have easy*

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<sup>39</sup> AIR 1992 SC 789.

<sup>40</sup> (1993) 3 SSC 258.

<sup>41</sup> (1995) 5 SSC 482.

<sup>42</sup> (1995) 2 SCC 549.

<sup>43</sup> *Id.*

*access to his daily avocation. Right to shelter when used as an essential requisite to the right to live, should be deemed to have been guaranteed as a fundamental right”<sup>44</sup>*

### **6.4.3 Right to Live with Human Dignity**

Article 21 of the Constitution specially promises to protect the life and liberty of individual against the arbitrary action of the government. By giving the liberal interpretation to Article 21 apex court of India has given recognition to ‘right to live with human dignity’. In *Francis Coralie Mullin v. Administration of Union Territory of Delhi*,<sup>45</sup> the Supreme Court observed that “Right to life includes the right to live with human dignity and all that goes along, with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings”.

### **6.4.4 Right to Education**

Education is basis of civilized society; it is a basic human right. For education gives a person human dignity who develops himself as well as contributes to the development of his country. The Supreme Court in *Bandhua Muliti Morcha v. Union of India*,<sup>46</sup> held that the right to life guaranteed by Article 21 does include in it ‘educational facilities’. The Supreme Court in another landmark judgement of *Unni Krishan v. State of Andra Prades*,<sup>47</sup> held that “Right to education is implicit in and flows from the right to life guaranteed by Article 21. The right to education has been treated as one of transcendental importance in the life of an individual has been recognized not only in this country since thousands of years, but all over the world”.

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<sup>44</sup> *Id.*

<sup>45</sup> AIR 1981 SC 746; Similarly, right to live with human dignity has been recognized as an integral part of Article 21 of Indian Constitution in several other cases such as *Puttappa Honnappa Tiavar v. Deputy Commissioner Dharwad* AIR 1998 Karnataka 10; *State of Maharashtra v. Chandrabhan* AIR 1983 SC 803; *Olga Tellis v. Bombay Corporation* AIR 1986 SC 180; *DTC v. DTC Mazdoor Congress* AIR 1991 SC101.

<sup>46</sup> AIR 1984 SC 802.

<sup>47</sup> AIR 1993 SC 2178.

In year of 2002, parliament of India has added Article 21-A by 86th amendment act and made education for all children of the age of 6 to 14 year a fundamental right.<sup>48</sup>

#### **6.4.5 Right to Health**

A healthy body is the very foundation of all human activities. In welfare State this is the obligation of the State to ensure the creation and sustaining of conditions congenial to good health. Article 21 of the Constitution casts the obligation on the State to preserve life of people. In *Vincent Parikurlangara v. Union of India*,<sup>49</sup> the Supreme Court held that the right to maintenance and improvement of public health is included in the right to live with human dignity enshrined in Article 21.

In *Consumer Education & Research Centre v. Union of India*,<sup>50</sup> the court made it clear that right to health and care are part of Article 21 and any denial of these right amounts to violation of Article 21.

#### **6.4.6 Right to be Heard**

Right to be heard is one of the principles of natural justice. Whenever people displaced by government for dam projects or any other development projects, in that case they have many objections which must be heard by projects authorities. In *Olga Teliis v. Bombay Municipal Corporation*,<sup>51</sup> the Court held that “pavement dwellers residing on the public pavements of Mumbai has a right to hearing before they were sought to be evicted by the Municipal authorities.”

#### **6.4.7 The Right to Clean and Safe Environment**

There is a strong relationship between human rights and environment. Human rights derived from the inherent dignity of the human person; environment law lays down the means by which human dignity may be maintained. It is not possible for human being

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<sup>48</sup> The Constitution of India, art. 21A.

<sup>49</sup> (1987) 2 SCC 165.

<sup>50</sup> (1995) 3 SCC 42.

<sup>51</sup> AIR 1986 SC 180.

to preserve their dignity in polluted environment. A human being living in polluted environment cannot imagine of his physical as well as mental health and happiness.

In *Rural Litigation and Entitlement Kendra v. State of UP*,<sup>52</sup> Supreme Court of India held that “the right to decent environment is include in the concept of the right to life along with right to food, right to clothing and a reasonable accommodation to live in. These are the basic necessities which a human being must possess. Right to live with human dignity becomes illusory in the absence of humane and healthy environment.”<sup>53</sup>

Again in *L.K. Koolwal v. State of Rajasthan*,<sup>54</sup> the Court held that maintenance of health, sanitation and preservation of environment fall within the purview of Article 21 of the Constitution.

#### **6.4.8 Right to Ecological Balance**

Most of the world’s large rivers are fragmented and transformed by large dams. More than two thirds of large rivers worldwide are fragmented, threatening fresh water, biodiversity, river integrity, and the services that fresh water ecosystems provide for human populations around the globe.<sup>55</sup> Human’s activities are threatening to the sustainability of services provided by ecosystems and some of the planetary boundaries for sustainable use have already been exceeded.

In *People United for Better Living in Calcutta v. State of West Bengal*,<sup>56</sup> a petition came before the Court under Article 226 of Constitution. It was alleged in the petition that encroachment of Calcutta wetland for shopping plazas or for commercial activities would damage eco-system, the wildlife of the area and the water etc. The Court while treating ecology a social problem observed;

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<sup>52</sup> A.I.R. 1988 SC 2187.

<sup>53</sup> *M. C. Mehta v. Union of India* A.I.R. 1987 SC 965. *M.K. Balakrishnan v. Union of India*, (2009) 5 S.C.C. 511.

<sup>54</sup> AIR 1988 Raj.2.

<sup>55</sup> Kim Birnie-Gauvin, Jan Nielsen, *et.al.*, “Catchment-scale effects of river fragmentation: A case study on restoring connectivity, *Journal of Environmental Management*” 264 *Journal of Environmental Management* (2020), available at: <https://doi.org/10.1016/j.jenvman.2020.110408>.

<sup>56</sup> AIR1993Cal.215.

“Wetland acts as a benefactor to the society and there cannot be any manner of doubt in regard thereto and as such encroachment thereof would be detrimental to the society which the law courts cannot permit”<sup>57</sup>

The Court further held that, “It is now a well-settled principle of law that socio-economic condition of the country cannot be ignored by a court of law. It is now a well settled principle of law that while dealing with the matter, the social problems shall have to be dealt with in the way and in the manner, it calls for, since benefit to the society ought to be the prime consideration of the law courts and ecological imbalance being a social problem ought to be decided by a Court of law so that the society may thrive and prosper without any affection”.<sup>58</sup>

#### **6.4.9 Right to Enjoyment of Pollution Free Water and Air**

In *Subash Kumar v. State of Bihar*,<sup>59</sup> the Supreme Court held that “*Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has a right to have recourse to Article 32 of the Constitution for removing the pollution of water and air which may be determined to the quality of life.*”

#### **6.4.10 Right to Access to Information**

The oustees would willfully deprive of having any access to information about the dam projects. Whatever little they come to know about the dam project, is either unofficial declaration of the officers coming for surveys or from forest guards or other low-grade governmental officials/employees.<sup>60</sup> Which is gross violated the right to information of the oustees. Right to information as a human right is now well accepted right around the globe. It is integral part of fundamental right of freedom of expression.

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<sup>57</sup> *Id* at 231.

<sup>58</sup> *Id* at 228.

<sup>59</sup> AIR 1991 SC 420.

<sup>60</sup> United Nations and the rule of laws, *available at*: <https://www.un.org/ruleoflaw/thematic-areas/governance/freedom-of-information/>.

Any type of restriction on the access to information, especially between government and citizen leads to failure of democratic values and developmental scheme.<sup>61</sup>

In *Essar Oil Ltd. v. Halar Utarsh Samiti*,<sup>62</sup> the Court observed that, “the citizens who have been made responsible to protect the environment have a right to know. There is a strong link between Article 21 and the right to know particularly where secret government decisions may affect health, life and livelihood.”

#### **6.4.11 Right to Development**

The term ‘development’ includes the overall development of human being in term of economic, social and political process. The declaration on right to development makes the right to development itself a human right.<sup>63</sup>

The Supreme Court in *N.D. Jayal v. Union of India*,<sup>64</sup> observed;

“For protection of life under Article 21, adherence of sustainable development was sine qua non for maintenance of symbiotic balance between right to development and environment. Right to development includes guarantee of fundamental human rights. The Construction of dam and mega development projects should be treated as integral component for development. Without strict compliance right to environment under Article 21 could not be guaranteed.”

However, the Court in *Kinkari Devi v. State of H.P.*,<sup>65</sup> held that “improper and unplanned exploitation of the natural resources in the name of socio-economic development is the violation of right to life under Article 21”.

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<sup>61</sup> Ashirbani Dutta, *Development Induced Displacement and Human Rights* 37 (Deep & Deep Publication, New Delhi, 2007).

<sup>62</sup> AIR 2004 SC 1834.

<sup>63</sup> United Nations Declaration on the Right to Development 1986, art. 1.

<sup>64</sup> AIR 2004 SC 867.

<sup>65</sup> AIR 1988 HP 4.

The analyses of above cases shows that apex court of India is aware of the violation of people's human rights and all this rights also available to dam oustees. Either directly or indirectly these judgments are protecting basic human rights of dam oustees.

