CHAPTER VI

INTERNAL DISPLACEMENT; REHABILITATION AND RESETTLEMENT & GENDER JUSTICE IN LAND ACQUISITION

6.1 Introduction
This chapter deals with internally displaced people in the process of land acquisition for public purposes. The chapter finds out the legal issues involved in rehabilitation and settlement of internally displaced people. The chapter also makes an attempt to pinpoint the focus on tribal community which is the worst sufferers of development. The chapter investigates the issues relating with displaced tribal ladies in the land acquisition process. The chapter also aims to critically analyse the legal and constitutional protections in this regard available to internally displaced people.

6.2 Internal Displacement & Land Acquisition
6.2.1 Internally Displaced Persons
In the land acquisition process the issue of internally displaced people (IDP) is very pertinent so we need a precise definition of the same. In this regard According to UN guiding principles on Internal Displacement ‘Internally displaced persons’ are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border’¹.

Walter Fernandes says that, “Development DPs/PAPs are only one of many groups of the displaced. The others include voluntary or involuntary migrants, refugees of wars and of natural or human made disasters and process induced migrants caused by economic or technological changes, for example introduction of trawlers in fishing.”²

Pablo Bose says that development-induced displacement can be defined as the forcing of communities and individuals out of their homes, often also their homelands, for the

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purposes of economic development. Use of coercion or force of any nature by State is central to the idea of development-induced displacement. At the international level, it is viewed as a violation of human rights. Professor B.S. Chimni says that an internally displaced person (IDP) is someone who is forced to flee their home but who remains within their country's borders. Michael Cernea says that being forcibly ousted from one's land and habitat by a dam, reservoir or highway is not only immediately disruptive and painful, it is also fraught with serious long term risks of becoming poorer than before displacement, more vulnerable economically, and disintegrated socially. So IDPs are similar to refugee but they are different as there is no statelessness. They are forced to migrate from their natural habitat due to variety of reasons like group violence, riot, development projects, infrastructure development, natural disaster etc. Forcibly ousted from one's land and habitat carries with it many risk.

Some of the identified interlinked potential risks intrinsic to displacement are:

1. Landlessness.
2. Joblessness.
3. Homelessness.
5. Food Insecurity.
6. Increased Morbidity and Mortality.
8. Social Disintegration.

6.2.2 Alarming Numbers of IDPs

The issues and problems of IDPs can be gauged by the increasing number of IDPs in India. Internally Displaced Monitoring Centre keeps a vigil watch on IDPs. It has

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produced a global overview wherein it paints a very dark side of IDPs. India continued to experience new and protracted displacement during 2013 as a result of communal violence and armed conflict with a total of at least 526,000 people displaced at the end of the year. This figure likely under-represents the real number of IDPs since in India IDPs tend to no longer be counted once official camps are closed, even if they remain in displacement. In addition, many of the country’s IDPs are assumed to be dispersed in urban areas, and there is little or no information about their numbers or protection and assistance needs. An estimated 64,000 people were newly displaced in 2013, more than half of whom were still living in displacement at the end of the year. More than 488,000 IDPs continued to live in protracted displacement, which lasts on average for five to ten years. A survey of IDPs conducted during the year by the NGO Centre for Social Justice identified ethnic identity and land disputes as the main causes of communal tensions. Outbreaks of communal violence led to displacement during the year, in the north-eastern state of Assam and in the northern state of Uttar Pradesh. Riots displaced around 51,000 people from more than 150 villages in Uttar Pradesh in September. State authorities said that more than 90 per cent of those who fled had returned by the end of the year, but local organisations assisting IDPs said that more than 27,000 people were still living in unofficial camps after the authorities forcibly evicted them from official ones. In December, more than 3,000 people from the Karbi and Rengma Naga tribes sought shelter in displacement camps in the Bokajan area of the Karbi Anglong Hills district of central Assam, following ethnic violence between the Karbi People’s Liberation Tigers (KPLT) and the Rengma Naga Hills Protection Force (RNHPF). In Assam, authorities closed the remaining camps where 12,000 Bengali-speaking Muslims and members of the Bodo tribe who fled inter-communal violence in 2012 were staying. The situation of IDPs outside of the camps is unknown. At the end of the year the security situation in the area remained tense and it is likely many remain unable to return. Around 30,000 Bru people who fled their homes in Mizoram state in 1997 and 2009 also remain displaced in Tripura state. Hundreds more fled in fear in December amid tensions sparked by kidnappings the previous month. In central India, more than 148,000 Adivasi people remained displaced as a result of recurring conflict over land and

