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**TRIBAL DISPLACEMENT IN THE NAME OF DEVELOPMENT IN INDIA: LEGAL INTERVENTION AND  
REDRESSAL**

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**INTRODUCTION**

Displacement in the name of development or development-induced displacement is the forcing of communities and individuals out of their homes, often also their homelands, for the purposes of economic development<sup>1</sup>. It is a subset of forced migration. It has been historically associated with the construction of dams for hydroelectric power and irrigation purposes but also appears due to many other activities, such as mining and the creation of military installations, airports, industrial plants, weapon testing grounds, railways, road developments, urbanization, conservation projects, forestry, etc. Displacement in the name of development is a social problem affecting adversely the marginalized sections and more so the tribals causing deprivation, displacement and devastation. *Large-scale displacement of tribals due to land acquisition for development is a challenge*<sup>2</sup>. According to one study approximately fifteen million people each year are forced to leave their homes following big development projects (dams, irrigation projects, highways, urbanization, mining, conservation of nature, etc.)<sup>3</sup>. The people that face such forced migration in the name of development are often helpless, suppressed by the power and laws of nations. Strictly speaking the development-induced displacement of indigenous peoples has emerged as a major human rights issue in the contemporary society.

In this backdrop, this article critiques the legal aspects of resettlement and rehabilitation of involuntary displaced communities with special reference to tribal population. It highlights the deficiency in laws and policies made for the above purpose as in reality such laws and policies empower

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<sup>1</sup> Pablo Bose, *Development Induced Displacement and Participation*, at <http://www.yorku.ca/crs>.

<sup>2</sup> Krishna Tirath, *Women and Child Development Minister, May 2011*.

<sup>3</sup> B. Terminski, *Environmentally-Induced Displacement. Theoretical Frameworks and Current Challenges*, Liege, 2012.

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the rich and powerful at the cost of the poor, especially the tribals or indigenous peoples<sup>4</sup>, who are dispossessed not only of their lands but also of their other sources of livelihood.

#### TRIBAL DISPLACEMENT: CONCEPTUAL ANALYSIS

In order to achieve rapid economic growth, India has invested in industrial projects, dams, roads, mines and power plants which have been made possible only through massive acquisition of land and subsequent displacement of people. The main reason behind such acquisition of land by the government leading to involuntary displacement is based on the fact that the government is considered to be representative of the collective, the voice of the public, as compared to the individual. Thus use of coercion or force of any kind by State is central to the idea of displacement in the name of development. Each year, millions of persons are forcibly displaced by development projects, whether dams, roads, reservoirs or oil, gas and mining projects. In India during last 50 years more than 50 million people have been uprooted from their homes and huts, displaced from their farms, jungles, rivers etc. and sacrificed at the altar of collective interest. The existing laws and policies relating to displacement in India are based on the principle that is called the state's *eminent domain*<sup>5</sup> in the USA and *terra nullius* (nobody's land) in Australia. According to this principle all biodiversity, community lands and water sources without an individual title are state property. That turns the CPR (Common Property Resources) dependants into encroachers in what was their habitat for centuries before the colonial laws were enacted. The laws authorize the State to appropriate the CPRs without paying compensation to their dependants. The legal system thus created a disjunction between their communities and their sustenance<sup>6</sup>. In this context the idea that State can take away any property for public good that is, *the doctrine of eminent domain*, raises the classic debate of *power of state versus individual rights*.

As regards the applicability of this eminent domain power in India we find that the Constitution originally provided for the right to property under Articles 19 and 31. Article 19 guaranteed to all citizens

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<sup>4</sup> Literally "indigenous" means native, belonging naturally, that of the people regarded as the original inhabitants of an area. In the Indian context, however, indigenous peoples were generally known as primitive tribes, 'Aboriginals', 'Adivasis', 'Janajati' etc. and after the commencement of the Constitution of India they simply meant 'Scheduled Tribes'.

<sup>5</sup> *Eminent domain* (United States), *compulsory purchase* (United Kingdom, New Zealand, Ireland), *resumption/compulsory acquisition* (Australia), or *expropriation* (South Africa and Canada) is an action of the state to seize a citizen's private property, expropriate property, or seize a citizen's rights in property with due monetary compensation, but without the owner's consent. The property is taken either for government use or by delegation to third parties who will devote it to public or civic use or, in some cases, economic development. The most common uses of property taken by eminent domain are for public utilities, highways, and railroads.