## **6.5 REHABILITATION POLICY DECISIONS**

In the year 1986, in the matter of *The Collector of 24 Parganas and others v. Lalit Mohan Mullick and others*,<sup>66</sup> while defining the meaning of “rehabilitation”, the Supreme Court highlighting the object of rehabilitation observed as:

*“By rehabilitation what is meant is not to provide shelter alone. The real purpose of rehabilitation can be achieved only if those who are sought to be rehabilitated are provided with shelter, food and other necessary amenities of life. It would be too much to contend, much less to accept, that providing medical facilities would not come within the concept of the word rehabilitation.”*

In *B.D. Sharma v. Union of India*,<sup>67</sup> it was ruled that:

“The overarching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of ousted. They should be rehabilitated as soon as they are uprooted. Further, the Court provided a time frame by which the rehabilitation must be complete: before six months of submergence. Such a time limit fixed by the Court was reiterated in the Narmada's case.”<sup>68</sup>

In the matter of *Narmada Bachao Andolan v. Union of India*<sup>69</sup> the Supreme Court noticed that displacement of people living on the proposed project sites and the areas to be submerged is an important issue and a properly drafted R & R plan would improve the living standards of displaced persons after displacement, and held:

*“Displacement of people living on the proposed project sites and the areas to be submerged is an important issue. Most of the hydrology projects are located in remote*

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<sup>66</sup> AIR 1986 SC 622.

<sup>67</sup> 1992 Supp (3) SCC 93.

<sup>68</sup> *Id.*

<sup>69</sup> (2000) 10 SCC 664.

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*and inaccessible areas, where local population is, like in the present case, either illiterate or having marginal means of employment and the per capita income of the families is low. It is a fact that people are displaced by projects from their ancestral homes. Displacement of these people would undoubtedly disconnect them from their past, culture, custom and traditions, but then it becomes necessary to harvest a river for the larger good. A natural river is not only meant for the people close by but it should be for the benefit of those who can make use of it, being away from it or nearby. Realizing the fact that displacement of these people would disconnect them from their past, culture, custom and traditions, the moment any village is earmarked for takeover for dam or any other developmental activity, the project-implementing authorities have to implement R & R programme. The R & R plans are required to be specially drafted and implemented to mitigate problems whatsoever relating to all, whether rich or poor, landowner or encroacher, farmer or tenant, employee or employer, tribal or non-tribal. A properly drafted R & R plan would improve the living standards of displaced persons after displacement.”<sup>70</sup>*

In *State of Punjab v. Raam Lubhaya Bagga*,<sup>71</sup> the Supreme Court while examining the state policy fixing the rates for reimbursement of medical expenses to the 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 these sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority. No*

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<sup>70</sup> *Id.*

<sup>71</sup> (1998) 4 SCC 117, See also, *Ram Singh Vijay Pal Singh v. State of U.P* (2007) 6 SCC 44; *Villianur Iyarkkai Padukappu Maiyam v. Union of India* (2009) 7 SCC 561; and *State of Kerala v. Peoples’ Union for Civil Liberties*, AIR 1998 SC 1703.

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*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.”<sup>72</sup>*

With respect to rehabilitation and resettlement 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.”<sup>73</sup>

Therefore, considering the above judgments it emerges to be a settled principle 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.”<sup>74</sup>

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<sup>72</sup> *Id.*

<sup>73</sup> *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

<sup>74</sup> *State of Kerala v. Peoples’ Union for Civil Liberties, Kerala State Unit*, (2009) 8 SCC 46.

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In *N.D. Jayal v. Union of India*,<sup>75</sup> Supreme Court held that:

“Rehabilitation is not only about providing just food, clothes or shelter. It is also about extending support to rebuild livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is a logical corollary of Article 21. The oustees should be in a better position to lead a decent life and earn livelihood in the rehabilitated locations.”

In the matter of *State of Madhya Pradesh v. Narmada Bachao Andolan and another*,<sup>76</sup> the Supreme Court has clearly held that the land oustees are entitled to resettlement and rehabilitation as per the policy framed for the oustees of the project concerned and observed:

“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 project concerned.”<sup>77</sup>

As a result of judicial pronouncements, the United Progressive Alliance<sup>78</sup> Government had made a proposal to repeal the inadequate land Acquisition Act, 1894. As such to find solution to the issue of rehabilitation and resettlement a unified legislation came into force since 1st January 2014. The Right to fair Compensation and Transparency in Land Acquisition, rehabilitation and Resettlement Act deals with the both acquisition and rehabilitation and resettlement in the process of acquisition. Thus, it is evident that this phrase simply means that the principles are to be observed unless it is not possible to follow the same in the particular circumstances of a case.

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<sup>75</sup> 2003 Supp (3) SCR 152.

<sup>76</sup> (2011) 7 SCC 639.

<sup>77</sup> *Id.*

<sup>78</sup> The United Progressive Alliance is a coalition of Centre-left political parties in India formed after the 2004 general election and remained in power till 2014.

## **6.6 BARTER OF LAND**

In *Gramin Sewa Sanstha v. State of M.P. & Others*,<sup>79</sup> Court held that:

*“We are also informed that though land has been earmarked by the State Government for resettlement of the displaced tribals, such land is not available because it is already occupied by other persons who themselves will be uprooted if such land is acquired and made available for the tribals displaced on account of the Hasdeo Bango Dam Project. If this is true, the remedy might be worse than the disease because in order to re-settle one set of displaced persons the State Government would be displacing another set of persons. We would, therefore direct the State Government to consider in the meanwhile as to whether the cultivable land at any other place or places can be made available for the tribals who are displaced on account of the present project.”*

In *State of Kerala v. Peoples’ Union for Civil Liberties*,<sup>80</sup> the Supreme Court of India held 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 displacement date.”*<sup>81</sup>

Similarly, in *Narmada Bachao Andolan v. Union of India*,<sup>82</sup> the court observed that:

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<sup>79</sup> 1986 Supp SCC 578, para 2.

<sup>80</sup> (2009) 8 SCC 46.

<sup>81</sup> *Id.*

<sup>82</sup> (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.

“When 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.”<sup>83</sup>

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 a long time to allocate land.<sup>84</sup>

## **6.7 PAYMENT OF COMPENSATION**

Compensation is price of property which is acquired by government for development purposes. It can be in cash or kind or both, based on valuation recognized by law. It helps to oustees to rebuild their life.<sup>85</sup> The World Commission on Dams is also recognized the importance of compensation as “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 efficacious remedy that can halt on-going violations and prevent future ones”.<sup>86</sup>

Compensation means anything given to make the things equivalent; a thing given to or make good for loss. The term ‘compensation’ is used to indicate what constitutes or is regarded as equivalent or recompense for loss or privation.<sup>87</sup> The term ‘compensation’

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<sup>83</sup> *Id.*

<sup>84</sup> *K. Krishna Reddy v. Sp. Dy. Collector, land Acquisition.*, AIR 1988 SC 2123.

<sup>85</sup> Hari Mohan Mathur, “Making Resettlement Work: Policy, Planning and Management” in Hari Mohan Mathur (eds.), *Resettling displaced people: Policy and practice in India* 26-74 (Routledge, New Delhi, 2011).

<sup>86</sup> Balakrishnan Rajapogal, Human Rights and Development (*World Commission on Dams, Thematic Review V. 4, Working Paper 11* (2000), available at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.194.7417&rep=rep1&type=pdf>).

<sup>87</sup> *Awasthi's, Law of Land Acquisition and Compensation* 14 (2008).

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etymologically suggests the image of balancing one thing against the other.<sup>88</sup> 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 like having nothing at all.

The question of the quantum of compensation payable by the Government for the property acquired has been one of the most controversial aspects over the years. Under the normal circumstances, the compensation must be just (value and normal measure of a just value is the market price). It was on the basis that in *State of W.B. v. Mrs. Bela Banerjee*,<sup>89</sup> the Court held that, to be just compensation one must pay the market value as on the date of acquisition together with compensation for being deprived of property.

In *Maj. Gen. Kapil Mehra case*,<sup>90</sup> court held that while fixing the market value of the acquired land, the Land Acquisition Officer is required to keep in mind the following factors:

- 1) existing geographical situation of the land;
- 2) existing use of the land;
- 3) already available advantages, like proximity to National or State Highway or road and/or developed area and
- 4) market value of other land situated in the same locality/village/area or adjacent or very near to the acquired land.

In *Food Corporation of India v. Makhan Singh*,<sup>91</sup> it was observed by court that:

The Court must take into consideration the market value of the land on the date of publication of notification under sub- section (1) of section 4 of the land acquisition Act 1894. This is the reason why Courts have looked for comparable sales of lands at or close to the date of the notification. Somewhere in the process, where difficulties crop up, the Courts employ the rule of thumb, since compensation has to be assessed and arms cannot be raised in despair. It is the bounded duty of the Court while ascertaining compensation

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<sup>88</sup> *Id.*

<sup>89</sup> AIR 1954 SC 170.

<sup>90</sup> *Maj. Gen. Kapil Mehra v. Union of India* 2014 (145) DRJ 497.

<sup>91</sup> 1992 SCR (2) 615.

