

**Developmental Projects and Tribal Displacement
in Neo-liberal Period: A Study of Judicial
Response in India**

**ABSTRACT OF
Thesis**

SUBMITTED TO THE
BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY, LUCKNOW
(A CENTRAL UNIVERSITY)



FOR THE AWARD OF THE DEGREE OF
Doctor of Philosophy
IN
POLITICAL SCIENCE

SUBMITTED BY
Pramod Kumar Sharma

Enrollment No: 811/18

UNDER THE SUPERVISION OF
Prof. Sartik Bagh

DEPARTMENT OF POLITICAL SCIENCE
SCHOOL OF AMBEDKAR STUDIES FOR SOCIAL SCIENCES
BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY

(A Central University) (NAAC A++ ACCREDITED)
VIDYA VIHAR, RAEBARELI ROAD, LUCKNOW-226 025
UTTAR PRADESH, INDIA

2024

Abstract

This study examines the judicial responses to developmental projects and tribal displacement in India during the neoliberal period. It focuses on understanding the impact of these projects on tribal communities and the legal measures taken by the judiciary to address their concerns. The findings of this study contribute to the existing literature on the subject and provide insights into the role of the judiciary in safeguarding the rights of marginalised communities in the context of development.

There are many reasons for displacement like traditional, natural, developmental activities like infrastructure development, construction of dams, irrigation projects, construction of railways and roads etc. Development induced displacement is a major cause of displacement in developing countries like India. Theories related to human displacement along with Michael M Cernea's Impoverishment Risk and Reconstruction Model (IRR), many researchers also gave their theories but the problems related to displacement could not be resolved. The Supreme Court of India has given many landmark judgments on the problems related to development induced displacement, but due to the apathy of the executive, they could not be implemented properly, which has caused huge dissatisfaction among the tribal community and farmers. It is a big responsibility of the state legislature and the corporate sector to solve the problems related to displacement. But it is not understood as to why the State Legislature and the corporate sector are not showing a positive attitude towards making a sound rehabilitation and resettlement policy for the displaced people.

The aim of this study is to examine the impact of developmental projects on the displacement of tribal communities and the judicial responses to these projects in India. The study focuses on three specific cases: the Sardar Sarovar Dam Project, the Polavaram Dam Project, and the Posco Steel Project. These projects have been controversial due to their environmental, social, and human rights implications. The study analyses the legal and policy frameworks that govern these projects, the challenges and grievances faced by the affected tribal populations, and the role of the judiciary in addressing these issues. The study also explores the possible alternatives and solutions to mitigate the adverse effects of these projects on the tribal communities and their livelihoods.

Legal Framework of the State Legislature and the Corporate Social Responsibility (CSR):

Nowadays, corporate social responsibility is being seen as an option for the rehabilitation of displaced people. It is the social and moral responsibility of the corporate sector who is going to set up the project to formulate fair and transparent policies for the displaced people. The pain of the displacement can be reduced if rehabilitation works are carried out with better amenities and more than what the displaced people lose after displacement. It is true that for the development of the country, it is necessary to carry forward the developmental works but it is equally necessary that after displacement, the rehabilitation of the displaced people should be done in a

just and fair manner. The approach related to development induced displacement and resettlement policy will not change unless the state legislature restructures its legal framework. The state legislature needs to restructure its ethical practices and national commitment of the corporate sector. State legislatures need to enact binding laws for the corporate sector. Both the State Legislature and the corporate sector will have to be ethical regarding formulating laws related to displacement, only then the pain of displacement can be mitigated. Even a catastrophic disaster like displacement can be mitigated if various international and national laws are followed transparently and honestly.

Theoretical Model of Displacement: An Analysis:

A number of theoretical models have been advanced to study the Development Induced Displacement Risks (DIDR).

Scudder and Colson model of DIDR: In the 1980s, the Scudder¹-Colson² model was developed to outline the four phases of resettlement for displaced populations: recruitment stage, transition stage, potential development stage, and handling over or incorporation stage.

¹ T. Scudder, 'Development-induced impoverishment, resistance and river-basin development' in C McDowell (ed.), *Understanding Impoverishment: The consequences of development-induced displacement* 49-74. (Oxford: Berghahn Books, 1996).

² E. Colson, 'From welfare to development: A conceptual framework for the analysis of dislocated people' in A. Hansen and A. Oliver-Smith (eds), *Involuntary Migration and Resettlement: The Problems and Responses of displaced people* 267-87 (USA: Westview Press, 1982).

Michael M Cornia's DIDR model³: In 1990, Michael M Cornia introduced the Impoverishment Risks and Reconstruction (IRR) model, which identified various challenges such as landlessness, joblessness, homelessness, marginalisation, social disarticulation, food insecurity, loss of access to common property and services, and increased morbidity and mortality. Michael Cornia's Impoverishment Risk Reversals:

- From landlessness to land-based reestablishment.
- From joblessness to reemployment.
- From homelessness to house reconstruction.
- From disarticulation to community reconstruction.
- From marginalisation to social inclusion.
- From expropriation to restoration of community assets/services.
- From food insecurity to adequate nutrition.
- From increased morbidity and mortality to better health care.

The IRR model identifies the impoverishment risks intrinsic to forced displacement and the processes necessary for reconstructing the livelihoods of the displaced. In particular it stresses that unless specifically addressed by targeted policies forced displacement can cause impoverishment among displaced.