<sup>6</sup> Ramanathan, Usha (2008). "The Land Acquisition Act 1894: Displacement and State Power," in Hari Mohan Mathur (ed.), *India: Social Development Report 2008: Development and Displacement*, Council for Social Development, Oxford University Press, pp.27-38.

the right to 'acquire, hold and dispose of property'. Article 31 provided that "No person shall be deprived of his property save by authority of law." It also provided that compensation would be paid to a person whose property had been 'taken possession of or acquired' for public purposes. In addition, both the state governments as well as the union (federal) government were empowered to enact laws for the "acquisition or requisition of property"<sup>7</sup>. It is this provision that has been interpreted as being the source of the state's 'eminent domain' powers<sup>8</sup>.

The provisions relating to the right to property were changed a number of times. And in the year 1978 the right to property was deleted from the list of Fundamental Rights<sup>9</sup>. A new Article 300-A was added to the Constitution which provided that "no person shall be deprived of his property save by authority of law". Thus, if a legislature makes a law depriving a person of his property, there would be no obligation on the part of the State to pay anything as compensation. The aggrieved person shall have no right to move the court under Article 32<sup>10</sup>. Because the right to property is no longer a fundamental right, but it is still a constitutional right. If the government appears to have acted unfairly, the action can be challenged in a court of law by citizens<sup>11</sup>.

But the fact remains that forced displacement is always crisis-prone, even when necessary as part of broad and beneficial development programs. It is a profound socio-economic and cultural disruption for those affected. Dislocation breaks up living patterns and social continuity. Not only is development-induced displacement a widespread, and growing phenomenon, but evidence suggests that while the beneficiaries of development are numerous, the costs are being borne disproportionately by the poorest and most marginalized populations. In India one study calculated that 2 percent of the total population had been displaced by development projects in the first forty years of the country's independence (1951-1990). Of those displaced, however, 40 percent were tribal people though they comprise only 8 percent of the population<sup>12</sup>. As author Arundhati Roy observed, "The ethnic 'otherness' of their victims takes some of the pressure off the nation builders. It's like having an expense account. Someone else pays the bills"<sup>13</sup>. Therefore the liberalization of the economy and the Government's

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<sup>7</sup> Schedule VII, Entry 42, List III.

<sup>8</sup> *State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others*, AIR 1975 SC 1083.

<sup>9</sup> Amended by the 44<sup>th</sup> (Constitution) Amendment Act, 1978.

<sup>10</sup> The right to move to the Supreme Court straight for the enforcement of fundamental rights has been guaranteed under Article 32 (Right to Constitutional Remedies).

<sup>11</sup> Tayal, B.B. & A.Jacob (2005), Indian History, *World Developments and Civics*, p. A-33.

<sup>12</sup> Alan Rew, Eleanor Fisher, and Balaji Pandey (2000), *Addressing Policy Constraints and Improving Outcomes in Development-Induced Resettlement Projects* (Oxford: Refugee Studies Center).

<sup>13</sup> Arundhati Roy (1999), *The Cost of Living* (London: Flamingo), p. 19.

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initiative to set up special economic zones have led to many protests by farmers and have opened up a debate on the reinstatement of the fundamental right to private property<sup>14</sup>.

#### TRIBAL DISPLACEMENT: CONTEMPORARY DIMENSIONS

In the Indian context, it is of interest to note that most of the developmental projects are located in the most backward areas and populated by tribals. These segments, with the enactment of land settlement laws, forest laws and commercialization of forest products and minerals, have undergone a metamorphosis, where legally the access to the various natural resources are denied and these segments are treated as hostages within their environment. Studies on the magnitude of development-induced displacement suggest that tribals and ethnic minorities are disproportionately affected. Coming from politically marginalized and disadvantaged strata of society, these groups often end up neglected and impoverished. The heart of the problem is that people displaced by development projects are generally seen as a necessary sacrifice on the road to development. In recent times the large scale industrialization, privatization and globalization for sake of “development” has emerged as the biggest threat to tribal’s survival – ironically, the so called “modern civilized society” has become a predator of their age-old eco-friendly, peaceful and harmonious lifestyle. The tribals, their lands, and other resources are now exposed to the exploitative market forces, mostly due to the State and Multi National Companies (MNCs) sponsored developmental projects to exploit minerals and other natural resources. Land alienation of the tribals by the powerful entities has become common phenomena. It is most unfortunate that “the freedom to live in their own traditional ways” as guaranteed by the constitution is flouted by those who understand the constitution better. The main reason for this callous attitude according to W. Fernandes<sup>15</sup> is that most displaced persons are rural poor like landless labourers and small and marginal farmers. It becomes abundantly clear that mostly powerless and voiceless people are displaced and made to pay the price of national progress. In the recent past the proportion of tribal population among those displaced has been growing. An official report on the rehabilitation of tribals, based on a comprehensive study of 110 projects, suggests that of the 16.94 lakh people displaced by these projects almost 50% were tribals<sup>16</sup>.