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mineral resources. The fighting pitted government forces and allied militias against Maoist insurgents claiming to fight on behalf of the Adivasis. Clashes in May displaced another 10,000 people. Conditions in displacement camps remain dire across the country. IDPs lack access to clean water, adequate shelter, food, security, clothing and health care. In Uttar Pradesh, camp conditions contributed to the deaths of more than 50 IDPs, most of whom were children under the age of 15. Harassment and threats from villagers in IDPs’ home areas often hinder their efforts to return, and the police tend to be unwilling to protect returnees. Support for long-term solutions varied significantly between states in 2013. Some opted to compensate IDPs for their displacement, while others tried to encourage return by offering grants and housing. The state government in Jammu and Kashmir provided 350 temporary accommodation units, employment opportunities, utilities and livestock and farming grants in an effort to facilitate the return of Kashmiri Pandits displaced since 1990.

The governments of Gujarat, Assam, Andhra Pradesh and Odisha, however, made no such efforts to assist the hundreds of thousands of people who remain displaced there. India’s Central Government does not consider IDPs’ recovery and rehabilitation as part of its mandate. In Uttar Pradesh, the state government’s measures to promote IDPs’ sustainable return of IDPs displaced centred on compensation. It distributed 500,000 rupees ($8,190) to 1,800 families from nine villages recognised as having been affected by rioting. It did not, however, consider IDPs from other areas as eligible. Religious charities, madrassas, civil society groups and local communities took the lead in assisting IDPs during 2013.

India has invested in industrial projects, dams, roads, mines, power plants and new cities to achieve rapid economic growth. This has been made possible through massive acquisition of land and subsequent displacement of people. Development Displacement Population is the single largest category among all Internally Displaced Populations (IDPs). In India around 50 million people have been displaced due to development projects in over 50 years. Around 21.3 million development-induced IDPs include those displaced by dams (16.4 million), mines (2.55 million), industrial development (1.25 million) and wild life sanctuaries and national parks (0.6 million).10

These alarming figures are more than enough to make us understand the crucial issue of internal displacement and its causes. As cited above there are various reasons for displacement of people but we have to concentrate the issue around the land acquisition due to development and in the process the displacement of people. So now we shall see the development and displacement and its various dimensions.

6.3 IDPs and International Protection

Over the past decade, different international legal entities and institutions have responded to the human rights impacts and risks of development-induced displacement by formulating a variety of guidelines, laws and best practices. Some of the most important international agencies, guidelines and practice on this issue are:

i. The UN Guiding Principles on Internal Displacement.


iv. Internal Displacement Unit.

v. World Food Program.

vi. UN Development Programme.

vii. UN-Habitat.

viii. Internally Displaced Monitoring Centre.

6.4 Development and Displacement

Social impacts are the overarching impacts that affect the human society. All economic impacts also have social impacts; so do all environmental impacts, as the improvement or degradation of the environment also affects human beings. However, whereas economic impacts can all be seen as having essentially social impacts, environmental impacts do not affect only the human society but also affect plants and animals. Dams are intended to produce beneficial social impacts; however large dams also have many adverse social impacts. Historically, most of the beneficial impacts were recognised but many of the adverse impacts remained unacknowledged. As the latter were neither assessed prior to dam construction nor examined after construction, it is, difficult, in retrospect, to determine their intensity. Even today, only some of these adverse impacts are being introduced into the process for and large dams.

Tribal/Indigenous people in India constitute approximately seven percent of the population. The major threat to their livelihood is because of large scale alienation of their lands by state machinery for mega projects such as mining, large dams, industries,
highways, army firing ranges, military cantonments etc. With the increasing privatization of resources mining has become a double edged sword-lucrative for the government but destructive for the marginalized people of the region. Most minerals like Bauxite, Uranium, Chromite and Coal are in tribal areas of Orissa, Madhya Pradesh, Bihar and Maharashtra. Uranium mining in Jharkhand and Meghalaya has not only led to the destruction of vegetation, water resource, fish etc. but has caused serious damage to the health of Tribal. Narmada Valley project is yet another case in point which raises many valid questions on social justice, common property resource management and conditional foreign aid.

