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Rights of Dislocated Tribal in Development Projects and the Remedies Provided to Them

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ABSTRACT

India is a developing country. The country is seeing growth at a very rapid rate with an exponential growth of development projects. The building of these developmental projects needs land. For this purpose, the state is forced to vacate lands that are inhabited by tribal and locals. Because of this, the people already living in these places are coerced to leave the spot. With the government having the power to displace them under the doctrine of 'Eminent Domain', these groups live with a constant fear of being uprooted from their residential spaces. The construction of these developmental projects has displaced more than 4.4million people till date since independence. Thousands of these displaced individuals are struggling to lead a better life. Our country, for a very long time, lacked a uniform code that could rehabilitate and resettle the affected groups. It was only in the year 2013 that The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act was introduced by the legislature to help these people. The researchers, in this paper, try to analyze as to what are the displacement-induced issues that the tribal are forced to face while exploring the protections that these groups have been given under the abovementioned statute. The researchers have also tried to critically analyze a few judgments in order to understand the role and opinion of the judiciary in this matter. This paper also tries to see if the protections that have been provided to these groups are actually effective while also trying to suggest a way for helping them better.

Keywords: Tribal, Development, Projects, Displacement, Rehabilitation, Resettlement.

I. INTRODUCTION

For the purpose of achieving economic development at a rapid pace, India has invested a large sum of money, time and resources for the development of industrial projects, bridges, dams, mines and various other things³. Estimates have shown, that because of the initiatives that the

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³ HM Mathur, D Marsden, Development projects and impoverishment risks: Resettling project-affected people in India (2000).

country has taken for development, more than 21 million of the population of the country have had to suffer as they have been displaced from their places. While out of the total population of the country, only 8 percent constitute tribal population⁴. But in a stark contrast to this, out of the large displaced population, 40 % is tribal population⁵. All of these people have to face infinite number of issues. The only difference being that all of them face issues of various different natures. These ramifications contribute to the need for legislation addressing not just the issue of restitution, but also resettlement, recovery and negotiating intervention.⁶ This article explores the rights of tribal people when they are forced to dislocate, because of the construction of developmental projects and the remedies given to them. This article also tries to deal with as to how can a tribal deal with the issues, what are the possible outcomes, and what legal rights do they have.

II. DEVELOPMENT INDUCED DISPLACEMENT AND ITS EFFECT ON THE TRIBAL POPULATION

With countries trying to evolve at a rapid pace and them trying to reach their developmental goals as soon as possible, the government is trying to attract foreign investors. In order to do so, the government is trying to provide numerous incentives to the investors; cheap land being one of them. Very frequently, for this urge of development, the local inhabitants have to suffer. The government takes away the lands from the people for the purpose of development under the doctrine of 'Eminent Domain'⁷. The doctrine of Eminent Domain means that the king; or in our case, the government can take away the properties of the people for the use of the general public provided that the public use of the property has to be established without any doubt. The state and the government look at the whole situation of displacement of the tribal from a very different view. For them, the whole process is for development and for a rapid growth of the country and for national interest.⁸ The displacement leaves the tribal hanging by a thread not having any idea what to do. It affects the population in numerous ways.

The very primary issue that these people face is the issue of landlessness. When forced to displace, these groups loose their place of residence; they loose their livelihood and are also

⁴ 2011 Census Data, Office of the Registrar General & Census Commissioner, Ministry of Home Affairs, Government of India. <https://censusindia.gov.in/2011-common/censusdata2011.html>

⁵ S Parasuraman, *The development dilemma: Displacement in India* (2016).

⁶ WC Robinson, *Occasional Paper, Risks and rights: The causes, consequences, and challenges of development-induced displacement* (2003).

⁷ Umamaheswari. R, Dr. A. Sree Latha, *Doctrine Of Eminent Domain In India*, *International Journal Of Pure And Applied Mathematics*, Volume 120 No. 5 2018 At 1771-1780

⁸ David A. Dana, *Reframing Eminent Domain: Unsupported Advocacy, Ambiguous Economics, and the Case for a New Public Use Test*, *32 Vermont Law Review*, 129. (2007-2008).

forced to face the loss of human made as well as natural capital.⁹ While, on the other hand, they have to face joblessness and unemployment as when they relocate, they cannot have access to their current jobs.¹⁰ The families then have to face the loss of their economic power and wealth and that leads to their rampant marginalization. The acquired skills that the people already have is difficult to use in new situation and locations as the skills that they develop over time is according to the local needs and when they move, they face the difficulty of applying them in new environment.

