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Rehabilitation and Resettlement of Oustees -
A Study of National Policies Perspectives

3.1 Prelude

The decade of 1980 has been called by some as the decade of displacement. After independence the governments in India assumed the responsibility for economic growth and national progress through adoption of the dominant development policy. The development policy legitimized displacement and dispossession of the resources and labour and in fact, the very, basic means of human existence of deprived sections of society. The dispossessing of vast number of peoples from their land in the name of development is a phenomenon that has accelerated rapidly since the last few years. The activists are talking about adverse consequences of forced displacement on human rights of affected populations. The inadequate rehabilitation and resettlement of displaced has further aggravated the problems of displaced. The government authorities are advocating development and long-term benefits of the large projects but at the same time have turned their back towards the rehabilitation and resettlement of displaced people. Delayed and inadequate rehabilitation and resettlement of oustees amounts violation of human rights. It can be said that human rights versus development, the utility or futility of projects per se are

arguments which will be mulled over for a long time. It seems that the present issues of rehabilitation and resettlement have gained importance because of increasing importance of human rights in India. Involuntary and delayed resettlement and rehabilitation of displaced persons deprives them from their various basic rights such as right to liberty, right to livelihood, right to rehabilitation, right to shelter, right to food, right of self-determination and right to freedom etc. Moreover, resettlement and rehabilitation of oustees have consequently gained importance in development literature due to a worldwide concern over the adverse environmental and social costs of large infrastructure projects and the well organized and well publicized resistance movements in many Countries including India against involuntary resettlement. Development projects will be taken up in the name of social good and for so called public purpose. The villages, towns and cities will be destructed on submergence. The people will be displaced and shifted into poorly constructed resettlement sites, losing their homes and livelihoods. Under such circumstances rehabilitation and resettlement of project affected people becomes prime responsibilities of governments and project authorities. Therefore, rehabilitation and resettlement of the oustees being sensitive issues require special strategies, plans and emphasis on time bound resettlement by the governments. Only, then trauma of involuntary displacement can be mitigated or minimized.

4 See, for example, Dams on Yangtze River in China which invited debate and resistance movements led by Premier Wen Jiabao and The Regional Commission against Large Dams in Brazil etc.
5 For example, Narmada Bachao Andolan in India. The Narmada Bachao Andolan, is signifying protests by the displaced people against inadequate compensation and the backlog of rehabilitation in the case of the Sardar Sarovar Project. It constitutes one of the glaring examples in a long history of public resistance against government sponsored development projects. For details, see, V. Venkatesan, "The Debate on Big Dams," 2 February Frontline 73-74 (2001); R. Padmanabhan, "A Fascist Turn: Violence against Anti-Dam Movement," 22 April Frontline 125-127 (1994). Similarly Polavaram Dam in Andra Pradesh has led to a substantial number of protests launched by several people's organizations in recent years over concerns about large scale displacement of the tribal population. See, D. J. Narendra Bondia and N. Sudhakar Rao, "Resistance against Polvaram," 7 August Economic and Political Weekly 93-95(2010).
It is easy task to frame and draft policies on rehabilitation and resettlement but it is difficult, if not impossible, to mitigate the consequences of involuntary resettlement. It requires soft humanistic approach on the part of those who are executing the existing policies in practice. Addressing and protecting the rights of the oustees depends on the availability of legal and institutional mechanisms, respectively. Under such circumstances what is significant to examine is whether the existing framework of National Policy on Rehabilitation and Resettlement is sufficient to address the concerns of displaced persons or oustees. How far are the policies being implemented by the authorities? Are displaced persons being adequately rehabilitated and resettled?

In India, at the national level, there is a National Rehabilitation and Resettlement Policy, 2007 for dealing with the issues of rehabilitation and resettlement. Many State governments have their own rehabilitation and resettlement laws and policies. Many Public Sector Undertakings and developmental agencies also have laid down their own R & R policies. This Chapter attempts to throw light on various aspects associated with displacement, rehabilitation and resettlement such as contents of forced displacement, consequences of displacement which necessitates rehabilitation and resettlement, meaning and types of the terms rehabilitation and resettlement, the history of R&R policies in India, the provisions of the earlier National Rehabilitation and Resettlement Policy 2003, the provisions of the existing National Policy on Rehabilitation and Resettlement, 2007 and to what extent the newly drafted R&R Policy, 2007 has succeeded to fill gaps of old policy and to address the human rights of the project affected people all over the country. The study would also help to know that to what extent the new R & R Policy 2007 is addressing the

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6 For examples, Resettlement Policies of the Government of Orissa, Rehabilitation and Resettlement Schemes of Government of Himachal Pradesh for oustees of Hydro-Electric Power Projects, Laws on Resettlement of three States namely Madhaya Prasesh, Maharashtra and Karnataka etc. are worthy to mention in this context.

7 National Thermal Power Corporation (NTPC) a Public Undertaking has its own Resettlement and Rehabilitation Policy, Coal India Limited (CIL) and National Hydro-Electric Power Corporation (NHPC) has laid down their own R&R policies.

8 For example, major International development agencies such as World Bank and Asian Development Bank have their own resettlement policies and applicable if particular project is funded by these developmental agencies.
right implications of development induced displacement. Similarly the aim of present study is to know whether the new policy is in line with various international human rights laws relevant in context of development induced displacement.

It is worthy to mention here that the present study taken up by the researcher also covers the study about the people who got adversely affected by Kol Dam Hydro Electric Power Project in State of Himachal Pradesh. The construction of dam is under progress and in order to rehabilitate and resettle the Kol dam oustees, the Government of Himachal Pradesh and National Thermal Power Corporation (government Public Undertaking) has also drafted a scheme. It may be relevant to compare the R& R Scheme of government of Himachal Pradesh with National Policy, 2007 to know which policy is comprehensive and detailed. Therefore, the last part of this chapter is dedicated to a comparative assessment of both the policies.

3.2 Content of Forced Displacement

Displacement is the obvious fallout of development projects that necessitates proper and meaningful resettlement of affected persons. Forced population displacement caused by development projects is usually defined as occurring when people lose, through expropriation, either their house, or their land or both simultaneously in order to allow a project to proceed for the overall social good. In real life this is not just an expropriation, a simple transfer of property in exchange of compensation but more than this. In sociological terms, it is a process of unraveling the existing patterns of social organization and functioning of on going production systems and settlement units. Forced displacement always creates a social crisis, and sometimes a political, as well. Displacement may be either physical or economic. Physical displacement is the actual

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physical relocation of people resulting in a loss of shelter, productive assets and access to productive assets (such as land, water, and forests\textsuperscript{12}). Economic displacement results from an action that interrupts or eliminates access to productive assets without physical relocation of the people themselves\textsuperscript{13}. Displacement may be total or partial. Total displacement occurs when, in addition to the loss of livelihood, there is a loss of home and earth, otherwise displacement is termed partial\textsuperscript{14}.

In a narrow sense, displacement implies relocation of affected persons to a place away from their places of residence. However, displacement need not necessarily involve relocation. When the impact results in significant loss of income sources or means of livelihoods, whether or not the affected persons must move to another place, is also displacement\textsuperscript{15}. The Land Acquisition Act, 1894 displaces people. Whatever may be the type of displacement, but one thing can not be denied that displaced population is subject to deprivation of several human and fundamental rights. Displacement has severe adverse consequences which are multi-dimensional in nature.

3.2.1 Consequences of Development induced Displacement

Development processes, be they spontaneous or induced, do not bring just benefits to all. It changes the status quo and such change usually entails social disruptions and undesirable consequences for some population segments\textsuperscript{16}. The experience of the post-independence period from projects, across the country suggests that the long drawn out process of displacement has caused widespread traumatic psychological and sociocultural consequences\textsuperscript{17}. These include the dismantling of production systems, desecration of ancestral sacred zones or graves and temples, scattering of kinship groups and family, disorganization of informal social networks that provide mutual support, weakening of self-management and

\textsuperscript{12} See, supra note 9.
\textsuperscript{13} Ibid.
\textsuperscript{14} B.K. Sinha, supra note 10
\textsuperscript{15} Hari Mohan Mathur, supra note 9.
\textsuperscript{16} See, supra note 11 at 1515.
\textsuperscript{17} Smitu Kothari, "Whose Nation: The Displaced as Victims of Development," 15 June Economic and Political Weekly 1477(1996)
Michael M. Cernea, a sociologist, who has done research on development induced displacement and resettlement for the World Bank, has identified eight dimensions of impoverishment risk induced by displacement. They are landlessness, joblessness, homelessness, marginalization, food insecurity, increased morbidity and mortality, loss of access to common property resources and social disarticulation. Displaced were forced to replace the socio-cultural fabric and eco systems which had given meaning to their lives for thousands of years by alien places, and were reduced to nomads or misfits. For the displaced, this constituted a cultural ethnocide. Development induced displacement affects all persons but vulnerable sections are the worst sufferers of development projects.

3.2.2 Victims of Development induced Displacement

Displacement does not usually seem to be discriminatory. It affects all. However, the magnitude of the impacts of displacement on vulnerable groups (such as weaker sections, women, and children, older persons, disabled, Scheduled Caste, Scheduled Tribes and so on) is enormous. Vulnerable groups in the society are more acutely affected. Project affected people are usually from the less powerful, and the economically more marginalized sections of a society. Despite Constitutional mandates and an emphasis on favoring the downtrodden section of the society, the primary beneficiaries of the development process violate the interests of weaker groups and individuals. Development projects which displace people from their own habitat have benefits only the powerful, the high castes and the urban population. These categories enjoy project benefits like irrigation, employment, electricity, and other infrastructural gains and are unable to understand the sufferings and the marginalization of the

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18 Ibid.
20 For details see chapter II
21 William Stanley, supra note 1.
displaced population\textsuperscript{23}. On the other hand, vulnerable groups are the people who by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage, or social status may be more adversely affected and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits\textsuperscript{24}. Development induced displacement violates the rights of vulnerable sections. A classic story of human rights violation and injustice is the experience of the \textit{Dongaria Kondhas} with Vedanta, a British mining company. Vedanta Alumina, a subsidiary of Sterlite Industries, signed an agreement with the Orissa Government in October 2004 to mine bauxite in the Niyamgiri hills\textsuperscript{25}. This project trampled on the rights of the forest dwellers in the region as well as threatening them with arrest. Similarly, displacement has an adverse impact on women as it results into loss of access to common property resources, which support subsistence livelihoods and provide greater security against risk of poverty to women. They have no control over the cash compensation that is paid to the man of the family. Participation, consultation and representation- the three fundamental processes that are instrumental in the institution of rights- are gendered based processes\textsuperscript{26}. In context of development projects, a discussion on rights should include all communities that benefit or suffer losses. In addition to women, the constituents of the community include children, minorities and others\textsuperscript{27}. Children constitute the majority of those whose health and nutrition have been negatively impacted due to displacement. Under nutrition, among children is one of the most significant fallouts of displacement\textsuperscript{28}. Therefore, in many ways the problems of women, children, older persons, disabled, indigenous peoples, encroachers and squatters, and other such groups are different and they need special attention in the planning and implementation of

\textsuperscript{23} See, \textit{supra} note 1 at 1535.
\textsuperscript{24} Hari Mohan Mathur, \textit{supra} note 9 at 51.
\textsuperscript{27} \textit{Ibid}.
rehabilitation and resettlement plans. In respect of vulnerable groups the appropriate authority shall take special measures to protect their rights. Unfortunately, in India the situation of vulnerable is worse off. Individual studies\(^\text{29}\) are indicative that young girls and stigmatized women such as unmarried, divorced, separated, widowed women, tribal women, Scheduled castes and Scheduled tribes, are the worst victims of development induced displacement.

