CHAPTER V

DEVELOPMENT-INDUCED DISPLACEMENT IN ASSAM

The issue of development-induced displacement and consequent rehabilitation has become a controversial issue in recent years. In fact, the issue is looked at from different perspectives. According to some people displacement is inevitable although it is a painful process. Others argue that the effect of displacement could be compensated only by adequate rehabilitation process. However, in reality, development does not benefit everyone equally. Millions of people across the world have lost their homes, livelihood, health and even their lives because of development projects. The suffering of the displaced population is a challenge not only for the states concerned but also for the whole international community.

Millions of people worldwide are displaced every year due to development projects such as the construction of dams, irrigation schemes, urban development, transport, conservation or mining projects. The results have often being very negative for most of the people who have been forced to move as well as for those living in the area. The social and cultural life of these people have been disrupted and they have also become economically worse-off with the environment destruction as a result of the introduction of infrastructure and increased crowding in the areas to which people had to move.

Development-induced displacement can be defined as the forcing of communities and individuals out of their homes and homelands for the purposes of economic development. Use of force or coercion of any nature
by the State is central to the idea of development-induced displacement. At
the international level it is viewed as a violation of human rights.¹

Assessment sponsored by the World Bank has estimated that every year
since 1990, roughly ten million people worldwide have been displaced by
infrastructural development projects.² Such development-induced
displacement can take place within a city or district, from one village to
another; or it can also involve displacement across long distances,
sometimes to economically, culturally different settings.³ In regard to
population displacement, resulting from development, they are typically two
types: direct displacement, which leads to actual displacement of people
from their locations and indirect displacement, which leads to loss of
livelihood. In such cases people have not been forced out of their homes but
their environment can become so polluted that their health and livelihood
deteriorate. This can give rise to protection of rights and responsibilities
similar to those that apply to direct displacement.⁴ For example, when fly ash
from cement or thermal plants destroy their land or noise or air pollution from
mines affect their houses, they have no choice but to move out.

The impact of Development-Induced Displacement (DID) is felt more strongly
amongst socially and economically vulnerable groups of people, and
indigenous communities worldwide. There has been particular intensification
of DID in recent years as a result of increasing globalization. In fact,
economic liberalization policies, and programmes have made the problem of
development-induced displacement more urgent. India does not have reliable
official statistics regarding the number of development-induced displacees.
But calculations made on the basis of the number of dams built in the
country, the figure may go up to 21 to 33 million.⁵ The indigenous people or
Scheduled Tribes, constitute roughly eight per cent of India’s total population,
numbering over 84.3 million people, according to 2001 census. Over 50 per
cent of this section of population has been displaced or relocated by
development projects and over 75 per cent of those displaced remain without
proper rehabilitation.\(^6\)

According to a Planning Commission report prepared by the Steering
Committee on Empowering the Scheduled Tribes for the Tenth Five Year
Plan, it is the tribal people who have borne the burnt of displacements. The
tribal people constitute 75 per cent of the people displaced due to wildlife
sanctuaries and national parks numbering about 4.5 lakh. The mining activity
has displaced 13.3 lakh tribal people, who constitute 52.2 per cent of the total
population displaced. Dams, which is the biggest source of displacement in
India, have caused uprooted 63.2 lakh tribal people, that constitute 38.5 per
cent of the total population displaced. Other development activities have
uprooted 1.3 lakh tribal people, constituting 25 per cent of the total population
displaced. These figures cover the period from 1951 to 1999 only. Displacement after this period has not even been accounted for in official
reports.\(^7\)

An unofficial study, prepared by Walter Fernandes\(^8\) puts the figure at around
60 million for the period from 1947 to 2004, involving 25 million hectares of
land, which includes seven million hectares of forest land and six million
hectares of common property resources.\(^9\)

Most of the developing nations in South Asia namely India, Pakistan,
Bangladesh, Srilanka have tried to achieve rapid economic growth often
ignoring the problem of internal displacement. Development policies of these
countries are hardly concerned about the settlement of those people
displaced by development projects.
Large dams are one of the biggest sources of displacement of population not only in India but throughout the whole world. Over the last several years extensive studies have been carried out to assess the adverse impact of dam on downstream river ecosystem, biodiversity and socio-economic life of the people living in the downstream. However the first independent study was conducted by World Commission on Dams (WCD) in 1998.

The proposed Lower Subansiri Project dam in Arunachal Pradesh is located 2.3 km upstream of Gerukamukh village in Lower Subansiri district on the border of Assam and Arunachal Pradesh will generate 2000 MW of power. It is of common knowledge that people of both Assam and Arunachal Pradesh are very apprehensive about the impact of such a large dam in their lives. The Appropriate Technology Mission Assam (ATMA) has filed a Public Interest Litigation (PIL) against the construction of Lower Subansiri dam on the ground that no proper study has been conducted regarding the downstream impacts in the form of flood, erosion and loss of biodiversity.\textsuperscript{10}

Currently the problem of displacement induced by development projects has attracted more and more attention, both at the international as well as national level. In this respect Guiding Principles on Internal Displacement may be recognized as the most remarkable instrument. However, from the definition of internally displaced persons it is clear that Guiding Principles does not specifically mention development projects as possible cause of displacement. However, mention of the word ‘in particular’ in the definition means that the list of causes as given in the definition is not exhaustive. Therefore, it can be argued that development projects such as construction of hydro-electric projects, which provide no adequate resettlement and compensation can be considered as human made disaster and a human rights violation. Consequently those displaced by development projects without rehabilitation fall within the definition of Guiding Principles.
1. Land alienation and tribal people in Northeast India

In an agrarian economy like India land is the life of the people, it is their livelihood, especially for tribal people. Individuals in Northeast India can have rights over land by alienation, by inheritance and by sharing forest lands. The rights thus acquired differ according to the different mode of cultivation—shifting and sedentary. In many tribal areas only shifting or jhoom cultivation prevails and in such areas the cultivator can have no better right than the mere right to use and occupation. But in areas where permanent cultivation prevails, the right of use and occupation becomes permanent, and this in turn develops into higher right of transfer.

The communities inhabiting in Northeastern region have their own system of land management with dominant community life. The land revenue system in the region can be classified into community forest land, state forest, protected forest land, unclassified forests or jhoom land under habitation, family and individual land. Community forests are protected and managed by the community and sustain the community needs in terms of their basic requirements. Different communities have evolved their own methodologies for protection and management of the community forests.

In the plain areas of Assam, Revenue Department has the responsibility to keep the land records. But the department is severely constrained by the fact that the subject of land has been traditionally included in the non-plan head. As a result there is dearth of resources for both modernization and adequate skilled manpower. The land record system is not updated and does not reflect the ground realities. This has resulted in incursion of illegal immigrants and encroachment upon the community as well as state land and acquisition of titles by such illegal migrants.
Tribal groups in Assam and other Northeastern states are still maintaining their own culture, customs and civilization. These areas are therefore treated differently by the Constitution and sizeable amount of autonomy has been granted to these people for their self-governance.\textsuperscript{13} They can make laws for certain matters of proximate interest to the tribal people such as marriage, social customs, inheritance of property, village administration, shifting cultivation, forests, land, use of canal or water course for agriculture etc.\textsuperscript{14} In 1963 the Constitution recognized the customary laws of Nagaland\textsuperscript{15} and in 1986 Mizoram were recognizes by the Constitution of India.\textsuperscript{16} Under the modern law, land is only a commodity for cultivation and construction whereas for tribals it is their identity, an ecosystem on which they thrive. For centuries these tribal communities have treated the resources judicially and built their culture and economy on it.