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to see that, “it is just, not merely to the individual whose property is taken, but to the public which is to pay for it; even if it be a public corporation set up for public needs.”

In *K. Krishna Reddy v. Spl. Dy. Collector, Land Acqn. Unit II, LMD Karimnagar*,<sup>92</sup> the Supreme Court of India expressed grave concern on the issue observing:

“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.”<sup>93</sup>

In *Suresh Kumar v. Town Improvement Trust Bhopal*,<sup>94</sup> the Supreme Court has been observed that:

“In determining the amount of compensation, the Court should not only look at the present use to which the land has been put to, but also the probable uses of the land. The agreement between government and claimant cannot defeat the statutory right of compensation. Another interesting aspect with regard to the payment of compensation is whether the claimants are entitled for compensation under the provisions of the Act, when the assigned lands are resumed by the Government for a public purpose. There was a dichotomy of judicial opinion on this point; however, the legal position was finally settled in the case of *LAO-Cum-Revenue Divisional Officer, Chevella Division and Orsection v Mekala Panda and Orsection*.<sup>95</sup>

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<sup>92</sup> AIR 1988 SC 2123.

<sup>93</sup> *Id.*

<sup>94</sup> 1989 SCR (1) 908.

<sup>95</sup> AIR 2004 AP 250.

## **6.8 AN ANALYSIS OF JUDICIAL RESPONSE TO THE OUSTEES IN LIGHT OF NARMADA BACHAO CASE**

Apart from the above-mentioned aspects discussed by the judiciary the researcher would deal with the right to rehabilitation of development induced displacement people by analyzing *Narmada Bachao case*,<sup>96</sup> decision rendered by the apex court. Though the court expanded the language of Article 21 to incorporate the right to rehabilitation as a fundamental right, it did not apply the same to a real fact situation. Instead, it chose to take a narrow approach by demarcating a line between policy decisions and judicial interference. The result was that the oustees could not secure justice and were failed by the courts ailed as citizen's custodian of rights.<sup>97</sup> More significantly, the following criticisms can be made of the above decisions;

- 1) In Narmada, the court allowed the construction of the dam to proceed by blatantly disregarding the evidences placed before it. The court's final decision did not take into account the affidavit filed by the government of Madhya Pradesh which stated that that it has no land to resettle the oustees, that in all these years Madhya Pradesh has not produced a single hectare of agricultural land for its oustees. It ignored the facts that not one village has been resettled according to the directives of the Narmada Water Disputes Tribunal Award, the fact that even thirteen years after the project was given conditional clearance, not a single condition has been fulfilled, that there is not even a rehabilitation Master Plan.<sup>98</sup>
- 2) In Narmada, the court went on to say that, "It is for the Government to decide how to do its job. When it has put a system in place for the execution of a project and such a system cannot be said to be arbitrary, then the only role which a Court may have to play is to see that the system works in the manner it was envisaged." The petitioners had not asked the court to intervene in policy decisions of the government, but to restrain the construction on the ground that the project was not being implemented as

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<sup>96</sup> *Narmada Bachao Andolan v. Union of India*, AIR 2000 SC 3751, para-158 & 181.

<sup>97</sup> *Bulbul Khaitan & Nitya Priya*, "Rehabilitation of The Displaced Persons in India" 2 *NUJS L. Rev.* 118 (2009).

<sup>98</sup> *Narmada Bachao Andolan v. Union of India*, AIR 2000 SC 3751, para-158 & 181.

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it was envisaged, without any rehabilitation. The distinction made by the court between policy decisions and the permissible area of judicial intervention was unnecessary in this context. More importantly, contrary to its own finding, the court itself indulged in commenting on the policy decisions of the government when it presented an unqualified eulogy on the virtues of a dam such as the following in the Tehri's case. It said, "The benefits which have been reaped by the people all over India with the construction of the dams are too well-known and, therefore, the Government cannot be faulted for deciding to construct the high dam on river Tehri with a view to provide water and electricity in the area as was the decision in the Sardar Sarovar project's case also."<sup>99</sup>

- 3) The court refused to accept the report prepared by the Morse Committee which was an independent committee appointed by the World Bank. The Morse committee, which was set up by the World Bank comprised qualified and reputed members. Assisted by the finest consultants from around the world, it conducted an extensive review of the rehabilitation and environmental aspects through a period of 10 months. The committee being the only one with access to all the documents relating to the project from the World Bank, governments, NGOs, *Narmada Bachao Andolan* etc., produced a comprehensive report.<sup>100</sup> However, the report was not accepted either by the World Bank or the Government of India. This rejection by the World Bank and Government of India was not surprising since the report was critical of both the project and the World Bank. But what is highly unacceptable is the Supreme Court's rejection of the report on the grounds that it was rejected by both the World Bank and the Government of India. decision in the Sardar Sarovar project's case also."<sup>101</sup>

The majority order of the Supreme Court observes that, "Once the Award is binding on the States; it will not be open to a third party like the Petitioners to challenge the correctness thereof. We therefore, do not propose to deal with any contention which in fact seems to challenge the correctness of an issue decided by the Tribunal." This is a

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<sup>99</sup> *Id.*

<sup>100</sup> Dilip D'Souza, "Why They Call It a Black Day" *rediff*, (Oct. 19, 2001), available at: <http://www.rediff.com/news/2001/oct/19dilip.htm> (last visited on April 8, 2021).

<sup>101</sup> *Id.*

very legalistic interpretation of the Interstate Water Disputes Act<sup>102</sup> and Article 262<sup>103</sup> of the Constitution of India. The Narmada issue being a dispute between the state and the people and one where the fundamental rights of the people are involved, the court's declaration that a third party cannot challenge the Tribunal is an incorrect application of the ISWDA which created the Tribunal to solve disputes between the states inter se. The fact that the people were not given a hearing before the Tribunal clearly indicates the injustice involved.

Even if there is an assumption that the governments represent the people, in this case, the governments represent the tribunals on behalf of the beneficiaries and the affected. This being a conflict of interest, it is only fair that there be a provision enabling the representation of the affected people. If this cannot be done, there should at least be a provision to challenge the tribunal, especially since it involves the right to life of the citizens. The need is furthered by the existence of situations wherein the facts and assumptions on which the tribunal based its order have been found to be incorrect, as in the case of the Sardar Sarovar Project. It would be a difficult situation if the implementation of one part of the tribunal award becomes impossible and there is no right to challenge the tribunal order. The situation is akin to what is happening in the Sardar Sarovar project where implementation of the rehabilitation plans is incomplete leading to the violation of the tribunal order time and again. In such cases, it should be open to the person to challenge the order on the ground that the part of it dealing with right to life is not being implemented.<sup>104</sup>

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<sup>102</sup> The Interstate Water Disputes Act, 1956 is an Act of the Parliament of India enacted under Article 262 of Constitution of India on the eve of reorganization of states on linguistic basis to resolve the water disputes that would arise in the use, control and distribution of an interstate river or river valley. This Act further has undergone amendments subsequently and its most recent amendment took place in the year 2002. [Hereinafter ISWDA].

<sup>103</sup> Article 262. Adjudication of disputes relating to waters of inter-State rivers or river valleys: - (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, in any inter-State River or river valley.

<sup>104</sup> *Bulbul Khaitan & Nitya Priya, Rehabilitation of The Displaced Persons in India 2 NUJS L. Rev.* 120 (2009).

## **6.9 THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 AND ITS APPLICABILITY ON PENDING CASES**

Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013<sup>105</sup> has given applicability of new Act upon the acquisition done by government under the old Act. In *Pawan Bawri v. State of Meghalaya and Others*,<sup>106</sup> the Supreme Court has held that where the acquisition proceedings under the old Act were pending on the date of commencement of the LARR Act 2013, section 24 of the new Act shall govern the pending acquisition proceedings.”<sup>107</sup>

when clause (a) of sub-section (1) is read with Sub-section (2) of section 24 then, it creates little dispute due to its terminology and hence created controversy. In *Pune Municipal Corporation Case*,<sup>108</sup> court held regarding section 24 (2) that; if land acquisition proceeding is initiated under the old Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied:

- 1) Physical possession of the land has not been taken or
- 2) The compensation has not been paid (money in the government treasury will not be treated as a payment to a landowner).

In both above cases acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate government still chooses to acquire the land which was the subject matter of acquisition under the old Act, then it has to initiate the fresh proceedings under the new Act. This Judgment has benefited to land owners and given great relief to them.

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<sup>105</sup> Hereinafter LARR Act, 2013.

<sup>106</sup> 2014 CC 6721/2014.

<sup>107</sup> *Pawan Bawri v. State of Meghalaya and Others*, 2014 CC 6721/2014.

<sup>108</sup> *Pune Municipal Corporation v. Harakchand Misirimal Solanki*, AIR 2014 SC 982.

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Indore Development Authority case,<sup>109</sup> declared the above judgment ‘per incuriam’<sup>110</sup> and held if a landowner refuses to accept the compensation offered by the developer, they cannot take advantage of their own wrongdoing and have the acquisition proceedings lapse under the old law. This has given great relief for developers and given upper hand to government.