3.3 Rehabilitation vs. Resettlement: An Analysis of the terms

Most policies are called Rehabilitation and Resettlement (in short (R&R) as though they were one and the same. In reality they are two different processes\(^\text{30}\). The most contentious aspect of resettlement policy concerns the question as to what constitutes adequate and appropriate resettlement and rehabilitation, and also the very important related issue of who is to judge such adequacy and appropriateness of a resettlement package\(^\text{31}\). What constitutes adequate and appropriate resettlement and rehabilitation of displaced persons, has been a subject of considerable debate. Before discussing the existing R&R policies, it would be desirable here to analysis the meaning of the terms rehabilitation and resettlement.

3.3.1 Meaning and Types of Rehabilitation

In the past, rehabilitation was meant simply the payment of cash in lieu of lands and other properties acquired for project purposes\(^\text{32}\). The Land Acquisition Act, 1894 provides only for payment of cash compensation. The Act makes a provision to pay compensation to those who are the owners of the land. It does not consider landless, unrecorded tenants and agricultural labours for compensatory entitlements. Thus,

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under the LA Act, the legal obligations of the project authorities do not go beyond monetary compensation to a narrowly defined category of project affected persons. The underlying rationale is that the displaced should be able to rehabilitate themselves with the money given as compensation. In other words, the interpretation of resettlement and rehabilitation stops at monetary compensation for land. But rehabilitation is a term of wide connotation. According to the Oxford English Dictionary it means: ‘to restore to former privileges or reputation or to proper condition’. Rehabilitation refers to the process of reconstruction of the livelihood of displaced persons. It may be defined as a long-run trend towards ecological restoration and a restorative attempt to recover the features of a natural state. It includes various measures and strategies to make the resettlement site ecologically sustainable. Rehabilitation is a long process that involves replacing or rebuilding the economic resources, cultural systems, social structures, and community support mechanisms that the displaced persons lose to the project. Thus, rehabilitation is a mode of re-establishing the lost livelihood of displaced persons. It has to deal with the problems that begin as soon as a decision about the project is taken and continues for several years after resettlement. The following are the common types of rehabilitation.

- **Cash Based Rehabilitation**

  A person whose land or other means of livelihood are destroyed in the process of displacement is entitled to get cash compensation. This means that land, natural resources, means of livelihood, social and cultural loss resulting from displacement have to be quantified and compensated in monetary terms. The compensation for land, house, public buildings, trees, standing crops, irrigation channels, tanks, bunds, fences, etc, should be provided as per the Land Acquisition Act, 1894 in operation at the time of

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33 See, *supra* note 31 at 1462.
37 Walter Fernades, *supra* note 30.
38 Ibid.
acquisition. It should be based on the current market value of land of equivalent size and location or in other words the replacement value. This amounts cash based rehabilitation. Some of the displaced persons may be willing to sell their land provided the compensation rates are just. However, it cannot be denied that displacement and ousting the people from their native places and from their known indigenous occupation is the huge social cost of projects which can never be properly compensated. In practice, cash compensation as an income restoration measure often fails to benefit the affected people for a variety of reasons. Individuals’ studies are indicative that in most of the cases the land owners complain that their land is acquired without consent and that the rates of compensation are much lower than the market rates. Nevertheless, cash based rehabilitation is commonly used practice in all most all existing laws and policies.

- **Land Based Rehabilitation**

Land for land can be the best alternative to restore the lost livelihood of project affected people. Land is a lifeline and inheritable livelihood producing asset and therefore, not comparable to the inadequate one time cash payment that is made for it. A widely held assumption, that cash compensation by itself often fails to result in acquisition of productive assets or income restoration, accounts for the popularity of land based remedies. As part of this policy the lost land is replaced with new land at some other place. Alternative land is seen as the means of ensuring that resettlement is sustainable, given the unique characteristics of land as an asset, as a factor of production, as a commodity, and as a basis for

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40 For example, one reason for its failure is that it ignores the rehabilitation needs of large number of people whose livelihoods are not connected with land-ownership, but who also lose from project activities (laborers, craftsmen, small shopkeepers. Secondly, even those who receive compensation are rarely able to get back to the kind of living that they lost. With the compensation amount usually the affected people are not in position to buy replacement assets or means of generating income on a sustainable basis. For details see, Ritu Dewan, supra note 28.


42 Hari Mohan Mathur, supra note 32 at 41.
community living. For affected families from rural areas, this is the best rehabilitation option. By ensuring continuity with the past occupation this goes a long way in cushioning the disruptive impact of the move. Land has also been the most important source of earning livelihoods especially for the vulnerable such as tribals/indigenous population. Activists argue that since most of the tribals are engaged in primary activities, their sole skill is agriculture. Land and forest produce remain their main source of earning livelihood and therefore they respect agriculture land. The best rehabilitation plans includes provision for land in lieu of land taken. Every project affected persons should be provided land for a sustainable livelihood. Where persons are given land for land, it amounts land based rehabilitation. However, the issue of the provision of land for land has been contentious aspect of rehabilitation planning. The availability of land is restricted. This has also been subject to controversy in the past. It is argued mainly on the ground that sufficient land is not available. In the absence of suitable land, the rights of various people, in particular rights of tribals got adversely affected.

- Employment Based Rehabilitation

The employment to at least one member of the affected family is a quick and reliable solution to mitigate the sufferings of forced displacement. Providing priority entitlement to jobs in the construction of the new project is a form of giving those displaced immediate access to an opportunity created by the project itself to gain income that can help temporarily substitute for losses of prior means of production. The one job per displaced family is a well known mitigation measure. However, many internationally and domestically financed projects do not exploit this opportunity. Employment based rehabilitation can be helpful to reduce the impacts of forced displacement to a great extent. But it is unfortunate that Project authorities and governments in most of the cases failed to provide jobs to the displaced families in post displacement period.

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43 Sangeeta Goyal, supra note 31 at 1431.
45 B.K. Sinha, supra note 10 at 1458.
• **Socio-Economic and Cultural Based Rehabilitation**

Displacement dismantles the socio-economic fabric and cultural moorings of the displaced. Therefore in order to overcome the socio-economic and cultural disruptions, in rehabilitation plans all these aspects must be accommodated. The adverse impact of displacement has to be mitigated through strong measures for socio-economic and cultural rehabilitation. A cultural rehabilitation plan includes rebuilding of demolished temples, churches and other institutions. Cultural milieu viz. social festivals, religious rites, rites of passage, obligations, demand, presence of priest, and friends should be promoted. Similarly, socio-economic rehabilitation includes grants-in-aid, compensation for the land acquired, financial assistance to weaker sections, free transportation to displaced families to shift to new resettlement sites, financial assistance to shift household’s materials and cattle to new place and adequate jobs opportunities etc. Similarly social rehabilitation is equally important and it should be taken into consideration. During social rehabilitation it is very necessary to give due importance to family, caste, religion, neighborhood and community. Socio-economic based rehabilitation is important to promote the overall well being of the displaced persons.

• **Ecological Rehabilitation**

The conditions and surroundings of the displaced do change at new resettlement sites. The displaced people face different health problems after resettlement owing to the reason of changed ecological conditions. In order to give to the displaced the same feelings of ecological conditions with which they were earlier habituated, the policy should be designed for ecological rehabilitation using ecosystem approach. It includes special right to access to common property resources (in short CPR’s) at new resettlement site. In addition to right to access to common property resources, different plantation programmes like agro-forestry, community forestry, kitchen gardens, agricultural boundary side plantation should be given due emphasis at the rehabilitation sites. In view of the growing environmental awareness it is necessary to make the displaced persons

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47 Afroz Ahmad, *supra* note 36 at 56.
aware so that they can resolve environmental problems and find solutions.

3.3.2 Meaning and Types of Resettlement

Resettlement is one-time physical relocation. It may be defined as the final movement of displaced persons to a new relocation site after getting full compensation for their land and properties. Involuntary resettlement destroys productive assets and disorganizes production systems, and creates a high risk of chronic impoverishment that typically occurs along one or several of the dimensions. Involuntary resettlement consists of two closely related yet distinct processes. These are displacing people and rebuilding or reconstructing their livelihoods. The complexity of involuntary resettlement and the enormous diversity of project situations make achieving good resettlement a formidable task. The stages of resettlement include payment of compensation, acquisition of houses and properties, allotment of land and plots at new sites, free transport for shifting to new site, payment of ex-gratia, rehabilitation grant, subsistence allowance, development assistance, and ration card issued at new R&R site and civic amenities provided at new site. Among all these stages of resettlement, transition stage is the most difficult stage. Transition stage is the stage where the displaced are transferred from the original habitat to the resettlement sites. It means the transition period between actual displacement and resettlement. It is difficult phase, in which, the displaced suffer somewhat more. In the absence of sensitive handling and a supportive atmosphere, the oustees found it difficult to shift to the new site. The resettlement of the displaced persons is usually the most neglected aspect of project management. It is a very sensitive issue that concerns the lives of millions. The following are the common types of resettlement and issues associated with them.

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48 Id., at 57
49 Id., at 52
51 Roli Asthana, supra note 3.
52 See, supra note 36.
53 See, supra note 50 at 1501.
• **Rural Resettlement**

A development project affects all people who have been ousted for its construction. The displacement of people does not make a difference between people residing in rural and urban areas. It affects all, categories of persons. Nevertheless rural population got severely affected due to any development projects if taken in rural areas. Displacement of people in rural areas results in loss of agricultural and ancestral land, loss of earning opportunities, loss of labour work, loss of common property resources such as pasture, natural water bodies, forest produce, fuel wood and fodder for cattle etc. The villagers in rural areas enjoy several customary rights over common property resources. All common property resources support the subsistence of rural population. Their deprivation from these resources amounts violation of common property rights. Therefore, rural resettlement is a big challenge before the project authorities and the government. While selecting sites attention is to be given to availability of sources of off-farm income (fishing, gathering forest produce, seasonal wage employment) to complement farm income. Major challenges associated with rural resettlement include: requirements for restoring income based on land or resources and the need to avoid compromising the social and cultural continuity of affected communities, including those of host communities to which displaced populations may be resettled.

• **Urban Resettlement**

Urban settings rest on housing, employment and enterprises. Displacement of people in urban areas results in both physical and economic displacement affecting all these things. For the urban resettlers, the new site should ensure comparable access to employment, infrastructure, services and productive opportunities. Therefore, a major challenge associated with urban resettlement involves restoration of wage-based or enterprise based livelihoods that are often tied to location (such as proximity to jobs, customers, and markets). Resettlement sites should

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54 See, Afroz Ahmed, 36 at 61.
56 See, supra note 36.
be selected to maintain the proximity of affected people to established source of employment and income and to maintain neighborhood networks. In some cases, the mobility of urban population and the consequent weakening of social safety nets that are characteristic of rural communities require that resettlement planners be especially attentive to the needs of vulnerable groups.

- Site-Specific Resettlement

The selection of resettlement site is a critical factor in relocation planning. Access to land, employment, business, marketing opportunities, credit, and social support systems are all linked to location. Site-specific resettlement is associated with discrete, non-linear projects such as factories, ports, highway interchanges, hotels, commercial plantations, etc where land acquisition encompasses a fixed area. The major challenge in such incremental resettlement is maintaining a consistent approach to compensation and income restoration over the life of the project.

After discussing the meaning and types of rehabilitation and resettlement, it can be said that the R & R of displaced has become a highly contentious issue. It makes it difficult, if not impossible, to arrive at a solution to the problem that may be universally acceptable. The history of rehabilitation and resettlement is not a happy one. Experience, shows that resettlement often fails. There are lots of problems arising from inadequate resettlement of displaced persons. However, successful resettlement is possible, if governments would manage the rehabilitation and resettlement operations in a more humanistic way. Moreover, proper understanding of the issues involved in resettlement need to be acknowledged, only then successful rehabilitation and resettlement is possible. Therefore, to devise a policy that may be readily acceptable to all is the task that should be done. The newly drafted National Policy on Rehabilitation and Resettlement, 2007 tried its best to address all issues pertaining to the rehabilitation and resettlement of displaced persons. But

57 Id., at 40.
58 Ibid.
59 Id., at 41.
before discussing the existing Rehabilitation and Resettlement Policy, 2007, it is desirable here to peep into the history of policies on rehabilitation and resettlement in India. It becomes desirable here to know why need was felt to draft recent National Policy on Rehabilitation and Resettlement, 2007.

