

Displacement, Rehabilitation and Human Rights Regarding Scheduled castes & Scheduled Tribes in India



Social Science

KEYWORDS :

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Displacement in this modern era is nothing but forced migration of schedule tribes and schedule castes who are below poverty line. Forced migration (also called deracination - originally a French word meaning uprooting) refers to the coerced movement of a person or persons away from their home or home region. It often connotes violent coercion, and is used interchangeably with the terms "displacement" or forced displacement. A specific form of forced migration is population transfer, which is a coherent policy to move unwanted persons, perhaps as an attempt at "ethnic cleansing". Someone who has experienced forced migration is a "forced migrant" or "displaced person". Less formally such a person may be referred to as a refugee, although that term has a specific narrower legal definition. The International Organization for Migration defines forced migration as any person who migrates to "escape persecution, conflict, repression, natural and human-made disasters, ecological degradation, or other situations that endanger their lives, freedom or livelihood." Forced migration has accompanied persecution, as well as war, throughout human history but has only become a topic of serious study and discussion relatively recently. This increased attention is the result of greater ease of travel, allowing displaced persons to flee to nations far removed from their homes, the creation of an international legal structure of human rights, and the realizations that the destabilizing effects of forced migration, especially in parts of Africa, the Middle East, south and central Asia, ripple out well beyond the immediate region. Development-induced displacement is a subset of forced migration. Such displacement is the forcing of communities and individuals out of their homes, often also their homelands, for the purposes of economic development. 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. The most well-known examples of development-induced displacement is a result of the construction of the Three Gorges Dam in China, and also the previous German expulsions. In India Government even though rehabilitated but majority of members suffered a lot.

Rehabilitation is nothing but Restoration of an entity to its normal or near-normal functional capabilities after the occurrence of a disabling event. The present study is based on secondary data. The paper focus its light on SC&ST regarding displacement and Rehabilitation in India. The objectives of the study are following.

OBJECTIVES:

- To bring out the rights of SC&ST regarding displacement and rehabilitation,
- To create awareness among the down trodden people about law and human rights,
- To explain in detail about the displacement cases.

Discussion:

Displacement is a multi-dimensional trauma, with far-reaching impacts, which cannot easily be compensated. Unless the nature and magnitude of displacement in all its dimensions are fully analyzed and appropriate safety nets put in place, well in advance of the implementation of the project itself, it will lead to discontent. The track record of the Government in this regard has so far been dismal and those likely to be displaced are rightly apprehensive about their future. It is important, therefore, that in the case of all major projects, including SEZs, socioeconomic impact appraisals are carried out by independent expert institutions so that, before the project is implemented, effective steps are taken to upgrade the skills of the members of the families

likely to be affected, so as to ensure that they are in a position to take full advantage of the livelihood opportunities provided by the project. Such a step will minimize the trauma of displacement. Dr. Walter Fernandes, peg this figure at around 60 million for the period from 1947 to 2004, involving 25 million ha. which includes 7 million ha. of forest and 6 million ha. of other Common Property Resources (CPR). Whereas the tribals constitute 8.08% of country's population, they are 40% of the total displaced/affected persons by the projects. Similarly at least 20% of the displaced /affected are Dalits and another 20% are OBCs. The resettlement record is also very dismal. Only a third of the displaced persons of planned development have been resettled. 1.12.4 As tribal areas are also rich in mineral resources, the mining projects proposed such as in Orissa, Jharkhana and Chhattisgarh threaten the very existence of tribal people. Protest action becomes an inevitable consequence of displacement, such as in Kalinganagar and in Kashipur people's movement against Utkal Alumina Rayagada district, Orissa.

For example, the tribals in the scheduled areas enjoy presumptive right of ownership of the land and minerals (Refer SC judgment in CA Nos. 4601-02 of 1997 on SLP Nos. 17080-81 in Samata vs State of Andhra Pradesh and others). Also, the Fifth Schedule requires the Government to review any law before it can be extended to the notified areas, so as to ensure that such a law is appropriately adapted to safeguard the interests of the tribals. In view of this, as far as the notified areas are concerned, projects that cause displacement need to be avoided. Even if the setting up of a project becomes inevitable strictly on the ground of public interest, as laid down by the Hon'ble Supreme Court in the Samata judgment, it should be on the basis of the prior consent given by the Gram Sabhas and through involvement of the tribals as owners of the projects. The Government should evolve suitable mechanisms to ensure this. A policy guiding the Rehabilitation and Resettlement (R&R) should ensure that none of the displaced be worse off after the project. They should in fact be better off after it because they are paying its price. The National Rehabilitation and Resettlement Policy, 2007 is a significant departure from the earlier policies in this direction. First of all, it aims at minimizing large scale displacement as far as possible, by stipulating the acquiring of the minimum possible areas of land and that too of wasteland, degraded land or un-irrigated land. Where large numbers of families are affected (400 in plain area or 200 in tribal/hilly area, DDP blocks or area mentioned in Scheduled V or VI) Social Impact Assessment (SIA) has been made mandatory. The SIA will ensure that impact on Project Affected Families be assessed in a holistic, participatory and transparent manner. More particularly, where ST people are displaced in sizeable numbers, a well thought out Tribal Development Plan must be put in place. Preference in allotment of Land for Land in command areas and Fishing Rights in water bodies is another important feature of the new policy. The specification of clear time frames for implementation of rehabilitation package as well as for utilization of land along with an effective monitoring and grievances redressal mechanism, are the other significant inclusions in the new policy.