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<sup>14</sup> Mahapatra, Dhananjay(2009). "Should right to property return?," *The Times of India*, 28<sup>th</sup> February, <http://timesofindia.indiatimes.com/India/Should-right-to-property-return/articleshow/4202212.cms>.

<sup>15</sup> Walter Fernandes, "Displacement-What is all the fuss about?," *Humanscape*, November 1999.

<sup>16</sup> *Ibid*.

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The Parliamentary Standing Committee<sup>17</sup> on the Welfare of Scheduled Castes and Scheduled Tribes in a report submitted to the Lok Sabha on 23 October 2008 observed:

“Notwithstanding Act and regulations to control alienation of tribal land, tribal people are being alienated from their land in the name of development and due to insufficient amount given to them for their land, they migrate to other places in search of livelihood.”

It further stated:

“Tribals should not suffer in the name of development” and recommended that “the Ministry of Tribal Affairs should take immediate *suo-moto* action whenever it is reported that tribal people are agitating against displacement and endangerment to their lives.”

The absence of rehabilitation in large number of projects is a major factor in the impoverishment and marginalization of the Displaced Persons (DPs). Less than one-fourth of the DPs have been resettled. Rehabilitation is not part of most projects. Even if included in the scheme, it is done long after work on the project begins. For example, people displaced by the Tungabhadra dam in AP were resettled five years after their displacement. The DPs of the joint Orissa-Andhra venture Machkund dam were resettled after a decade of their displacement. The resettlement of the DPs of the Salaulim dam in Goa is still going on while dam was completed in the 1980s<sup>18</sup>. DPs and PAPs (Project Affected People) cannot ask for compensation or demand resettlement, because India has neither a national rehabilitation policy nor a law. In most cases, the Land Acquisition Act is used to pay a symbolic cash payment as compensation to the Patta-holders. The landless and those dependent on CPRs do not get any compensation. Projects like the Sardar Sarovar and Upper Krishna have rehabilitation plans because their DPs/PAPs fought against the project or because the World Bank finances them. This is the reason why Gujarat did not have any rehabilitation scheme for the Ukai dam in the 1970s but it has one of the most progressive rehabilitation packages for Sardar Sarovar oustees. These packages are known as Resettlement and Rehabilitation (R&R) but they are two separate things. Resettlement is one-time physical relocation, whereas rehabilitation is a long drawn-out process. Most of oustees of big projects, like the Hirakud Dam in Orissa or the Rihand dam in U.P. were never officially resettled.

The example of the oustees of the Pong dam in Himachal Pradesh, who were displaced in the late 1960s, is very poignant. Out of the 30,000 families, only 16,000 were found eligible for

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<sup>17</sup>The Parliamentary Standing Committee on the Welfare of Scheduled Castes and Scheduled Tribes in a report submitted to the Lok Sabha on 23 October 2008 disclosed this fact.

<sup>18</sup> Ibid.

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compensation and in the end only 3756 were moved hundreds of miles to a completely different cultural, linguistic and ecological zone in Rajasthan. Some of the land meant for their occupation had already been occupied, while remaining land was uncultivable. As it was not enough, the host villagers were not prepared for their arrival and finally over 75% returned to Himachal only to find little support for their re-establishment. They kept migrating all over Northern India, most of them at various stages of destitution<sup>19</sup>.

However the Human Rights Declaration states that everyone has the right to life, liberty and security. Under the heading of economic, social and cultural rights, all governments are expected to try progressively to improve the living conditions of their citizens. But studies reveal that forced displacements have created potential risks—"landlessness, joblessness, homelessness, marginalization, increased morbidity and mortality, food insecurity, loss of access to common property and social disarticulation<sup>20</sup>".