The families face the insecurity of food, making them vulnerable to chronic undernourishment, violating their Right to basic food for survival. The groups residing at a particular spot for a reasonable amount of time know about the locally available resources. They also grow their own food. When they have to leave that land, with that, they also loose the food that used to grow on that land.¹¹ With the loss of the property of the dwellers, there is a loss of the flowing incomes of the poor which also results in the loss of long established colonies in which people have been living, loss of trade links and the source of livelihood becoming non-functional.¹² Not only this, the long established community services such as the medical services, the facilities of education all get lost because of the displacement.¹³

The massive displacement not only affects the masses economically and socially, but also takes a toll on their health.¹⁴ With the mental stress and psychological trauma of displacement, these groups are also exposed to illness that is related relocation. Inadequate availability of safe drinking water and abysmal sanitary conditions make them vulnerable to diseases such as cholera and diarrhoea on a very regular basis. The right of these people to basic living conditions and health standards is affected.

Not only do these people face violation of rights on personal level, but, by the state making them move in an arbitrary manner, these people also become prone to violation of Human Rights¹⁵ and there is also loss of their civil and political rights.

⁹ Biswaranjan Mohanty. Displacement and Rehabilitation of Tribals. *Economic and Political Weekly*, vol. 40, no. 13, 2005, pp. 1318–1320.

¹⁰ Subhash Sharma, Development for whom and at whose cost: Displacement due to Dams in India, 60 *INDIAN J. PUB.ADMIN* (2014).

¹¹ Idriss Jazairy, Food Insecurity and Forced Displacement of People: Where do we Draw the Line?, Inter Press Service, <http://www.ipsnews.net/2017/10/food-insecurity-forced-displacement-people-draw-line/>

¹² *Supra* Note 3.

¹³ *Supra* Note 9.

¹⁴ Samantha L Thomas and Stuart DM Thomas, Displacement and Health, *British Medical Bulletin* 2004, at 69: 115–127

¹⁵ Maria Stavropoulou, Displacement and Human Rights: Reflections on UN Practice, *Human Rights Quarterly* Vol. 20, No. 3, Aug., 1998 at pp. 515-554.

III. REHABILITATION AND RESETTLEMENT: POLICY FRAMEWORK AND IMPLEMENTATION

Since independence, in our country, there has been a massive acquisition of land for the purpose of construction of huge developmental projects such as dams, irrigation system, steel and power industries etc by the government. But even when such acquisitions were taking place and the tribal were suffering, our country did not have proper set of laws to address the situation for the rehabilitation and resettlement of the displaced community. The people's organizations had to struggle and protest against the government and after a lot of struggle, the government came up with a legal framework and formulated the National Policy for Rehabilitation¹⁶ in the year 2007 which then replaced the earlier policy of the year 2003¹⁷.

Then, in the year 2013, a legislation known as the Land Acquisition and Resettlement and Rehabilitation (LARR) Act, 2013¹⁸ was brought in by the government. This act then provided for the resettlement of the displaced and also provided rules for the land acquisition by the government keeping in mind the rights of the displaced too.

The above legislation gave a package that was comprehensive for the rehabilitation and resettlement for those people who had to be displaced and were losing their sources of livelihood.¹⁹ The act also provides plans for Human resource development as it included plans to establish schools, health centres, basic living infrastructure, electricity and safe drinking water.²⁰ The government came up with the said laws with great deal of research and also kept in mind the needs of the displaced. On paper, the job that was done by the government was remarkable, but, unfortunately, the things on paper have been facing a very tough time to reach the reality. With the corruption that our country has, the funds that are passed by the government, hardly reach the needy and even if the infrastructure and the things that have been promised to the tribal are made, the quality and quantity of the same is never satisfactory²¹. Their struggle seems never ending.

Out of the whole population of India, approximately 8.08% is Tribal population²², making India home to one of the largest tribal populations in the world. With the model of development that

¹⁶ National Rehabilitation and Resettlement Policy, 2007.

¹⁷ National Rehabilitation and Resettlement Policy, 2003.

¹⁸ The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013.

¹⁹ Supra Note 9.

²⁰ The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013, § 4(5), Acts of Parliament, 2013 (India).

²¹ Ankur Yadav, Dr. Shashikala Gurpur, Dr. Aparajita Mohanty, Displacement Crisis Of Rural Community In India, *Journal of Critical Reviews*, Vol 6, Issue 6, 2019.