The displaced / affected persons should be actively involved in the decision regarding the selection of a particular land. This requires their prior informed consent based on proper information, given in a language and manner they can understand. The Standing Committee on Inter Sectoral Issues has strongly recommended the protection of tribal domain whenever Government transfers land from a tribal to non-tribal. Cultivable Land for Land based R&R with suitable safeguards be ensured for all SCs / STs and other BPL families and provisions to bring it to

cultivation be made mandatory and not “preferential”.

Case Examples:

Pavement dwellers and public interest organizations claims eviction of pavement dwellers would violate right to life under the Constitution by depriving them of their livelihood; right to life includes protection of means of livelihood; obligations to provide natural justice before eviction but no automatic right to resettlement under Indian constitutional law.

Summary:

In 1981, the State of Maharashtra and the Bombay Municipal Council decided to evict all pavement and slum dwellers from the city of Bombay. The residents claimed such action would violate the right to life, since a home in the city allowed them to attain a livelihood and demanded that adequate resettlement be provided if the evictions proceeded. The Court declined to provide the remedies requested by the applicants but found that the right to a hearing had been violated at the time of the planned eviction. The Court held that the right to life, in Article 21 of the Constitution, encompassed means of livelihood since, “if there is an obligation upon the State to secure to citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life.” However, the right to a livelihood was not absolute and deprivation of the right to livelihood could occur if there was a just and fair procedure undertaken according to law. The government’s action must be reasonable and any person affected must be afforded an opportunity of being heard as to why that action should not be taken. In the present case, the Court found that the residents had been rendered the opportunity of being heard by virtue of the Supreme Court proceedings. While the residents were clearly not intending to trespass, they found it was reasonable for the government to evict those living on public pavements, footpaths and public roads. The evictions were to be delayed until one month after the monsoon season (31 October 1985). The Court declined to hold that evicted dwellers had a right to an alternative site but instead made orders that: (i) sites should be provided to residents presented with census cards in 1976; (ii) slums in existence for 20 years or more were not to be removed unless land was required for public purposes and, in that case, alternative sites must be provided; (iii) high priority should be given to resettlement.

Enforcement of the decision and other outcomes:

The pavement dwellers were evicted without resettlement.

Since 1985, the principles in this case have been affirmed in many subsequent decisions, frequently leading to large-scale evictions without resettlement. For example, in the Narmada dam cases, adequate resettlement was ordered but most affected evictees have not been properly resettled and the majority of the Court declined to examine the extent to which their judgment was enforced in *Narmada Bachao Andolan v. Union of India* (2000) 10 SCC 664.

Significance of the case:

Olga Tellis has stated: “Ironically, [the case] helped the property-tied classes; Lawyers often cite the case to justify eviction of tenants and slum dwellers. But it also helps, the slum dwellers; the Government can’t evict them summarily. The case also spawned a lot of interest in fighting for housing as a fundamental right... but if you were a pavement dweller, it is just not enough.” This case is widely quoted as exemplifying the use of civil and political rights to advance social rights but it is also viewed as problematic due to its failure to provide for the right to resettlement. It is also inconsistent with developments in other jurisdictions, where courts have found stronger rights to resettlement.

RECOMMENDATIONS:

National Commission for Human rights and some voluntary organization fight towards SC/STs rehabilitation and displacement. The Government of India have initiated action on the various recommendations relating to their housing shelters, and also improvement in the working conditions of scavengers, leather workers and others engaged in similar unclean occupations to rehabilitate them in alternative gainful occupations. Regarding SC&STs The Government have enacted a legislation known as the National Commission for Safai Karmcharis Act, 1993 which was notified in the official Gazette on 4-9-93 but the Commission had not been constituted till the end of July 1994. The schemes for rehabilitation of scavengers in other gainful Governments through the Scheduled Castes and Scheduled Tribes Finance & Development Corporations. Articles 14, 15 and 16 of Indian Constitution provide the framework for a harmonious conjuncture of equality as citizens and compensatory discrimination and affirmative action in favour of SCs/STs and the other backward sections in certain areas. The Directive Principles cast an obligation on the State to promote the educational and economic interests of these sections, and social and economic justice and equality. These mandates have been translated into specific policy. They should give Justice to article 21 Right to Life then only SC/STs lives becomes green.

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