#### **TRIBAL DISPLACEMENT: SOCIAL IMPACT**

The development-induced displacement after independence has mostly caused downward "spiral of impoverishments". The long drawn out, dehumanising, disempowering and painful process of displacement has led to widespread traumatic psychological and socio-cultural consequences. It causes dismantling of the existing socio-cultural fabric and economic base of the displaced families, which have been built over several centuries and generations. This also leads to the loss of complex social relationship which used to provide avenues of representation, mediation and conflict resolution. Essentially, the very cultural identity of the displaced community and individual is subjected to massive onslaught leading to very severe physiological stress and psychological trauma<sup>21</sup>. The entire process of displacement is disempowering because it breaks up socio-political organisations opposing the project or the development process itself. In the case of tribals, the experience of displacement becomes much more monstrous. They encounter tremendous odds in dealing with the market economy. Their unfamiliarity with modern technology and skills coupled with official indifference to their entry into the mainstream economy pushes a majority of tribals into conditions of servility and bondage<sup>22</sup>. It is tragic

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<sup>19</sup> Smitu Kothari, "Whose Nation? The Displaced as victims of Development", *Economic and Political Weekly*, June 15, 1996.

<sup>20</sup> Cernea, M (1995), *Understanding and Preventing Impoverishment from Displacement: Reflection on the State Knowledge*, *Social Action*, 45, No.3, pp-261-76.

<sup>21</sup> Smitu Kothari, *Supra note 16*.

<sup>22</sup> *Ibid*.

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irony that the government – sanctioning authority of development projects - is well aware about these traumas faced by the indigenous communities.

The proponents of development and displacement often argue that the monetary income of the displaced person improves. Walter Fernandes has debunked this proposition. He says that out of 700 persons from 13 projects whom they interviewed in Andhra Pradesh, monetary income had improved in less than 30 cases. It deteriorated in remaining cases, at times by more than 80%. Fernandes further argues that even when monetary income rises, the life style of the displaced people does not necessarily improve. Those who measure change through the improvement of monetary income alone ignore the fact that before displacement a large number of the DPs belonged to the non-monetised or semi-monetised informal economy. To quote Fernandes, “Many of these communities sustain themselves on the CPRs or by rendering community services to the village or as agricultural labourers. Their lost livelihood is not compensated or replaced. So even when monetary income rises after displacement, they are often impoverished also in economic terms because the CPRs and other sources of their non-monetised livelihood are not replaced. For example, a study of the 28000 families to be displaced by the proposed Polavarem dam in Andhra Pradesh shows that the cost benefit analysis is limited to not more than 20% of their livelihood. The rest is ignored<sup>23</sup>.

#### **RIGHTS OF THE TRIBALS: INTERNATIONAL MECHANISM**

International legal instruments take the form of a treaty (also called agreement, convention, covenant, protocol), which may be binding, on the contracting States. The international community has shown increasing concern for the protection of the rights of tribals. Conventions and declarations of the international community provide a broad framework, as well as specific statements regarding the protection of tribal population and their interests, cultures, ways of life, cultural survival, and development.

The United Nations *Universal Declaration of Human Rights 1948*<sup>24</sup> and *International Covenant on Civil and Political Rights 1966*<sup>25</sup> have specific significance for tribals or indigenous peoples. The Universal

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<sup>23</sup>Walter Fernandes, *op. cit.*

<sup>24</sup> **The Universal Declaration of Human Rights is the first international document that states that all human beings are “equal in dignity and rights” (Article 1). Everybody is entitled to the rights in the Declaration, “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Article 2).**

<sup>25</sup> **This Covenant outlines the basic civil and political rights of individuals. There are also provisions for collective rights. “In those States in which ethnic, religious or linguistic minorities exist, persons belonging**

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Declaration provides a common standard for the human rights of all peoples and all nations, and proclaims the importance of traditional, political, and civil rights, as well as basic economic social and cultural rights. The Covenant spells out civil and political rights and guiding principles based on the Universal Declaration.