This new judgment has open a pandora box and given space to reopen the all cases decided by various High Courts and Apex Court under the principle of *Pune Municipal Corporation case*. That is why matter has been referred to 5 judges’ bench. In *Indore Development Authority v. Manoharlal*,<sup>111</sup> in this case court has clear the interpretation of section 24 (2) and made following point:

- 1) The word “or” used between possession or compensation in Section 24(2) will be read as “and”, in other words, in case possession has been taken and compensation has been not paid then proceeding under old Act would not lapse. Similarly, if compensation have been paid and possession has not been taken in that case also proceeding under old Act would not lapse.
- 2) The word “paid” shall include a deposit of compensation made in a court or treasury.
- 3) The proviso that in case compensation for the majority of land holdings has not been paid will only be read in a situation where there is no lapsing as per Section 24(2); therefore, it cannot be read with Section 24(1).

### **6.10 SUM-UP**

One of the important features of the written Constitution is to define power and functions of each organ of the government, especially judiciary. The Constitution of India has given peculiar position to judiciary and tremendous power and function. Such power

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<sup>109</sup> *Indore Development Authority v. Shailendra (dead) Through LRS & Ors.*, (2018) 3 SCC 412.

<sup>110</sup> A judgment can be declared per incuriam if it does not follow a statutory provision or a binding precedent that may have been relevant. It literally translates to “through lack of care”. In such scenarios, a judgment can be declared to be without any legal force, and is then not treated as a valid precedent.

<sup>111</sup> (2020) 8 SCC 129.

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and function exercised by the judiciary to protect the basic features of the Constitution and protect the right of individual against the arbitrary actions of the government.

An analysis of the cases reveals that the courts have given decisions that helped in legitimizing government's abuse of power. Thus, even though the court granted formal rights to oustees by expanding the scope of Article 21 of the Constitution of India, it desisted from applying the same to real fact situations such that the abstract could be contextualized. Section 24 of this Act allowed the retrospective implementation of this Act whose object was to undo the fault committed by the old colonial legislation, but SC by its judgment limited the retrospective effect of this Act.

The State of Tamil Nadu has completely trespassed the Act of 2013. In 2019 Tamil Nadu assembly has passed "The Tamil Nadu Land Acquisition Law (Revival of Operation, Amendment and Validation) Act 2019", by this it has revived its three old laws which had become ineffective due to LARR Act. These old laws of Tamil Nadu are very similar to year old colonial law of Land acquisition. This amendment got the assent of president on Dec. 2, 2019 and is applicable to the territory of Tamil Nadu with retrospective effect.<sup>112</sup> Madras High Court has declared this amendment as unconstitutional but the irony is that Supreme Court of India has stayed the order of Hight Court and allowed the Tamil Nadu government to acquire the land under the old revised law.<sup>113</sup>

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<sup>112</sup> The amendment inserted a new section 105A that said that provisions of the LARR would not apply to acquisitions carried out under three state laws; the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, the Tamil Nadu Highways Act, 2001.

<sup>113</sup> *G. Mohan Rao v. State of Tamil Nadu*, 2021 SCC OnLine SC 440.

# **CHAPTER-VII**

## **CONCLUSION AND SUGGESTIONS**

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### **7.1 CONCLUSION**

The major goal of this study was to examine the resettlement and rehabilitation of people displaced by large dam projects. Displacement of people is a real concern; it can be seen across the globe. The theory of modernization claims that development is important for the betterment of future generations. But this claim is not true in totality, every coin has two sides; similarly, development projects also have two side, one is economic development of the nation and another one is displacement of people.

There are numerous development projects which are responsible for displacement of people but dams belong to that category of projects which are most evasive and displace entire community, even then large dams are existing since ages because of their incomparable contribution to economic development.

Most of the world irrigated land gets water from the large dams (according to world commission on dams, 40 to 30 percent) and they are providing more than 19 percent of the world's electricity. It was estimated by the world commission on dams<sup>1</sup> that more than two trillion dollars have been invested in dam projects. Which shows the importance of dams in eyes of governments across the world including India.

India, being a land of rivers attracts huge investment towards dam projects. Pt. Nehru, the first Prime Minister of India, himself called large dams as temples of modern India. Since independence India has introduced many large dam projects. According to a central water commission report there are 5701 large dams existing in India, which places India at the third position in terms of large dams. These dams are serving many purposes and providing electricity, water supply, preventing floods etc. which seems good for development. But at the same time large dams are forcing people to live their natural habitat or native place. Apart from this, large dams are degrading the biodiversity of rivers, responsible for inequitable development, rivers are becoming

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<sup>1</sup> Hereinafter WCD.

natural resource (rivers are nature themselves), negative social impact on humans and dams are ageing too (more than 1000 dams are 50-year-old in India.<sup>2</sup>).

It was estimated by WCD 40-80 million people world-wide and 16-38 million people in India were displaced by large dam projects.<sup>3</sup> It was also estimated by WCD that 77 percent of total displaced people belonged to dam induced displacement category.<sup>4</sup> The exact number of dam oustees is not available and probably never be because government are not ready to accept their mistake and responsibility. It is sad reality that there is no reliable official statistics of dam oustees.

Dams are directly associated with economic development of nation as claim by government but in reality, they are not bringing prosperity for all people. Those who are facing displacement, they are paying heavy price for it and in return they are getting impoverishment. Most the large dams are commissioned in rural area or in forest which belongs to Schedule Tribes that is why ST are the who are the most affected by large dam projects. They have to left behind their land, livelihood, forest and most important their socio-culture bond to their home land. Native people resist to large dams not because it displaces them, they resist because it is command from outside and brings unacceptable changes in their life. They see it as threat to their security and violation of their basic human rights.

Dam needs large portion of land for its construction and for that purpose government acquires lands. Most of the land acquisition process are forced one and in return people hardly get adequate compensation. Rehabilitation and resettlement program could help in reducing the evil effect of displacement but in most the cases it does not implement properly because of its poor preparation and incompetent authorities. In most of the cases R & R program never be completed on time which leads to increase cost of projects, human suffering and violation of human rights.

People who are displaced by large dam projects are identified as dam oustees. Dam oustees are the person who face the involuntary or forced displacement from their

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<sup>2</sup> Government of India, "National Register of Large Dams" (Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation) *available at*: <http://cwc.gov.in/national-register-large-dams> (Last visited on December 21, 2020).

<sup>3</sup> World Commission on Dams 2000, *Dams and Development, A New Framework for Decision-making - The Report of the World Commission on Dams* 53, 97 (Earthscan, New York, 2013).

<sup>4</sup> *Id* at 98.

home land by their own government for large dams' construction. Generally, people understand dam oustees and refugees as one but both are not the same. Refugee laws would never apply upon dam oustees because dam oustees are facing displacement within their own country because of dam projects. Refugee law generally deal with violence conflicts or politically motivated persecution it is not essential characteristic of dam induced displacement. Dam oustees faces displacement within their own country.

Governments are aware of the dilemma of dam induced displacement but they are not ready to accept it and justify it on the ground of national interest and claiming that dam induced displacement is not forced one as governments are providing compensation for acquired lands and also cite that development brings equality in society. These arguments of governments are not satisfactory because in the name of national interest some have to scarifies their everything and in most of the cases compensation is not adequately awarded, which is against the principle of a social welfare state, violation of right to self-determination and equality. Some scholars who support government's view by citing that right to development is also a human right. But it could only be accepted if dam oustees are protected from net losses from displacement, get equal benefit in profit, livelihood and proper R & R.

It is clear from study that large dam projects and displacement of people are closely associated. If there is any dam constructed, it will also displace people. Displacement has many negative effects upon oustees like joblessness, landlessness, homelessness, social disintegration, food insecurity, disruption of formal education etc. which can be minimised by adequate R & R programs. Rehabilitation would help in restoration of lost economic and social ability whereas resettlement would help to physically relocate the dam oustees. R & R is a process of transformation of dam oustees which helps to displace native people and rebuild their livelihood. The main task of R & R is to restoration to pre-displacement life of dam oustees and protect them from impoverishment by restoring their livelihood.

There are mainly two models of R & R, first one is Four-stage model given by T. Scudder and E. Colson, Second one; Cernea's impoverishment risk construction model. The key message of the two models is that it is not necessary to worry too much about displacement, but that one must find ways and means to minimize physical,

economic, social and psychological impacts of physical displacement, by creating opportunities and avenues for those displaced to participate in development interventions, so that they could benefit from them. Both models stress that development interventions trigger growth and benefit not only for the displaced persons and communities, but also for national or regional populations.

Studies shows that most of R & R process fails due to bad preparation and implementation. It has primarily management issue. Whenever R & R plans are prepared by authorities, they should follow some procedure, for example; social impact assessment, public participation, special focus on vulnerable and tribal people, fair compensation, restoration of livelihood and if possible, make oustees partner in project profit.

Another issue which is associated with dam induced displacement is violation of basic human rights of dam oustees. The concept of human rights comes in the second half of last century. In 1948 United Nations<sup>5</sup> General Assembly has adopted Universal Declaration of Human Rights, which marks the official beginning of age of human rights.