T. Downing and others have identified additional risks associated with dam projects, including the loss of access to public services, disruption of formal education activities, and the loss of civil and human rights.

Colchester's research reveals that indigenous populations and ethnic minorities are disproportionately affected by dam projects worldwide, with their livelihoods being significantly impacted.

Lassailly Jacob's study focuses on land-based resettlement strategies in African dam projects, emphasising the importance of providing not just land for resettlement, but

³ Cornea, M.M. (2006), "Development-induced and conflict-induced IDPs: bridging the research divide". Forced Migration Review (Special Issue): 25–27. Cornea, Michael (2006), Development & Dispossession: The Crisis of Forced Displacement and Resettlement (School for Advanced Research Advanced Seminar), 2009.

also common lands, productive farmland, full land ownership, and development programs directed by the resettlers themselves.

Neoliberalism:

Neoliberalism is a political and economic philosophy that emphasises free trade, deregulation, globalisation, and reduced government spending. This is related to laissez-faire economics, which advocates for minimal government interference in economic matters. Laissez-faire economics suggests that economic growth will lead to expanding free markets, technological innovation and limited government intervention.

Neoliberalism in Indian Context:

Neoliberalism, a dominant economic ideology, has made its way into the Indian context in the 90's in the regime of prime minister P.V. Narasimha Rao. With its focus on free markets, privatisation, and deregulation, neoliberal policies have significantly shaped India's economic landscape. One of the key aspects of neoliberalism in India has been the liberalisation of trade and investment, which has opened up the economy to global markets. This has led to increased foreign direct investment and the growth of industries such as information technology and services. However, neoliberal policies have also been criticised for exacerbating inequality and neglecting social welfare. Despite the mixed outcomes, neoliberalism continues to play a significant role in shaping India's economic policies and development trajectory.

Neoliberalism, Developmental Projects and its Impact on Tribal Community:

Neoliberalism in the Indian context has had significant implications for developmental projects and their impact on displaced tribal communities. The adoption of neoliberal policies in India has led to a shift towards market-oriented economic reforms, privatisation, and deregulation. While these policies have aimed to promote economic growth and development, they have often overlooked the social and environmental consequences of large-scale infrastructure projects.

One of the key challenges faced by displaced tribal communities is the loss of their traditional lands and livelihoods due to these projects. The construction of dams, mining operations, and industrial zones has resulted in the displacement of tribal communities

from their ancestral lands, leading to the loss of their cultural identity and traditional way of life. Moreover, the lack of adequate compensation and rehabilitation measures for these communities has further exacerbated their marginalisation and vulnerability.

Another significant impact of neoliberalism on displaced tribal communities is the erosion of their rights and access to natural resources. The privatisation of natural resources, such as forests and water bodies, has restricted the traditional rights of tribal communities to these resources. This has not only affected their subsistence and livelihoods but has also undermined their cultural practices and traditional knowledge systems that are closely tied to the sustainable use of natural resources.

Neoliberalism in the Indian context has had far-reaching implications for developmental projects and their impact on displaced tribal communities. The prioritisation of economic growth and profit over social and environmental concerns has resulted in the marginalisation and vulnerability of these communities. It is crucial for policymakers to adopt a more inclusive and sustainable approach that takes into account the rights and well-being of tribal communities in the development process.

The study focuses on three specific cases: the Sardar Sarovar Dam Project, the Polavaram Dam Project, and the Posco Steel Project. These projects have been controversial due to their environmental, social, and human rights implications. These are as follows:

(1). The Sardar Sarovar Dam Project:

Pandit Jawaharlal Nehru laid the cornerstone for the Sardar Sarovar project on the Narmada river on April 5, 1961. It is a concrete gravity dam constructed on the Narmada River in Navagam, close to Kevadiya, Gujarat's Narmada district. Rajasthan, Gujarat, Madhya Pradesh, and Maharashtra will profit from the irrigation and electricity supply. The World Bank established the project through its International Bank for Reconstruction and Development (IBRD) with US\$200 million.

The construction of the Sardar Sarovar Dam began in 1987, but it was impeded by the supreme court in 1995 on hearing a litigation filed by Narmada Bachao Andolan (NBA) over concern of people's displacement.

With a maximum height of 111 m the project was revived by the supreme court in 2001. The height of the Dam was increased to 123 m in 2006 and 139 metre in 2017 by the centre. Prime Minister Narendra Modi again inaugurated the project in 2017. The water level reached its highest capacity at 138.7 m on 15 September 2019 in the Sardar Sarovar Dam of Kevadia in Narmada district.

The dam alone displaces more than 41,000 families (or 2,05,000 people) in the three states of Gujarat, Maharashtra and Madhya Pradesh. Neither including at least 1,57,000 people displaced by the canals nor people displaced because of compensatory afforestation and people displaced by the project construction colony. Over 56% of the people affected by the dam are tribals.

Judgements and Rehabilitation & Resettlement on the SSP:

The judgements on the Sardar Sarovar Dam Project related to tribal displacement, rehabilitation, and resettlement in India have been a subject of extensive scrutiny and debate. Over the years, multiple court cases and legal battles have taken place, with various verdicts and rulings being passed.