3.4 History of Rehabilitation and Resettlement (R&R) Policies in India

After Independence when development projects were initiated in different parts of the country, no specific policy was ever formulated either by the Central or the State governments to address the issue of displacement of people that took place. In the absence of specific policy, resettlement and rehabilitation of the displaced people had been based on *ad hoc* plans, resolutions and orders, passed for specific States or even projects when the need arose. Thus, R&R in the past has been *ad hoc* and piecemeal. Different State governments and Ministries of Central government followed different policies on R&R in the absence of a National R&R Policy. The States such as Maharashtra, Madhya Pradesh and Karnataka had rehabilitation laws for persons displaced due to irrigation projects. Similarly, governments of Rajasthan, Orrisa and Madhya Pradesh had promulgated policies between 1994 and 1998. There were different kinds of legislations on R&R for different kinds of development projects. Most State governments rely not only on laws or universal policies, but instead of *ad hoc* administrative instructions, in conformity with the bureaucratic preference for what is described as case-by-case approach. The State of Madhya Pradesh had legislation of R&R for the displaced people due to irrigation projects only and the law may be applicable to other projects at the discretion of the government. In Orissa, there were different R&R policies for mining, industrial, thermal power and water resources development projects. In 1994, the government of Orissa issued resettlement and rehabilitation policy for the entire water resource sector.

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for all World Bank funded projects. In December, 2003 the Orissa
government has formulated a policy for the grant of mining lease and
transfer of land in Schedule Areas for commercial projects. Again, in May
2006 the government of Orissa has formulated and implemented a
comprehensive new Orissa Resettlement and Rehabilitation Policy in order
to provide better compensatory financial assistance to the displaced
persons affected either due to industrial, mining, irrigation, urban and linear
or any other projects. The States of Andra Pradesh, Tamil Naidu and
Rajasthan have passed several government orders, for R&R of the
displaced people due to development projects, most of them were funded
by the World Bank. Other States had either government orders or policy
formations for R&R of the displaced people for different kinds of
development projects. Similarly, National Thermal Power Corporation
(NTPC) a Public undertaking of Central government promulgated its policy
on R&R in 1993. The Coal India Limited (CIL) another large Public Sector
undertaking of Central government concerned with production of Coal in
different parts of the country, mainly in Jharkhand, Orrisa, Madhya Pradesh
and Uttar Pradesh has also promulgated its policy on resettlement and
rehabilitation. Unfortunately there was no National Policy formed by
Government of India. The Union government began its policy drafting
exercise in 1985 when the National Commission for Scheduled Castes and
Tribes found that the tribal who were a little over 8% of the population but
were 40 % of the Displaced persons. It is only since 1988 that the
government of India considered a National Policy on R&R for Project
Affected Families. In the initial stage during 1988-1992, then Ministry of
Welfare had prepared a draft of National Policy for R&R of displaced tribal
and submitted it to the committee of secretaries. The Cabinet Secretariat
thereafter directed the Ministry of Rural Development to prepare a general
policy for R&R which could take cognizance of the plight of the tribal. The

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64 Satya Prakesh Das, "Resettlement and Rehabilitation in Orissa: A Study of the
65 See, supra note 62.
66 M.P. Roy, "Approaches to Reconstructing Livelihoods: The CIL Experience with Self-
67 Joesh Masrianus Kujur, "A Tribal Reading of the Resettlement and Rehabilitation
committee of the Department of Welfare was appointed to draft a policy for the tribal displaced persons. In 1993 in the wake of the World Bank withdrawing from Sardar Sarovar Project, the Ministry of Rural Development prepared a draft, revised it in 1994 and once again in 1998. Thus, over the past 20 years there have been various initiatives, both from the government and from people’s groups, to develop an acceptable rehabilitation policy. Finally, the efforts of the Central government succeed when in 2003 the Ministry of Rural Development announced a National Policy on R&R for Project Affected Families vide Notification F.No.ACQ.13011/4/2003-LRD which finally came into effect from 17\textsuperscript{th} of February, 2004. This policy applies to Projects displacing 500 or more families \textit{en masse} in the plains and 250 in the hills or the Scheduled areas. However, this policy was widely criticized for being inadequate and essentially being unjust on many issues pertaining to displacement rehabilitation and resettlement. Among other things, this policy did not envisage a provision for land for land especially to tribals who depend upon land for earning their livelihood. The land based rehabilitation is the most important mean to restore lost livelihood. The Ministry of Rural Development 1993 had promised “land for land” to the tribals and National Policy on Rehabilitation and Resettlement, 2003 gives them some benefits but not “Land for Land”. Thus, keeping in view of the increasing tendency of the government to move away from providing land even to those whose land was being acquired and who had no other means of livelihood\textsuperscript{68} need was felt to redraft the then existing policy. It is clear now that NPRR 2003 was unacceptable from the point of view of those who were paying the price of national development. Various loopholes were noticed in the NPRR 2003. Therefore, the NPRR 2003 was recently replaced by The National Rehabilitation and Resettlement Policy, 2007. It was notified in the official gazette and has become operative with effect from the 31\textsuperscript{st} of October, 2007. This Policy addressed many of the deficiencies of the earlier policy of 2003. The Policy attempts to represent a significant milestone in the Indian R& R landscape. This Policy takes adequate care of the human rights of the displaced. The coming pages of

the study will throw light on various outstanding features of the new policy. But before proceeding further with the new policy, it becomes necessary here to discuss in brief the shortcoming and deficiencies of NPRR 2003.

3.5 National Policy on Rehabilitation and Resettlement for Project Affected Families, 2003: A Critical Study

It has been discussed earlier that over the past few years various initiatives were taken to develop an acceptable rehabilitation policy. In 2003 a National Policy on Rehabilitation and Resettlement for Project Affected Families came into being. The Policy of 2003 had several provisions to deal with rehabilitation and resettlement of project affected families such as appointment of Administrator and Commissioner for resettlement and rehabilitation, schemes/plans for resettlement and rehabilitation of families, R & R benefits for families belonging to below poverty line or non-below poverty line families, provisions for land to Schedule Tribes, Scheduled Caste including reservation benefits to Schedule caste in employment. In addition to this, the policy had a dispute redressal mechanism and had provisions for basic amenities which are to be provided at resettlement zone. Experience of implementation of the policy of 2003 indicates that there are many issues which were left unaddressed in the policy. This policy invited a lot of criticism for being inadequate to address various issues. There should be clear perception, through a careful quantification of the costs and benefits that will accrue to society at large, of the desirability and justifiability of each project. The adverse impact on affected families-economic, environmental, social and cultural-needs be assessed in a participatory and transparent manner. A national policy must apply to all projects where involuntary displacement takes place. In order to overcome from the shortcomings of the policy of 2003 a new policy on R & R was issued in 2007. But before discussing the provisions of the new policy it is desirable here to discuss in details the grounds on the basis of which the old policy was criticized.

3.5.1 Applicability of the Policy

The National Policy on Rehabilitation and Resettlement for Project Affected Families, 2003 was very limited in its application. It was applicable on the projects displacing 500 or more families en masse in the plains.
areas and 250 families *en masse* in hilly areas, Desert Development Programs (DDP) blocks, and areas mentioned in Schedule V and Schedule VI of the Constitution of India. The projects displacing less than 500 families in plain and less than 250 families in hilly areas were not covered under the policy. Therefore, displaced families were not eligible for any benefits under the policy in case of displacement. Moreover, the scope of the policy was limited. It was only covering development induced displacement. Displacement must not be seen in narrow terms as that caused due to development projects alone. There are other cases of involuntary displacement such as conflicts induced displacement and disaster induced displacement. This type of displacement also involves human rights issues. Therefore, conflicts induced and disaster induced displacement were not covered in the earlier policy.

### 3.5.2 Displacement as a Norm

The most disturbing part of the R &R Policy was its adherence of the concept of displacement as a norm and not as an exception. In the National Policy on R &R 2003, provision for non-displacing and least displacing option or alternatives was not clearly elaborated. Only the minimum area of land commensurate with the purpose of the project may be acquired and there was absence of provision to set up projects on wasteland, degraded land or un-irrigated land. The policy was not based on all these objectives. In the absence of such provision consequences of development induced displacement were inevitable. Displacement was not taken as the last resort. The land required could be for any company, institution or for any other organization. When displacement is involuntary, one is devoid of right to liberty and freedom and so many other human rights.

### 3.5.3 Policy's Stance on Tribals

The policy did not seem to recognize the historical, customary and cultural rights of the tribal community. However in practice, it did mention them in theory. The customary and historically established rights of the tribals over their livelihood were not recognized properly. Apart from this, there was provision in the policy to re-settle displaced tribal close to their

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69 See, National Policy on Rehabilitation and Resettlement for Project Affected Families, 2003 ch...III
natural habitat in a compact block to retain their ethnic, linguistic and cultural identity\textsuperscript{70}. Existing provisions to provide land for land to tribal in the policy was misleading and not effective. Experiences showed that in the absence of surplus land near the project tribals could not be rehabilitated in groups. Similarly, the policy was silent about the past land alienation. It was intended to make the benefits only to the original tribal land owner. The tribal who alienated land in violation of the laws and regulations in force on the subject was treated as null and void. Under such circumstances, the R&R benefits could be availed by original tribal land owner. The problem arose if a tribal had bought land from another. The policy was silent on this aspect.

3.5.4 Issue of Social Impact Assessment

An overall assessment of the impacts of displacement has to be made in order to design an appropriate rehabilitation plans. The assets of individual like owned agricultural land (irrigated, unirrigated), other land (encroached, shared, common), cattle and total value of the cattle and livestock, productive assets, movable and immovable properties, houses (living area and material used in construction), kitchen garden, separate structure for cattle and as possessed by the displaced should be studied before initiating rehabilitation plans. Land is not a mere tradable commodity which can be acquired after payment of compensation under the land Acquisition Act. In practice people's attachment to land goes beyond its commercial value. Human beings develop emotional attachments to land, houses and livestock and the whole social structure around it. It can not be compensated in terms of money. The displacement process often poses problems that make it difficult for the project affected people to continue their earlier livelihood activities after resettlement. This requires a careful assessment of the economic disadvantages and social impact of displacement. There was no provision in the NPRR-2003 for assessing the social, economic, cultural and demographic impacts of development induced displacement that involved involuntary land acquisition. Therefore,

\textsuperscript{70} \textsl{Id.}, ch.VI.
the need to draft more comprehensive and detailed R & R policy was inevitable.

3.5.5 Vulnerable Sections and their welfare

There are various vulnerable sections in Indian society such as Scheduled Castes (SCs), Scheduled Tribes (STs), women, destitute and children who are the worst sufferers of development induced displacement. The Policy of 2003 had not specific provisions for the welfare of the vulnerable especially for the women and children of the affected area. The Policy failed to consider common property resources and Public resources for payment of compensation. Common property resources are important sources of livelihood of the poor village people in our country. In India a considerable number of poor village people especially women depend on CPR’s for their living. The earlier policy failed to address there concerns. It amounts violation of various Constitutional rights of vulnerable and was not gender neutral. Similarly, the absence of welfare provisions for children and members of schedule caste exposes the weakness of the policy to address their concern and human rights.

3.5.6 R & R Programs and Policy

Delayed execution of rehabilitation and resettlement plans increase the problems of displaced. Therefore, all displaced persons should be rehabilitated as soon as possible after their displacement from their habitat. The Policy of 2003 did not prescribe any time limit for completion of R & R programs. Similarly, the policy did not prescribe time limit to dispose off surplus acquired land and how to utilize the surplus acquired land. The policy did not provide any effective mechanism for speedy redressal of grievances of the project affected families.