Since development projects, have been one of the biggest source of loss of land and subsequent displacement in India a study of development-induced displacement in Assam between 1947 and 2000 shows that, by official count, various development schemes used 391,772.9 acres and displaced 343,262 persons. Unofficial sources show that no less than 1,401,184.8 acres were used and 1,909,368 persons displaced from them. The 10,09,412 acres that are missing from the official files are CPRs. According to Government source this unaccounted land is state property and no record needed to be maintained of this land and or persons displaced from it since they are encroachers. That explains why 15.66 lakh CPR dependants are not counted.\textsuperscript{17}

The All Assam Tribal Sangha (AATS) and other tribal organizations in the state have alleged widespread violation of land transfer rules and regulations in the existing tribal belts and blocks in Assam. Cases of transferring of land to non-tribals or non-bonafide people are on the rise.\textsuperscript{18} The All Assam Tribal Sangha (AATS) and other tribal organizations of the State have alleged wide
spread violation of land transfer rules and regulations in the existing tribal belts and blocks in the State. Non-tribal and other people purchase land in the name of private school, societies, trust etc. and use these land for commercial purpose.  

2. Land acquisition law, development and displacement in India

In India the main legislation pertaining to land acquisition is the Land Acquisition Act, 1894. The legislation was enacted by the British to suit the colonial need of exploiting the resources to the benefit of the British Industrial Revolution. In order to achieve the industrial growth, the colonial regime required monopoly over land for coal mine, coffee and tea plantation, roads, railways and other schemes. During colonialism, India’s traditional land use and land ownership patterns were changed to ease the acquisition of land by British entrepreneurs. The introduction of institution of private property had made the community ownership system illegal.

For tribal people in Assam and other Northeastern States land and forests are essentially community resources and they recognize land not as a commodity which can be bought or sold in markets. These people consider land as sacred and it is embedded in social relations. This close attachment to the land and environment is the defining characteristic of indigenous people. To day their land relations are being modified by immigration, encroachment and the changes that the modern legal system induces in their tradition. The colonial law providing for individual ownership continues to be in force in post-colonial India even today. The process of turning land into commodity for the colonial purposes began with the Permanent Settlement 1793 and culminated in the Land Acquisition Act 1894.

In Assam initially for establishment of tea gardens and later on for exploration of petroleum, the British government enacted the Assam Wasteland
Settlement Rules 1838 to make acquisition of land easy. It had resulted in massive land alienation among Ahoms and other ethnic Assamese communities like Bodo and Kachari tribes. As a result most of the people became landless or cultivators as adhiars or eksonia patta holders. More than one crop became non-available under the system because investment had to come from the cultivator but most benefit went to Zamindar. The cultivator who lacked security beyond a year could not make any long term investment. The Assam Adhiars Protection and Regulation Act, 1948 was enacted apparently to provide security to the tenants but it did not transfer ownership to the adhiars. It only stipulated that they pay 20-25 per cent of their first crop depending on who paid for seeds and provided bullocks. Further, the implementation of the clauses on rent remains weak. As a result 50 per cent of private land continues to be under ek-sonia pattas.

Land acquisition in India may be defined as the action of the government whereby it acquires land from its owner in order to pursue certain public purpose or for company. The Act authorizes governments to acquire land for public purposes such as planned development, provisions for town or rural planning, provision for residential purpose to the poor or landless and for carrying out any education, housing or health scheme of the Government. The definition of the term ‘public purpose’ in the Act is inclusive, and is often interpreted very liberally to include variety of uses such as roads, playgrounds, offices and factories, benefiting only a portion of the society. Under the Act the Government is required to make a public notification of the intention to take over the land. The notification has to be published in the official gazette and in two daily news papers circulation in that locality of which at least one shall be in the regional language. After the notification the government is also required to make an enquiry into objection that may be filed by the people interested in the land or property.
For the purpose of development, maintenance, and management of national highways, a special law, the National Highways (NH) Act, has been promulgated. The Act provides for acquiring land for public purpose through a 'competent authority' which means any person or authority authorized by the Union Government by notification in the official Gazette to perform functions of the competent authority for such areas as may be specified in the notification. In addition National Highways Authority of India also has policies on a project by project basis for highway projects funded by bilateral and multilateral agencies.

3. Public purpose as defined by the Apex Court in India

Under the current trend of law in India state can acquire land from individuals for development purposes on the ground of ‘public purpose’. The law authorizes land acquisition by the government after paying a fixed compensation in lieu of the losses incurred by the land owners.

The courts in India have also held different views on the public purpose. In the case of State of Bihar vs. Kameshwar Singh the Supreme Court held that the expression ‘public purpose’ is incapable of precise definition and cannot be given a rigid meaning. It can only be defined by a process of judicial inclusion and exclusion.

In another case, the Apex Court observed that it is impossible to precisely define the expression of public purpose. In each case, all the facts and circumstances will require to be closely examined in order to determine whether a public purpose has been established prima facie. The court further held that the government is the best judge of public purpose.

In a recent case the Apex court has held that land acquired by the Government or its instrumentalities for a specific public purpose cannot be
changed and transferred to private individuals or corporate bodies. Though the government enjoys power of ‘eminent domain’\(^3\) to compulsorily acquire any land for public purpose yet, it cannot legitimize any fraudulent act of authorities. The proposition to acquire land for public purpose cannot be over stretched to legitimize a patently illegal and fraudulent exercise undertaken for depriving the landowners of their constitutional right to property with a view to favour private persons.\(^3\)

In another case the Supreme Court expressed concerned over misuse of the Land Acquisition Act. In this case the court observed that in the name of globalization and land development the States had marginalized farmers by paying a pittance as compensation and acquires land from farmers for development in the guise of public purpose.\(^3\) Giving a new dimension to poor farmers whose land is acquired for public purpose, the Supreme Court held that the right to possess land being a right to property cannot be taken away without conducting an enquiry under the land acquisition Act (LAA). In the instant case appellants were aggrieved over acquisition of their fertile agricultural land by the Uttar Pradesh Government for construction of a modern jail. The Court also made it clear that in construing the concept of public purpose the mandate of Article 13 of the Constitution\(^3\) could not in any way take away or abridge the rights conferred under the chapter of Fundamental Rights.\(^3\)

4. Land Acquisition and Rehabilitation

The Government of India has recognized the need to minimize large-scale displacement and to provide for resettlement and rehabilitation to the project affected people. Accordingly government formulated National policies on Resettlement and Rehabilitation for project affected people in 2003. After the lapse of 2007 Rehabilitation and Resettlement Bill Government of India has tried to bring about a new legislation for land acquisition reforms and
rehabilitation for development projects in India. The Bill provides for land acquisition and as well as rehabilitation and resettlement. It replaces the Land Acquisition Act, 1894.

The acquisition of land by the governments has become a contentious issue. For the last several years, people’s movement and social groups have been demanding a repeal or amendment in the Land Acquisition Act. The grounds of this protest are the misuse of the term ‘public purpose’ and the power of the ‘eminent domain’ that enables the government to acquire land by force. The Government of India with a view to minimize displacement had drafted a National Land Acquisition and Rehabilitation and Resettlement Bill, 2011 that had been introduced in Parliament. Under the provision of the Bill the process of land acquisition involves a social impact assessment survey, preliminary notification stating the intent for acquisition, a declaration of acquisition and compensation to be given within a definite time.

However, if amendments in the Act are observed closely it becomes obvious that provisions are now more regressive than the century old British Land Acquisition legislation and earlier bill of 2007. For instance, there is an ‘urgency clause’ whereby the entire acquisition, social impact assessment and rehabilitation and resettlement provisions may be bypassed altogether. In addition the government reserves the power to undo the entire legislation in certain cases or to apply with certain modifications. The Land Acquisition, Rehabilitation and Resettlement (LARR) Bill broadly says that the legislation shall be in addition to existing laws and not in derogation of any other law. It means in case of inconsistency, every other statute will prevail. Further the provision of the Bill shall not apply to acquisitions under 16 existing legislations as provided in the fourth schedule of the Bill, including Special Economic Zones Act, 2005, the Atomic Energy Act, 1962, the Railway Act, 1989 etc. Earlier draft provided for return of unused land after ten years to the original owner but now the Bill says if the land is not used for
stated purpose it will be returned to the State Government or land authority and not the owner\(^39\).