The project has faced criticism for its impact on the tribal communities residing in the affected areas. Concerns have been raised about the displacement of these communities and the adequacy of their rehabilitation and resettlement. The Supreme Court of India has played a crucial role in overseeing the implementation of rehabilitation measures and ensuring the protection of the rights of the affected tribes.

While some judgements have acknowledged the importance of providing adequate compensation and rehabilitation to the displaced tribes, others have highlighted the shortcomings in the implementation of these measures. The issue of land acquisition and compensation has been a key aspect of the judgements, with the courts emphasising the need for fair and just compensation for the affected communities.

In conclusion, the judgements on the Sardar Sarovar Dam Project have highlighted the complexities and challenges associated with tribal displacement, rehabilitation, and resettlement. The courts have recognized the importance of protecting the rights of the affected tribes and ensuring their well-being. However, there is still a need for

continuous monitoring and improvement in the implementation of rehabilitation measures to address the concerns and grievances of the affected communities.

(2). The Polavaram Dam Project:

In Andhra Pradesh, the Godavari River is the site of the Polavaram Project, a multipurpose irrigation project. It has been given the status of National Project by the Indian Union government.

The backwater of the reservoir extends approximately 150 km from Polavaram Dam on the main riverside, along the Sabri River side, to the Dummugudem Anicut. Backwater also invades portions of the states of Chhattisgarh and Odisha.

There are several features on the River Godavari, including the Polavaram Hydroelectric Power Project, Papikonda National Park, and National Waterways 4. It will significantly boost the Godavari district of Andhra Pradesh's tourism industry.

The Rajahmundry Airport is 25 kilometres away from this dam. Just 41 km away to the upstream of the Sir Arthur Cotton Barrage, the dam of Polavaram is located.

The project also reportedly involves the relocation of 98,818 families spread across 371 habitations in the East Godavari and West Godavari districts, bringing the total number of project-affected individuals to 1,88,012. The Scheduled Tribes category includes more than half of this population, and the Scheduled Castes category also includes a sizable portion.

Judgements and Rehabilitation & Resettlement on the Polavaram Dam Project:

The judgments on the Polavaram Dam Project related to tribal displacement, rehabilitation, and resettlement in India have been varied. Some judgements have acknowledged the adverse impact of the project on the tribal communities, highlighting the need for proper compensation, rehabilitation and resettlement measures. Other judgements have emphasised the importance of balancing development with the protection of tribal rights, calling for effective implementation of social safeguards and environmental regulations. Overall, the judgements reflect the complex nature of the

issue and the need for a comprehensive approach that considers the concerns and rights of the tribal communities affected by the project.

(3). The POSCO Steel Plant:

On 22 June 2005, POSCO (Pohang Iron and Steel Company) formalised a deal with the Odisha government worth \$12 billion for the establishment of a 12 million tonne steel factory in the vicinity of Paradip. On 8 August 2008, the Supreme Court confirmed permission "in principle" to utilise forest land for a project.

Subsequently, on 29 December 2009, the Environment Ministry sanctioned the diversion of the forest land. Six and half months later, on 14 July 2010, the Odisha High Court revoked the licence for the Khandadhar iron ore mines belonging to POSCO.

On 8 August, 2008, the supreme court upheld 'In Principle' clearance for the project to use the forestland. The environment ministry grants clearance for the diversion of the forest land on 29 December, 2009. On 14 July, 2010, the Odisha High Court cancelled the POSCO licence for the Khandadhar iron ore mines.

The Odisha government went to the Supreme Court to challenge the ruling of the Odisha High Court on October 29, 2010. Subsequently, the Supreme Court annulled the decision of the High Court. Conditional environment clearance was given to POSCO by the ministry of environment and forest on 31 January, 2011.

On 30 March 2012, environment clearance was suspended by the National Green Tribunal which was granted to POSCO. After a strong protest and resistance by the people of Dinkia, Godakujang and Nuagaon under the banner of the POSCO Pratirodh Sangharsh Samiti (PPSS) against the POSCO steel company, it decided to withdraw the proposed steel project in March 2017.

The mega steel plant, which experts say will generate an estimated 50,000 direct and indirect jobs, will result in the displacement of nearly 22,000 people from the area and thousands more from surrounding areas.

Judgements and Rehabilitation & Resettlement on the POSCO Steel Plant Project:

In conclusion, the judgements on the POSCO Steel Plant project in India have addressed the critical issues of displacement, rehabilitation, and resettlement. The courts have recognized the importance of protecting the rights of affected communities and have emphasised the need for proper compensation and rehabilitation measures. These judgements have highlighted the significance of conducting comprehensive social impact assessments and ensuring the participation of affected communities in the decision-making process. The courts have also emphasised the need for transparency and accountability in the implementation of resettlement and rehabilitation plans. Overall, the judgements have played a crucial role in safeguarding the rights and well-being of the affected communities in the POSCO Steel Plant project.

Some Acts Which Safeguard the Tribal Rights:

The PESA Act, 1996: The PESA Act, 1996 is a legislation aimed at promoting the welfare and protection of tribal communities in India. It stands for the Panchayats (Extension to Scheduled Areas) Act and was enacted to empower and safeguard the rights of tribal populations living in scheduled areas. This act grants local self-governance to these areas and recognizes the traditional customs and practices of tribal communities. It also ensures the participation of tribal communities in decision-making processes and provides them with greater control over their natural resources. Overall, the PESA Act, 1996 plays a crucial role in promoting the socio-economic development and empowerment of tribal communities in India.