3.5.7 Participation in Decision making

The adverse consequences of involuntary displacement can be mitigated by consultation, participation and negotiation between the State (and the Project authorities), on one hand, and the displaced community, on the other. In such cases, the resettlement is not involuntary and no liberties are lost. Generally it has been seen that participation of project affected people in the discussions and resettlement process is treated secondary. In the process of displacement and resettlement of people,
there is always one-sided decision-making and the 'dialogue' seems to be a means to convince people that their displacement is, in fact, serving the 'common purpose'. The R&R Policy, 2003 talks of greater flexibility for interaction and negotiation with displaced persons. But it seems to be with the intention of greater acceptability of the government imposition of displacement rather than of rehabilitation. The talk of participation was misleading and ineffective. The only aim seemed to be to convince the victims to make sacrifice for the common cause. The prior consultation about the proposed project with the people going to be affected with the project is most important aspect of any development induced displacement. There was no provision in the old policy for prior consent of the affected people before involuntary displacement and resettlement arising from land acquisition. The failure to get their consent goes against Article 19(1) (d) of the Constitution that confers on every Indian the right to inhibit any part of the territory and by implication does not permit displacement without their consent.

3.5.8 Issue of Multiple Displacements

The Policy of 2003 was insensitive to multiple displacements. There was lack of provision in the policy to assure that the project affected families from earlier projects would not be displaced again. There was no assurance that the displaced from other projects in the region would be resettled and rehabilitated first before the newly displaced could rehabilitate. Under such circumstances adverse consequences of multiple displacements increase severely. This issue was left unaddressed in the old policy on rehabilitation and resettlement.

3.5.9 Policy and its Gender concerns

The policy of 2003 was not gender sensitive. It failed to take into account the trouble the women faced in case of multiple displacements. Multiple displacement is responsible for lose of access to common Property resources such as fodder, pasture, fuel wood, natural water and so many other forest produce which support women's subsistence. In the matter of allotment of house and land they were not treated at par with their

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71 Joseph Marianus Kujur, "Resettlement Debate: Continuing the Historical Injustice," 36 Social Change 184 (2006); Also see Joseph Marianus Kujur, supra note 67.
male partners. Past experiences also show that women have not been equally treated at par with men in job allocation to the displaced people in the projects having scope of job opportunities. Similarly very few women have ownership rights on land acquired by the government and project authorities. Due to this reason, the compensation amount generally goes to the male persons of the family. The policy was silent on these aspects and failed to address the right implications of development induced displacement.

The foregoing discussion on the provisions and defects of the policy showed that the policy required amendments. The policy failed to address many issues such as rights of women, children, and interests of indigenous people, Schedule castes and other project affected persons. Apart from this, the policy did not address social impacts of the projects on the people. Similarly, the policy failed to integrate proper environmental concerns in its provisions. Due to all these and other reasons the policy was criticized and finally redrafted recently in 2007.

3.6 National Policy on Rehabilitation and Resettlement, 2007: A Study from Human Rights Perspective

The National Policy on Rehabilitation and Resettlement for Project Affected Families, 2003 did not fulfill any expectations of displaced persons. It generated a debate among scholars about its relevance to project affected people. It was suffering with many shortcomings and deficiencies as mentioned in the preceding discussion. In order to overcome from shortcomings, the new policy has been notified in the Official Gazette and has become operative with effect from the 31st October, 2007. Since the inception of the Land Acquisition Act, 1894 for the first time legislation namely, the Rehabilitation and Resettlement Bill, 2007 has also been developed on the lines of the provisions of the new policy. The purpose of Rehabilitation and Resettlement Bill, 2007 was to give a statutory backing to the provisions of the policy. The new policy known as National Rehabilitation and Resettlement Policy, 2007 (hereinafter referred as NRRP) tried to fill gaps of the earlier policy of 2003. The strength and

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72 Balaji Pandey & Binaya Kumar Rout, supra note 61 at 38.
appropriateness of this policy can be assessed in terms of at least with reference to the various parameters such as, policy's effectiveness to discourage involuntary or forced displacement, compensation and mitigation package under the policy, rehabilitation process whether participatory, transparent, appropriately timed and efficient. The study of provisions of the Policy would through light, to what extent policy succeeds to integrate human rights concerns of displaced. The following are the important provisions of the new National Rehabilitation and Resettlement Policy, 2007.

3.6.1 Prembulary Message of the Policy

The introductory part of the policy gives an impression that the policy has tried its best to integrate human rights concerns of all displaced persons. In the preamble it has been mentioned that as far as possible, projects may be set up on wasteland, degraded land or un-irrigated land. The involuntary displacement deprives people from their land, livelihood and shelter, restricting their access to traditional resource base, and uprooting them from their socio cultural environment. The displaced people especially tribals and rural populations depend on land for the fulfillment of their different needs. In India majority of the population and especially tribal depends on agricultural land to earn livelihood. Taking of land from them mean that they have been deprived from several rights associated with land. These rights include rights over common property resources, right to earn livelihood and right to work etc. The NRRP, 2007 makes it amply clear that acquisition of agricultural land for non-agricultural use in the project would be kept to the minimum. Similarly, policy clears that multi-cropped land would be avoided to the extent possible for projects. Thus, the introductory part of the policy is trying to respect rights of affected people by incorporating provisions to acquire waste land instead of acquiring irrigated and productive land for the projects.

The forced displacement from land amounts violation of right to property. It also infringes the right not to be arbitrarily displaced from property. Before displacing people, they should be consulted and their participation must be ensured. In our country right to know about the government's policy and effective participation of the people are the
essential requisite for smooth running of democracy and governments. The preamble of the NRRP, 2007 also mentions that rehabilitation and resettlement plans will be formulated with the active participation of the affected persons. The policy felt imperative need of active participation of the affected persons, rather than, as externally imposed requirements. Thus, it also seems of respecting the right to take effective participation in the formation of R&R plans.

The policy in its preamble also makes provision to provide additional benefits beyond monetary compensation to the project affected families so that they can lead respectable life in post displacement period. The plight of those who do not have legal or recognized rights over the land has also been considered and recognized.

3.6.2 Objectives of the Policy

As compared with the old policy the new policy of 2007 has expanded its objectives. The objectives of the NRRP, 2007 includes- to minimize displacement and to promote, as far as possible, non-displacing or least-displacing alternatives. The displacement uproots thousands of families from their home land and houses. The consequences of displacement are brutal in nature and it deprives people from their right to house, right to rehabilitation, right to life and so many other rights. The selection of non-displacing or least displacing alternatives would reduce the pain of forced displacement to great extent. The Policy explicitly focuses on how to avoid displacement. The policy ensures adequate rehabilitation packages for the affected families, if displacement is unavoidable. The policy further shows concerns by integrating rehabilitation concerns into the development planning and implementation process. Thus the objectives of the policy are useful for the proper realization of all basic human rights of the affected persons.

The members of Schedule caste, Schedule Tribes and other weaker section of society such as women, children, disabled persons and orphans etc are the worst suffers of development induced displacement. The rights of these vulnerable should be protected under all circumstances.

In NRRP, 2007 special care is taken for protecting the rights of the weaker sections of society, especially members of the Scheduled Castes and Scheduled Tribes. The NRRP, 2007 creates obligations on the Central and State governments to give to weaker section of the society proper treatment with concern and sensitivity. The Policy adequately takes care of all neglected section of the society. Further, to provide a better standard of living, making concerted efforts for providing sustainable income to the affected families has also been mentioned as one of the objectives of the policy.

3.6.3 Amplitude of the Policy

The NRRP extends its benefits to all displaced persons and their families whose land, property and livelihoods are adversely affected because of land acquisition. These could be tenants, landless, the agricultural and non agricultural laborers, artisans, and other categories of persons who depend on the land. It is worthy to mention here that under existing Land Acquisition Act, 1894 only land owners having formal legal title over land can claim compensation for the land lost. But there are various categories of persons who are enjoying various rights associated with the land. They are in possession of the land from long time. But they could not produce formal legal title of land in their possession. The Land Acquisition Act, 1894 debars these categories of persons from claiming compensation for the land lost. It deprives them from right to earn livelihood and common property rights. Under NRRP, 2007 persons who are landless and could not produce legal title of land are also entitled for various benefits. Thus, the policy respects rights of all categories of persons displaced due to any development projects.

3.6.4 Issue of Involuntary Displacement

Displacement either voluntary or involuntary deprives people from their several rights. It is worthy to mention here that displacement can never be voluntary. The experience showed that the land acquired for various projects remains unutilized for several years. In the past in several cases the acquired land could not be used for intended purposes. Moreover, the land acquired for small projects was not considered large scale or major displacement of people. The persons displaced due to small
projects have not been covered under rehabilitation and resettlement policies. The term project was not clearly defined under the old policy of 2003. However, the scope of the term ‘Project’ has been redefined under NRRP, 2007. It means a Project involving involuntary displacement of people, irrespective of the number of persons affected.\(^{74}\)

There are different types of displacement such as conflicts induced displacement and natural disasters induced displacement. The NRRP, 2007 also covers involuntary displacement of people for development projects. The old policy of 2003 did not extend its benefits to people who are displaced due to conflicts and disasters. But National Policy of 2007 covers all cases of displacements. After all, all involuntary displacement is affecting human rights of the displaced and new policy affords protection in cases of all types of displacement. Thus, new policy of 2007 is comprehensive and detailed document drafted in line with several Human rights documents governing rights of project affected people.

### 3.6.5 Provision for SIA

Development induced displacement uproots the people from their original place of habitation. It results into loss of land, house and sources of livelihood. Generally displaced people are compensated for the land being acquired. But it should not be forgotten that displaced people develop emotional attachments to land, houses and livestock and the whole social structure around it. It is difficult to quantify this and pay compensation for it. Deprivation of people from livelihood, shelter, common property resources such as fodder, fuel wood, forest produce, water, grazing land, public utilities and societal surrounding has been considered human rights violation by United Nations. One of the worth quotable provision of the new Policy is Social Impact Assessment of the proposed Projects.\(^{75}\) Chapter IV of the Policy provides that whenever it is desired to undertake a new project or expansion of an existing project, which involves involuntary displacement of 400 hundred or more families \textit{en masse} in plain areas, or 200 hundred or more families \textit{en masse} in tribal or hilly areas, DDP

\(^{74}\) \textit{Id.}, ch. III, para 3.1 (t).
\(^{75}\) \textit{Id.}, ch. IV, para 4.1- 4.7.
blocks or areas mentioned in the Schedule V or Schedule VI to the Constitution then the Government shall ensure that Social Impact Assessment (SIA) study. The study shall be carried out in the proposed affected areas. At the time of undertaking a social impact assessment, the government shall inter alia, take into consideration the impacts that the project will have on public and community properties, assets and infrastructure, particularly, roads, public transport, drainage, sanitation. Similarly the governments shall take into consideration the impacts that project will have on sources of safe drinking water, sources of drinking water for cattle, community ponds, grazing land, plantations, public utilities, such as post office, fair price shops etc, food storage godowns, electricity supply, health care facilities, schools and educational/training facilities, places of worship, land for traditional tribal institutions, burial and cremation grounds, etc. The SIA clearance shall be mandatory for all projects, displacing 400 hundred or more families en masse in plain areas or 200 or more families en masse in tribal or hilly areas and DDP blocks mentioned in the Schedule V or Schedule VI to the Constitution.

It is also worthy to mention here that development projects put various adverse impacts on the environment of the surrounding. Large development projects deteriorate the quality of surrounding environment and cause loss of flora, fauna and pollute water resources and ecology of the area. In India various environmental rights such as right to live in wholesome environment, right to pure drinking water and right to enjoy pollution free environment, are available to all. These environmental rights and many more must be respected even at the time of carrying out any development activities. The new policy makes a provision that where it is required as per the provisions of any law, rules, regulations or guidelines, to undertake environmental impact assessment also, the SIA study shall be

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142

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76 The “DDP block” has been defined in Ch. III 3.1(i) of the National Rehabilitation and Resettlement Policy, 2007 means a block identified under the Desert Development Programme of the Government of India.