Human right is a generic term which includes civil rights, civil liberties and social, economic and cultural rights. The concept of human rights claim that every human being has some legitimate claims and freedom against their state. The idea of human right is a political one which has moral foundation. It is States responsibility to use all available resources to gradually achieve and protect human rights of their people. The need for the protection of human rights of dam oustees arises because of increase in the cases of displacement by large dams and arbitrary action of state over the dam affected people. States are trying to control people's action in the name of economic development which cannot be justified at any cost.

Whenever people rooted from their home land, it results in massive violation of their human rights, which includes; right to life, right to livelihood, right to equality, right to adequate housing, right to sustainable development, right against discrimination, right to compensation, right to clean and healthy environment and many more important human rights.

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<sup>5</sup> Hereinafter UN.

## *Conclusion and Suggestions*

Even though the land rights are one of the most important rights for forcefully displaced people specifically for dam oustees but none of the international convention has recognised land rights as a human right. Land rights are a group of rights which contains in itself variety of rights related to land, for example; right to retain the land, right to enjoyment, restrict or exclude others from land, transfer, sale, purchase, lease, rent and all others' rights which are directly or indirectly associated with land.

However, in reality land rights are key human rights issue in all development projects in which displacement occurs, particularly in case of large dam projects. In this study it has been found that even though land rights are not directly mentioned in international human rights law thought it can be identified by interpretation and connection with the other human rights, for example; Land Rights as Property Right, Land Rights as Right to Food, Land Rights as Indigenous People's Cultural Rights, Land Rights as Instrument of Gender Equality, Land Rights as Adequate Housing etc.

The concept of human right is very attractive and sounds very good but the issue is that it has its origin from international law hence it is not easy to implement and protect it. UN charter is based on the principle of equality and serenity of the state that is why international agencies can not directly intervene in the domestic jurisdiction of the states. There is only one effective way to protect and implement the international human rights law that is adoption of these laws in to domestic law by states. But whenever state adopts international laws in their domestic law, they followed the procedure of 'reservation' and adopt international laws with convenient modification which reduces the standard of human rights protections.

India has already adopted many human rights principles in its Constitution and also ratified many international conventions. But the problem is that most of the rights of dam oustees are associated with third generation human rights which are not directly given in the Indian Constitution and any ratified convention.

Like the national law, international law also controls the behavior of the society but the difference lies in the subject matters. The subject of national law is state and people whereas the subject of international law is state and state. There are many international organizations who have positively responded to protecting the rights of oustees, especially dam oustees and adopted many declarations, guidelines and conventions. Some of the important organizations are; United Nations, International

Labour Organization, World Bank, World Commission on Dam, Asian Development Bank.

UN came into existence on 24 October 1948, since its establishment UN is promoting, protecting and maintaining the standard of human rights of every section of society including dam oustees. In 1986, UN has adopted the Declaration on the Right to Development. This declaration reaffirms development as human right which entitles a person and peoples to participate, contribute and enjoy the process of development.

In 1998, UN adopted the U.N. Guiding Principles on Internal Displacement. It was the first official document which addressed the issue of internal displacement and gave a procedure to protect the rights of people who were displaced by development projects. Dam oustees are comes under the category of internally displaced people and by virtue this will equally apply on dam oustees. The issue is that it is non-binding in nature.

Again in 2007, UN came with the United Nation Declaration on the rights of Indigenous people. This declaration deals with extensive, elaborate and contains ‘well-accepted’ rights for indigenous people around the globe. Even though, tribals represents 8.6 percent of total population of India<sup>6</sup> but, almost 40 percent of dam oustees belong to the tribal communities.<sup>7</sup> In some states, up to 100 percent of the dam oustees are tribals.<sup>8</sup> The convention of 2007 is full of aspirational values which should be considered by states during drafting legislation and policies for indigenous people. Apart from this UN has adopted ‘Basic Principle and Guidelines on Development Based Eviction and Displacement, 2007; this guideline deals with all types of forced or involuntary displacement and provides umbrella protection to oustees against forced eviction from their homes.

UN has put strong efforts to protect the rights of dam oustees by adopting various conventions, declarations and guiding principles but in applicability they are non-binding in nature and cannot be enforce by the courts. State is free to adopt these

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<sup>6</sup> Census 2011, *Office of the Registrar General*, India.

<sup>7</sup>Ministry of Tribal Affairs, “Annual Report 2016-17: Socio-Economic Activities for Tribal Development” 47 available at: <https://tribal.nic.in/Statistics.aspx> (last visited on Feb. 2, 2022).

<sup>8</sup> D. Gupta and P.K. Singh, “The hidden cost of development—a review of mental health issues of displaced tribal populations in India”. 26 *Journal of Public Health* 718 (2018), available at: <https://doi.org/10.1007/s10389-018-0913-9>

declaration and guiding principles, most of the States have not adopted these principles and guidelines, even though some States have adopted but not ratified them. There should be some mandatory declaration and guiding principles to protect the interest and human rights of dam oustees.

Like UN, International Labour Organization<sup>9</sup> has also adopted some useful convention. Convention No. 107 and 169 is relevant one in area of displacement. Convention No. 169 is the revised version of convention No. 107. These conventions have acknowledged some important rights of indigenous and tribal people, for example; their right to continue to live with their own institution, way of life, culture, right to self-government to indigenous population, right to challenge proposed legislation for them, right to native language etc.

Even though the ILO convention 107 and 169 have acknowledged a number of important rights of indigenous and tribal peoples but without proper implementation and watchdog machinery no right can be protected. That is why the ILO Constitution has adopted a procedure for governing body and complain procedures. Governing body is authorised to request to member states to submit annual report about the measures taken by them to implement of the conventions. This report would be submitted in International Labour Office.

World Bank has also laid down a similar procedure to protect the interests of dam oustees. The main function of the world bank is to protect economic development and eradicate poverty. But in reality, most of the large dam projects which are responsible for displacement are funded by the world bank. By accepting their accountability with economic development mission world bank has gradually adopted a policy on resettlement and rehabilitation of development induced displacement including by large dams' projects. In 1979, world bank prepared its policy in 1979 and issued in 1980 as "Social Issues Associated with Involuntary Resettlement in Bank Finance Projects" also known as OMS 2.33. In 1986 this policy was revised and re-issued as "An Operation Note" also known OPN 10.08. First policy was descriptive platitudes while OPN 10.08 emphasises on sustainable goal of development.

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<sup>9</sup> Hereinafter ILO.

## *Conclusion and Suggestions*

In 1990, world bank has come with World Bank Operational Directive 4.30 which talks about the reconstruction of oustees livelihood. It had also some lacunas that is why in 2001 world bank had revised it and introduced World Bank's Operational Policy 4.12 on Involuntary Resettlement along with Procedure 4.12. This one is one of the most progressive international instruments which deals with displacement of people by development projects including displacement by large dam projects. This policy goes beyond the simple compensation scheme and demands restoration of living standard of oustees and if oustees are indigenous population in that case compensation should be land based settlement. This policy also speaks at length about the need to maintain the ethnic values and social relationships of the indigenous communities. It also talks about treating their informal customary rights to the land or other resources acquired for the project, as natural rights and hence to be compensated adequately.

The negative thing about this policy is that it only covers direct displacement and is silent about the indirect displacement caused by development projects and also does not cover the cases of displacement which occurred prior to involvement of the world bank in the mid of the project. There are many projects in which world bank has made an entry in the mid of the project and till then many people have already been displaced and due to such policy of the world bank, they become helpless and are able to make their claims under this policy. There is an ethical dilemma, being financial institution functions on the basics of distributing loan to borrowing countries, the world has a legitimate reason for worrying that government will stop borrowing for controversial development projects in order to avoid high standard of accountability. The World Bank can maintain high standards and consequently run the risk that clients will turn less scrupulous or bank can lower its standard and ensure that its participation prevents risky projects from avoiding any international security.

In 2007, WCD had come into existence and worked till 2001 and its objective was to review the development effectiveness of large dams and assess alternatives for water resources and energy development, and to develop an internationally acceptable criteria, guidelines and standard rules. WCD has shown the bad faith of government and money-making mindset. Its findings, suggestions and guidelines would be useful to improve planning and decision making for future dams if fallowed by any government. It has re-stressed the Dublin-Rio Principle of 'Stakeholder Consultation and Participation' and recommends the requirement of 'free, prior, informed consent'.

It formulates a 'rights and risks' approach that transcends the old-style cost benefit analyses.

Asian Development Bank<sup>10</sup> has also come forward and given its involuntary resettlement policy in 1994, which was formally introduced in 1994 and the main objectives of ADB policy was to avoid forceful displacement in all possible manner and if it is unavoidable then in that case development authorities should focus on minimizing the harmful consequences of involuntary displacement. The ADB policy on involuntary resettlement requires certain specific procedure which must be followed in all ADB funded development projects. They are; Social assessment of projects, Resettlement plans, Project processing, Project implementation etc.

Almost all these international instruments have given similar provisions. These policies are also talking about the profit of project sharing with oustees but none of them has a given mechanism as to how it would be claims by oustees or given to them and all of these polies makes profit sharing clause subjected to the availability of natural resources which gives the States means of escape from implementing it.

Apart from international concerns, Indian legislature has also shown its concern towards the issue of displacement caused by development projects including large dams but it seems that they are not serious in this regard and are only trying to deceive Indian people in the name of policy and laws.