Of course, it is true that the new Bill is a great improvement over the 2007 Bill. The new Bill provides for a comprehensive regime of rehabilitation and where appropriate, resettlement for affected families. Special provisions for food security have also been made in the Bill. The Bill rules out the acquisition, not of all irrigated agricultural land, but also of multi-cropped irrigated agricultural land.\(^40\) However the definition of ‘multicrop’ is unclear whether it means a number of crops grown in a single season or in alternate seasons by rotation.\(^41\) The condition of consent by 80 per cent of the land owners applies only to land acquisition by the Government for companies. Many people criticize that the provision should apply to government projects as well. Further, the draft bill gives legitimacy to Government to acquire land for private companies.\(^42\) Thus it seems that there has been no dilution of the principle of ‘eminent domain’ in the draft bill.

The 2007 Bill had sought to reduce the extent of land acquisition by the State for a company to 30 per cent, if the company purchases 70 per cent of the land needed by negotiation. The present Bill does away with the 70:30 formula, and provides for partial acquisition by the State for a company if the company so requests\(^43\). The Bill also referred to loss of primary livelihood that links to the acquisition of land. The term ‘livelihood’ is illustrated by a reference to the gathering of forest produce, hunting, fishing etc.;\(^44\) there is no reference to sellers of goods and services to the people in the project area, who will lose their livelihood when the people whom they serve move away to resettlement areas. It is not clear whether they will be regarded as project-affected persons.\(^45\)
Even though the Bill is an improvement over 2007 Bill, the issue of Social Impact Assessment (SIA)\(^46\) is not addressed appropriately. The Bill does not cover the disappearance of a whole way of life; the loss of close knit communities; the loss of age old of relationship with nature; loss of roots etc. Women, senior citizens and children are not part of this exercise.\(^47\) The principle of ‘land for land’ has been abandoned. It figures only in case of irrigation projects. The Bill envisages one acre per family instead of two acres as was given in Sardar Sarovar Project.\(^48\) In addition a number of officials and institutions are specified in the Bill, such as collector, Administrator of R&R etc., but it is only the R&R Committee that has a significant non-official presence. The National Monitoring Committee is not participatory; apart from officials, it includes only a few experts. The idea of a National Rehabilitation Commission has also been abandoned. Lastly it is not clear whether displacement by natural calamities would be brought within the purview of the Bill as there is a vital difference between unavoidable displacement caused by nature and deliberate displacement caused by human decision.\(^49\)

Some state governments such as Orissa, Madhya Pradesh, Maharashtra, Karnataka and organizations like the National Thermal Power Corporation (NTPC), the National Hydel Power Corporation (NHPC), Coal India Ltd. have their own resettlement and rehabilitation policies. Gujrat initially followed Maharashtra's land for land scheme for compensation and later passed several government orders. The best known package emerging from government orders was that for Narmada even though Gujrat does not have state policy on rehabilitation. Andhra Pradesh, Tamil Nadu and Rajasthan have passed several government orders but most of them in connection with World Bank-assisted projects, and have no policies of their own.\(^50\)
4.1. Special Economic Zone and Land Acquisition

In India Special Economic Zones (SEZ) are established with a view to improve the infrastructural deficiencies, for development of industry and commerce. Government of India in April 2000 announced the introduction of Special Economic Zones policy in the country. As of 2007, more than 500 Special Economic Zones have been proposed and out of them 220 have already been created.51

Special Economic Zones are deemed to be foreign territory for the purpose of trade operations, duties and tariffs. These zones are to provide an internationally competitive and hassle free environment for exports. Units are allowed to set up in SEZ for manufacture of goods and rendering of services. All export/import operations of the Special Economic Zone units are on self-certification basis. Anything could be imported duty free but sales in the Domestic Tariff Area by SEZ units are subject to payment of full custom duty as per import policy in force. Further offshore banking52 units are being allowed to be set up in the Special Economic Zones. The policy provided for setting up of Special Economic Zones in the public, private, joint sector or by state governments.53

The Government of India in 2004 announced the Foreign Trade 2004 facilitation and growth of external trade. The Special Economic Zone Act, 2005 and Special Economic Zone Rules, 2006 were introduced under the policy, to regulate and promote the development of these industrial enclaves. The Act designated the Special Economic Zones a duty free enclave. No license is required for import and no routine examination is to be conducted by the custom authorities of the export/import cargo. The Act provides exemptions to SEZ units and special economic zone developers from all indirect taxes, including basic customs duty, countervailing duty54 and direct
taxes such as income tax, sales tax, excise duties and service tax. The Act provides the freedom to subcontract and permit manufacturing, trading and service activities in the special economic zones. The SEZs are exempted from many labour laws—including Industrial Dispute Act, Contract Labour Act, Factories Act, Minimum Wages Act and Trade Union Act. The SEZ Act, 2005 is also not applicable to Panchayat Raj Act, 1996 for local self governance.

In 1991 when India opened its market for foreign investment, it was believed that there were enough bureaucratic controls, improper administrative procedure, rigid labour laws and poor infrastructure that were adversely affecting the investment climate. As a solution to the problem the Special Economic Zone Act was passed in 2005, making provision for converting vast stretches of agricultural land into industrial and other developmental purpose. Such land conversion not only has a negative impact on agriculture and food security but also give rise other problems such as problems of displacement and rehabilitation and inadequate compensation. 

Currently building of SEZ units on prime agricultural land and the displacement and inadequate compensation provided to farmers, and deprivation suffered by them and other rural workers has become the biggest bone of contention. The extent of land acquired or committed to various companies has been on the rise. For instance during the 1947-2000 period West Bengal has used 47 lakh acres of land for development purpose affecting 70 lakh persons, 36 lakh of them are now displaced persons (DP) and 34 lakh deprived of livelihood without being physically relocated project affected persons (PAP). Of these 14 lakh about 20 per cent are tribals who make up six per cent of the state’s population, 21 lakh (30 per cent) dalits and another 20 per cent weakest among the backwards like fish and quarry workers. Thus it is obvious that there will be more displacement in coming years than has been in the past sixty years.
Besides, the socio-economic controversies, SEZ policy is also contentious on environment front. The areas designated for SEZ are generally located within and around sensitive ecosystems which poses a serious threat to these fragile systems. Further, SEZs are also exempted from public hearing under Environment Impact Assessment (EIA)\textsuperscript{57} procedure and are free from labour laws. Within areas under Coastal Zone Regulation, developmental projects that are apparently ‘non-polluting’, such as office parks, hotels, golf-courses etc. are granted permission to continue under SEZ regulation.\textsuperscript{58} Thus the establishment of SEZ leads to conflict between rural people on one hand and government and the developers on the other. In the name of development government has used full force and justification to acquire land. The government has assured that SEZ will be coming only on barren and single crop lands, but in practice it has not been so.

To counter the mechanism of SEZ people have not only started protesting vehemently but have also knocked the doors of judiciary to strike down the policy as well as the Act. Several writ petitions and Public Interest Litigations have been filed in various High Courts as well as in the Supreme Court of India. The displaced people in India were simply granted compensation for the land acquired under the law. The notion of rehabilitation emerged when it was realized that compensation for land and property acquired was not enough to make good the loss of the displaced people. However, most officials claim that compensation is rehabilitation. Compensation is defined as the average of the registered price of land in an area for three years. In Assam, the compensation was as little as Rs. 43.37 per acre for some plots in Dhubri District, in 1970s. People could not begin the life anew with this amount. What is worse is that CPR dependants are not even paid this paltry sum.\textsuperscript{59}

Those who are in favour of SEZ argue that even if agricultural land is lost, people would get jobs in the factories. But it has to be remembered that their
employment generation capacity is low in these industries and even if jobs are available they are out of reach of rural youths. As these industries use most modern technology, the number of jobs available is much less and more so for the rural youths.