77 The Fifth Schedule under Article 244(1) deals with tribes living in Scheduled areas and the Sixth Schedule under Articles 244(2) and 275(1) deal with tribes living in tribal areas (i.e., the State of Assam, Meghalaya, Tripura and Mizoram); For details of Schedule 5th and 6th see, Durga Das Basu, "Shorter Constitution of India," 1645-1646 (14th edition 2009).
carried out simultaneously with the Environmental Impact Assessment (EIA) study. In this respect NRRP, 2007 is an improvement over the old national policy of 2003 which had no provision for Social Impact Assessment and Environmental Impact Assessment.

3.6.6 Public hearing, Participation and Counseling of People

A popular criticism of R & R plans and justifiability has been the lack of involvement of the affected persons within its structure. Public hearing and participation of the affected people in decision making is important for the success of rehabilitation and resettlement plans. In the resettlement and rehabilitation context, the participation of ousted people in decisions making would helps to diminish risk aversions. This aspect had not been adequately addressed in the earlier policy. The NRRP, 2007 has a lot of scope for extensive public participation at all stages of the rehabilitation and resettlement process. The participation of the people would make the whole process more transparent. Public hearing shall be organized by the government in the affected areas. People's participation include mandatory public hearing at the Social Impact Assessment and Environment Impact Assessment stages, wide publicity for the survey results and R&R plan, consultations with Gram Sabhas, representation of the affected persons on the R&R Committees, and accessibility for all to the grievance redressal mechanisms. Thus, the new policy takes care of right of participation and decision making on important matters. It would help the displaced families in physical, occupational, socio-economic, cultural psychological and ecological adaptation to the new environment.

3.6.7 Provision for Land for Land

Individual study indicates that in case of development induced displacement compensation given to the displaced is misappropriated by them. Moreover, compensation for the land lost does not afford adequate

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78 Environmental Impact Assessment is an exercise of evaluating and predicting future changes caused by proposed projects, plans or policies to the quality of the environment. EIA is a multi-disciplinary process requiring application of a variety of knowledge and expertise. See, P.Leealakrishnan, "Environmental Impact Assessment: Legal Dimensions 34 Journal of the Indian Law Institute 541(1992).

79 See, NRRP, 2007 ch. IV, V and VI.

80 For details on how compensation generally is misused by displaced families in post displacement period. See, infra, chapter VI.
protection to the project affected persons and to their families. Land for land on one to one basis would have been the ideal solution for the displaced persons to mitigate pain of forced displacement. Moreover, the fulcrum of rural life continues to rest on land. Land is the major economic aspect in any agricultural society including ours. It is not only a source of livelihood for the people but it is also a symbol of social status and prestige. Therefore land for land could be the best option to rehabilitate the project affected people with earning sources of livelihood. The worth quotable provision of the new policy is a provision for land for land\textsuperscript{81}. Each affected family owning agricultural land in the affected area and whose entire land has been acquired or lost, may be allotted agricultural land or cultivable wasteland to the extent of actual land lost, subject to a maximum of one hectare of irrigated land or two hectares of un-irrigated land or cultivable wasteland. However, land will be given only, if government land is available in the resettlement area. This benefit is also available to the marginal farmers.

Similarly, in the case of irrigation or hydel projects, the affected families shall be given preference in allotment of land for land in the command area of the project, to the extent possible\textsuperscript{82}. Such lands may be consolidated, and plots of suitable sizes allotted to the affected families who could be settled there in groups. In case a family cannot be given land in the command area of the project or the family opts not to take land there, such a family may be given monetary compensation on replacement cost basis for their land lost, for purchase of suitable land elsewhere. Thus, the new policy of 2007 makes detailed and clear provisions regarding allotment of land so that displaced persons can earn their livelihood. Right to earn livelihood is one of the universal human rights recognized in Indian Constitution and in various international human rights instruments.

3.6.8 Jobs and Labour work in Projects

Providing priority entitlement to jobs in the construction of the new project is a form of giving those displaced immediate access to an opportunity created by the project itself to gain income that can help

\textsuperscript{81} See, NRRP,2007 ch. VII para 7.4.1
\textsuperscript{82} Id., para 7.4.2
temporarily substitute for losses of prior means of production. The one job per displaced family option is a well known mitigation measure. The new NRRP, 2007 also makes a provision for a job to the affecting families—at least one person per nuclear family. The policy also makes provision that wherever necessary, the requiring body shall arrange for training of the affected persons, so as to enable such persons to take suitable jobs. The policy also provides that the requiring body shall give preference to the affected persons in allotment of contracts, shops or other economic opportunities coming up or around the project site. The affected persons shall be offered the necessary training facilities for development of entrepreneurship, technical and professional skills for self employment. It appears from the study of these provisions that the policy has adequately shown concerns to restore or improve economic position of the displaced in the policy. The Policy explicitly focuses on how the displaced families, can earn livelihood to lead comfortable life in post displacement period. Thus, the Policy of 2007 adequately upholds and protects economic rights of the displaced persons.

3.6.9 Grievance Redressal and Monitoring Mechanism

Displaced families often complain about the absence of an appropriate forum where they can refer their grievances in post displacement period. Under the Land Acquisition Act, 1894 an aggrieved person if not satisfied with the rate of compensation can make a reference to Collector. This process is slow and dominant by governments. The NRRP, 2007 makes a effective provision in respect of grievance redressal mechanism. Under Chapter-VIII of the new policy a robust mechanism for time bound disposal of grievances has been provided which include R&R committees at the project level and standing R&R committees at the district level. It also incorporates a new provision for monitoring the R&R

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84 See, National Rehabilitation and Resettlement Policy,2007 ch.VII para 7.13.1(a)
85 Id., para. 7.13.1(b)
86 Id., para. 7.13.1(d)
87 Id., para. 7.13.2
88 Id., ch. VIII. para. 8.1
89 Id., para. 8.2
benefits schemes at the national level\textsuperscript{90}. A National Monitoring Committees would monitor the implementation of the R&R process and would be serviced by a National Monitoring Cell. Independent monitoring plays a key role in the R & R process. Similarly, an ombudsman shall be appointed by the appropriate government, in the manner as may be prescribed, for time-bound disposal of the grievances arising out of the matters covered by this policy\textsuperscript{91}. Any affected person, if aggrieved, for not being offered the admissible rehabilitation and resettlement benefits as provided under the policy, may move an appropriate petition for redressal of his or her grievances to the Ombudsman concerned\textsuperscript{92}. Similarly, the policy provides that in case of a project involving land acquisition on behalf of a requiring body, the disputes related to the compensation award for the land or other property acquired will be disposed of as per the provisions of the Land Acquisition Act, 1894 or any other Act of the Union or a State for the time being in force under which the acquisition of land is undertaken, and will be outside the purview of the functions of the Ombudsman\textsuperscript{93}. Thus, the existing new policy, 2007 provides an effective grievance redressal mechanism and upholds right to speedy remedy. The right to speedy and efficacious remedy has been treated universal human rights in various International human rights documents.

3.6.10 Vulnerable Sections and their rights

The NRRP, 2007 addresses the concerns of the vulnerable sections such as the old, disabled, orphans, women, children and members of Schedule caste. Displacement put various adverse impacts on these vulnerable groups. For example, Women, tribals and landless persons depend on forest produces for earning income. The NRRP, 2007 makes promise to develop and provide common property resources to tribals. Similarly studies are indicative that the members of Schedule Tribes and Schedule Castes suffer more severely in the absence of any work in post displacement period. The joint family system and social networks are adversely affected due to forced displacement. The absence of financial aid

\textsuperscript{90} Id., ch. IX. para. 9.1
\textsuperscript{91} Id., ch.VIII. para. 8.3.1
\textsuperscript{92} Id., para. 8.3.2
\textsuperscript{93} Id., para. 8.3.5
to displaced person further aggravates the conditions of displaced families. The old National Policy 2003 had no provision to uplift and assist these vulnerable groups. The NRRP, 2007 aims at providing better R&R benefits to these vulnerable. These include provisions regarding annuity policies that pay a pension for life, resettlement in a compact block as far as possible and financial assistance for loss of usage of forest produce for tribal and continuation of the reservation benefits at resettlement sites for SCs and STs etc. Thus, the policy can be seen of upholding interests of the weaker and vulnerable segments of the society. The NRRP, 2007 adequately respects fundamental and human rights of vulnerable enshrined in Constitutional law in India.

**3.6.11 Customary, Historical and Cultural rights of Indigenous**

Indigenous/tribals are the worst suffers of development induced displacement. They form the majority of the development induced displaced persons. They possess different rights over forest. For example, they meet their basic needs such as fuel, fodder, green manures, food, timber and other materials from forest. These common property resources are important economic substances and the sources of earning livelihood for them. Displacement adversely impinges on rights of indigenous populations. These rights have been recognized in various International human rights documents. Tribals are dispossessed of their political autonomy and their communities broken up in the name of development for national interest. A new type of internal colonialism is being unleashed on them by the ruling classes of the country. The R&R benefits available in the NRRP, 2007 for them include land for land, if government land would be available in the resettlement areas. Similarly, in case of land being acquired from the members of the Scheduled tribes, at least one third of

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94 The ILO Indigenous and Tribal Population Convention (No.107 of 1957) guarantees forest and land rights to tribals; U.N Declaration of Human Rights,1948 endorses the right of tribal people to maintain their traditional structure of economy and culture and stresses that their land and rights over natural resources, should not be taken away from them; Indigenous and Tribal Peoples Convention(No.169)1989 and The U.N Declaration on the Rights of Indigenous Peoples(UNDRIP),2007 also advocate the right to education for indigenous people.


96 See, National Rehabilitation and Resettlement Policy, 2007 ch. VII para. 7.21.3
the compensation amount is paid at the outset as first installment and rest at the time of taking the possession of the land. The policy also makes provision for additional one time financial assistance equivalent to five hundred days minimum agricultural wages for loss of customary rights or usage of forest produce. Moreover, the policy makes a provision that the families of Scheduled Tribes adversely affected due to projects would be re-settled, as far as possible, in the same Schedule Area in a compact block, so that they can retain their ethnic, linguistic and cultural identity. Again the policy of 2007 provides that Scheduled Tribes to get free of cost land for community and religious gathering to the extent decided by the appropriate government and families of STs resettled out of district to get 25% higher benefits in monetary terms.

Displacement put adverse impacts on the livelihood and earning of the tribes. In order to compensate loss of livelihood the policy provides that in the case of irrigation or hydel projects, the affected Scheduled Tribes, other traditional forest dwellers and the Scheduled Castes families having fishing rights in a river or pond or dam in the affected area shall be given fishing rights in the reservoir area of the irrigation or hydel projects. The families of Scheduled tribes, enjoying reservation benefits in the affected areas shall be entitled to get reservation benefits at the resettlement areas. Thus, the policy shows deep concerns to the customary, cultural and livelihood rights of this weaker section of the society. All these rights of tribals have also been adequately recognized in various international human rights laws. It can be said that the existing NRRP, 2007, is in compliance with human rights laws governing rights of indigenous people.

3.6.12 Housing benefits under the Policy

Right to shelter is a human right, recognized in various international human rights documents. Indian Constitution in its article 21 guarantees, right to life and personal liberty to all citizens of India. This right has now
been liberally interpreted to include the right to live with human dignity and
the right to shelter as a human right\textsuperscript{104}. The movement the persons are
uprooted from there original place of habitation they suffer the risk of
homelessness. The Schedule tribes reside in temporary made houses in
the absence of land. They could not produce formal legal title of their land
and reside in temporary made houses. Being landless, they are denied to
the benefits of houses. Homelessness of a large number of people due to
acquisition of land and arbitrary displacement is denial of right to shelter.
Loss of a family’s and individual home and the loss of a group’s cultural
space tend to result in alienation and status deprivation. In the old policy
there was no provision for housing benefits for the landless but the new
policy has incorporated a provision for the house even to the landless.
Thus, the new policy adequately integrates right to shelter in its provision
and considered housing vital even for the landless.