The Forest Rights Act, 2006 (FRA) is a law that recognizes and vests the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded. The FRA also grants them the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance of the forests. The FRA aims to correct the historical injustice caused by the colonial and post-colonial forest laws that deprived the forest dwellers of their ancestral lands and habitats. The FRA provides for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR) is a law that regulates land acquisition and lays down the procedure and rules for granting compensation, rehabilitation and resettlement to the affected persons in India. The RFCTLARR also ensures that the land acquisition process is humane, participative, informed and transparent, and that the affected persons become partners in development. The RFCTLARR applies to the land acquisition for public purpose such as industrialisation, development of essential infrastructural facilities and urbanisation, as well as the land acquisition under 13 other Acts specified in the Fourth Schedule. The RFCTLARR provides for the determination of social impact and public purpose, the safeguard of food security, the notification and acquisition, the rehabilitation and resettlement award, the procedure and manner of rehabilitation and resettlement, and the establishment of various authorities and committees for the implementation of the Act.

Rehabilitation Policy by the Court:

(A). Violation of Fundamental Right:

India is an agricultural country. About two-thirds of the population here is dependent on agricultural land. Agricultural land provides a sense of security to a person and gives him freedom from fear. Peace and prosperity come inside the person due to which the person is able to develop himself properly. Having agricultural land makes a person feel proud in the society. A credit of a person is formed in the society due to agricultural land. In such a situation, depriving a person of his agricultural land is a violation of his fundamental rights. Displacement should be avoided as much as possible and if displacement is necessary, proper arrangements for rehabilitation should be made.

(B). No Interference in Public Policy:

The work of the court is to adjudicate. The Court cannot declare any law unconstitutional unless it is contrary to the provisions of the Constitution. Policy making is the work of the government. Government is the representative of the people. The government is aware of the satisfaction and dissatisfaction of every section of the public. The government implements its policies according to the wishes of the public. As long as the policies of the government are not contrary to public sentiments, the court does not interfere in them.

(C). Land for Land:

As far as possible, efforts should be made to stop the displacement of tribals. Their displacement should occur only as a last resort. After displacement, they should be given quality land and at least that much land as was acquired from them. The land should not be barren or rough. Otherwise their means of livelihood will be lost. After displacement, every type of damage caused to them should be compensated. It is also necessary to keep in mind the time gap in compensation imbursement. The process of compensation should be settled as soon as possible. This process should be completed within 6 months.

(D). Fair Compensation:

Merely payment of compensation to the oustees is not enough, it should be a fair compensation. After getting compensation if the oustee is not able to buy the land then he may not have land at all. Indian agriculturists have no other occupation except cultivation. They are only dependent on their land. They have no other skills. If they are not rehabilitated properly, they will face starvation too.

(E). Displaced Family:

In *Narmada Bachao Andolan vs The State Of Madhya Pradesh*, AIR 2008 MP 142, 2008, 21 February, 2008 have defined the definition of the displaced family and the major sons as:

(i) The displaced family means the head of the household, the wife, minor children and other dependents. (ii) All sons on or before the date of notification under section 4 of the Land Acquisition Act, 1894 shall be treated as separate members of the family.

(F). Major Sons as Entitled to Compensation in the R&R Policy 1993:

As per the Land Acquisition Act of 1894 and the court order, any son or unmarried daughter who has become major on or before the date of issuance of notification under section 4 of Land Acquisition Act 1894, will be treated as "Separate Family" and he/she will be entitled to the compensation.

Case Laws: Some court case laws related to LARR Act,2013 are here as under:

(A). Compensation to be paid only to the deserving person:

It is the responsibility of the government to pay the compensation only to the true owner of the land. The term 'Dispute' covers all disputes that relate to the title of a single claimant. When the government acquires any property for public use under eminent domain, it is the responsibility of the government to pay the compensation amount only to the true owner and not to anyone else. Overall, it is the government's responsibility to ensure that public funds are used as compensation and reach the right person. Sometimes it happens that the rightful owner of the compensation does not come to the fore, yet it is the responsibility of the government to find the rightful beneficiary.

(B). In 'Public Purpose' decision, government might be a best judge but the court is the sole judge:

In K. Madhava Rao Vs State of A.P. case the issue of 'public purpose' came to the fore. That is, who will decide whether any acquisition is for public purpose or not? In this case, the court ruled that this court will decide whether any acquisition has been made for 'public purpose' or not. Although it is the job of the government to decide public policies, it cannot be guaranteed that the government will always take the right decisions. Therefore, it becomes necessary in public interest that the court should decide whether the government's decision is right or wrong. The policy of checks and balances is always appropriate. Although the government can be the best judge in the matter of acquisition, only the court can fulfill the responsibility of being the sole judge.

(C). Government is competent to decide the land need for public purpose:

The State Government is competent on its own to decide the need for land acquisition for public purposes. The validity of the notification issued by the government for land acquisition cannot be challenged in the court on the ground that the land acquired by the government was not for public purpose. It is the job of the government to formulate public policies and the government is able to decide what is for the public good and what is not. The government represents the public and is well aware of the good and bad of the public. Public welfare should be an objective for the government. The

government's decision can be challenged in the court only if there is evidence of misuse of powers or adopting arbitrary attitude by the government.