The first land acquisition law, Land Acquisition Act, 1894,<sup>11</sup> was introduced by the Britishers to plunder the natural resources of India and to justify the involuntary displacement of people. This Act was arbitrary in nature and gave every possible power to the British government to abuse the rights of Indian people. But the irony is that even after independence the government has not only adopted this Act but also continued it till 2013 with little amendments. LAA was based on principle of 'eminent domain' which gave absolute power to the government to deprive the people from their land without their consent. This Act also did not recognise any type of R & R procedure and entitlement. This Act also did not provide adequate compensation.

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<sup>10</sup> Hereinafter ADB.

<sup>11</sup> Hereinafter LAA.

In 1990, India prepared its first rehabilitation policy drafted by S.C. Saxena which came into effect in February 2004, entitled as “National Policy on Rehabilitation and Resettlement for Project Affected Families” and again revised and reintroduced as “National Rehabilitation and Resettlement Policy of 2007”. This policy covered all the cases of involuntary displacement caused by development projects including railway projects, housing projects, large dam projects etc. and also recognised social impact assessment program, people’s participation in decision making, land for land compensation scheme, job opportunity in same project by which they were displaced and many other people friendly procedures. This policy did not cover the cases of displacement which had occurred before 2007. Job opportunity is only available if there is a vacancy. This policy failed to fulfil the demand of oustees. The conflict of land acquisition remained the same, power of eminent domain haunting the oustees as before.

In 2013, parliament of India has adopted a long-demanded legislation that is “Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013”.<sup>12</sup> It was the first official legislation which acknowledged the issue of displacement and gave detailed procedure for R & R of oustees. This Act has replaced LAA. The object of the Act is to make land acquisition process transparent and fair, provide adequate compensation, conduct social impact assessment before initiating land acquisition process, land for land in case the acquired land’s owner belongs to Schedule Tribe. This Act has also ensured that, if possible, to make the project affected person partner in project profit to make oustees life better. This Act has adopted most of the provisions of the 2007 policy. Apart from the compensation, this Act also provides for the award of solatium as well as interest on compensation amount. Solatium is given in addition to the compensation amount and it is equivalent to 100 percent of compensation.

This Act has provided an umbrella legislation to tackle displacement caused by any type of project in which government has acquired land. Before the adoption of this Act R & R of oustees was governed by *ad hoc* plans, resolutions, orders or policies prepared by project authority. The provision of this Act would be also applicable to 13 legislations which are mentioned in the fourth schedule of this Act. In old Act consent

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<sup>12</sup> Hereinafter LARR Act, 2013.

provision was not given and government did not take consent of affected family before land acquisition. However, there is no consent required by government if it acquires land for its own purpose. Under this Act government can acquire land for itself, for PPPP and also for private companies. If acquired land is unutilised for more than five years from the date of its acquisition, in that case land shall be return to original owner. This Act has given imminence protection to SCs and STs and clearly makes a restriction on acquisition of land in Scheduled Areas under section 41(1). But in case of last resort government can acquire such land.

Section 24 of this LARR allowed the retrospective implementation of this Act whose object was to undo the faults of by the old colonial legislation, but SC by its judgment limited the retrospective effect of this Act. This Act also talks about the issue of compensating land for land in case of irrigational project. This benefit is limited to one acre for general category affected families and two-and-a-half for SC and ST families. There is the general presumption about this Act that compensation amount would be four times in regular area and two time in urban area of the market value of acquired land but this is not true because schedule-I clearly mentions a sliding scale which would be fixed by appropriate government.

This new Act is very effective and protects the rights of oustees but since its adoption government are trying various means and methods to dilute it. Many State governments have brought amendments to bypass the LARR Act, 2013 and also governments are misusing the delegated rule making power under the LARR Act and making rules which are different from the core provisions of LARR Act.

Forest Dwellers Act, 2006, is another piece of Indian central legislation which focuses on the issues of displacement. The primary object of this Act is to protect and confer the right to livelihood upon Forest Dwelling Scheduled Tribes<sup>13</sup> and Other Traditional Forest Dwellers<sup>14</sup>. This Act has recognised the FDST and OTFD right to hold and live upon the forest land, right to use minor forest produce, fishing right, right to in situ rehabilitation and alternative land in case of illegal eviction or forced displacement of FDST and OTFD etc. Along with rights, this Act has also imposed

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<sup>13</sup> Hereinafter FDST.

<sup>14</sup> Hereinafter OTFD.

some duty upon FDST and OTED, for example; duty to protect wild life, forest, biodiversity etc.

But till the 2013 there was no such procedure to provide rehabilitation or compensation to implement Forest dwellers Act. In 2013 LARR Act was passed and is also recognised the rights given by Forest Dwellers Act, but the problem was that most of the States had already made legislations to bypass LARR Act which makes the Forest Dweller Act ineffective as before 2013.

India is a democratic country and it is the duty of Supreme Court to protect the rights of individuals against the arbitrary actions of government. The Supreme Court of India has played a vital role in the reform and protection of human rights by invoking Article 21 and 32. Adopting judicial activist role, the Apex Court India has put itself in a unique position to intervene when ever court finds a violation of human rights, for example; in *Waman Rao v. Union of India*,<sup>15</sup> S.C. has recognized the relationship between land and the social status of people. In *N.D. Jayal and another v. Union of India*,<sup>16</sup> court held that right to rehabilitation is protected under Article 21 of the Indian Constitution, in *B D Sharma v. Union of India*,<sup>17</sup> court held that oustees should be rehabilitated as soon as possible, in *Narmada Bachao Andolan v. Union of India*,<sup>18</sup> Supreme Court has recognised STs right to land in return of acquired land.

There are many human rights, for example; right to livelihood, right to development, right to compensation, right to ecology, right to clean environment and many other human rights are recognised by the Supreme Court to protect the interest of oustees. Apex court has tried to maintain balance between development and displacement.

Questions relating to the desirability of dams to foster development, existing alternatives to produce electricity and to provide irrigation and drinking water are of great importance and must also be taken into account. However, whatever path was chosen to foster economic development, it is today agreed in India and abroad that

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<sup>15</sup> AIR 1981 SC 271

<sup>16</sup> (2004) 9 SCC 362.

<sup>17</sup> 1992 Supp (3) SCC 93.

<sup>18</sup> (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.

development must be ‘environmentally sustainable’ and that it should contribute to the realization of human rights for all residents of the country. The question of the ‘human cost’ of development cannot be dealt with in a technical manner but must necessarily refer to the fundamental rights of people whose lives and/or livelihoods are threatened by development projects.

“Dam oustees opposed the dam not simply because it represented change but because it represented unacceptable change. It was a threat to the native people’s basic securities and comes to them in the form of command from outside. People did not understand the rationale behind dam yet they were expected to make major sacrifices on behalf of a nation-state with which they did not identify.”<sup>19</sup>

The construction of dam involves displacement of a large number of people from the dam area and dam oustees have to face many impoverishment risks, most of them ending up worse than what was before displacement which is against the basic object of development. The debate around the dam inducement displacement is mainly related to equity, governance and justice. The core issue is the problem faced by humanity. Dams are a means to an end, not an end in themselves. The end of any dam project must be sustainable improvement of human welfare that is human development on the basis of social and economic equality.

## **7.2 SIGNIFICANCE OF OBJECTIVES**

This research is based on doctrinal research and secondary sources of data. These sources are mainly the library sources including books, journals, reports of various authorities or governments, judgment of various High Courts and Supreme Court and study materials available on the internet. On the beginning of the study the researcher has formulated some objective to find out the cause-and-effect relationship in research. Followings are the significance of the findings in relation to the research objective:

**First objective;** to find out the negative impact of displacement on the native people caused by dam induced displacement.

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<sup>19</sup> E. Colson, *The Social Consequences of Resettlement: The Impact of the Kariba Resettlement on the Gwembe Tonga* 3 (Manchester University Press, Manchester, 1971).

This objective of research found place in the initial chapters of this thesis mainly chapter-I and chapter-II. There are many researchers, scholars and national as well as international organizations who have done empirical and non-empirical studies to find out the impact of displacement upon oustees.

Michael Cernea,<sup>20</sup> T. Downing,<sup>21</sup> Alexander,<sup>22</sup> and many others have done their research in the field of displacement and after analysing their work the researcher has found that the impact of displacement existed for a long time. Even though development projects are intended to provide positive benefits but in fact in most of the cases oustees have to pay a heavy price for it. There are many risks and negative impacts which are faced by dam oustees. These are;

- 1) Loss of access to common property;
- 2) Social disintegration;
- 3) Loss of access to services;
- 4) Disruption of formal education activities;
- 5) Loss of civil and human rights;
- 6) Landlessness;
- 7) Joblessness;
- 8) Homelessness;
- 9) Marginalization;
- 10) Food insecurity;
- 11) Increased morbidity and mortality.

Colson, a researcher, began her analysis of the impact of the Kariba hydro-electric dam on the Gwembe Tonga in Central Africa with the following words:

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<sup>20</sup> Worked as the World Bank's Senior Adviser for Sociology and Social Policy until 1997. He has published on a wide range of the effects of development, including social change, social forestry, participation, grassroots organizations, and population resettlement. He is an author of the term "development-induced displacement and resettlement".