Most adverse social impacts of large dams are either not reflected at all or only partly reflected in the financial and economic analyses of dams. For example, the financial analysis reflects the direct financial costs of relocating and rehabilitating project-affected peoples. However, there are many other costs that remain unacknowledged and, therefore, are not reflected in the financial or economic assessments, or are inadequately reflected. As in the case of most environmental impacts, it is difficult to lay down standards for social impacts, because most social impacts do not lend themselves to quantification. It is, for example, difficult to measure trauma, alienation, fear and insecurity and, for that and other reasons, it is difficult to prescribe how much of psychological trauma, indeed if any at all, is acceptable. To what extent is cultural and social alienation bearable? At what point does fear and insecurity become unbearable? One view is that none of it is acceptable, but by that token all large dams might become unacceptable. The other view is that though some social costs are inevitable, such costs must only be permitted under the rarest of rare circumstances and all efforts must be made to minimise them and to compensate for those that still occur\(^\text{11}\).

In terms of the social impacts of dams, the World Commission on Dams found that the negative effects were frequently neither adequately assessed nor accounted for. The range of these impacts is substantial, including on the lives, livelihoods and health of the affected communities dependent on the riverine environment:

- Some 40-80 million people have been physically displaced by dams worldwide.

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\(^{11}\) ‘World Commission on Dams: Democratic means for Sustainable Ends’, (2001) May 26 Economic and Political Weekly.1886
• Millions of people living downstream from dams - particularly those reliant on natural floodplain function and fisheries - have also suffered serious harm to their livelihoods and the future productivity of their resources has been put at risk
• Many of the displaced were not recognised (or enumerated) as such, and therefore were not resettled or compensated
• Where compensation was provided it was often inadequate, and where the physically displaced were enumerated, many were not included in resettlement programmes
• Those who were resettled rarely had their livelihoods restored, as resettlement programmes have focused on physical relocation rather than the economic and social development of the displaced
• The larger the magnitude of displacement, the less likely it is that even the livelihoods of affected communities can be restored
• Even in the 1990s, impacts on downstream livelihoods were, in many cases, not adequately assessed or addressed in the planning and design of large dams12.

In sum, the Knowledge Base demonstrated a generalised lack of commitment or lack of capacity to cope with displacement. In addition, large dams in the Knowledge Base have also had significant adverse effects on cultural heritage through the loss of cultural resources of local communities and the submergence and degradation of plant and animal remains, burial sites and archaeological monuments. The Knowledge Base indicated that the poor, other vulnerable groups and future generations are likely to bear a disproportionate share of the social and environmental costs of large dam projects without gaining a commensurate share of the economic benefits:
• Indigenous and tribal peoples and vulnerable ethnic minorities have suffered disproportionate levels of displacement and negative impacts on livelihood, culture and spiritual existence
• Affected populations living near reservoirs as well as displaced people and downstream communities have often faced adverse health and livelihood outcomes from environmental change and social disruption
• Among affected communities, gender gaps have widened and women have frequently borne a disproportionate share of the social costs and were often discriminated against in the sharing of benefits.

A lack of legal framework to enforce compliance contributed to the impacts of displacement going unmitigated. In the process of creating dams, the highest risks are borne by society’s most vulnerable groups – indigenous and tribal peoples, fisher people and food plain agriculturalists. With avenues of recourse being largely inaccessible, unavailable and ineffective, impoverishment and social decline were inevitable. Affected populations living near reservoirs as well as displaced people and downstream communities have often faced adverse health and livelihood outcomes from environmental change and social disruption.

The basic right to development enshrined the Constitution of India in Article 21 read with Articles 37, 38, 39, and 46 of the Constitution. India being an active participant in the successful declaration of the Convention on Right to Development and a party signatory thereto, it was its duty to formulate its policies, legislative or executive, accord equal attention to the promotion of and to protect the right to social, economic, civil and cultural rights of the people, in particular, the poor, the Dalit sand Tribes as enjoined in Article 46 read with Articles 38, 39 and all other related Articles read with right to life guaranteed by Article 21 of the Constitution of India.

These have been vehemently denied to the tribals of this State, as a part of right to development to enjoy full freedom, democracy offered to them through the States regulated power of good Government that the lands in scheduled areas are preserved for social economic empowerment of the tribals; but for some reason or other they constantly denied to these tribals.