(D). Weightage of Notice:

According to the decision of the court, it is necessary to give notice to the affected people before acquiring the land. Notice is the primary and essential step in land acquisition. Giving notice to the people affected by land acquisition paves the way for their further steps. It is only after receiving the notice that the affected person makes his future plans. It is clearly mentioned in the Land Acquisition Act, 1894 that giving of notice is an essential condition for a valid acquisition. If the condition of notice is not fulfilled by the government, the entry of the officer or employee becomes illegal.

Results and Discussion:

Tribals are the most sufferer: According to the Report of the High Level Committee on Socio-Economic, Health and Educational Status of Tribal Communities of India, conducted by Prof. Virginius Xaxa of the Tata Institute of Social Sciences (TISS), the report, based on a survey of existing literature, highlights that around 25 percent of India's tribals experience displacement at least once in their lifetime due to the presence of natural resources in their regions. The tribal or Scheduled Tribe communities in India, despite constituting only 8.6 percent of the population, account for approximately 40 percent of those displaced due to 'development' projects.

According to data from the Annual Report of the Department of Land Resources working under the Ministry of Rural Development report:

- According to the above report, a total of 0.506 million cases related to the acquisition of tribal lands have been filed in the court. These cases cover 0.902 million hectares of land. Of the cases filed, 0.225 million cases involving 500,000 acres of land were decided in favour of the tribals. Courts dismissed a total of 0.199 million cases on various grounds. These cases cover 0.4411 million acres of land.

- The report said it was surprising that so many cases were cancelled and that it was done because of loopholes in the law or negligence or collusion on the part of the state government.
- The main reason for the relocation was probably the construction of dams. The number of people displaced by the construction of the dam varies between 20 and 50 million.
- About 40% of displaced people are from tribal communities by development projects, 20% from Scheduled Castes and 20% from other backward castes. Based on available data, researchers estimate that people have had to give up 25 million hectares of land, including 7 million hectares of forest land. While 25% of internally displaced people completed rehabilitation, only 21.16% of internally displaced people from tribal communities received rehabilitation. The remaining 79% of tribal communities still need recovery.
- About 80% of the Scheduled Tribe population is employed in the primary sector of the economy, while 53% of the general category of people are employed in the primary sector of the economy. All are mainly employed in agriculture. The number of tribals engaged in agriculture declined from 68% to 45% in 2001, while the number of tribal agricultural labourers increased from 20% to 37% in 2001. This trend, confirmed by the 2011 census data, shows the lack of land among the tribal population.
- According to a study by the Center for Science and Environment, 'Rich Land Poor People' (2008), 50% of the highest mineral producing areas are tribally controlled. The forest cover rate in these areas is also 28%, which is higher than the national average (20.9%).

Land and Livelihood:

The expropriation of land and forest resources for development exacerbates poverty and deprivation. In India, tribal lands are consistently being taken away, with the largest share in Andhra Pradesh (1,129 sq km), followed by Madhya Pradesh (639 sq km), Karnataka (256 sq km), and Gujarat (469 sq km) (Society for Regional Research and Analysis, 2010).

The construction of the Polavaram Dam in Andhra Pradesh has led to the displacement of tribal communities, resulting in the convergence of forest areas for the dam. This has had a significant impact on thousands of tribal households (Kumaran, 2013). Similar examples of scarcity can also be seen in Jaisawal and Saha's (2018) descriptive study of the impact of Pohang Iron and Steel Company (POSCO) on tribals in Orissa.

Tribal Land Alienation and Social Justice:

According to the above report, a total of 0.506 million cases related to the acquisition of tribal lands have been filed in the court. These cases cover 0.902 million hectares of land. Of the cases filed, 0.225 million cases involving 5,00,000 acres of land were decided in favour of the tribals. Courts dismissed a total of 0.199 million cases on various grounds. These cases cover 0.411 million acres of land.

The High Level Committee, led by Prof. Xaxa, has raised concerns regarding the high number of rejected cases. They suggest that this could be attributed to loopholes in the law, apathy, or collusion within the State machinery.

FRA Fails to Deliver the Land to the Tribals:

According to the High Level Committee report, the Forest Rights Act claims status data as of 31 January 2014 reveals a significant disparity between the land claimed and the actual titles issued. The report highlights that many claims are rejected due to the absence of ST community certificates. Additionally, claims made by Other Traditional Forest Dwellers (OTFD) have not been entertained due to a lack of evidence. OTFD individuals are discouraged from filing claims, with most being rejected at the Gram Sabha level or by the Forest Rights Committee (FRC). Claims have also been denied due to the inability to prove plot cultivation for seventy five years prior to 13th December 2005. Furthermore, there are instances of claims being rejected due to land disputes.

Steps Taken by the Central Government:

For the betterment of the tribal people Indian Parliament has passed some bills like, PESA Act, 1996, Forest Rights Act, 2006, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in which

special provisions were made to protect the identity, culture, their traditions, beliefs and their constitutional rights.

The government has enacted several Acts to ensure the welfare of the tribal community and protect their rights. These include the PESA Act, 1996, Forest Rights Act, 2006, and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The PESA Act aims to empower tribal communities by granting them self-governance rights and control over their resources. The Forest Rights Act recognizes the rights of tribal people over forest land and resources. Lastly, the Land Acquisition Act ensures fair compensation, rehabilitation, and resettlement for tribal communities affected by land acquisition projects. These Acts collectively work towards safeguarding the interests and well-being of the tribal community.