The rights of land ownership are guaranteed in the *ILO Indigenous and Tribal Populations Convention No. 107 of 1957*<sup>26</sup> which is the first international law instrument in specific support of tribals or indigenous peoples, largely because of its view that tribals or indigenous peoples should be integrated into the larger society. Subsequently it was followed in 1989 by the *ILO Indigenous and Tribal People in Independent Countries Convention No.169 of 1989*<sup>27</sup>. Convention No. 169 presents the fundamental concept that the way of life of indigenous and tribal peoples should and will survive, as well as the view that indigenous and tribal peoples and their traditional organizations should be closely involved in the planning and implementation of development projects that affect them. As the most comprehensive and most current international legal instrument to address issues vital to indigenous and tribal peoples, Convention No. 169 includes articles that deal with consultation and participation, social security and health, human development, and the environment. To date, Convention No. 169 has been ratified by only a few countries, and so far by none in the Asian and Pacific Region.

Agenda 21 adopted by the United Nations *Conference on Environment and Development*<sup>28</sup> (UNCED) in 1992 recognizes the actual and potential contribution of indigenous and tribal peoples to sustainable development. The 1992 Convention on Biodiversity calls on contracting parties to respect traditional indigenous knowledge with regard to the preservation of biodiversity and its sustainable use.

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to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.” (Article 27)

<sup>26</sup> *Convention No. 107, concerning the Protection and Intergradations of Indigenous and other Tribal and Semi – Tribal Population in Independent Countries (Indigenous and Tribal Population Convention, 1957) was adopted by the International Labour Conference at its 48th Session at Geneva on 26 June 1957. For the text of this convention, see ILO, Conventions and Recommendations adopted by the International Labour Conference 1919 – 1966. Geneva (1966). See also Martinz Cobo Report, UN Doc. E/CN. A/Sub. 2/1982/2/Add. 1, pp. 63 – 72.*

<sup>27</sup> *ILO Convention No. 169, concerning Indigenous and Tribal Peoples in Independent Countries was adopted by the International Labour Conference at its 76<sup>th</sup> Session at Geneva on 7th June, 1989. For the text of this Convention No. 169, see, ILM, Vol. 138 of 1989.*

<sup>28</sup> *The United Nations Conference on Environment and Development (UNCED), also known as the Rio Summit, Rio Conference, Earth Summit was a major United Nations conference held in Rio de Janeiro from 3 June to 14 June 1992.*



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The *Vienna Declaration and Programme of Action*<sup>29</sup> recognizes the dignity and unique cultural contributions of indigenous peoples, and strongly reaffirms the commitment of the international community to the economic, social, and cultural well-being of indigenous peoples and their enjoyment of the fruits of sustainable development. The emerging concern for indigenous peoples prompted the United Nations to declare 1993 as the *International Year of the World's Indigenous Peoples* and the decade from December 1994 as the *Indigenous Peoples Decade*.

The United Nations *Declaration on the Rights of Indigenous Peoples* of 2007<sup>30</sup> sets out the individual and collective rights of indigenous peoples, as well as their rights to culture, identity, language, employment, health, education and other issues. It also "emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations". It "prohibits discrimination against indigenous peoples", and it "promotes their full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development".

## RESETTLEMENT AND REHABILITATION OF DISPLACED TRIBALS: LEGAL INTERVENTION AND STRATEGY

### Constitutional Mandate

Articles 244 and 244(A) under part X of the Constitution provide for Administration of Scheduled Areas and Tribal Areas. Under the Constitution, the terms Scheduled Areas<sup>31</sup> and Tribal Areas<sup>32</sup> have definite connotations.

### Scheduled Areas

As per para 6 of the Part 'C' of the Fifth Schedule of the Constitution, the expression 'Scheduled Areas' means such areas as the President may, by order, declare to be Scheduled Areas. The President

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<sup>29</sup> **The Vienna Declaration (Vienna on 25 June 1993) is the closing declaration of the 1993 World Conference on Human Rights held in Austria. It "recognizes the inherent dignity and the unique contribution of indigenous people to the development and plurality of society and strongly reaffirms the commitment of the international community to their economic, social and cultural well-being."**

<sup>30</sup> **The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly during its 62<sup>nd</sup> session at UN Headquarters in New York City on 13 September 2007.**

<sup>31</sup> **The Scheduled Areas are governed by the provisions contained in the Fifth Schedule. These may also be called the Fifth Scheduled Areas.**

<sup>32</sup> **The Tribal Areas are governed by the provisions of the Sixth Schedule.**

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may, make any changes in the Scheduled Areas after consultation with the Governor of a State. The Parliament has been empowered to make any amendment in the Schedule. However, any such law making amendment in the Schedule of the Scheduled Areas shall not be deemed to be an amendment of the Constitution for the purpose of Article 368.