It is surprising that governments continue to view the adverse social impacts of a large dam as inevitable and to an extent justified when pitched against the proverbial millions of beneficiaries of large dams. Irrespective of benefits, disregarding the rights of those displaced, dispossessed and disentitled is not compatible either with equity or social justice. Often the overwhelming need of the vast populations in developing nations is given as a reason for going ahead with the developmental projects and for not having stringent standards of equity and rights that are considered more suitable for developed countries. The proclamation and practice of this amazing duplicity of standards that make some human beings more dispensable than others begs the question that whether development projects which need such justifications are really about development? An

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informed and open public debate about the nature, extent of losses and the ability, will and demonstration of institutions to mitigate these losses supported by more democratic decision making are the ways out of this situation.

6.5 Development and Land Acquisition

Throughout the history of mankind, societies have tried to balance between individual rights and the power, often a coercive power, of the State. While my own political ideology was struggling between is and ought of the situations, one fine day, my family received a notice that the road adjoining our house needs to be widened and we are required to give away a portion of our yard to the Government. In India earlier the right to property was recognised as a fundamental right but due to being a roadblock in implementing the idea of social and distributive justice it was made just a legal right which created the real problem as the huge chunks of land were acquired by an archaic law Land Acquisition Act, 1894 under the doctrine of Eminent domain on public purpose but I consider John Locke to be right in crowning Right to Property as a fundamental natural right, unlike the provisions of the Constitution of India.\(^\text{14}\)

With the increasing pressures on land due to urbanization, rapid economic development, increasing infrastructure requirements etc., especially in a fast growing economy like India, the acquisition of land by the Government has increased. Not only is the idea of losing one’s land without a free consent problematic, the terms under which it is required to be given away still find their legitimacy under the archaic laws. The idea that State can take away any property for public good, that is, the doctrine of eminent domain, is itself contested\(^\text{15}\), as it raises the classic debate of power of state versus individual rights. Not many in today’s world will agree with the idea that the King owns all property and bestows rights, including rights in property, upon his citizens. Let us, however, assume the idea of Eminent Domain as a fact. The existence of Eminent Domain means that the exclusivity of the rights owned in a property is at least diluted against the government acquisition of such property.

In India, there are a rising number of protests against compulsory acquisition of land for construction of manufacturing units such as Tata’s Nano car in Singur, in which 997 acres of agricultural land was acquired to set up a factory for one of the cheapest cars in Asia, (the project was subsequently shifted to Gujarat) or for developing Special Economic

\(^{14}\) Article 31 C & 300A of The Constitution of India.

\(^{15}\) David A, Dana, ‘Reframing Eminent Domain: Unsupported Advocacy, Ambiguous Economics, and the Case for a New Public Use Test,’ 32 Vt. L. Rev. 129.
Zone such as Nandigram or construction of large dams like Sardar Sarovar Dam on the river Narmada, which famously led to a cancellation of grant by World Bank due to protests under the argument that the tribal population was getting displaced under unfair conditions among other reasons such as environmental impact of the project\textsuperscript{16}. The effects of displacement spill over to generations in many ways, such as loss of traditional means of employment, change of environment, disrupted community life and relationships, marginalization, a profound psychological trauma and more.

### 6.6 Legal Issues in Land Acquisition

If we try to analyse the various dimensions of land acquisition process vis-à-vis internally displaced people we can come to following issues:

- i. The Land Acquisition Act, 1894 which is repealed by The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Settlement Act, 2013 is not very much settled to provide a stable legal regime.
- ii. The criterion and parameters for acquisition for the public purposes are not defined.
- iii. The issue of compensation and its method of computation is still not settled.
- iv. The issue of social impact assessment is still not settled.
- v. The issue of IDPs and their rights as recognised by The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has been curtailed.
- vi. The idea of inclusive governance is missing.
- vii. The settlement and rehabilitation of ethnic minorities who are indigenous is also in peril.
- viii. The issue of biological diversity and protection of biological diversity is also at stake.
- ix. The national policy on rehabilitation and settlement of IDPs as mentioned in National Rehabilitation and settlement Policy 2007 could not settle the dust on the issue.
- x. The issue of tribal community irrespective of constitutional safeguards by Article 29, Schedule V and XI could not be dealt properly in the land acquisition process.

\textsuperscript{16}http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/12A795722EA20F6E852567F5005D8933.>accessed on 24\textsuperscript{th} December, 2014.
6.7 Judiciary; Land Acquisition and Internally Displaced People

The Indian Judiciary has always been a qui vive of the issues pertaining to land acquisition, internally displaced persons and their rights. The various rights have been identified in Article 21 after Maneka’s judgment\(^{17}\) wherein Supreme Court identified that law which deprives one of his life and personal liberty must be just, fair and reasonable instead of being a ‘procedure established by law’. This liberal interpretation resulted in three arena especially environmental law, criminal law and social transformation. The idea of social justice became more cemented by incorporation of new rights under Article 21.