5. Some of the major developmental projects in Assam causing displacement

5.1. Dams

Out of all the developmental projects that bring out physical displacement, dams and their related infrastructure are the major source of displacement of population. The International Commission on Large Dams (ICOLD) reports that the world had over 5,000 large dams in 1950 and over 45,000 by the late 1990s. At present India ranks among the top few ‘big dam’ countries next only to China and USA. Of course, it is true that these large dams and multi-purpose river valley projects have provided food security to India at a crucial period. The nation’s food production has increased many fold during the last few decades—from 51 mn tonnes in 1950-51 to 208 mn. tones in 1999-2000.

The proposed multipurpose river project in the Pagladiya River at Thalkuchi in the Nalbari district of lower Assam threatens to displace more than 50,000 people and more than 5,000 families. The area is inhabited by various castes and communities but basically dominated by tribals of Bodo ethnic group, The Brahmaputra Board claims that only 20 per cent of the potential displacees belong to the scheduled tribes, but the affected people say that it is around 90 per cent.
According to a Guwahati based researcher Geeta Bharali, the Pagladiya Project will displace 20,000 families. The construction of dams, roads, reservoir and canals will lead to the displacement of about 1,05,000 people from their lands and homes. About 34,000 acres of land will be acquired for the project. Land in the proposed area is highly fertile and most of the people are poor peasants. Moreover, the proposed project will submerge four high schools, several primary health centers, namghars and other places of worship. All these are very important social assets for the people which they cannot afford to lose at any cost. The Government has proposed to grant Rs. 20,800 per displaced family and Rs. 1,000 as material grant. It has also been planned to shift the project displaced to a government reserve forest in Nalbari district. However, the site is already occupied by illegal settlers coming from Bangladesh.

Nalbari district is one of the most densely populated district in Assam. The district has virtually no land to resettle such large number of displaced peasants. Other districts are also unwilling to accommodate such a large number of population. Now, the only option left to the government is to resettle and rehabilitate them in different places. However, this will lead to fragmentation of the community. Hence people are against rehabilitation of people at different places.

The Brahmaputra Board, the commissioning agency prepared a resettlement and rehabilitation package at the cost of Rs.47.89 crores. The number of potential project displaced estimated by the Board is 18,743 persons and resettlement and rehabilitation (R&R) package aims at covering only these people. This is a gross underestimation of the number of potential project affected people.
Assam is witnessing a number of protests against the construction of big dams in Arunachal Pradesh where most of the tributaries of Brahmaputra originate. Protest is led by the two biggest pressure lobbies in the state – All Assam Students’ Union (AASU) and Krishak Mukti Sangram Samity (KMSS). Groups like KMSS have demanded shelving of all dam projects, while some others have called for a total review of the environmental impact of the proposed dams in order to prevent loss of human lives and properties in the downstream.

### 5.2. Urbanization

Urban infrastructure and transportation projects that cause displacement include establishment of industrial and commercial estate, slum clearance and upgrading, the building and upgrading of sewage systems, schools, hospitals ports, construction of communication and transport network etc.

The process of urbanization has also affected several communities in Assam. However, the rate of urbanization is much low in Assam in comparison to other parts of the country. For example, about 86 per cent of the State’s population live in rural areas and only 14 per cent are urban inhabitants. 69

#### 5.2.1. Gauhati University

The first university of the Northeast Gauhati University was established in 1948, in the outskirt of Guwahati as it was then Jalukbari. To establish the university the Government acquired large tracts of land from a cluster of Assamese Muslim villages. The process had displaced a large number of Muslim villagers leading to marginalization of these villagers. Even today, the villagers allege that they have not received adequate compensation from the
Government. Very few persons from the displaced villages got jobs as peons and *chaukidars* in the university.\textsuperscript{70}

### 5.2.3. Assam University

For the construction of Assam University at Dargakona about 20 km from Silchar the Government acquired 600 acres of land that included 100 acres of private land and rest government land. Majority of the displaced people are Dalits, Karbi and Hmar tribals. They lived by growing bamboo, vegetables and paddy and collecting firewood. That made them self-reliant till they lost their livelihood to the project.\textsuperscript{71}

### 5.2.4. Dispur Capital Complex and Guwahati City

The capital city of Assam, Guwahati was once the original habitat of the Bodos—the largest plain tribe in Assam and Karbis—one of the hill tribes of the State. Most of them have been completely uprooted from their soil in the process of modernization and urbanization. To-day there is no trace of these original people. A few of them who managed to survive in some pockets have been marginalized in the process of urbanization. The Bodos paid their price for the construction of new capital of Assam after the formation of Meghalaya in 1972. The total land used for construction of Dispur Capital Complex was around 48,000 acres including 43,067.33 acres of the Kamrup Tribal Belt. The rest was agricultural land that land owners gave out on rent on a share cropper basis. Most of these tenants were Bodos. Around 1,000 families affected by these 5,000 acres were tenant share croppers whose livelihood was agriculture but it was not taken into account.\textsuperscript{72}

Displaced Karbi people now live in the adjoining Bonda-Chandrapur area outside the city boundary in abject poverty. In future, they are likely to be pushed out further once the city is expanded to their present habitat. Another
tribal group—Rabhas are also affected by the rapid expansion of Guwahati city living near the state capital in Kahilipara.

5.2.5. Indian Institute of Technology (IIT), Guwahati

As per the Assam Accord 1985, the Government of India established its sixth IIT in 1994. Establishment of the institute displaced 6,000 families, roughly 35,000 people from their land. Around 60 per cent of them are Bodo people. The rest constitute Ahom, Rabha and Muslim communities. They lost their main livelihood of fishing and collection of forest produce since IIT destroyed the forests and beels. The Union Government gave Rs. 10.3 crores to the State Government as compensation to be paid to the displaced persons (DP) but the Assam Government released only 4.3 crores of it. The CPR dependants were given land compensation 0.1 acres and others got Rs. 25,000.

Kutting Pahar is a locality where some of DPs are living near the IIT. When the investigator visited the place it was found that the area is low lying and often submerged by flood from nearby Brahmaputra and also by rain water. People are living in most unhygienic condition. There is no electricity in the area. Primary health care is available at a distance of about three to four km away, however primary education for children is available nearby. These people are marginalized because of displacement and majority of them earn their livelihood as daily wage labourers. Another locality where some of the IDPs are living is Mariapatty. Majority of IDPs living in the area belong to scheduled castes. Living conditions of these people are worse than the people living in the Kutting Pahar area. These people are living in a cluster of accommodations without any basic amenities like safe drinking water, sanitation etc. These people get marginalized due to displacement and now some of them earn livelihood as manual labourer while others are engaged in petty business.
5.2.6. Sports Complex

Assam hosted the National Games in the year 2007 and a large tract of land had been acquired at a place called Saro-Hojai within the city of Guwahati to build permanent ultra-modern sports stadium. This had also resulted displacement of several thousand people who cannot afford to play or watch games.\textsuperscript{76}

5.2.7. Bogibeel Bridge

The 4,135.2 meter long road cum rail bridge now under construction, will connect the north and south banks of Brahmaputra in Dhemaji and Dibrugarh districts. In total 893.09 acres of land have been acquired for the project. The project has displaced large number of people in both north and south banks. On the south bank displacees are mainly non-tribals and on the north bank they are mainly Mising tribals.\textsuperscript{77}

6. Oil sector

It is difficult to find the exact amount of land acquisition for the oil sector in Assam. Official records presenting the land acquisition data does not provide the whole story. For the establishment of BRPL the State Government acquired 565 acres of private land and 5,455 acres Common Property Resource (CPR) land. Similarly in the case of Numaligarh Refinary Limited (NRL) in Golaghat district, the Government of Assam acquired at least 269 acres of private land and 481 acres of CPR land.\textsuperscript{78}

In case of NRL located in Guwahati the State Government acquired 603 acres of private land and 3,397 acres of CPR land for the refinery. Cash compensation was given to the legal owners only i.e. those having individual patta. Since all the occupants of lands were not legal owners, CPR dependants got no compensation.\textsuperscript{79}
For the implementation of Reliance Gas Cracker Project the State Government has identified 1100 acres of land in Lapetkata near Dibrugarh town of which 1,000 acres of land belongs to private owners and the remaining 100 acres of land belongs to the Government.80 The Project has displaced several thousands of people belonging to Sonowal, Kachari tribes and also tea garden labourers.