<sup>21</sup> T. Downing, *Avoiding New Poverty: Mineral-Induced Displacement and Resettlement* (Mining, Minerals and Sustainable Development and International Institute for Environment and Development, 2002).

<sup>22</sup> J. Alexander, "The Lahanan of the Balui (1963-2006)" 39 *Borneo Research Bulletin*, 122 (2008). He has done research on the Lahanan of the Batang Balui, a small longhouse dwelling group impacted by logging and then displaced distantly by state construction of a reservoir in Sarawak, has presented a post-resettlement picture of oustees.

“Massive technological development hurts. This is a fact largely ignored by economic planners, technicians and political leaders. In planning drastic alterations in environment that uproot populations or make old adjustments impossible, they count the engineering costs but not the social costs”.

*Second objective;* to study the human rights violation of dam oustees in course of displacement.

Human rights violation is one of the most important aspects of the study of dam induced displacement. Dam projects leads to massive displacement and violate a number of basic human rights. Chapter-III of this thesis deals with the second objective of research and tries to find out the what are the basic human rights of dam oustees which are violated in the course of displacement. For that purpose, researchers have analysed general human rights conventions as well as specific conventions such as UN Declaration on the Right to Development 1986 and United Nations Declaration on the Rights of Indigenous Peoples, 2007, which are adopted by international communities, specially United Nations. After analysis the researcher has found that following are the important human rights of dam oustees which are violated in course of displacement which must be protected:

- 1) Right to Life, Liberty and Security;
- 2) Right to Participation;
- 3) Right to Self-Determination;
- 4) Right to Equality;
- 5) Right Against Discrimination;
- 6) Right Against Forced Eviction;
- 7) Right to Sustainable Development;
- 8) Right to Freedom of Residence;
- 9) The Right to Adequate Housing;
- 10) Right to Development;
- 11) Right to Access to Information;
- 12) Righty to Compensation/Remedy;
- 13) Right to Safe Environment;
- 14) Many other human rights which are related to land.

States are the one, who are under the obligation to protect the human rights of people in their jurisdiction.

**Third objective;** To study the international institutions response to rights of dam oustees.

There are many different international legal entities and institutions which have responded to the human rights impacts and risks of dam induced displacement and adopted various guidelines, laws and best practices. Chapter-III of the thesis has discussed the concerns of international institutions in this regard. Some of the most important international practices and role of various international organization on displacement by development project specifically by large dams are studied and analysed by the researcher in this chapter.

Followings are the international institutions and their responses to rights of dam oustees:

<b>S. No.</b>	<b>International Institutions</b>	<b>Response to Rights of Dam Ousteers</b>
1.	United Nation	<ul style="list-style-type: none"> <li>• Declaration on the Right to Development, 1986.</li> <li>• The U.N. Guiding Principles on Internal Displacement, 1998.</li> <li>• The Declaration on Rights of indigenous peoples, 2007.</li> <li>• Basic Principle and Guidelines on Development Based Eviction and Displacement, 2007.</li> </ul>
2.	International Labour Organization	<ul style="list-style-type: none"> <li>• ILO has passed two convention that is Convention No. 107 and Convention No. 169 in 1957 and 1986 respectively. Convention No. 169 is outcome of Convention No. 107. Convention No. 169 is revised version of Convention No. 107. Both the convention has limitation that is they only talk about the indigenous and tribal people.</li> </ul>
3.	World Bank	<ul style="list-style-type: none"> <li>• World Bank Operational Directive 4.30.</li> <li>• The world bank OD 4.30 has been revised in the end of 2001. New revised policy was adopted in December 2001 as World Bank's Operational Policy 4.12 on Involuntary Resettlement along with Bank Procedure 4.12.</li> <li>• World bank's inspection panel is an independent forum and it was established by the resolution no. 93-10 of the International Bank for Reconstruction and Development and by the identical resolution no. 93-6 of the International Development Association, both adopted by the Executive</li> </ul>

		Directors of the respective institutions on 22 September 1993
4.	World Commission on Dam	<ul style="list-style-type: none"> <li>The WCD was outcome of workshop done by International Union for Conservation of Nature with the help of World Bank in Switzerland in 1997. It was an independent body consisting of twelve commissioners. They have been appointed for two and a half years. WCD has revised its report in year of 2000, titled as “Dams and Development, A New Framework for Decision-making - The Report of the World Commission on Dams”. In this report WCD has tried to give detailed information, experiences and different perspective of dams, on the basis of public dialogue by different delegates, scholars and researchers.</li> </ul>
5.	Asian Development Bank	<ul style="list-style-type: none"> <li>ADB has adopted its involuntary resettlement policy in 1994, which was formally introduced in 1994. ADB involuntary resettlement policy emphasises that planning of involuntary resettlement is an integral part of development projects. One of the main objectives of ADB policy is to avoid forceful displacement in all possible manner and if it is unavoidable then in that case development authorities should focus on minimizing the harmful consequences of involuntary displacement.</li> </ul>

***Fourth objective;*** to study the legal protection available to dam oustees whose human rights are violated by dam projects.

India has signed numerous international agreements in regard to the protection of the human rights and also many human rights are found directly placed under the Indian Constitution as fundamental rights. Human rights law emphasises that all human rights are inalienable, universal, interdependent and indivisible.<sup>23</sup> Anyone can claim them and it is the obligation of the government to provide them without any discrimination, including, indeed especially, to dam oustees. There may be some limitation upon the rights but such limitation cannot be arbitrary and without the due process of law.

This objective has been covered under chapter-III and chapter-VI. Chapter-III has studied the human rights of dam oustees available in India and how it can be

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<sup>23</sup>OHCHR, what are human rights? available at: <https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>.

implemented, and chapter-VI has analysed how it will protect. In order to implement the human rights provided in the international conventions parliament of the country is required to be in conformity with the provision of the international treaties. Treaties may be transferred into the domestic laws so that individuals may invoke them in securing or defending their rights in cases where this does not automatically flow from ratification, thus, treaties are required to be implemented through legislation. In *Sunil Batra v. Delhi Administration*,<sup>24</sup> Krishna Iyer, J. observed that, “of course, new legislation is the best solution, but when law makers take for too long for social patience to suffer, as in this very case of prison reform, courts have to make do with interpretation and carve on wood and sculpt on stone ready at hand and not wait for away marble architecture.”

By giving new interpretations to Article 21, Supreme court of India, by invoking the concept of judicial activism protected the basic human rights of oustees.<sup>25</sup> It is the duty of the court to protect the rights of individuals and time to time check government’s arbitrary action.<sup>26</sup> If justice is not accessible to every citizen, then it is automatically violation of the rule of law. Supreme Court in its various decision recognised variety of human rights related to oustees and order to rehabilitate and compensate them.

The right to take proceedings by original petition straight to the Supreme Court for the enforcement of the fundamental rights (including recognised human rights under Article 21.) is guaranteed in Article 32. In *Prem Chand Garg v. Excise Commr.*,<sup>27</sup> The importance of this right has been assessed by *Gajendragadkar* J, later CJ, as “The fundamental right to move this Court can, therefore, be appropriately described as the corner-stone of the democratic edifice raised by the Constitution. That is why it is natural that this Court should regard itself ‘*as the protector and guarantor of fundamental rights*’, and should declare that it cannot, consistently with the

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<sup>24</sup> AIR 1980 Supreme Court p: 1579.

<sup>25</sup> Dr. K. S. Rathore, “Historical Overview of Judicial Activism in India” 39 *Indian Bar Review* (2012).

<sup>26</sup> V. M. Bachal, “Judicial Interpretation of Article 21 of the Constitution of India, The Indian Journal of Political Science” 25 *Conference Number for XXVI Indian Political Science Conference 1964: Annamalaiagar* 231-240 (1964).

<sup>27</sup> AIR 1963 SC 996, 999. Also see; *Romesh Thappar v. State of Madras* AIR 1950 SC 124, 126: 1950 SCR 594. 597, *State of Madras v. V.G. Row* AIR 1952 SC 196: 1952 SCR 597, 607.

responsibility laid upon it, refuse to entertain applications seeking protection against infringements of such rights”.

*Last one;* to study the resettlement and rehabilitation laws of India and existence of gap between laws and their implementation in relation to dam oustees.

There was total absence of resettlement and rehabilitation laws in India since 2013 before that in 2003 Government of India had brought a policy to tackle the issues of displacement which was revised in 2007, named; “National Rehabilitation and Resettlement Policy of 2007”. In 2013, India has adopted which deals with R & R, named; “Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013”. This Act has replaced the more than 100-year-old colonial legislation that is Land Acquisition Act, 1894.

This Act was quite good compared to old laws and policies but various State governments have brought many amendments to bypass this piece of legislation and again created a situation similar to the one before the coming of this Act. Implementation processes are not up to the mark and States are trying their every possible trick to bypass the 2013 Act.

### **7.3 RESULTS OF HYPOTHESES**

Hypothesis is a tentative guess about the research outcome, it contains variables that that are measurable and specifying how they are related. In the starting of this research work, researcher has framed three hypotheses.

The results can be put as fallows; *first hypothesis* was “The existing international and national laws as well as policies on the issue of dam-induced-displacement are not sufficient to protect the basic human rights of dam oustees.”