Since independence the President has issued two orders namely, (i) The Scheduled Areas (Part-A States) Order, 1950 and (ii) The Scheduled Areas (Part-B States) Order 1950, (as amended). These orders declared certain tribal areas as Scheduled Areas in the states of Andhra Pradesh, Bihar, Gujarat, Madhya Pradesh, Maharashtra, Orissa, Rajasthan and Himachal Pradesh.

### **The Main Features of the Scheduled Areas**

- (a) Special Legislative Powers of the Governor.
- (b) Governor's Report to the President
- (c) Tribes Advisory Council.

#### **(a) Special Legislative Powers of the Governor**

The Governor of a State having Scheduled Areas has been vested with special powers of legislation in two ways:

- (i) Legislation by notification,
- (ii) Legislation by regulation.

#### **(b) Governor's Report**

The Union Government has been made responsible for providing guidance for the administration of the Scheduled Areas. Para 3 of the Fifth Schedule lays down mechanism of keeping the Union Government informed of the situation in tribal areas<sup>33</sup>.

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<sup>33</sup> **It provided that the Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State.**

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**(c) Tribes Advisory Council**

The Excluded and Partially Excluded Areas Sub-Committee of the Advisory Committee of the Constituent Assembly which had gone into the tribal situation had recommended the setting up of Tribes Advisory Councils to keep the State Governments in their respective States constantly in touch with the needs of the aboriginal tracts and to exercise special supervisory functions over the working of development schemes. The recommendations of the Sub-Committees have been suitably incorporated in the Fifth Schedule of the Constitution. Clause 4 of the Fifth Schedule of the Constitution provided for Tribes Advisory Council<sup>34</sup> in each State having Scheduled Areas. Besides, if the President so directs, it may also be established in States which do not have Scheduled Areas.

**Tribal Areas**

The Sixth Schedule applies to Tribal Areas within the states of Assam, Meghalaya, Mizoram and Tripura<sup>35</sup>. The Tribal Areas have been defined under the Sixth Schedule and cover those areas only which are specified in that Schedule. The Parliament, may, by law make changes in the areas included in this Schedule.

**Main Features of the Tribal Areas**

- (1) Tribal Areas enjoy full autonomy in respect of matters falling within their jurisdiction. These areas may be called States within a State.
- (2) It provided to the tribals power of self-management through autonomous districts and autonomous regions.
- (3) The writ of the Parliament or the State Legislature does not run automatically unless the Acts in whole or part are specifically extended to the Tribal Areas by Notification of the Governor.

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<sup>34</sup> **The Councils have been established in all the 8 states of Andhra Pradesh, Bihar, Madhya Pradesh, Maharashtra, Gujarat, Himachal Pradesh, Rajasthan and Orissa which have Scheduled Areas. In addition, Tribes Advisory Councils have also been established in two states which do not have Scheduled Areas, namely, Tamil Nadu and West Bengal.**

<sup>35</sup> **The provisions of the Sixth Schedule have been extended to Tripura since July, 1986 by Parliament.**

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### Statutory and Policy Framework

Initially, resettlement was undertaken on a case-by-case basis. To mention a few, there were projects like the Nagarjunasagar, Hirakund, Tungabhadra and Mayurakshi dams; the Rourkela, Bhilai and Bokaro steel plants, several defence establishments, coal mines, etc, which offered resettlement in the form of house sites to the displaced. Only National Thermal Power Corporation (NTPC), and Coal India Limited (CIL), two Government undertakings have formulated an R and R policy and constituted R and R departments to administer it. In addition, resettlement colonies have been demarcated near all their project sites to resettle the displaced<sup>36</sup>. As a result of this ad hoc approach many of the displaced were left out of the process and even though there is an absence of accurate national database studies on displacement a study for 1951-1995 completed in six States and other research show that their real number 1947-2000 is probably around 60 million<sup>37</sup>. On the other hand Maharashtra was the first state to institute a rehabilitation law in response to the demands of the DPs of a large number of dams constructed during the first 5 year plan and also established the Rehabilitation Directorate at Sachivalaya (Secretariat) to implement its policy. In Orissa, the Department of Water resources came up with a comprehensive policy on resettlement and rehabilitation - *the Orissa Resettlement and Rehabilitation of Project Affected Persons Policy, 1994* which was promulgated on August 27, 1994. At the national level, in 1980 the Government of India issued an order<sup>38</sup> to all the State Governments that unless satisfactory safeguards are provided for protecting the interests of the oustees, particularly the weaker sections, the Government might not approve the project since rehabilitation issues could hold up the progress of the project and result in excessive cost escalation. Even though the order only reflects the concerns with regard to completion of the projects, it implied that a little more attention should have been paid to the problems of the DPs. Around the 1980's World Bank issued its first R&R policy, which became operational in 1990s. With the liberalization of Indian economy, World Bank, states like Odisha (1994), Karnataka (1994), Rajasthan (1997) and agencies like National Thermal Power Corporation (NTPC) (1993), and Coal India Limited (CIL) (1994) including the Govt. of India, Ministry of Water Resources 1994, Ministry of Rural Development (1993 and 1994) etc, all came up with their policy statements on resettlement and rehabilitation.