The right to life is the essence of all other types of rights because it refers to the core existence of human beings. A threatened or terminated human life cannot enjoy other rights. Vasak described the right to life is ‘the first right of man’.\(^{18}\) Because of its paramount importance, it is often recognised as a peremptory norm in international law that cannot be derogated under any circumstances. The right to life is a well-established international human right that is embodied in major international and regional instruments.\(^{19}\) The *Jus cogens* nature of the right to life makes states, as traditional duty-bearers, accountable not only when it infringes on the right to life but also when it fails to take necessary measures to prevent its infringement. The idea of negative rights versus positive rights, which differentiates civil and political rights from socioeconomic rights, is applicable only when states are viewed as the sole actors in the human rights arena. The state is required to take some positive measures to ensure that civil and political rights, traditionally considered negative rights, are sufficiently respected and guaranteed.

The European Commission on Human Rights (ECHR) adopted this proactive approach by suggesting that the right to life, as embodied in Article 2 of the European convention, requires states “not only to refrain from taking life intentionally but, further, to take appropriate steps to safeguard life.”

The 1989 Hague Declaration on the Environment is an important (non-binding) document because it linked the fundamental right to life to a healthy environment. Several national and regional courts have drawn upon this link between environmental protection and the

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\(^{17}\) AIR 1978 SC 578.


\(^{19}\) Article 3 of the UDHR, Article 3 of the ICCPR, Article 4 of the African Charter on Human and Peoples’ Rights (Banjul Charter), Article 4 of the American Convention on Human Rights (ACHR) and Article 2 of the European Convention on Human Rights (European Convention).
right to life of special importance is the Indian judiciary, which is known for its proactive role in defending the environment through the expansion of the right to life to include environmental interests and through its reliance on unenforceable directive principles to interpret and expand fundamental rights. The Indian Supreme Court interpreted the fundamental right to life in a broad way as to secure environmental protection in both its anthropocentric and ecocentric dimensions. This interpretation promoted the status of human rights and initiated a rich environmental jurisprudence in India. Decisions of an anthropocentric nature have linked environmental violation to human life, health and safety. For instance, in Chinnappa and Godavarman case,\(^20\) the Supreme Court found that a hygienic environment is an integral facet of the right to a healthy life and it would be impossible to live with human dignity without a humane and healthy environment.\(^21\) Some environmental decisions went further in the protection of the environment by requiring pollution-free air and water or even the more ecocentric goal of ‘ecological balance’.\(^22\) In the Subhash Kumar case, the S.C. stated that the right to life “include the right to enjoyment of pollution-free water and air for full enjoyment of life.”\(^23\) In another case, it reiterated “that every citizen has a right to fresh air and to live in a pollution-free environment”.\(^24\) In the Rural Litigation and Entitlement Kendra case, the Supreme Court ruled that the limestone quarries in Dehradun area should be closed and the cost borne by the lessees for the sake of “protecting and safe-guarding the right of the people to live in a healthy environment with minimal disturbance of ecological balance.”\(^25\) In this case, the Supreme Court stood by peoples’ right to ecological balance without direct reliance on fundamental rights such as life or health. In addition to its weak anthropocentric orientation, this case reflects the collective nature of the right to environment. The right to environment in all its forms (free from pollution, the right to livelihood, the right to ecological balance and so on) is derived from a fundamental right to life, which is traditionally considered a negative right. However, by combining Directive under Article 48A and Fundamental Duty under Article 51A(g) on affirmative environmental obligations to the expansive interpretation of the right to life, the Indian jurisprudence

\(^{21}\) Ibid. par. 18
\(^{23}\) Subhash Kumar v State of Bihar AIR 1991 SC 420.
\(^{25}\) Rural Litigation and Entitlement Kendra, Dehradun v State of Uttar Pradesh AIR 1995 SC 652
allowed the new right to environment to acquire the characteristics of both negative and positive rights.26

Environmental provisions in the Indian Constitution are in the form of environmental duties, from a legal standpoint, these provisions are not by themselves enforceable because they fall under the Directive Principles of State Policy (DPSP).27 Most provisions in the DPSP (Article 36 to 50) can be associated with social, economic and cultural rights of the ICESCR.28 The reason for including these rights under the title of DPSP is to distinguish them from enforceable fundamental rights, a distinction which coincides with the traditional division between civil and political rights enshrined in the ICCPR, and the socio-economic rights of the ICESCR. Despite the constitutional impediment to the justifiability of DPSP, the Indian judiciary was able to narrow the gap between Fundamental Rights and Directive Principles on Environmental Protection through an ingenious interpretation of Constitutional provisions.