3.6.13 Policy and Gender concerns

In addition to the Indigenous people, women are also the worst
victims of development induced displacement. They have not been treated
at par with their male partners in the family. They face discrimination at
different occasions in matter of receiving R & R benefits. The new policy of
2007 eliminates the gender discrimination and protects rights of women.
Under the policy the house or land allotted to the affected families shall be
free from all encumbrances and may be allotted in the joint names of wife
and husband of the affected family\textsuperscript{105}. Therefore, the policy has not only
adequately integrated right to house and shelter in it but also equally taking
care of women of the family in the matter of the allotment of the land. The
policy thus, respecting right to equality and eradicates the possibility of
gender discrimination while preparing resettlement and rehabilitation plans
for women oustees.

\textsuperscript{104} In Francis Curalie Mullin vs. Administration, Union Territory of Delhi (1981) 1 SCC
607 at p. 619 Justice Bhagwati (as he then was) said “We think that right to life
includes the right to live with human dignity and all that goes with it, namely the
basic necessities of life such as adequate nutrition, clothing and shelter and facilities
for reading, writing and expressing one self in diverse forms. For details see, infra
chapter V

\textsuperscript{105} See, National Rehabilitation and Resettlement Policy,2007 ch.VII, para 7.7 - 7.8
3.6.14 Land Acquisition for Public Purpose

One of the most important provisions of the NRRP, 2007 is that land compulsorily acquired for a project cannot be transferred to any other purpose except for a public purpose, and after obtaining the prior approval of the government\textsuperscript{106}. In number of cases earlier, we saw tendency of keeping the acquired land, unused after handing over the same to the corporate bodies or other requiring body. For example, we saw in Kalinganagar, Gopalpur in Orissa, in Kerla, in Chinnai and also in some other states\textsuperscript{107} where after acquisition land was not used for intended purpose. The tendency to keep acquired land unused causes harassment to the displaced people. They scarified their land for social good but land was not used for the intended purposes. It causes lot of pain to the people whose land is acquired. Under the new policy if land compulsorily acquired for a project or part thereof, remains unutilized for the project for a period of five years from the date of taking over the possession by the requiring body, the same shall be reverted back to the original owners. The policy eliminates the chances to misuse the acquired land.

3.6.15 Compensation before Displacement

Compensation before actual displacement of people can be the best way to reduce the risks of joblessness, homelessness, marginalization and food insecurity in post displacement period. The compensation amount awarded to the persons to be displaced in advance would help them in variety of ways. For example, the people can invest compensation amount on existing business and to start new business. Similarly the displaced persons can construct houses at any other place with the amount of compensation if they are not willing to reside at allotted plots by the governments. The National Policy on Rehabilitation and Resettlement, 2007 makes a provision that in case of a project involving land acquisition on behalf of a requiring body the compensation award shall be declared well in time before displacement of the affected families. Full payment of compensation as well as adequate progress in resettlement shall be

\textsuperscript{106} \textit{Id.}, ch.VI para. 6.24.1

\textsuperscript{107} Diganta Biswas, "Impacts of Land Acquisition vis a vis the Concept of Land Bank: A Study on West Bengal," 1 Indian Journal of Law and Justice 83(2010).
ensured in advance of the actual displacement of the affected families\(^{108}\). The policy further provides that conversion to the intended category of use of the land being acquired (for example, from agricultural to no-agricultural) shall be taken into account in advance of the acquisition, and the compensation award shall be determined as per the intended land use category\(^{109}\). Thus, under the policy the procedure is more transparent. The policy is explicitly favouring payment of compensation in advance i.e. before displacement of project affected people.

### 3.6.16 Periphery Development

Development projects are not only causing direct displacement to those whose land is actually acquired, but also cause indirect displacement in areas adjoining the acquired land. The people residing near the projects area such as dam's area also like to shift to new place due to many reasons. For example, it may happen due to the pressures generated by the project activities on the existing settlers and people residing near the projects. In order to avoid this indirect displacement, area nearby the project should be developed in context of facilities. The provision in the new policy regarding periphery development has taken this contingency into account. The policy states that in case of a project involving land acquisition on behalf of a requiring body, it will be responsible for development of the defined geographic areas on the periphery of the project site as decided by the government, and will be required to contribute to the socio-economic development of the areas contiguous to its areas of operation. For this purpose, the requiring body will earmark a percentage of its net profit or, in case no profit is declared by the requiring body in a particular year, for that year, such minimum alternative amount as may be determined by the government after consultation with the requiring body, to be spent within the specified zone. The requiring body will carry out the developmental activity within this zone in close co-ordination with the Commissioner for Rehabilitation and Resettlement\(^{110}\). The State governments will be free to frame their own rules and guidelines for this

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\(^{108}\) See, NRRP, 2007 para. 6.22(a)

\(^{109}\) \textit{Ibid}, para. 6.22(c)

\(^{110}\) \textit{Ibid}, para. 7.24
purpose. Thus, the new policy designate an authority charged with the responsibility for periphery development.

3.7 Major Highlights of NRRP, 2007\(^\text{111}\): A Cursory Glance

- Policy covers all cases of involuntary displacement.
- Social Impact Assessment (SIA) introduced for displacement of 400/200 or more families in plain/tribal, hilly, Scheduled areas etc.
- Consultations with Gram Sabhas or Public hearing made compulsory.
- Principle of rehabilitation before displacement.
- If possible, land for land as compensation.
- Skill development support and preference in project jobs (one person per nuclear family).
- Rehabilitation Grant in lieu of land Job.
- Option for shares in companies implementing projects to affected families.
- Housing benefits to all affected families including the landless.
- Monthly pension to the vulnerable, such as disabled, destitute, orphans, widows, unmarried girls etc.
- Necessary infrastructural facilities and amenities at resettlement areas
- Periphery development by project authorities.
- Committees for each project, to be headed by Administrator for relief and rehabilitation.
- Ombudsman for grievance redressal.
- National Rehabilitation Commission for external oversight.
- The revised policy covers all projects leading to involuntary displacement of people and envisages special provision for Scheduled Tribes and Scheduled Castes, the main feature of which are given below.
- Consultation with the concerned gram sabha or the panchyats at the appropriate level in the Scheduled Areas under Schedule V of the

Constitution in accordance with provision of the Panchayats (Extension to the Scheduled Areas) Act 1996.

- Each affected family of Scheduled Tribe followed by Scheduled Caste shall be given allotment of land for land, if government land is available in the resettlement areas.
- In case of land being acquired from the members of the Scheduled tribes, at least one third of the compensation amount be paid at the outset as first installment and rest at the time of taking the possession of the land.
- Additional one time financial assistance equivalent to five hundred days minimum agricultural wages for loss of customary rights or usage of forest produce.
- Scheduled Tribes to get free of cost land for community and religious gathering to the extent decided by the appropriate government.
- Scheduled Tribes affected families resettled out of district to get 25 percent higher benefits in monetary terms.
- Scheduled Tribes and Scheduled Castes affected families to be given fishing rights in the reservoir areas of the irrigation or hydel projects.
- Scheduled Tribes and Scheduled Castes affected families enjoying reservation benefits in the affected areas shall be entitled to get the reservation benefits at the resettlement areas.

The preceding discussion makes it amply clear that the NRRP, 2007 is an improvement over the earlier policy of 2003 in many respects. It has adequately integrated human rights concerns into relief and rehabilitation for displaced. A review of the provisions of the NRRP-2007 shows that there has been a renewed emphasis on inclusiveness and greater sensitivity to social impact of the project. However, the policy upholds the sovereign power of the State to apply the concept of eminent domain to acquire land in any part of the country. But the existing Policy aims at striking a balance between the need for land for developmental activities and the need to protect the interests of the landowner, and other persons.
such as the tenants, landless, the agricultural and non-agricultural laborers, artisans, whose livelihood depends on the land involved. The benefits under the new policy shall be available to all affected persons and families whether are adversely affected by land acquisition for development projects or affected due to any other reason such as natural disasters induced displacement. Thus, policy is showing concerns to vulnerable and neglected segment of society such as tribals, landless, non-agriculturists and others during R&R plans and thus protecting and respecting their human rights of all.

3.8 Chinks and Flaws in NRRP, 2007: A Critique

No doubt, NRRP, 2007 is a significant improvement over the National Rehabilitation and Resettlement Policy 2003. The NRRP, 2007 makes significant provisions regarding rehabilitation and resettlement issues arising out from displacement. Despite good provisions, again the question is how successful has the policy been? A close scrutiny of the provisions of the policy reveals that there are certain chinks and flaws in the NRRP, 2007 and its provisions are not encouraging. These have been discussed under the following heads.

3.8.1 Chinks and Flaws

The notable and major gaps and flaws in the new policy which is the latest and a more comprehensive document on the subject, are as follows:-

- **Prospective Application**

The NRRP, 2007 can not be implemented retrospectively. The projects which have already been displaced millions of persons are not benefited under this new policy. For example, the controversial Narmada and Tehri Dam has been displaced thousands of people in the past and majority of them are still struggling for their rehabilitation and resettlement. Their livelihood and other economic rights were ignored and still a burning issue among the academicians and human rights activists. The oustees of these dams can not be benefited by the comprehensive R & R plans of new policy 2007. They are to be governed and rehabilitated either in accordance with the provisions of respective State policies or in accordance with old national policy of 2003. It has been disused earlier that old national policy on rehabilitation and resettlement drafted in 2003 was
not comprehensive as compared with the NRRP, 2007. The different State polices were also criticized for their shortcomings. In large numbers of development projects, the displaced have still not been rehabilitated. Some of them have been rehabilitated, but again, in accordance with the provisions of less detailed R & R policies. In the absence of proper and uniform R &R plans various human rights of oustees such as right to shelter, right to earn livelihood, right to access to common property resources and so many other rights are still at stake. The new policy has been made applicable to the projects in future. A person whose land or other means of livelihood have been destroyed in the process of displacement is not entitled to get the benefits of this new policy. The displaced families which are still looking for their rehabilitation should be given the benefits of this new policy. Thus, the policy deprives large number of the affected persons displaced before 2007 from the benefits that policy offers. The NRRP, 2007 deprives them from there various human rights such as right to equality. The policy and its benefits should be extended to at least those oustees who still have not been rehabilitated.

- **Restricted Applicability**

  The affected families eligible for resettlement and rehabilitation benefits are identified as on the date of declaration the area as project affected area. The NRRP, 2007 makes a provision regarding rehabilitation and resettlement of the people only in those projects where 400 hundred or more families *en masse* in plain areas or 200 or more families *en masse* in tribal and hilly areas DDP blocks or scheduled areas are affected. The policy is applicable only on the projects where number of the displaced persons does not exceed the limits as mentioned above. Only those people would be eligible to claim the benefits of new policy. The benefits given in the new policy would not extend in cases where fewer families are displaced. Moreover, there is a scope for misuse of the applicability threshold especially in small projects such as highways where the project proponents can divide the project into multiple parts so that they do not
have to provide comprehensive R&R benefits to the displaced\textsuperscript{112} mentioned in R & R Policy, 2007. Thus, the new policy restricts it to those affected by projects satisfying the specified numerical benchmark of the level of displacement. It places a barrier and is not liberal policy. The new policy is selective, irrational, biased in its application and promotes inequality in treatment of the displaced persons. The policy does not bother about rehabilitation and resettlement of those where number of the displaced is less in any projects. Thus, emphasis in NRRP 2007 is on mitigation of suffering due to physical displacement rather than economic displacement such as livelihood issues. It amounts violation of Article 14 of Indian Constitution which speaks about right to equality.