²² Supra Note 3.

the country is undertaking, the interaction of these tribes and development projects is unavoidable given the population size and other demographic factors of the country making it even more important for the judiciary to balance the interests of the two. However, the Tribal groups, have still have to suffer at the hands of majoritarian rule. Remedies have been provided to these groups under Article 32²³ and Article 226²⁴ of the Indian Constitution, however the effectiveness and the outreach of such remedies is still up in the air.

On paper, when any project had to be initiated, the consent of the people have to be taken from them,²⁵ but, the very issue with the procedure of consent in the act²⁶ is that for a project that the government itself plans to bring for the public use, for that, the consent of the local community is immaterial²⁷. For the purpose of development of the country, the consent of these people does not make a difference. The lives, the rights of these people do not matter. And, with the speed at which this country is growing, there is an exponential increase for the state to come up with developmental projects and therefore, leaving the tribal at an ever-growing fear of being forcefully displaced without being provided for any alternatives whatsoever.

The Act of 2013 had initially made it mandatory for Social Impact Assessment²⁸, but, with the amendment in the year 2015, mandatory requirement for the same was removed for security, defence, rural infrastructure and industrial corridor projects in the amendment.²⁹

What becomes very disappointing is to see, that Indian Supreme Court while giving out various judgements has very openly accepted that fundamental rights enshrined in the part III of the Constitution of India is violated of these IDPs (Internally Displaced Persons) and these people are badly impacted by displacement but has then gone on to give decisions that are absolutely South of what was expected from them to do and hence violating their rights even more. The Supreme Court has regularly faced issues in which it had to choose between the Fundamental Rights of the tribal and the need for the development of the country. Many a times, the Supreme Court has chosen development over the rights of individuals. In the case of **Narmada Bachao**

²³ INDIA CONST. art. 32.

²⁴ INDIA CONST. art.226.

²⁵ The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013, § 41, Acts of Parliament, 2013 (India).

²⁶ Supra Note 19.

²⁷ The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013, § 2 (2), Acts of Parliament, 2013 (India).

²⁸ The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013, § 4, Acts of Parliament, 2013 (India).

²⁹ The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement (Amendment) Second Ordinance, § 5, Acts of Parliament, 2015 (India).

Andolan v. Union of India³⁰, due to the construction of the massive Sardar Sarovar Dam on the river Narmada, a huge population of the tribal was forced to displace. The question of the violation of the Fundamental Rights i.e. Article 21³¹ of the Schedule Tribes and other Tribals was faced by the courts. In the case, it was contended that for interpretation of the Fundamental Rights, International treaties and covenants can be read with the domestic law. ILO Convention No. 107³² states that tribal populations shall not be removed from their lands without free consent from them except in instances when it's a matter of national security or of national economic interest.

It was further contended that the facts of this case do not fall in the second exception to the ILO Convention 107 as serious doubts can be casted on the economic benefits of the Sardar Sarovar Project because the estimates have been largely exaggerated by the government. The court accepted the usage of ILO Convention 107 but disagreed with the contention that this project doesn't not fall within the exception as it has many economic benefits.

Even though the court accepted the negative implications of displacement, it stated that the Fundamental Rights the right to life of these groups would not be violated by displacement as it is still protected under the resettlement and rehabilitation plans of the government.

The decision of the court, that the rights of the people was not violated was heavily criticized³³ by the activists as they were of the opinion that the very fact that they were uprooted from their places was a proof enough that their fundamental rights have been violated and the ineffective policies of rehabilitation and resettlement cannot be a justification for the same.

The case of **N.D. Jayala and Anr v. Union of India and Ors**³⁴, was another one that raised questions on the Tehri Dam's construction on the grounds that the government's rehabilitation policies had failed. The court did concede that the tribal groups are the biggest sufferers of development as they lose the natural resources which is the very base of their existence and hence provided for the relief of the people with land in exchange of land. But, it is still not to be forgotten that just ordering that the people are to be provided with land is not enough. They need proper rehabilitation beyond settlement.

In **Ram Chand v. Union of India**³⁵, another controversial decision was passed by the Supreme

³⁰ Narmada Bachao Andolan v. Union of India AIR 2000 SC 3786 (India).

³¹ INDIA CONST. art. 21.

³² C107 - Indigenous and Tribal Populations Convention, 1957 (No. 107)

³³ Mathew John, Interpreting Narmada Judgment, Economic and Political Weekly Vol. 36, No. 32 (Aug. 11-17, 2001), pp. 3030-3034

³⁴ N.D. Jayala and Anr v. Union of India and Ors AIR 2003 SC 453 (India).