It is argued that the DPSP are introduced in the Constitution to encourage future environmental legislation, rather than to create new Fundamental Rights among its provisions Articles 48A and 51-A(g), which place ‘fundamental duties’ regarding environmental protection on the Indian State and its citizens, respectively.29 These constitutional provisions, which obligate respectively the state and the citizen to protect the environment, were referred to in many judicial decisions, and therefore led to the creation of a new right to a clean environment.30

There are, however, limitations to the extent to which the right to life can be relied upon to protect the environment. The invocation of the right to environment based on the link to life-threatening conditions is a very narrow approach because environmental danger must be severe to imperil human life directly. Although the right to life has the potential to include protection against serious environmental risks to life, the reliance on such an

26 Art. 48A & 51A (g), The Constitution of India.
27 As per Art. 37 of the Indian Constitution, “The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.”
29 Article 48A of the Constitution of India declares: “The state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.” Article 51A (g) of Constitution of India provides – “It shall be the duty of every citizen of India “to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.”
expansive formulation is limited to incidents of direct threats to life. It is preferable to take preventive measures well before environmental degradation occurs. In some case, such as the *Bhopal Gas* tragedy, it might be too late or too costly to reverse the environmental damage by the time a case gets to court. Forgotten in much of the debate is the people’s right to a life with dignity enshrined in Article 21 of the Constitution. Development-induced displacement and deprivation are planned. So their impoverishment and marginalisation are avoidable but the projects that deprive them of their sustenance in the name of national development rarely make provision for them to begin life anew.\(^{31}\)

The Court is also bound to recognize the status of downtrodden sections as held in *Randhir Singh v Union of India & Ors*\(^{32}\) that “The judges of the Court have a duty to redeem their constitutional oath and do justice no less to the pavement dweller than to the guest of the five star hotel.” In the case of *Narmada Bachao Andolan v. Union Of India And Others*\(^{33}\) Supreme Court has held that “…It is a matter of great concern that even after half a century of freedom, water is not available to all citizens even for their basic drinking necessity violating the human right resolution of U.N.O. and Article 21 of the Constitution of India…."

The right to shelter was accepted as a part of the right to life as laid down by the Apex Court in *Francis Coralie Mullin, Petitioner v. The Administrator, Union Territory of Delhi and Ors*\(^{34}\). the Apex Court held that, “The fundamental right to life which is the most precious human right and which forms the arc of all other right must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person”.

Also in the case of *State of Karnataka & Ors. v. Narasimhamurthy & Ors*\(^{35}\) it was stressed that “Right to shelter is a fundamental right under Article 19 (1) of the Constitution. To make the right meaningful to the poor, the State has to provide facilities and opportunity to build house. Acquisition of the land to provide house sites to the poor

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32 AIR 1982 SC 879.
33 AIR 2000 SC 3751
34 AIR 1981 SC 746.
35 AIR 1996 SC 90.
houseless is a public purpose as it is a constitutional duty of the State to provide house sites to the poor.”

Recently it was observed that right to property is a part of human rights in *Narmada Bachao Andolan v. State of M.P. & Anr.* decided on 11 May, 2011 in connection with Civil Appeal No. 2082 of 2011, their Lordship of Hon’ble Supreme Court has observed that, “This Court has consistently held that Article 300-A is not only a constitutional right but also a human right.”36 And in *State of Kerala & Anr. v. Peoples Union for Civil Liberties, Kerala State Unit & Ors.*37, the Apex Court held that Article 21 deals with right to life and liberty. Would it bring within its umbrage a right of tribes to be rehabilitated in their own habitat is the question? It further said that if the answer is to be rendered in the affirmative, then, for no reason whatsoever even an inch of land belonging to a member of Scheduled Tribe can ever be acquired. Furthermore, a distinction must be borne between a right of rehabilitation required to be provided when the land of the members of the Scheduled Tribes are acquired *vis-a-vis* a prohibition imposed upon the State from doing so at all.”