At least 24 families of Ghurania Gaon, Lapetkata alleged that district administration had acquired their land ranging from three to five bighas for the Gas Cracker Project with the promise of adequate compensation but when the list of awardees came out it was found that only four out of twenty eight families are enlisted in the list of beneficiaries. These families were in possession of land for almost half a century.81 The people are not against the project but against not getting adequate compensation and proper rehabilitation.

7. Defence establishments

The Northeastern States including Assam have military camps, airfields, defence training institute, border out posts and other defence units because of its geo-strategic location. A large chunk of land including agricultural land has been acquired for establishment of cantonments. However, details about the cantonments and paramilitary units in the State are difficult to obtain since they come under national security.

According to the website of the Ministry of Defence, Government of India, in 2005, the country as a whole had 62 cantonments spreading over 17 lakh acres of land, much of it acquired before 1947. However, most of the defence establishments in Assam were built after independence because of sharing of international border with Bangladesh and also for growth of insurgency.82
Official files show that 1,103.76 acres of CPR land have been used for defence purposes.  

8. Industries

8.1. Paper Mills

In order to utilize Assam’s forest resources the Nagaon Paper Mills at Jagiroad, the Cachar Paper Mills at Panchgram and Jogighopa Paper Mills in Goalpara district were established in late sixties and mid-seventies. These paper mills have been responsible for decreasing the green forest cover as well as increasing the level of environmental pollution in Assam. For the Jagiroad Paper Mill, the Government acquired 600.84 acres of prime land that mostly belonged to Lalung, Tiwa and Karbi tribes. The entire land of five villages was acquired for the project. These tribal had to surrender 257.26 acres of their land. However, the Nagaon Paper Mill (NPM) authority remained silent on the number of non-tribal people displaced from the project area. However, the people living around the mills say the number of IDPs is much larger than what has been described by the NPM authority.

8.2. Namrup Fertilizers

Namrup Fertilizer was established in 1960, at Namrup in Dibrugarh district. The project occupies 319 acres of land. More than 200 mostly tribal families belonging to Naga and Ahom families from Khermiya, Nagajan, Parbatia, Rangjan, Duwania, Chayakar Gaon were affected by it. The project did not have a resettlement plan and most displaced families have resettled themselves in Nigam, Joypur, Naharkatia in Dibrugarh and Makumkilla in Tinsukia, a few in Siloni Nagagaon and Barhatgaon in Sibsagar and rest in the project area.
9. World Bank policy on involuntary resettlement

Until recently United Nations’ concern regarding IDPs have mostly been confined to persons displaced due to violence natural or man made disaster. In 1980, the World Bank for the first time formulated the policy on involuntary resettlement of any development agency engaged in funding and constructing projects that cause displacement. The World Bank’s Policy has undergone alterations a number of times and the latest version of the policy was released in December 2001. The World Bank also has operational policy on indigenous people, which is relevant in many cases of involuntary resettlement. The policy aims to ensure that the development process fosters full respect for the dignity, human rights and cultures of indigenous people. The policy requires that indigenous peoples benefit from the commercial development of natural resources. The World Bank’s policy on Rehabilitation and Resettlement has been the norm for various funding agencies. The policy applies even in situations where people lose their agricultural land or small business, even though their housing is not affected or people are temporarily displaced. The key principles of the policy are as follows:

(i) Avoiding minimization of the need for resettlement

This means that serious consideration should be given to alternatives such as the keeping the level of the reservoir level low in the case of hydropower projects or narrowing the breadth of the highway or re-routing through less populated areas in case of highway projects.
(ii) To ensure that the affected population can achieve an equivalent or improved standard of living within a reasonable time

The affected population should be given access to land, natural resources, housing and infrastructure of a level or at least equivalent to that which they previously enjoyed, so that they can recover or improve their income levels within a reasonable period.

(iii) Fully compensate all transitional losses

Displacee should be given all legal costs, transport costs and loss of income resulting from displacement.

(iv) Minimise the disruption of social networks and economic opportunities

As far as possible affected population should be encouraged to maintain their social networks. This can be achieved through close consultation by resettling the affected population as a group, and as near as possible to their original habitat.

(v) The project should provide opportunities for development

Wherever possible the affected population should be the first to benefit from the opportunities provided by the project. This can be achieved by giving them preference in employment, and if necessary specific training should be given to them so that it offers opportunities for self employment.

Michael Cernea, a sociologist, who conducted a research on development-induced displacement and resettlement for the World Bank, points out that when people are forcibly ousted from their land and habitat, it carries with it
the risk of becoming poorer than before displacement. Those displaced are supposed to receive compensation for their lost assets and effective assistance to re-establish their lives. But this does not happen for large number of oustees. Cernea’s impoverishment and reconstruction model identifies eight common risk factors of such displacement, these are landlessness, joblessness, homelessness, marginalization, food insecurity, increased morbidity and mortality, loss of access to common property, and social disintegration.\textsuperscript{86}

10. International framework

At the international level legal scholars have traditionally focused on conflict-induced displacement. It is only recently some legal scholars have begun to shift their attention to development-induced displacement through the perspective of international law, in particular international human rights law. To manage the issue of equitable compensation and rehabilitation of affected population international community has made an effort to establish a framework for setting up universal norms and standards. The foundation of this framework is based on United Nations Charter (1945) and the Universal Declaration of Human Rights (1948). The United Nations General Assembly reinforced this framework with United Nations Declaration on the Right to Development (1986) and the Rio Declaration on Environment and Development (1992). Rio Declaration on Environment and Development—commonly known as Earth Summit intended to guide future sustainable development around the world and based on the principle that human beings are entitled to healthy and productive life in harmony with nature.\textsuperscript{87} The protection, preservation and enhancement of natural environment particularly the proper management of climate system, biological diversity and flora and fauna of the earth, are the common concern of mankind. Therefore, all the states have a duty to cooperate in the achievement of global sustainable development. In this respect industrial concerns also have responsibility.
The Rio Declaration recognizes the role of indigenous people in environment management and the use of these natural resources for their sustainable development. The Declaration also proclaims that states have duty to support indigenous peoples' identity, culture, interest and enable their participation in the achievement of sustainable development. The principle to recognize the vital role of indigenous people in sustainable development is reaffirmed by another United Nations document.

The International Labour Organization (ILO), in 1957 developed and ratified the Indigenous and Tribal Populations Convention (No.107) with a view to improving the living conditions of indigenous peoples worldwide. In 1989, ILO Convention 107 was revised and renamed as Indigenous and Tribal Peoples Convention. The Convention sets out the standard for national governments regarding indigenous peoples’ economic, social, cultural and political rights, including the right to land base. The Convention emphasizes that indigenous and tribal peoples have the right to decide their priorities for the process of development as it affects their beliefs, customs and lands. They should have the right to exercise control over their own economic, social and cultural developments.