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<sup>36</sup> Mohammed Asif, June 2000 - 'Why Displaced Persons Reject Project Resettlement Colonies', in *Economic and Political Weekly*, Issue June 10 2000, pp 2005-2008.

<sup>37</sup> Fernandes, Walter. 2004. "Rehabilitation Policy for the Displaced," *Economic and Political Weekly*, 39 (No. 12, March 20-26), pp. 1191-1193.

<sup>38</sup> No. 27/ (9)/30-P.I. dt 19.05.198.

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A turning Point in the history of legislation concerning indigenous peoples was the passing of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006<sup>39</sup>. The Act has been extended to the plight of tens of thousands of forest dwellers who have been displaced by development projects or other causes, without adequate rehabilitation<sup>40</sup>. The right to be given land has also justifiably been granted to those displaced by land acquisition without being given land compensation, and where the acquired land has not been used for its stated purpose for over 5 years<sup>41</sup>. On 1<sup>st</sup> January 2008, the Government of India notified that the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Rules 2007. Hence the Act of 2006 has been enforced giving tribals and forest dwellers rights over land and forest produce. This law was an attempt to arrest “historical injustice” through the acknowledgment of tenurial rights of tribals and other forest-dwelling communities. It was the result of strenuous political advocacy involving a range of social and political actors, and it is still contentious. However the tribal rights activists see this as an effort to arbitrarily sabotage the rights of indigenous peoples and remove them from forest areas<sup>42</sup>. The arguments over the 2006 Act include probing questions about the pragmatism of removing centuries of injustice with one sweeping law and about the government’s failure to follow up with procedures and safeguards needed to put the law’s directives into practice. It hardly empowers the tribal population at large. It is reasonable to question whether tribal communities can enforce and manage their legal rights to land while continuing to be marginalized in a macro-socioeconomic context. Apart from that, the Draft National Tribal Policy of 2006 acknowledges that there has been “no single policy which looks at the issue of protection and development of Scheduled Tribes in an integrated and holistic manner.”

Also the fact remains that despite the severity and scale of the trauma of displacement, India is yet to formulate a national rehabilitation policy. The only legislation pertaining to land acquisition currently in place is the Land Acquisition Act, 1894 which, though amended several times<sup>43</sup> retains its colonial flavour by granting unfettered powers to the Government. In this connection the Apex Court of our country remarked:

“The Act, which was enacted more than 116 years ago for facilitating the acquisition of land and other immovable properties for construction of roads, canals, railways etc., has been frequently

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<sup>39</sup> It was passed by the Parliament on 18<sup>th</sup> December, 2006.

<sup>40</sup> Section 3(1) (m).

<sup>41</sup> Section 4 (10).

<sup>42</sup> Anon (2007), Government Notify Forest Rights Act, Infochange Environment, [infochangeindia.org](http://infochangeindia.org).

<sup>43</sup> Amendments made in 1967 and 1984.

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used in the post independence era for different public purposes like laying of roads, construction of bridges, dams and buildings of various public establishments / institutions, planned development of urban areas, providing of houses to different sections of the society and for developing residential colonies/sectors. However, in the recent years, the country has witnessed a new phenomenon. Large tracts of land have been acquired in rural parts of the country in the name of development and transferred to private entrepreneurs, who have utilized the same for construction of multi-storied complexes, commercial centers and for setting up industrial units. Similarly, large scale acquisitions have been made on behalf of the companies by invoking the provisions contained in Part VII of the Act. The resultant effect of these acquisitions is that the land owners, who were doing agricultural operations and other ancillary activities in rural areas, have been deprived of the only source of their livelihood. Majority of them do not have any idea about their constitutional and legal rights, which can be enforced by availing the constitutional remedies under Articles 32 and 226 of the Constitution. They reconcile with deprivation of land by accepting the amount of compensation offered by the Government and by thinking that it is their fate and destiny determined by God<sup>44</sup>."