The present available enactment for the malady of displacement is the archaic “The Land Acquisition Act, 1894” but it deals with the landowners. Displacement of tribal community as harmful for their culture and traditions may also hit the entity of Article 29 of the Constitution of India. However, it may be insisting to conclude with the observations of Hon’ble Supreme

Court in the case of *Siddharam Satlingappa Mhetre v State Of Maharashtra And Ors.* decided on 2 December, 2010 in connection with Criminal Appeal No. 2271 of 2010. (Arising out of SLP (Crl.) No.7615 of 2009), the Supreme Court has held that- “All human beings are born with some unalienable rights like life, liberty and pursuit of happiness. The importance of these natural rights can be found in the fact that these are fundamental for their proper existence and no other right can be enjoyed without the presence of right to life and liberty. Life bereft of liberty would be without honour and dignity and it would lose all significance and meaning and the life itself would not be worth living. That is why “liberty” is called the very quintessence of a civilized existence.

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37 (2009) 8 SCC 46.
In *T.N. Godavarman* case\(^38\) the Supreme Court in order to protect deforestation and displacement of forest dwellers citing doctrine of sustainable development and precautionary principle the Apex Court issued directions for closure of all unlicensed saw mills and prohibited opening of any new saw mill without prior permission of the Central Empowered Committee (CEC). The proliferation of wood based industry was one of the causes of degradation of forest. It is evident that the order was passed with a view to ensure protection of the forest wealth and to enforce measures to stop illegal felling, removal and utilization of timber.

The issue of environment, forest, forest dwellers and deforestation was again taken up in *V. Kenchapa v. Karnataka Industrial Area Development Board*\(^39\) wherein the natives affected by a technological project challenged that pasture/meadow and the lands reserved for the residential purposes in the green-belt should not be acquired and allotted for non-agricultural purposes, including industrial purposes. The Supreme Court held that, “*We direct that, in future, before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment. We also direct the appellant to incorporate the condition of allotment to obtain clearance from the Karnataka State Pollution Control Board before the land is allotted for development. The said directory condition of allotment of lands be converted into a mandatory condition for all the projects to be sanctioned in future.*”

The Supreme Court highlighted his own contribution in the area of environmental jurisprudence. It said that this has been an interesting judicial pilgrimage for the last four decades. In our opinion, this is a significant contribution of the judiciary in making serious endeavour to preserve and protect ecology and environment in consonance with the provisions of the Constitution. Sustainable use of natural resources should essentially be based on maintaining a balance between development and ecosystem. Coordinated efforts of all concerned would be required to solve the problem of ecological crisis and pollution. Unless we adopt an approach of sustainable use, the problem of environmental degradation cannot be solved. The concept of sustainable development was propounded by the ‘World Commission on Environment and Development’, which very aptly and

\(^38\) *T.N. Godavarman Thirumalpad v Union of India* AIR 2003 SC 724.

\(^39\) AIR 2006 SC 2038.
comprehensively defined it as `development that meets the needs of the present without compromising the ability of future generations to meet their own needs'. Survival of mankind depends on following the said definition in letter and spirit.

Again in 2005 in *T. N. Godavarman Case* the Supreme Court in its first major order the court *inter alia* redefined the scope of the Forest Conservation Act 1980, suspended tree felling across the entire country, and sought to radically re-orient the licensing and functioning of forest-based industries. Subsequently, more than 2,000 interlocutory applications have been admitted, and several hundred orders have been issued, many with far-reaching implications. But the case is still pending in the Supreme Court. Natural resources are the assets of entire nation. It is the obligation of all concerned including Union Government and State Governments to conserve and not waste these resources. Article 48A of the Constitution of India requires the State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country. Under Article 51A, it is the duty of every citizen to protect and improve the natural environment including forest, lakes, rivers and wild-life and to have compassion for living creatures.

In the present case, the question is about conservation, preservation and protection of forests and the ecology. When forest land is used for non-forest purposes, what measures are required to be taken to compensate for loss of forest land and to compensate effect on the ecology, is the main question under consideration. The Supreme Court highlighted the importance of forests as it said that, “Forests are a vital component to sustain the life support system on the earth. Forests in India have been dwindling over the years for a number of reasons, one of it being the need to use forest area for development activities including economic development. Undoubtedly, in any nation development is also necessary but it has to be consistent with protection of environments and not at the cost of degradation of environments. Any programme, policy or vision for overall development has to evolve a systemic approach so as to balance economic development and environmental protection. Both have to go hand in hand. In ultimate analysis, economic development at the cost of degradation of environments and depletion of forest cover would not be long lasting. Such development would be counter-productive. Therefore, there is an absolute need to take all precautionary measures when forest lands are sought to be directed for non-forest use. The point in issue is whether before diversion of forest land for non-forest purposes and consequential loss of benefits accruing from

