

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

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ABSTRACT

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.

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 report of the World Commission on Dams, 30-40 percent of irrigation land worldwide now depends upon the dams and the more than 19 percent of world's electricity demand is also fulfilled by the said dams. Due to such immediate benefit from the dams, a huge amount that is more than \$2 trillion dollar investments were made in dam projects.

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.

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. 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. People also resist because of the ineffective rehabilitation and resettlement laws and their improper implementation which they had learnt from other dam projects. 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.

United Nation 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.”

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 20th 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.

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". 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. 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.

According to the Central Water Commission, at present there are 5701 large dams in India in which 5264 completed and 437 large dams are under construction.

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.

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;

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 21st century. It was estimated that 16 to 38 million people have been displaced by dams in India since independence.

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 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.

“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. 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.

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. There is 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.

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.

The impact of displacement exists for a long time. 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.

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. Ousteers have no choice to remain, they have to leave their habitat. 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 and some scholars argue that displacement by development projects is a violation of human rights because it is involuntary.

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 of 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 dealing with multidimensional stress that includes psychological and sociological components.

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.

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 dam induced displacement.

‘Right not to be displaced’ in strict sense denied displacement due to any reason and stop all development activity which were responsible for displacement. 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 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. 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. 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.

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 embrace all the interests of contemporary international life.

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.

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.

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. 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 in the year 2006 which became the National Rehabilitation and Resettlement Policy of 2007.

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 and 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.

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 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.