Judiciary as a Protector of the Tribal Rights:

There are number of cases where the court has given its verdict protecting the tribal rights, as:

Samata Judgment:

Case: **Samata v. State of Andhra Pradesh & Ors:** In the Visakhapatnam district of Andhra Pradesh, the state government was extracting resources and leasing out mining from the Schedule Areas ignoring rights of the tribal communities. This process was accelerated in the 1990s, when an era of liberalisation, privatisation and globalisation started. The state began leasing out mining to big corporations. Such an act of the State Government violated section 3(1)(a) of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, which prohibits the transfer of land to non-tribals in the Scheduled Areas.

The writ petition of Samata was dismissed by the Andhra Pradesh High Court and held that the definition of "person" of the section 3(1)(a) of the regulation applies only to the natural persons like tribals and non tribals. So the government cannot be considered as a "person". Court upheld that section 3(1)(a) of regulation does not restrict the government to transfer the tribal land to non-tribals in the Scheduled Areas.

In the Samata case, the Supreme Court's single judge bench declared the decision of the High Court of Andhra Pradesh Null and void. It overturned the High Court's interpretation of the word "person" in a special leave petition in 1997.

Niyamgiri Judgement:

To set up an integrated refinery and mining project in Kalahandi a memorandum of understanding was signed between the Government of Odisha and Sterlite Industries India Ltd (SIIL) in April, 1997.

The apex court delivered a judgement in the Niyamgiri case and expanded the scope of the Forest Rights Act (FRA). In doing so, the court highlighted that the Act grants a broad range of rights to both tribals and other traditional forest dwellers (OTFD). These rights go beyond just property rights or areas of habitation and also include customary rights to utilise forest resources. This decision has significant implications for the protection and recognition of the rights of these communities.

In this judgement the Court highlighted the importance of safeguarding the religious rights of the community affected by the Bauxite Mining Project (BMP). Specifically, it emphasised the need to protect their right to worship their deity, Niyam Raja, at the hilltops of the Niyamgiri range. The Court made it clear that if the BMP were to impact their religious rights in any way, those rights must be preserved and protected.

Banwasi Seva Ashram vs State of Uttar Pradesh, 1987:

In the case of Banwasi Seva Ashram vs State of Uttar Pradesh, 1987, the Supreme Court held that the right to livelihood is a constitutional right of the tribes.⁴

Although the Supreme Court acknowledged that industrial development is necessary and energy production is also necessary keeping in view the future requirements, it should not be at the expense of the fundamental rights of the tribals. The Supreme Court issued an order to protect the tribal rights and their right to habitat. The Supreme Court protected the interest of the tribals and their right to livelihood.

⁴ Banwasi Seva Ashram vs State of Uttar Pradesh, 1987, 3 SCC 304.

Narmada Bachao Andolan -I, (2009), 8 SCC 46, the Supreme Court 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 purposes.

Narmada Bachao Andolan v. Union of India (2000) 10 SCC 664. See also **Gramin Seva 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. People's Union for Civil Liberties, Kerala Slate Unit (2009) 8 SCC 46**, the court observed that 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.

Polavaram Dam Project: On 28 February, 2023, the apex court directed the Andhra Pradesh government to pay the compensation to the displaced people of the project as decided by the experts' committee.

POSCO Steel Project: In March, 2023, keeping the interests of the displaced people in mind the Orissa High Court stayed the lease and transfer of forest land for JSW Utkal Steel Ltd. (JUSL) Rs 65,000 crore steel project in Odisha's Jagatsinghpur district.

In **K. Krishna Reddy v. Sp. Dy. Collector, Land Acqn. Unit II, LMD Karimnagar**, the Supreme Court was of the opinion that displaced agriculturists generally have no avocation, depend upon land, have no savings to draw, they know no other work and they may even face starvation unless rehabilitated.

To protect the interests of the displaced people the Court has given many landmark judgments like Samata Judgment, Niyamgiri Judgment, Sardar Sarovar Dam Project and Polavaram Irrigation Project etc mostly in favour of tribal communities. Which is the proof that the judiciary has proved to be the saviour for the displaced, exploited and deprived tribal people.

In the neoliberal period, the court appears to be adopting a middle path between developmental projects and post-displacement rehabilitation and resettlement of tribals. While emphasising the importance of rehabilitation and resettlement, the court also recognizes the significance of developmental projects for the progress of the nation.

Findings and Recommendations of the Thesis:

The aim is to present the main findings and recommendations of the thesis that examined the impact of neoliberal policies on the rehabilitation and resettlement of tribal communities in India, and the role of the judiciary in protecting their rights and interests.

This thesis examines the impact of developmental projects on the displacement and resettlement of tribal communities in India during the neoliberal era. It analyses how the state and the market have collaborated to dispossess and marginalise the tribals, who are often considered as the most vulnerable and exploited section of the society. It also explores the role of the judiciary in safeguarding the rights and interests of the tribals, and the challenges and limitations that it faces in doing so.