- **Property Centric Approach**
  Regarding the entitlements of benefits, the new policy continues to be property centric. It does not cover the loss of livelihood and access to the common property resources by any compensatory arrangements. It does not compensate displaced persons for the loss of rights on common property resources. However, in the NRRP, 2007 there is provision for development of fuel, fodder and non-timber resources on non-forests lands. But the tribals have been deprived from the right to access to forests. Similarly, land based rehabilitation is very vital to rebuild the lost income sources even for non-tribals. Under NRRP, 2007, there is no similar commitment to provide common land in respect of the non-tribals inhabitants\textsuperscript{113}. The discrimination in entitlement to the affected persons such as allotment of land and provision of employment between those who lose land and other who lose livelihood is also implicit in new policy which amounts violation to right to equality.

- **Provision to Provide Land**
  The land has been the most important source to earn livelihood to the project affected families especially in rural areas wherein majority population depend on agricultural land to earn livelihood. But it has been noticed that project authorities and governments believes more in payment


of compensation for the lost land rather than to provide land in lieu of land taken. The NRRP, 2007 also makes a provision for land in lieu of land taken. But the provision of land has been made conditional to the availability of the government land/wasteland in the resettlement area. This condition is most unlikely to be satisfied. Apart from this, the option to acquire private land for such distribution for the vulnerable groups like the STs has been specifically disregarded. Thus, the new policy opts for cash option as the most convenient mode of wriggling out of the assurance to provide land. It shows non-seriousness of our law makers towards the sufferings of displaced.

- **Provision to Provide Employment**

Displacement put adverse impacts on the employment, self-employment and other trade, occupation and business of the project affected persons. The forced displacement also compels affected peoples to change their occupation despite having their inclination to carry on the old occupation. It amounts violation of Article 19(1) (g) of Indian Constitution which speak about freedom to carry on any occupation, trade and business. Therefore, after displacement the displaced should be given employment. In the NRRP, 2007 there is a provision for the employment to one person from each affected nuclear family. But this provision lacks postiveness and credibility. The employment is subject to the availability of vacancies and the eligibility of the displaced job seekers. It is worthy to mention here that in the current paradigm of the economy, projects public or private, create meager employment opportunities and ,that too, in the skilled category, by and large. Due to the low literacy levels and lack of skills, the displaced persons generally and tribals among them in particular, would fail to satisfy the requirements for such jobs even if available\(^ {114}\). It has been the experience that many time even the employment that is available in the unskilled, semi-skilled and clerical categories have been denied to the displaced persons on grounds of being wanting in requisite qualifications. These conditions snatch from the displaced, the opportunity

\(^{114}\) *Ibid.*
to earn livelihood which is one of the most important human rights recognized universally.

- **Scope of the term 'Family' used in Policy**

The definition of the term family given in the policy does not treat an unmarried adult daughter as an independent unit deserving separate rehabilitation. The women headed families (widows, divorcees and deserted) do not find proper place in the Policy. The NRRP, 2007 fails to recognize unmarried daughters, sisters, widow, and divorcee and deserted woman as a separate family for the benefits of rehabilitation and resettlement. The policy thus, fails to address the concerns of women. It is not gender neutral. The gender and class bias of the State is evident in many cases of displacement. For example, in most of the cases properties are owned by male members and the compensation is paid to the male head of the family. The individual studies\(^\text{115}\) are indicative that women are not considered at par with their male partners to receive compensation and other benefits of rehabilitation. Unfortunately, NRRP, 2007 has also failed to give them adequate attention. The concerns of women in general have been ignored since neither the baseline survey nor census collect information relating to their specific requirements nor the rehabilitation and resettlement scheme incorporates affirmative actions to promote the welfare of women\(^\text{116}\). Thus, gender bias is clearly reflected in the term family used in NRRP, 2007. It amounts violation of right to equality guaranteed in various international human rights documents\(^\text{117}\) and various national laws of the countries including India\(^\text{118}\).

- **Policy and Rights of Tribal**

Tribals form the majority of the development induced displaced persons\(^\text{119}\). Eviction of tribals and the landless for development projects in on the rise. The assessment of compensation is made on the basis of the

\(^{115}\) See, Balaji Pandey & Binaya Kumar Rout, *supra* note 61; Also see, *infra* chapter VI

\(^{116}\) K. B. Saxena, *supra* note 113.

\(^{117}\) See, Universal Declaration of Human Rights, 1948; International Covenant on Civil and Political Rights, 1966 and International Covenant on Social, Economic and Cultural Rights, 1966 which speak about right to equality.

\(^{118}\) Article 14 of Indian Constitution guarantees to every citizen 'Right to Equality and Equal Protection of Law. For details see, M.P. Jain, "Indian Constitutional Law," 855-901 (5th edition 2006)

\(^{119}\) See, Anupam Hazra, *supra* note 19 at 192.
property owned by an individual, ignoring the fact that common property contribute to the living and livelihood in a society. It is now accepted that tribals derive a good part of their sustenance from the common property resources and from the adjoining forests. The Scheduled Tribes reside in forests and remote areas and depend on forests and primitive modes of agriculture for their survival. The ethos of the tribal life is based significantly upon their natural resource-base. Displacement means a disruption in this symbiotic relationship. The Constitution of India, contains ample provisions to protect the special interests and the welfare of tribal groups and to protect them from all types of oppression. But individual studies exhibit that forced displacement of tribal deprive them from various basic rights. The Chapter-VII of the new policy has been especially devoted to the rehabilitation and resettlement benefits for the affected families including the tribals. It makes several provisions for the R&R of the affected tribal such as tribal development plan. But the requirement for a Tribal Development Plan in the NRRP, 2007 suffers from serious inadequacies. It is characterized by a homogenized and standardized approach and fails to reflect the diversity of the social and ecological situations in the tribal areas. The land management practices differ widely in the tribal areas with varying degrees of community control over natural

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122 See, Indian Constitution, Part X read with Schedules V and VI and Articles 15(4) 16(4),16 (4) (A) and 16 (4) (B), 17, 23, 46,275,330,332,338A,342,371A-371D and 371G. These Constitutional articles and provisions provide for comprehensive framework for the socio-economic development of STs and for preventing their exploitation by other groups of society.

resources\textsuperscript{124}. The shifting cultivation areas where the tribals use land on hilltops by rotation are inhabited usually by the primitive tribe (Pre-agricultural groups). The land records have not mapped all such areas, and individual uses of land particularly on slopes beyond 9 degree have not been documented since no plough agriculture is possible in that terrain\textsuperscript{125}. In the Sixth Scheduled areas, the pattern of land holding is communal with individual’s use, the land records do not exist and the tribals are opposed to their preparation\textsuperscript{126}. There is an extensive variety of rights and interests to access to land resources covered by the customary laws\textsuperscript{127}. In addition, the hunter and food gathering tribes are entirely dependent on forest resources with no fixed habitat as they move from areas to areas in search of food. There are also nomadic tribes, de-notified tribes and pastoral communities with different patterns of habitat and access to land, food resources and fulfillment of other needs\textsuperscript{128}. The Tribal Development Plan, therefore, cannot be neatly prepared in terms of a uniform model which has been made applicable to the non-tribal communities which the Policy seems to do. Moreover, rehabilitation of the \textit{adivasis} outside the Scheduled area would affect them seriously in more than one way, for they would not only be deprived of land, habitations and the natural bounty of the forests, but also the special customary rights recognized by the special laws applicable to the Scheduled areas\textsuperscript{129}.

\textsuperscript{124} K. B. Saxena, \textit{supra} note 113.
\textsuperscript{125} Ibid.
\textsuperscript{126} Ibid.
\textsuperscript{127} The Indian Forest Act, 1927 under section 12 to 16 recognizes the right to pasture and forest produce at the stage of settling rights before a given area of the forest is classified as the reserve forest. Similarly, Forest Rights Act, 2006 also recognizes the traditional forest rights of the communities (who live in the forest) both at the individual and community levels. At the individual level, it recognizes their rights, to hold a piece of forest land either for self-cultivation or for any other common occupation or habitation so as to ensure their livelihood. At the community level, it recognizes their rights to access minor forest product other than timber, and to carry out fishing activities in water bodies besides traditional and seasonal access to pastoral communities and nomadic tribes for grazing, protecting community forests, accessing biodiversity and claiming intellectual property rights over traditional knowledge and cultural diversity. For more details of these rights, see, section 3 of the Forest Rights Act, 2006.
\textsuperscript{128} K.B Saxena, \textit{supra} note 113.
\textsuperscript{129} K.Balagopal, “Illegal Acquisition in Tribal Areas,” 6 October \textit{Economic and Political Weekly} 4032 (2007)
In addition to above-mentioned problems, the policy is silent on the other issues such as social disarticulation, devaluation of culture and emotional trauma experienced by the displaced tribals. Development induced displacement brought to tribal many problems such as sudden break with their kinship networks, exposure to the hostile larger society and intrusion of the incompatible cultural and social norms from the immigrant non-tribals in the area. The trauma related with displacement and loss of livelihood is felt differently by different caste groups and tribes. With displacement they were deprived of their sources of sustenance with no alternatives available. It is against the sprit of Constitution, and violation of fundamental right to life guaranteed to every citizen to India under Article 21. It is also against the draft resolution of the rights of Indigenous and tribal people and the human rights. Further, it violates the basic tenets of social justice to which the government is allegedly committed. The displaced tribals experience all these things during their displacement phase.

- **SIA and Size of the Projects**

The NRRP, 2007 makes a provision that unless a project involves displacement of 400 or more families en masse in plains or 200 hundred or more families en masse in tribal or hilly areas, a Social Impact Assessment study including a baseline survey is not required to be carried out. It means that if project involves displacement of fewer families than there is no need to carry out SIA. It would not be mandatory in that case. The policy is discriminatory in nature. It gives preference to SIA only in case of large projects, displacing more people and not in small projects displacing less number of people. This classification is unreasonable and violative of article 14 of Indian Constitution. Moreover, the policy provides that in the case of extreme urgency, assessment can be carried out expeditiously. Thus, it seems that the new policy does not bother much about the pre project assessment of people's economic conditions, social status, cultural values and people's right to access to common property resources where project displace less than 400 families in plain or less than 200 families in hilly

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130 William Stanley, *supra* note 1 at 1536.
areas. Therefore, proper SIA study would be taken up to assess the impacts of the proposed projects on the people of the area.

- **Prescriptive Nature of Policy**
  
The new R&R Policy 2007 is more emphatic on defining the minimum standards and benefits rather than providing broad guidelines and principles for project promoters to decide on entitlements\(^{131}\). The policy is thus prescriptive in nature.

- **Benefits Sharing Conflicts**
  
In order to reduce the pain of displacement, the affected people should be accommodated in projects in variety of ways. For example, the displaced persons should be given irrigation facilities, jobs in projects and other casual works. The sharing of the benefits of any project would enhance the feelings, among displaced families that they are the part of the development projects. The NRRP, 2007 envisages long term benefit sharing with the affected people from the project profits. However, the scope is restricted to title holders only. In this scenario, non-title holders are excluded from receiving long term benefits from the revenue generated by the project. This could lead to a conflict situation within the community, entailing delays or even risks, leading to situations wherein the project may not materialize\(^{132}\). The policy fails to bridge gaps between title holders and non-title holders. It amounts clear cut violation of right to equality which has been declared a universal human right at international level.