There are many international conventions which are related to dam induced displacement either directly or indirectly and acknowledging a number of human rights. But they are not able to create a binding force. They cannot be directly enforced by a court of law in their domestic jurisdictions. There is only one effective way to implement and protect the human rights which are awarded by international laws that is, by adopting international human rights principles in domestic laws by States. But there is also a problem with it, strength of conventions/treaties fundamentally depends on a number of ratifications among States. Treaties/Convention are binding on State

parties only after ratification and whenever state ratifies any treaty, he would follow the principle of reservation. The primary reason a state would place reservation on its ratification status is “to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.” Sometimes international human rights convention contains standard of rights which are beyond the domestic law, in such case government of respective States by entering in to reservation reduces the standard of human rights according their convenience. Which leads to degradation of human rights protection. So, it is also a hard task for international institutions like UN to make states to perform their obligations in regard to protection and implementation of human rights of people including dam oustees in line of international conventions.

In respect of Indian national laws protection, it is quite clear that Government of India was never seriously concerned about the issue of dam induced displacement and has failed to protect the rights of dam oustees. Since independence till 2013 there was total absence of R & R laws for dam oustees, even though some authorities have their own policy but they are not sufficient and seriously implemented. Government failed to provide the data of dam oustees till date. Till 2013, India followed the colonial legislation to acquire the land. In 2013 after long protest by activists and farmers government of India adopted “the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013”. But this central law has also been bypassed by adopting the method of Article 254 clause 2 of the Constitution of India.<sup>28</sup> Till date many states have made amendments to dilute land acquisition process, some of them are; Tamil Nadu, Gujarat, Jharkhand, Andhra Pradesh, Haryana etc. These States amendments are nearly in the line of ordinance of the central government which lapsed in 2015. Major changes are; exemption from SIA for certain projects, exemption from consent provision, payment of lump sum amount instead of R & R entitlement.

In short, this hypothesis after the studies is found to be proved, the existing international and national laws as well as policies are not sufficient to protect the basic human rights of oustees.

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<sup>28</sup> According to clause 2 if a State Law with respect to any of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by parliament, or an existing law with respect of that matter, then the State law if it has been reserved for the assent of the president and has received his assent, shall prevail notwithstanding such repugnancy.

**Second hypothesis;** “Tribals are the one whose human rights are most affected by dam-induced-displacement, have been progressively alienated from their native place due to large dams.”

Tribals belong to a vulnerable group of society. Tribals have all human rights similar to other people of society. In fact, they belong to protected groups hence they have some extra human rights compared to general people. They are already deprived that is why there are special laws also adopted by international and national level to protect them; for example, ILO has passed two conventions that is Convention No. 107 and Convention No. 169 and both the convention talks only about the indigenous and tribal people, UN’s the Declaration on Rights of indigenous peoples, 2007 etc. India has also adopted special legislation for tribals; for example, Forest Dwellers Act, 2006 etc. They are getting recognition within general and special laws both.

McCully, pointed out the impact of displacement on tribals as, “In almost all of the resettlement operations for which reliable information is available, the majority of oustees have ended with lower incomes; less land than before; less work opportunities, inferior housing; less access to the resources of the commons such as fuel-wood and fodder; and worse nutrition and physical and mental health.”<sup>29</sup>

Most of the large dam projects have invariably come up in tribal areas and causes displacement of tribals. However, tribals represents 8.6 percent of total population of India even though almost 40 percent of dam oustees belong to the tribal communities. In some states, up to 100 percent of the dam oustees are tribals. The overall percentage of rehabilitated oustees is very less that is nearly 25 percent of the total oustees. This is quite concerning because in this light tribals will be the one who are suffering the most.

In short, this hypothesis is also proved and this research found that Tribals are the one whose human rights are most affected by large dam projects.

**Third hypothesis,** “Justice to dam oustees has not been effectively delivered.”

Whenever government machinery fails to protect the rights of people it becomes the duty of court to protect the rights of individuals. The majority judgment statement that the oustees’ human rights are its main issue since it highlights the importance of

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<sup>29</sup> McCully, *Silenced rivers: The ecology and politics of large dams* 77 (Zed Books, London, 1996).

human rights in this context. However, while the majority judgment accepts in theory the importance of the basic human rights of the oustees and indicates that it should not deal with any other issue but the problems arising from the displacement of people by the large dam, the actual reasoning gives a completely different picture. Indeed, it focuses largely on administrative procedures and arrangements but does not analyse the human rights of the oustees. This is reinforced by the fact that the judgment tends extensively from government.

While the judgment never fully addresses human rights issues, it surprisingly goes much beyond the scope of the petition to discuss the usefulness of dams as a whole in India. Definitely, the majority judgment clearly brings out its liking of big dams despite having specifically requested the petitioners not to comment on the usefulness of dams in general. This is both surprising and partly expected. On one hand, the Supreme Court has in recent years made a significant contribution to the language of human rights, in particular in the field of the dam induced displacement. On the other hand, in the case of large dam projects, the Court has often put significant emphasis on what it perceives as the broader economic development interests of the country. 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 side-lines the basic rights of dam oustees.

In regard to third hypothesis, it can be said this one is also proved.

## **7.4 SUGGESTIONS**

Following are some useful suggestions in regard to dam induced displacement:

- 1) The large dam projects should be people centric. Before a dam project begins, a class-benefit analysis should be mandatory. It must be ascertained which classes of people will benefit and who will pay the price. If a dam is likely to run at the cost of the weaker sections for the benefit of the richer groups, then it should not be considered for a public purpose.
- 2) There should be effective legal mechanism to guarantee the rights of dam oustees to representation, complaint and redress. They should be able to negotiate mutually agreed and legally enforceable agreements to ensure the implementation of mitigation, resettlement and development entitlements.

- 3) Before commissioning a new dam, outstanding social and environmental issues from existing dams should be addressed, and the benefits from existing projects should be maximized. Dam projects should minutely be planned so as to minimise displacement.
- 4) R & R policy should minutely be planned and implemented in accordance with internationally accepted guidelines, so as to minimise the suffering of displacement, human rights violation and award adequate compensation so that everyone can enjoy the fruit of development.
- 5) Tribal people suffer the dilemma of dam induced displacement more than any other community and in most of the cases they are not able to claim their compensation properly because of their poor education qualifications. That is why they should get extra attention from the government and special treatment in R & R policy. The forest dwellers are not to be treated as usurpers and encroachers; they have their customary rights. Even though the share croppers, landless agricultural labours, shepherds, and hunters have no legal land titles, their livelihood depends on the village lands and they too are entitled to compensation. At present, they are completely ignored. Those who are deprived of their land and other rights should share the benefits of the project.
- 6) Sometime dam oustees would not get enough compensation to buy another piece of land at the new place because the circle rate of lands is not the same at every place. Land price is decided by locality and surroundings. Same size of land has different-different rate at different places. Whenever oustees would get compensation for their land they get according to their land locality and when they try to purchase same piece of land outside the affected area then they have to pay extra price for it. Due to lack of money most of the oustees becomes landless. So, whenever government award compensation for land then it should take notice of such situation.
- 7) Barter of land is a more successful way of compensation compare to cash compensation scheme. But this procedure has also its flaws, for example, fertility of land is not universal. In many cases oustees will get less fertile or infertile land. Fertility of land is an essential aspect of agriculture which cannot be ignored.
- 8) Cash compensation is not the proper method to compensate (even though it may be many times compare to the actual value of land) because most of the oustees have never seen such huge amounts of cash. Ousteas in sudden get cash in their hands

and due to their inability to manage cash, they end up with losing most of their cash compensation which makes them poorer than before the displacement. Whenever oustees get compensation, they would develop a false sense of richness and in this false sense of behaviour they lose their money. Most the oustees never seen such a huge amount of cash before that is why, sudden cash flow make them confused. They don't know how to spend their money. Most of them spend their compensation money in gambling or drinking.

- 9) New land acquisition law, LARR, 2013 is quite good compared the old legislation but the government of India trying is its best to surpass it and the Indian judiciary is somewhere helping the government of India by allowing backdoor legislations. Section 24 of this Act allowed the retrospective implementation of this Act which object was to undo the fault committed by the old colonial legislation, but SC by its judgment limited the retrospective effect of this Act. In 2019 Tamil Nadu assembly has passed “The Tamil Nadu Land Acquisition Law (Revival of Operation, Amendment and Validation) Act, 2019”, by using the power given by Article 254 (2) and revived its three old laws which had become ineffective due to LARR Act. These old laws of Tamil Nadu are very similar to years old colonial law of Land acquisition. This amendment got the assent of the President on Dec. 2, 2019 and is applicable to the territory of Tamil Nadu with retrospective effect. Madras High Court has declared this amendment as unconstitutional but Supreme Court of India has stayed the order of Hight Court and allowed the Tamil Nadu government to acquire the land under the old revived law. The spirit of the Constitution is to protect the rights of people and it is never meant to be misused. So, Judiciary should come forward to protect the spirit of the Constitution and as nearly as possible new land acquisition law should be implemented.
- 10) There should be a data base of people who are displaced by large dam projects and such data should be available in public domain, so that government and people can understand the dilemma of dam induced displacement.

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