The main findings of the thesis are:

1. Developmental projects have resulted in massive displacement and dispossession of tribals, violating their constitutional and legal rights resulting in the marginalisation of the tribal community;
2. The rehabilitation and resettlement policies and programs have been inadequate and ineffective, failing to address the socio-economic and cultural needs of the tribals;
3. The government's assistance to the tribal community in India's rehabilitation and provision of employment, livelihood, education, health, and food security has been inadequate. Despite efforts, the support provided falls short of meeting the needs of the tribal population. Employment opportunities are limited, education and healthcare services are lacking, and food security remains a challenge. Overall, the government's assistance to the tribal community in these areas has not been sufficient;
4. The judiciary has played a significant role in upholding the rights and interests of the tribals, but it has also been constrained by the dominant development paradigm, the lack of political will, and the institutional barriers.
5. The legislature and top judiciary in India must take several steps to improve the conditions of tribal groups. Firstly, legislative measures should be implemented

to protect the rights and interests of these communities. This includes enacting laws to safeguard their land rights, ensuring access to education and healthcare, and promoting their cultural heritage. Secondly, the top judiciary should play an active role in interpreting and enforcing these laws, ensuring that justice is served and that the rights of tribal groups are upheld. Finally, collaboration between the legislature and judiciary is crucial in addressing the systemic issues faced by tribal communities, such as discrimination and marginalisation. Working together, state legislatures and the judiciary can create a more inclusive and just society for all.

6. During the neoliberal period, the Indian judiciary has consistently strived to strike a balance between the development of the nation and the welfare of its citizens through its judgements. By adopting a middle path and balancing approach, the judiciary has aimed to ensure that economic growth and progress of the nation do not come at the expense of neglecting the rights and well-being of the tribal community affected by the developmental projects.

The main recommendation of the thesis are:

1. To revise and implement the Land Acquisition, Resettlement and Rehabilitation (LARR) Act of 2013, which provides a comprehensive framework for addressing the issues of displacement and rehabilitation of tribal communities in India.
2. To strengthen the role and capacity of the Gram Sabhas (village assemblies) and the Tribal Advisory Councils (TACs) in ensuring the participation and consent of the tribal people in the decision-making process of development projects affecting their lands and livelihoods.
3. To enhance the accountability and effectiveness of the judiciary in protecting and enforcing the constitutional and statutory rights of the tribal people, such as the right to life, the right to culture, the right to forest resources, and the right to fair compensation and rehabilitation.
4. To conduct more empirical and comparative studies on the impact of neoliberal policies and development projects on the tribal communities in India, and to

develop alternative models of development that are more inclusive, equitable, and sustainable.

Measures Should be Taken by the Government Before Rehabilitation:

A survey related to Project Affected Persons (PAPs) should be conducted by the government. So that the correct data related to the affected persons can be known. By including these figures in the Rehabilitation Programmes, the government can carry out Rehabilitation and Resettlement (R&R) properly. The result of which will be that both the displaced and the government can avoid problems arising in the future.

- Correct number of families/ households to be displaced.
- Land to be acquired should be estimated rightly.
- Number of landless and unregistered displaced people.
- Educational profile of the displaced.
- Professional skills of the displaced.
- Potentials available with the displaced.
- Schools, hospitals, transports, temples and other facilities available to the displaced.
- Host populations' attitude to know acceptability of the displaced population.
- Structure of the caste in the area.
- Population structure of the area like, Adults, males, females, children and old people.

These data will help in providing guidelines in rehabilitation and resettlement programmes while deciding compensation packages. The above survey will help the government to decide which displaced person should be given the compensation amount to what extent. The facilities that the person was enjoying before displacement can be provided at the relocated place. The government should also arrange houses and occupations for the landless displaced people along with some compensation amount as much as possible. Identifying the educational qualifications of the persons and their skills, the government can arrange work or occupation for them accordingly.

Arrangements for schools, hospitals, temples, transport etc. can be made available as before. Overall, surveying the affected area before rehabilitation will make it easier for the government to manage rehabilitation and resettlement properly. The government will be able to establish a proper communication system. The communication gap between the government and the displaced will be ended. Displaced will be able to convey their messages to the government. The government will be able to understand the mood of the displaced people. With various statistics related to the displaced, the government can make such arrangements so that the displaced do not have to face problems like mental stress. Because after displacement, there are many problems in front of displaced people like loss of occupation and loss of social relations, due to which the person can become a victim of mental trauma. The pre-displacement survey therefore suggests a multipronged approach for both the government and the displaced.

Suggestions:

- The need of the hour is to develop new technology to continue the developmental works so that the dependency on land can be reduced.
- In this era of Liberalisation, Privatization and Globalization, economic competition has become a standard of modernity which has pushed human values beyond, there is a need for inclusion of human values with change in this standard.
- There is a need to incorporate the values of traditional tribal economy with this modern economy so that the tribal society can integrate itself proudly with the modern economy.
- In matters related to development and displacement, the tribal society should be made a participant in the decision-making process and at the time of acquisition of land from tribals, the consent of Gram Sabha must be taken in accordance with the Panchayat (Extension to Scheduled Areas) Act,1996.
- To connect the tribals with the mainstream of development, it is necessary that their identity, tradition, customs, culture, civilization and lifestyle should not be destroyed and they should be connected with the mainstream of development according to their culture and civilization.