³⁵ Ram Chand v. Union of India 1994 SCC (1) 44 (India).

Court where it had used the principle of eminent domain in order to justify the displacement of tribal even when the same was done without their consent. The court had held 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 owner’s 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 purposes.”

Recently in February 2019, in the judgement of **Wildlife First v. Ministry of Forest and Environment**³⁶, more than 1 million tribal were ordered by the Supreme Court to be evicted from the forests. In the given case, the Hon’ble court was accessing the Constitutional validity of the Forest Rights Act, 2006³⁷ and in doing so, ordered the removal of the people. The decision was heavily criticised and it was also questioned if due process was followed while ordering for their eviction. The state showed almost no interest for the protection of the tribal to the situation that when the order was passed the legal representative on behalf of the state had even failed to appear before the court³⁸. In the recent times, such decisions of the court have had to face a lot of backlash as the people of the country have started to stand with the marginalized sections of the society.

For these groups, another issue that comes forward with the actual exercise of the assistance when their rights are violated for the sake of development is that these people have always been disconnected from the mainstream society and also have usually very low literacy rates as compared to the rest of the country³⁹ making them even more vulnerable to the legal and judicial formalities. These groups are already cut-off from the politics and tactics of the conventional society putting them at an even more disadvantageous position to get exploited.⁴⁰

Therefore we can say that merely giving rights is not enough and honouring these rights is just as much important. The legitimacy of state is struggling to truly include these groups into the

³⁶ Wildlife First v. Ministry of Forest and Environment 2019 SCC OnLine SC 238 (India).

³⁷ Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, Acts of Parliament, 2006 (India).

³⁸ Nitin Sethi, SC Orders Forced Eviction Of More Than 1 Million Tribals, forest-dwellers , Business Standard, https://www.business-standard.com/article/current-affairs/sc-orders-forced-eviction-of-more-than-1-million-tribals-forest-dwellers-119022000855_1.html

³⁹ “As per Census 2011, literacy rate of Scheduled Tribes (STs) was 59% whereas the overall literacy rate was 73% at all India level” PIB Delhi, Ministry of Tribal Affairs, Government is Implementing a Number of Schemes / Programmes to Increase Literacy Rates and Education Level of STs. SEP 2020

⁴⁰ Parasuraman S. (1997) The Anti-Dam Movement And Rehabilitation Policy, in The Dam and the Nation: Displacement and Resettlement in the Narmada Valley, eds. Jean Dreze, Meera Samson and Satyajit Singh (Delhi: Oxford University Press, 1997).

mainstream idea of statehood but has not succeeded in doing so because this interaction has failed to find a balance between the interests of both the groups. The idea of what their rights should be and how they must be implemented has originated from mainstream society's idea of right and there has been no interaction with the affected group. This interaction is merely the imposition of majoritarian opinion of the vulnerable tribal group.

IV. CONCLUSION AND SUGGESTIONS

The tribal groups never consented to be part of mainstream community yet one needs to be practical enough to accept that the interaction between both the sides is unavoidable considering the large population of the country. The situation of the country looking to develop and move forward at a rapid pace without giving much consideration the rehabilitation of these groups is only giving rise to the economic disparity between the rich and the poor as the whole situation is basically a transfer of resources from the poor to the rich. The rich keep on getting richer and the situation of the poor keep on getting worse day by day. What can be an answer to this?

Ideally, a situation in which both the groups would be winning would be adopting a revenue generating model where the ideas of development and growth exist along with the practices for the protection and conservation of the ecosystem and natural resources. This model can only exist with systematic implementation of rehabilitation and resettlement policies that have been provided by the legislation at national level in a uniform manner.

The ideas of development and displacement are all a result of political process. But, so is the idea of rehabilitation. If the decision of development can be taken by our politicians, they can also strive and provide for better laws related to the rehabilitation process and make them applicable in a very strict and uniform manner throughout the length of the country.

Numerous reserves have had to live through some serious failures and disasters of administrative mis-governance and it is now high time that we do away with this very basic issue before coming up with further developmental projects. An improved aspect of administrative policy implementation might be the solution. The programs of project construction need to be brought in the parliament keeping in mind the policies of rehabilitation and resettlement along with a system that will make the administrative staff accountable for the actions that they take.

Neither the state nor the courts have yet taken this problem with enough seriousness that it deserves. The public's attitude toward such an issue must be changed by disseminating information about its impact on people and instilling sympathy in their hearts for the victims.

Maybe, then, the situation of these victims will improve and they too will be able to live the happy and prosperous lives that we all deserve.