In 2002 an international conference on development-induced displacement convened by Brookings Institution that brought together scholars from research communities, financial and development agencies and NGOs. It was concluded in that conference that the concept of internal displacement is not limited to one type of displacement only i.e. war or conflict induced displacement. The term embraces all the population who are forcibly displaced either by wars, civil wars, persecution, development projects or by natural disaster and yet do not cross the national border.
To date, the Declaration on the Rights of the Indigenous People is the most comprehensive statement of the rights of indigenous people in international human rights law. The Declaration though not legally binding upon the member States, nevertheless, has a major effective impact on indigenous people worldwide in regard to their rights. The Declaration introduces the key legal concept of free, prior and informed consent of indigenous peoples which must be obtained before any relocation. Article 26 of the Declaration constitutes an important recognition of indigenous land ownership that has been ignored in many countries including India. The colonial Governments which have different approach of land management failed to recognize the traditional, indigenous form of land management. Further the Johannesburg Declaration on Sustainable Development adopted in 2002 reaffirmed the vital role of indigenous people in sustainable development. Through this Declaration the international community recognizes the role of indigenous peoples as leaders and role-models for sustainability, and that they play a key role in protecting the natural resources and biodiversity within and outside of their territory.

In situations other than during emergency phases of disaster or armed conflicts which include instances of development-induced displacement, the Guiding Principles provide some safeguards and guarantees: (i) The displacement must be lawfully mandated and carried out. (ii) The authority must seek the free and fully informed consent and active participation of those displaced. (iii) It must guarantee compensation or relocation, where applicable. Displacement must be subject to the right of judicial review and effective remedy.

Authorities must take special care to protect against the displacement of indigenous people, minorities, peasants, pastoralists and others who have special attachment to their lands.
Among the human rights treaties only the 1981 African Charter on Human and Peoples’ Rights proclaims environmental rights in broad terms. It protects both the rights of people to the ‘best attainable standard of health’ and their right to ‘a general satisfactory environment’ favourable to their development. The African Commission on Human and Peoples’ Right concluded that an environmental pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and development as the breakdown of fundamental ecological equilibrium is harmful to physical and mental health.

11. Safeguards as provided under Indian law

The Constitution of India provides for a comprehensive framework for protection from social injustice to the people of the country. The founding fathers of the Indian Constitution with their farsightedness made various provisions within the constitutional framework for the protection of the interests of tribal people. It enjoins upon the state not to discriminate against any citizen on the ground of caste. Untouchability is abolished and its practice in any form is forbidden. The Constitution mandates that no citizen shall, on ground only of caste or race, subjected to any disability and restriction. It empowers the state to make provisions for reservation in educational institutions, and in appointments for posts in favour of scheduled castes and scheduled tribes. There is also provision for reservation of seats in the Lok Sabha for Scheduled Castes and Scheduled Tribes. The Constitution mandates the State to promote economic and educational interests of Scheduled Castes and Scheduled Tribes and protect them from social injustice and all forms of exploitation. The Constitution also requires the states to frame policies that will serve the right to an adequate means of livelihood for men and women equally.
The Fifth Schedule of the Constitution of India provides protection to the tribal people living in Scheduled areas of nine states in the country from alienation of their lands and natural resources to non-tribals and to companies. This constitutional safeguard is now under imminent threat of being amended to effect the transfer of tribal land to non-tribals and to companies. The Fifth Schedule granted the Governor of each State immense power to make regulations for good governance in such areas. The Sixth Schedule of Constitution of India makes similar provisions for the administration of tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram. Thus the Fifth and Sixth Schedule provide for self rule within the framework of the Constitution. The same legal system also makes alienation of tribal land to non-tribal easy. The laws banning alienation of tribal land are limited to individually owned land, which is around one third in the tribal areas. However, even a cursory glimpse of these laws reveal that these protective measures have far from succeeded in protecting the interests of tribal people not only from exploitation of non-tribal people but also from State itself.

In Assam during colonial regime the Assam Waste Land Settlement Rules 1838 made acquisition of land at a very low price for tea gardens which turned many cultivators into landless workers or adhiars. The Assam Land and Revenue Regulation was enacted in 1886 which removed many restrictions on land alienation and turned more cultivators into adhiars. The Assam Adhiars Protection and Regulation Act, 1948 was enacted apparently to provide security to the adhiars, but in reality the Act does not stipulate for the transfer of ownership to them.

Originally the Constitution of India included the right to property as a fundamental right under Article 19 (f) and Article 31. But the state was confronted with a number of difficulties with regard to inclusion of right to property in the category of fundamental right. It was in this background that
Constitution (First Amendment) Act was passed in 1951. The amendment inserted two new Articles 31 A, 31 B and the Ninth Schedule to give protection from challenge to land reform laws\(^{113}\). In 1977, the 44th amendment eliminated the right to acquire, hold and dispose of property as fundamental right. However, in another part of the constitution it was provided that no person shall be deprived of his property except by authority of law.\(^{114}\) The result is that the right to property as a fundamental right is now substituted as a statutory right. Thus, the amendment expanded the power of the State to appropriate property for social welfare purpose. However in a recent judgement that was delivered in 11 January 2007, the Supreme Court held that any law placed under the Ninth Schedule after 23 April 1973 can be challenged in the court of law if they violate fundamental rights of the Constitution.\(^{115}\)

**12. Indian judiciary on protection of human rights**

The status of international law within a municipal legal system is generally determined by the Constitution of a state. International law requires a state to carry out its international obligation through the domestic legal system. Therefore, implementation of these laws varies from country to country. International law automatically becomes a part of municipal law in some countries.\(^{116}\) India follows the dualist theory for the implementation of international law at domestic level. In some countries like France, United States of America, Germany, constitutions provide relatively clear provisions for the domestic application of International Treaty Law or Customary Law. On the other hand, Constitution of India does not make specific reference to the status of international law in its legal system nor does it specifically obligates the judiciary to apply international law.
The basic provision of the Constitution of India by which international law gets implemented in India is Article 51(C).\textsuperscript{117} From the reading of the Article it becomes clear that the Article is too general and no conclusion can be drawn from it as to how far rules of international law shall be applied by the courts.\textsuperscript{118} Constitution also mandates the Parliament to enact a law incorporating the objectives that are enshrined in the international law documents.\textsuperscript{119}

Indian judiciary though not empowered to make legislation, is free to interpret India’s obligations under international law into municipal law of the country while pronouncing decisions. In this respect, Indian judiciary has played a very important role in implementing India’s international obligations under international treaties, especially in the field of human rights and environmental law.

Whenever necessity arises Indian Courts took recourse to international conventions as an external aid for construction of national legislation. In Vishaka vs. State of Rajasthan\textsuperscript{120} the Supreme Court used international law\textsuperscript{121} in enacting guidelines for combating sexual harassment in the workplace. Using the international law as a guideline, the court ensured that women would be better protected in the workplace and violation of court’s standards in protecting women would be a breach of law. The Supreme Court in another case emphasized that in cases involving violation of human rights, the Court should be alive to the international convention, and applies the same in deciding cases.\textsuperscript{122}

In Jolly George Varghese and another vs. Bank of Cochin\textsuperscript{123} the Court attempted to deal with the emerging linkage between domestic law and human rights by reconciling Article 11 of ICCPR\textsuperscript{124} with contractual provisions and municipal law to protect human rights of a civil debtor due to
judicial process under Section 51 (proviso) and Order 21, Rule 37, Civil Procedure Code. The Court in the Vellore Citizens Welfare Forum v. Union of India and Others\textsuperscript{125} while referring to the' precautionary principles'\textsuperscript{126} and 'polluter pay principles'\textsuperscript{127} as part of the environmental law of the country.