- The specific skills of the tribals should be identified and fair opportunities should be provided for their development by giving them education and training accordingly.
- The Governments need to keep in mind while formulating policies that should be based on the traditional economic resources of tribal society and suited to their rural environment and ultimately tribals should be made participants in the decision making process.
- Honest and serious attempts should be made to rehabilitate the oustees.
- Displaced should provide better amenities than they enjoyed in their previous hamlet.
- Need to follow the LAAR Act, 2013, amended in 2015.
- Sometimes even the court's guidelines are set aside which should be avoided.
- Psychologically displaced people should be made ready for the relocation.
- At least one person in the family should be engaged in any government job.
- Employment schemes like MGNREGA should be made for the guarantee of the life and livelihood of the oustees.

Today the credibility of business enterprises is under question. In this era of neoliberalism, multinational companies are earning astonishing profits. The displaced people are having to pay the price of this profit of the companies in the form of their helplessness, tears of blood and exploitation. The foundation of the company rests on public resources. These companies are established on public resources, they breathe in the open air of these resources, they survive and by earning huge profits, they excel and get the title of being the best, but the point is that only a selected few people enjoy this profit. Which is not only injustice with the displaced people but also with the nation and against social justice.

In the era of neoliberalism, development and displacement are becoming two sides of the same coin. In such a situation, there is a need to change the paradigm of development. In democratic country like India, if development proves to be a misery for the displaced rather than social welfare, then what is the need for such development? Such development is meaningless and needs to be reoriented. The corporate sector will have to do business only as per the standards established by the Constitution. For this,

the legislature and the executive will have to be responsible and moral towards the people of the nation. Binding laws will have to be drafted for the corporate sector. So that the business enterprise can do justice to the affected people while setting up the developmental project. The corporate sector has an important contribution in the development of the country but it gives astonishing benefits to the least number of individuals at the expense of the misery of the highest number of individuals. Certainly, corporate sectors are like social engineers, hence they cannot be given the right to work like anti-social elements.

In the Niyamgiri judgement, 2007, the Supreme Court held that for the Scheduled Area development Sterlite Industries India Ltd (SIIL) have to include 5% of the annual profit or the 10 crore whichever is higher in the rehabilitation package. The case laws given by the courts, especially by the Supreme Court through their decisions related to Rehabilitation and Resettlement should be followed properly. For the sustainable development of the displaced community, the corporate sector should contribute or make it mandatory to contribute some part of its profits as a form of corporate social responsibility (CSR). The displacement of millions of people points towards establishing the right model of Rehabilitation and Resettlement so that the quality of life of the displaced people can be improved.

Young, Jones, Romer, Segerstrom and Grossman and Helpman are the researchers of 'endogenous development' who believe that technological development restructures the development policy of the state. Such economic development, which depends on natural resources, establishes projects for exploitation of natural resources only in naturally dominated areas. Due to which displacement of nature loving tribals becomes inevitable. It is the misfortune of the tribal community that they live amidst natural resources. Just as musk of deer causes its death, similarly natural resources cause displacement of tribals. It is the need of the hour is to develop new technology to continue the developmental works so that the dependency on land can be reduced.

The state legislature needs to restructure its ethical practices and national commitment towards the corporate sector. State legislatures need to enact binding laws for the corporate sector. Both the State Legislature and the corporate sector will have to be ethical regarding formulating laws related to displacement, only then the pain of displacement can be mitigated. Even a catastrophic disaster like displacement can be

mitigated if various international and national laws are followed transparently and honestly by the State.

Judicial discourse on tribal rights over their natural resources refers to legal discussions and decisions regarding the rights of indigenous or tribal communities to access, utilise, and manage their traditional lands, territories, and resources. These discussions often involve conflicts with governmental entities or corporations seeking to exploit these resources for economic purposes. Judgements in favour of tribal communities can vary depending on the specific case and its jurisdiction.

Judicial discourse acknowledges that tribal rights over natural resources are not solely individual-based but rather rooted in communal or collective ownership. Indigenous communities have long-standing historical and cultural connections to their lands and resources, which grant them certain rights.

Many judgements in favour of tribal communities reflect the recognition of historical injustices such as forced removals, dispossession of land, and resource extraction without their consent. These judgements often aim to rectify past violations and protect tribal rights.

Judiciary has developed the Free, Prior, and Informed Consent (FPIC) policy in favour of tribal community. Judicial discourse recognizes the importance of tribal communities having the right to give or withhold consent in decisions regarding resource utilisation on their lands. This concept highlights the need for meaningful engagement and consultation with indigenous groups before any project or activity takes place.

Courts often acknowledge the intertwined relationship between tribal communities and their natural environment. Judgements recognize the need to protect the ecological integrity of lands and resources, as well as the cultural practices and identities of indigenous communities reliant on them.

Judicial discourse sometimes involves striking a balance between tribal rights and the broader public interest, such as economic development or national security. Courts may consider factors like sustainable resource use, compensation mechanisms, or alternative livelihood options for tribal communities.

Judgements in favour of tribal communities often affirm their right to self-determination and autonomy. These decisions recognize that indigenous groups should have the authority to govern and manage their natural resources according to their cultural values and customary laws.

Judicial discourse may draw upon international human rights standards, such as those outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), to interpret and apply laws and protect tribal rights over natural resources.

It is important to note that the specific viewpoints may vary depending on the legal framework, jurisdiction, and specific cases involved in the judicial discourse on tribal rights over natural resources.