- **Issue of Public Consultation**
  
The displaced families should be given representation in formulating resettlement and rehabilitation plans. They should be integrated in decisions making and consultation processes. Right to participation in the decision making is important human right which can not denied to displaced families. Though the new policy requires wide dissemination of the resettlement and rehabilitation plans, the plan need not be prepared in consultation with the project affected persons. Similarly the policy fails to integrate host population's participation in preparation of R & R plan. It is


\(^{132}\) Ibid.
important to integrate them in R & R plans so that they may come to know about the displaced community which is to be resettled amongst them. This tendency would help to eliminate the feelings of outsiders and insiders between the new entrants and old inhabitants. Besides this, the policy also fails to integrate NGOs participation in planning and implementation of R & R plans. NGOs have been deemed integral to the planning and implementation process. NGOs can help displaced persons to cope with their new environment. But the policy fails to do so.

- **Policy & Eminent Domain Principle**

  The existing National Policy on Rehabilitation and Resettlement, 2007 reveals that it fails to address the key issues relating to the increase in conflict and forcible acquisition of land. Arbitrary and forcible acquisition of land basing on the concept of eminent domain is responsible for shifting of livelihood pattern of the people, for lose of shelter or place of residence and also put so many other impacts on the people\(^{133}\). Unfortunately, NRRP, 2007 covers only land acquired through the application of the eminent domain and does not apply to cases of negotiated settlement. Before acquiring land for public purpose, consultation with the *gram sabha* and persons going to be affected because of acquisition of land is must. This is the only acceptable democratic and humane method for acquisition of land. We can not rely on the century old law to acquire land compulsorily and forcefully. Unfortunately, the NRRP, 2007 drafted by our law making body still upholds the sovereign power of the state to apply the concept of *eminent domain* to forcibly acquire any private property for so called public purpose.

- **Issue of Shifting of displaced persons**

  The National Policy on R &R, 2007 does not stipulate clearly the time schedule for shifting and resettling the displaced persons in the resettlement area or areas. It merely requires adequate progress in the rehabilitation and resettlement to be ensured before physical shifting of the displaced and therefore, shows less sensitivity to the inconvenience faced by the project affected persons. Physical displacement before the

\(^{133}\) For Impacts of forced acquisition of land see, chapter II
completion of resettlement work lead to impoverishments risks such as landlessness, joblessness, homelessness, marginalization, increased morbidity and mortality, food insecurity, social disarticulation, and loss of common property resources. It amounts violation of several other human rights of the oustees.

3.8.2 Problems in Implementation of NRRP, 2007

India is a country with many laws and policies, each more progressive than the other, but very few of them are seriously implemented. It is sometimes argued that successive governments have had no hesitation in enacting increasingly radical laws, and policies, safe in the knowledge that these laws and policies will, by and large, not be enforced. The message from troubled projects of Singur, Nandigram and POSCO is that no matter how generous the compensation, unless the R&R policy is comprehensively communicated and credibility of its implementation firmly established, people will always be reluctant to part with their land. Therefore, more than the challenge of getting progressive policies and laws is the challenge of implementing them. Indeed, it is not enough to put in place policies that are more comprehensive covering all livelihoods issues related with the project affected persons. The policy can deliver its best only if the implementation challenges are adequately addressed. The new R&R Policy despite of its robustness is struggling with the problems of implementation. The problems encountered during implementation of the R&R Policy are detailed below.

- Follow-up of the Policy

The NRRP, 2007 has been approved by the Central Government in October 2007 i.e. almost 3 years back. But it is unfortunate that States have not yet followed the same in practice. Even though in some of the States R &R benefits and entitlements fall short of what is prescribed under NRRP, 2007. It is clearly seen that efforts are not made by the

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134 Shakhar Singh, supra note 68 at 47.
136 These States include-Chhatisgarh, Maharashtra and Himachal Pradesh. For details see, infra chapter IV
respective departments of those States to bridge the gap\textsuperscript{137} between State’s R & R policies and the existing National Rehabilitation and Resettlement Policy, 2007.

- **Problem with Social Impact Assessment**

  A complete section on SIA has been inserted in the new policy. The section exhibits a clear cut-process and set procedure to be followed. The provision of SIA is a crucial feature of any involuntary displacement. Based on socio-economic studies, estimates of physical and economic displacement are arrived at, and consequent entitlement packages determined. Though the objectives and methodology of undertaking the socio-economic survey are correctly set out, in practice the primary information is lost somewhere in the process of reporting and does not get registered\textsuperscript{138}. The SIA is considered to be an exercise to complete the process requirements and fill the gap. It has become more of a formality than an exercise aimed at finding and presenting the true impact of any proposed project on displacement. Further, it is observed that SIA reports provide macro level information of the project areas rather than providing a micro-level picture which is more pertinent from the point of view of R&R\textsuperscript{139}.

3.9 Scheme of Rehabilitation and Resettlement for the Oustees of Kol Dam Hydro Electric Project, 1999 and NRRP, 2007: A Quick Comparative Assessment

The government of Himachal Pradesh and NTPC brought out a scheme for Resettlement and Rehabilitation of the persons displaced on account of acquisition of their land and other immovable properties under the Land Acquisition Act, 1894 for the construction of Kol Dam Hydro Electric Project affecting people of Mandi, Solan, Shimla and Bilaspur Districts in February 1999. The government drafted a National Policy on Rehabilitation and Resettlement in 2003 which has been revised and the National Rehabilitation and Resettlement Policy, 2007 has been notified. Therefore, it may be relevant to compare it with the National Policy, 2007. The National Policy, 2007 scores over the existing scheme for the

\textsuperscript{137} Ashok Emani, supra note 131.
\textsuperscript{138} Id., at 108
\textsuperscript{139} Ibid.
Rehabilitation and Resettlement of the Oustees for Kol Dam Hydro Electric-Power Project in respect of the following features.

- While the R&R scheme for Kol dam oustees aims at addressing involuntary resettlement caused by project related land acquisition, NRRP,2007 is applicable to involuntary displacement resulting not only from project related land acquisition but also due to any other reason such as conflict and disaster induced displacement.

- NRRP, 2007 makes mandatory provisions for the Social Impact Assessment which shall be carried out by independent and multi-disciplinary expert group including non-official social scientists and rehabilitation experts to be nominated by the government. On the other hand, no such written provision has been inserted in the R & R scheme of the government of Himachal Pradesh.

- The NRRP, 2007 makes a provision regarding wide dissemination of resettlement plans. It makes provision that draft scheme or plan may be made known locally by wide publicity in the affected area and the resettlement area. The draft rehabilitation and resettlement scheme or plan shall also be discussed in gram sabhas in rural areas and in public hearings in urban and rural areas where gram sabhas do not exist. There is no such provision in the R & R scheme drafted for the Kol dam oustees in state of Himachal Pradesh.

- In respect of benefits to the landless and the homestead less encroachers the NRRP, 2007 shows concerns and grater sensitivity. The landless would not get benefits of R & R under the R&R scheme of Himachal Pradesh. The term ‘Oustee’ in R & R Scheme has been defined as a Land owner who has been deprived of his house or land or both on account of acquisition proceeding/private negotiations in connection with the construction of Kol dam project and entitled to compensation of lieu thereof and includes his successors in interest. Thus, landless have not been considered for R & R benefits.

- In the R&R Scheme of government of Himachal Pradesh a minimum of 25 to 30 families should opt for the plots in lieu of
acquisition of house in the resettlement colony, only then the infrastructural facilities such as light, drinking water, pacca approachable road, path and Sulbah sauchalaya will be provided. No such conditions have been given and mentioned in NRRP, 2007.

- In NRRP, 2007 there is a provision that in the case of irrigation or hydel projects, the affected families shall be given preference in allotment of land for land in the command areas of the project, to the extent possible. The land allotted may be consolidated. No such concerns have been shown in the existing R &R scheme of Kol dam oustees. The oustees of this dam have been allotted plots on different places without consulting them.

- In NRRP, 2007 each affected family that is displaced and has cattle, shall get financial assistance of such amount as the appropriate government may decide by not less than fifteen thousand rupees for construction of cattle shed. There is no such written provision in the R&R scheme drafted for Kol dam oustees.

- In the National Policy, 2007 there is time schedule fixed for shifting and resettling the displaced persons in the resettlement area. This is not so in case of R&R scheme of the government of Himachal Pradesh. Till date majority oustees have not been resettled140.

- One of the objectives of National Policy has been to minimize displacement and to promote as far as possible, non-displacing or least displacing alternatives. There is no such written provision mentioned in the R&R scheme of the government of Himachal Pradesh.

The National Policy contains some provisions which are either superior to the R&R scheme of the government of Himachal Pradesh or are omitted in the latter. This includes the mandatory Social Impact Assessment, detailed enumeration of rehabilitation benefits, and procedure for preparation of a rehabilitation plan, arrangement for grievance redressal and monitoring. The NPRR, 2007 is, therefore, a more comprehensive document on rehabilitation and resettlement. But on the basic issues, there

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140 See, infra chapter VI.
is little by way of a major difference. Both documents on R &R ignore rights of people in common property resources for compensatory entitlement. Both have failed to take note of the impoverishment risks such as joblessness, homelessness, marginalization, food insecurity and social disarticulation etc. The end result is that the beneficiary of either two documents would continue to face problems after their displacement.

3.10 Sum-Up

In foregoing discussion, researcher studied contents of forced displacement and its adverse consequences. It is amply clear from the preceding discussion that development induced displacement put several adverse impacts on the oustees and their human rights. In order to mitigate the suffering of the oustees, a well designed rehabilitation and resettlement plan must be put in place. The Policy of 2003 made efforts to mitigate the problems of project affected families by providing several benefits to the oustees but failed on many grounds. Several shortcomings were noticed and highlighted in the Policy of 2003 in the preceding discussion. The government of India in 2007 brought more comprehensive and elaborated policy on rehabilitation and resettlement of displaced which has several provisions to address the concerns of oustees. It incorporates requirement for Social Impact Assessment of the project and put in place dedicated administrative arrangements for preparation and implementation of the R & R plan in consultation with the affected persons. The admissible set of entitlements for the displaced persons include provision of house sites, allotment of agricultural land, preference in access to employment in the project and training for employability outside, financial grant for construction of house, cattle shed, work shed for rural artisans and so many other provisions. But NPRR, 2007 still does not address the major problems and issues which agitate the affected persons. The most important of them is that the policy is applicable on future projects and has ignored the huge number of oustees displaced from the earlier projects who till date are struggling for their rehabilitation and resettlement. The gender concerns have also not been properly addressed in the new policy. The definition of family has failed to treat an unmarried adult daughter as an independent unit deserving separate rehabilitation. Moreover, neither the baseline
survey and census collect information relating to their specific requirements nor the rehabilitation and resettlement scheme incorporates positive action towards the concerns of women. Like old policy, the new policy of 2007 also makes a provision regarding allotment of land in lieu of land taken to the project affected families but it is subject to availability of land. It means that a person whose land is destroyed in the process of dams induced displacement is entitled to get compensation under the Land Acquisition Act, 1894. But the individuals studies on the problems in hand reveals that the people affected are mostly those who give least value to monetary compensation or they do not know how to handle the cash. In such circumstances land for land can be the best solution. The proper and time bound resettlement and rehabilitation of the affected families matters a lot.

A recent review of the state of human rights in India by the UN Committee on Economic, Social and Cultural Rights (UNESCR) expresses deep concern about the displacement and forced evictions of millions of families, and their inadequate R&R, especially the adverse impacts on adivais and dalits, and the harassment of human rights campaigners attempting to help people assert their rights. It can not be denied that the existing policy of 2007 tried its best to integrate humanistic approach towards the rights of weaker sections of the society such as women, tribal, Schedule cast and other vulnerable persons but there are still various issues and human rights which have been left untouched in the policy. No doubt, some of the provisions in the existing policy are in line with or in compliance with International human rights Laws, Principles and Conventions governing rights of outees but still on many points the policy fails to address the rights implications of development induced displacement including dams induced displacement. In order to address the human rights and livelihood issues of vulnerable a well thought out plan must be put in place. There are inadequacies in the existing National Policy which need to be bridged if the current level of protest and resistance on account of displacement is to be reduced.

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