There are numerous decisions wherein judiciary in India, in its interpretation of Article 21 has strengthened and extended the human rights jurisprudence. From time to time the Supreme Court has asserted that right to life in Article 21 of Constitution of India means something more than survival of animal existence. It includes right of healthy living. In the case of Virender Gaur vs. State of Haryana the Supreme Court observed that Article 21 protects right to life as a fundamental right and enjoying of life includes the right to live with human dignity which encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air, water and sanitation.\textsuperscript{128} In M.C.Mehta vs. Union of India the Court held that the principle of sustainable development requires such development to take place which is ecologically sustainable.\textsuperscript{129}

The Court further observed that in any organized society, the right to live as a human being is not ensured by meeting only the animal needs of men. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit its growth. All human rights are designed to achieve this object. The right to live guaranteed in any civilized society implies the right to food, water, a decent environment, education, medical care and shelter. All civil, political, social and cultural rights enshrined in Universal Declaration of Human Rights, and other International Conventions and in the Constitution of India cannot be exercised without these basic rights.\textsuperscript{130}
In Kocchuni vs. State of Madras the Court did not accept the plea that Article 31 (1) after amendments gave an unrestricted power to the state to deprive a person of his property. It held that Article 31 (1) and (2) are different fundamental rights and that the expression 'law' in Article 31 (1) shall be valid law and that it cannot be valid law unless it amounts to a reasonable restriction in public interest within the meaning of Article 19 (5). But the Supreme Court in Srimathi Sitabai Devi vs. State of West Bengal held that Article 31 (2) i.e., the provision relating to the acquisition or requisition of land was not subject to Article 19 (5).

It has to be noted in this context that though the court in India has expanded the language of Article 21 to incorporate the right to rehabilitation as a fundamental right, it did not apply the same to a real fact situation. Instead, it took a narrow approach by drawing a distinction between policy decisions and judicial interference. The result is that the oustees are not able to secure justice and the courts as custodians of rights have failed to protect citizens’ rights.

In the Narmada case, the insensitivity of the Indian judiciary is shocking. India’s poorest and weakest have been asked to pay the price of development. The Court allowed the construction of the dam to proceed by blatantly disregarding the evidences placed before it. The Court’s final decision did not take into account the final affidavit filed by the Government of Madhya Pradesh which admitted that it has no land to resettle oustees. The Court ignored the fact that not a single village has been resettled according to the directives of Narmada Water Dispute Tribunal. Secondly, the Court went on to say that to restrain the construction of the dam on the ground that the project was not being implemented as it was envisaged i.e. without any rehabilitation would amount to unnecessary judicial intervention as it was not asked to intervene in policy decision. Thus the Court has increased the likelihood of displacement of thousands of people in the name
of development. In 1991 the World Bank sent a two member team to assess the rehabilitation aspect of Sardar Sarovar Project (SSP). Bradford Morse and Thomas Berger after visiting most of the places affected by the project and submitted their report, which came to be known as ‘Morse Report’. The Committee conducted an extensive review of the rehabilitation and environmental aspects of the project and criticized the unpardonable failure of the State and Union Government in the rehabilitation measures adopted for the project affected people.

A Supreme Court bench constituted by justices R. M. Lodha and J.S.Khehar have made observation that the 1894 Act has become outdated and it does not provide for rehabilitation of persons displaced from their land, although their livelihood is affected by compulsory acquisition. The apex court also observed that the Land Acquisition Act is needed to be replaced by at the earliest by fair, reasonable and rational enactment in tune with the constitutional provisions, particularly Article 300A of the Constitution.\footnote{133}

\section*{13. Role of international community}

Climate change, environmental degradation and displacement of population has a close connection. Among the human rights treaties only the 1981 African Charter on Human and Peoples’ Rights proclaims environmental rights in broad terms. It protects both the right of people to the’ best attainable standard of health\footnote{134} and their right to ‘a general satisfactory environment favourable to their development’.\footnote{135} In the Ogoniland case\footnote{136} the African Commission on Human and Peoples’ Rights concluded that an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and development as the breakdown of fundamental ecologic eqilibria is harmful to physical and mental health.\footnote{137} In this case an action was brought against
Nigeria to the African Commission on Human and Peoples’ Rights alleging that the military Government had, through its business relationship with Shell Petroleum Development Corporation exploited oil reserves in Ogoniland with no regard for health or environment of Ogoni people.

The Inter-American Commission on Human Rights has interpreted the rights to life, health and property to afford protection from environmental destruction and unsustainable development. In Toledo case\textsuperscript{138} the Inter American Commission accepted the contention that threatened long term and irreversible damage to the natural environment on which petitioners’ system of subsistence agriculture depended.

A number of UN bodies, including Treaty monitoring Committees have recognized that the failure of States and other parties to respect the right to self-determination and free prior consent of indigenous people results in violations of human rights of these people.\textsuperscript{139}

Comment

It has been seen that in majority cases development causes injustice to the displaces resulting in gross violation of their human rights. At times people are forced to move out of their homes merely on the strength of compensation. In many cases oustees are not getting or still awaiting compensation promised by the project authorities. As a result oustees get marginalized and there occur large scale migration of people to urban centres. All these people are not skilled and therefore do not find any meaningful employment in urban set up. This compelled them to pick up odd occupations like rag picking, rickshaw pulling and even bonded labour.
It is well known that the given the technology used and heavy capital investment involved, the large development projects cannot produce large number of jobs as expected. Of course, it is also true that development is necessary. There is no question of denying all types of development, only that kind of development is objected which leads to impoverishment and marginalization.

It is now widely accepted that who pay the price for development should be given the first preference to enjoy the benefits of development. Therefore, the best solution lies in the sustainable development.

The current land acquisition law is a pre-constitutional and is exploitative in nature. The law needs a total revamp providing for not merely compensation but also appropriate rehabilitation policy. Under the present law compensation is the only remedy for the persons affected by such acquisitions. Apart from that, there are serious problems at the level of implementation as well. There is a wide gap between the framed policy on paper and what get translated into policy.
END NOTE


2 Robinson. W. Courtland. "Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement", The Brookings Institution-SAIS Project on Internal Displacement, May 2003, p. 3, Available at www.brookings.edu; also at www.adb.org, Accessed on 21/12/2009, W. Courtland Robinson is a Research Associate at the centre for International Emergency, Disaster and Refugee Studies at the John Hopkins University Bloomberg School of Public health, Baltimore, Maryland. He has been involved in the field of forced migration since 1979. He has served as a consultant to a variety of humanitarian organizations, including the United Nations High Commissioner for Refugees, Mercy Corps, Catholic Relief Services, and Burmese Border Consortium.


7 Id.

8 Walter Fernandes is the Director of North Eastern Social Research Centre, Guwahati, Assam. He is considered to be an authority on the issue of internal displacement.


11 Govt. of India, Ministry of Rural Development, An Agenda to Reform Agrarian Relations for Enquiry and Efficiency in Contemporary India, Draft Report of the Committee on Agrarian Relations and Unfinished Task of Land Reforms, New Delhi, Vol. 1. p.4

12 Ibid, p.5.

13 The Sixth Schedule of the Constitution of India gives extensive power to small tribal communities, through the system of autonomous District Councils to protect their traditions as well as their land.


Share-croppers pay half of their produce as rent.


Section 3 (f), The Land Acquisition Act, 1894.

Ibid, Sec. 4 (1).

Ibid, Sec. 5 A(1).

Sec. 3 and 3A, The National Highways Act 1956.