In view of the above judicial observations the need of the hour is to test it against the needs of the society of a democratic India of today. Of course in India, different cases find independent solutions<sup>45</sup>, but the underlying problems remain with the existing laws regarding land acquisition and rehabilitation policy. The grave consequences of development induced displacements at the very least require legislations and policies that address not only the issue of compensation, but also the larger issues of resettlement, rehabilitation and participation in negotiation, which can mitigate the darker side of land acquisition for development. More specifically Land Acquisition and Rehabilitation & Resettlement (R&R) need to be seen necessarily as two sides of the same coin. Keeping in view the absence of a comprehensive national law to provide for the resettlement, rehabilitation and compensation for loss of livelihoods, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has been passed by the Indian Parliament in order to regulate land acquisition and to lay down rules for granting compensation, rehabilitation and resettlement to the affected persons in India. The Act has provisions to provide fair compensation to those whose land is taken away, brings transparency to the process of acquisition of land to set up

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<sup>44</sup> 2011 (4) SCALE 677 at paras 17 and 18.

<sup>45</sup> Mostly in the Courts of law through Public Interest Litigation.

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factories or buildings, infrastructural projects and assures rehabilitation of those affected. The Act establishes regulations for land acquisition as a part of India's massive industrialisation drive driven by public-private partnership. The Act replaced the Land Acquisition Act, 1894, a nearly 120-year-old law enacted during British rule. It is the central legislation in India for the rehabilitation and resettlement of families affected by land acquisitions. But still there is a doubt about its efficacy as it is also not free from loopholes.

### **CONCLUDING OBSERVATIONS**

The above discussion reveals that the State, whose prime duty is the protection and welfare of the citizens, is now using sovereign powers to separate indigenous peoples from their livelihood in the name of development. Surely it amounts to violation of the constitutional right to life. Displacement reduces employment opportunities for the indigenous population and causes impoverishment, thus denying them their right to employment, work and livelihood. It has increased the dropout rates and caused a great loss to children of the displaced tribals and denied their basic right to education and literacy. The comments given by the Parliamentary Standing Committee on the Welfare of Scheduled Castes and Scheduled Tribes gravely testify the fact that the tribal welfare laws such as the PESA 1996, the Forest Rights Act 2006 or even the Fifth Schedule of the Constitution have utterly failed to provide protection to the indigenous tribal communities of India. The effects of displacement spill over to generations in many ways, such as loss of traditional means of employment, change of environment, disrupted community life and relationships, marginalization, a profound psychological trauma and more. Therefore the State has a responsibility to find out the ways for non-displacing and least displacing alternatives. Another aspect is that those who pay the price for such development have a right to a better living condition after the project than before it and have to get its benefits. The essential problem with rehabilitation and resettlement in India is lack of political will. For resettlement to lead to rehabilitation, it has first to prevent impoverishment. That is the main reason for the insistence on minimising displacement and for stating that those who pay the price should be the first beneficiaries of the project. There are many implicit suggestions in this paper. However the following are some of the specific suggestions in the above context:

1. A comprehensive legislation need to be enacted laying down basic obligations of the Government towards the rehabilitation and resettlement of tribals affected by the development projects.

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2. A relevant method for determining monetary compensation which accounts for the potentiality of the price-rise should be adopted.
  3. It is necessary to make a Compulsory Social Impact Assessment of the development projects in order to ensure the subsequent problems of loss of employment, social surroundings and psychological trauma.
  4. To foster the political will at the domestic level, a stronger and effective international dialogue on Development-induced Displacement should be taken place considering such displacement as a violation of Human Right of indigenous peoples.
  5. Necessary programs should be designed and implemented to promote economic opportunities to enable the displaced persons to earn an income.
  6. Steps be taken to support access to education for displaced children, including their enrolment in local schools.

By way of conclusion it can be stated that the conferences and seminars should also be organized in India in regular intervals as a means of informing and sensitizing humanitarian and human rights organizations regarding the situation of forcibly displaced indigenous communities.

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