The expression public purpose includes (i) The provision of village sites, or the extension, planned development or improvement of existing village sites; (ii) the provision of land for town or rural planning; (iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part lease, assignment or outright sale with the object of securing further development as planned; (iv) the provision of land for a corporation owned or controlled by State; (v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State; (vi) the provision of land for carrying out any authority or society registered under the societies registration act, 1860 and co-operative societies established under the co-operative societies act; (vii) the provision of land for any other scheme of local authority; (viii) the provision of any premises or building for locating public office.

AIR, 1952 SC p. 252.

The principle of 'eminent domain' refers to the power of the sovereign to take property for public use without owner's consent. The colonial rulers established their eminent domain over all land within their territory and jurisdiction in respect of which people had no recognized rights under the colonial law. Of course, the power of eminent domain was exercised over both common as well as private property.

M/S Royal Orchid Hotels Ltd. And Another vs. G. Jayarama Reddy and Others, Civil Appellate Jurisdiction, Civil Appeal No. 7588 of 2005; 29 September, 2011.


Laws inconsistent with or in derogation of the fundamental rights shall to the extent of such inconsistency be void.


Clause 38 (4), The Land Acquisition, Rehabilitation and Resettlement Bill, 2011.

Ibid, Clause 98.

Ibid, Clause 97.

Ibid, Clause 95.

Ibid, Clause 10 (1).


Clause 2 (b), The Land Acquisition, Rehabilitation and Resettlement Bill, 2011.

Ibid, Clause 2 (2) (b).

Ibid, Clause 3 (iv).


Social Impact Assessment makes provision for determination of the impact of displacement on displaced population's livelihood, culture, identity and other social components.

Maheshwari, loc.cit.

Id. Schedule II (2) LARR Bill, 2011.

Id.


An offshore bank is a bank located outside the country of residence of the depositor, typically in a low tax jurisdiction that provides financial and legal advantages.

Legal Service India, loc. cit.

Countervailing duties are also known as anti-subsidy duties. They are trade import duties imposed under World Trade Organization (WTO) Rules to neutralize the negative effects of subsidies. They are imposed after an investigation finds that a foreign country subsidizes its exports, injuring domestic producers in the importing country.


An Environment Impact Assessment (EIA) is an assessment of the possible positive or negative impact that a proposed project may have on the environment together with natural, social and economic aspect.

Banerjee, Srestha, loc. Cit.

Fernandes, Walter, loc. Cit.


Id.


Id.

Id.

Id.

Census of India, 2011.

Marginalisation is a process of change in the economic, social and cultural status due to the loss of source of livelihood, social structure and culture. It is worse than impoverishment which is not merely economic but also cultural and social.

Hussain, Monirul, 2008, op. cit, p.44.

Fernandes and Bharali, NESRC, op. cit, p.18.

Hussain, op.cit, p. 33.

Id.


Fernandes and Bharali, op. cit, p. 38.


Fernandes and Bharali, op. cit. p.17.


Ibid, Principle 22.


Art. 7, Indigenous and Tribal Peoples Convention, 1989, also known as ILO Convention No.169.

Declaration on the Rights of Indigenous People was adopted by United Nations on 13 September 2007. The Declaration sets out the individual and collective rights of indigenous people, as well as their rights to culture, identity, language, employment, health, education and other issues. The UN describes it as setting an important standard for the treatment of indigenous people that will undoubtedly be an important tool for elimination of human rights violations against millions of indigenous people on
Art. 10, United Nations Declaration on the Rights of Indigenous People, 2007. ‘Informed consent’ means indigenous people must have access to all information, in all required languages, of any project or proposal; ‘prior’ means they must have sufficient time to review all information and conduct community consultation, without the pressure of any deadline; ‘free’ means that indigenous people may not be coerced, threatened or otherwise pressured into giving consent.

The Article affirms indigenous peoples’ right to the lands, territories and resources which they have traditionally owned and occupied or otherwise used or acquired. Indigenous people also have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use.


Ibid, Principle 7 (3) (c).

Ibid, Principle 7 (3) (b).

Ibid, Principle (7) (3) (f).


Art. 16.

Art. 24.


Ibid, Art. 15 (1).

Ibid, Art. 17.

Ibid, Art. 15 (2).

Ibid, Art. 15 (4) and (5), Article 16 (4), 16 (4A), 16 (4B).


Ibid, Art. 46

Ibid, Art. 39 (a).

Currently, the Fifth Schedule covers tribal areas in nine states, namely Andhra Pradesh, Orissa, Jharkhand, Chhattisgarh, Madhya Pradesh, Maharashtra, Gujrat, Rajasthan and Himachal Pradesh.

Fernandes, Walter, “Land as Livelihood vs. Land as Commodity in India”, 2008,

Art. 31 A contains savings of laws providing for acquisition of estate; Article 31 B validates certain Acts and Regulations and declared that none of the acts or regulations specified in neither the Ninth Schedule nor any of the provisions thereof shall be deemed to be void on the ground that they are inconsistent with Part III of the Constitution. Originally 64 laws were added to the Ninth Schedule. After that more and more acts were added by the various amendments raising the number of Acts in the Ninth Schedule to 257. The 75th Amendment Act, 1994 included Tamil Nadu Act providing for 69 per cent reservation for backward classes in the Ninth Schedule.

Art. 300 (A), Amended Provision added to the Constitution of India, 1950, in 1978.

I.R.Coelho vs. State of Tamil Nadu, Appeal (Civil) No. 1344-45 of 1976.

There are two theories for the incorporation of international law into municipal law. Monists assume that the municipal and international legal systems form a unity. In these countries international does not need to be translated into national law. After ratification international law can automatically be incorporated into national law.

The Article enjoins the state to endeavour to foster respect for international law and treaty obligation in the dealings of organizes peoples with one another.


Art. 253, The Constitution of India. A treaty may be implemented by executive power. However, when implementation of a treaty requires legislation, the Parliament has exclusive powers to enact a statute or legislation under the Article.

Air, 1997 SC 3011.


No one shall be imprisoned merely on the ground of inability to fulfill a contractual Obligation.

Precautionary Principle (PP) is often seen as an integral principle of sustainable development. Within the United Nations system the PP is included in Rio Declaration on Environment and Development, 1992. The principle implies that there is a social responsibility to protect the public from exposure to harm, when scientific investigation has found a plausible risk.
The Polluter Pays Principle (PPP) is an environmental policy principle which requires that the costs of pollution be borne by those who cause it. The principle is also referred to as extended Polluter Pays Principles. Today the principle is generally recognized principle of International Environmental Law.

1995 (2) SCC, 578 para 7.


Chamoli Singh and Others vs. State of Uttar Pradesh, 1996 (2) SCC 549 para 8.

AIR 1960 SC 1080.

Narmada Bachao Andolan vs. Union of India and Others 2005 (4) SCC 32.

J. Venkatesan, "Outdated Land Acquisition Act Should Go, Says Court", The Hindu, 8 Nov. 2011, Available at www.thehindu.com, Accessed on 15/12/2011. The Article 300A provides that no person can be deprived of his or her property except by due process of law.

Art. 16.

Art. 24.


Maya Indigenous Community of the Toledo District vs. Belize, Case no. 12.053, Report No.40/04, Inter-Am. CHR., OEA/Ser.L/II.122 Doc.5 rev.1 at 727 (2004). A petition was submitted before the Inter-American Commission on Human Rights by the Toledo Maya Cultural Council on behalf of Maya Indigenous Communities of Toledo District against the state of Belize. The Commission held Belize responsible for violating the Right to property, by not recognizing or protecting Maya land property rights and by granting logging and oil concessions in Maya Traditional lands, without Maya consent, which have caused environmental harm.

The 1990 UN Global Consultation on the Right to Development stated that, “the most destructive and prevalent abuses of Indigenous Rights are the direct consequences of development strategies”.