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40 AIR 2005 SC 4256.
the forests; Should not the user agency of such land be required to compensate for the diversion? If so, should not the user agency be required to make payment of Net Present Value (NPV) of such diverted land so as to utilize the amounts so received for getting back in long run the benefits which are lost by such diversion? What guidelines should be issued for determination of NPV? Should guidelines apply uniformly to all? How to calculate NPV? Should some projects be exempted from payment of NPV? These are the main aspects which require examination and determination in the backdrop of various legislations which we would presently notice.

Very quickly, the court got sucked into a whole maze of administrative and management issues. Disposal of felled timber, timber pricing, licensing of timber industries, felling of shade trees, budgetary provision for wildlife protection, disposal of infected trees, determination and utilisation of the compensation paid for conversion to non-forest purposes, confidential reports of forest officers, and even painting of rocks in forests all became grist to the Godavarman mill. The court created high powered committees, authorities and a fund for compensatory afforestation. Eventually, as the number of matters coming to the court spiralled out of control (due to its own expansion of the case) it got a Central Empowered Committee (CEC) set up under section 3(3) of the Environment (Protection) Act, 1986. More importantly, the court insulated the committee’s members from their roles as central government employees, delegated wide-ranging powers to it to dispose matters in accordance with the orders of the court, and made the committee answerable only to the court. The court has kept the case open under a “continuing mandamus” and continues to hear and dispose a large number of interlocutory applications every month.


observations on India, it called upon the Indian Government, particularly to address the issue of rising homelessness. It after referring the international documents opined on the issues of IDPs in following words that, “The above narration shows that homelessness may result from several causes including natural disasters; development projects, economic deprivation as well as human rights violations. International law terms persons who stand displaced from their countries as "refugees" and recognizes that they are entitled to protection from being returned to places where their lives or freedom could be threatened.\textsuperscript{42}

One of the most important judgment on development induced displacement is \textit{Narmada Bacho Andolan Case}\textsuperscript{43} Sardar Sarovar Project (SSP) was one of the most ambitious multipurpose projects which on completion is expected to produce 1450 MW of power and supply water for irrigation and drinking purposes to areas not only in the riparian States including Kutch in the State of Gujarat but even in areas belonging to non-riparian State like Rajasthan. The Narmada Bachao Andolan (NBA), a Non-Governmental Organization which has been in the forefront of the agitation against the construction of the Sardar Sarovar Dam filed a writ petition before this Court raising several issues including relief and rehabilitation of internally displaced people. The Supreme Court held that, “Water is the basic need for the survival of human beings and is part of right of life and human rights as enshrined in Article 21 of the Constitution of India and can be served only by providing source of water where there is none. The Resolution of the U.N.O. in 1977 to which India is a signatory, during the United Nations Water Conference resolved unanimously inter alia as that “All people, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of a quality equal to their basic needs.” The Supreme Court also spoke on issues of IDPs. Displacement of people living on the proposed project sites and the areas to be submerged is an important issue. Most of the hydrology projects are located in remote and in-accessible areas, where local population is, like in the present case, either illiterate or having marginal means of employment and the per capita income of the families is low. It is a fact that people are displaced by projects from their ancestral homes.

\textsuperscript{42} Supranote 41.
\textsuperscript{43} (2000)10 SCC 664.
Displacement of these people would undoubtedly disconnect them from their past, culture, custom and traditions, but then it becomes necessary to harvest a river for larger good. A natural river is not only meant for the people close by but it should be for the benefit of those who can make use of it, being away from it or nearby. Realising the fact that displacement of these people would disconnect them from their past, culture, custom and traditions, the moment any village is earmarked for take over for dam or any other developmental activity, the project implementing authorities have to implement Rehabilitation and Resettlement (R&R) programmes. The R&R plans are required to be specially drafted and implemented to mitigate problems whatsoever relating to all, whether rich or poor, land owner or encroacher, farmer or tenant, employee or employer, tribal or non-tribal. A properly drafted R&R plan would improve living standards of displaced persons after displacement.

For example residents of villages around Bhakra Nangal Dam, Nagarjun Sagar Dam, Tehri, Bhilai Steel Plant, Bokaro and Bala Iron and Steel Plant and numerous other developmental sites are better off than people living in villages in whose vicinity no development project came in. It is not fair that tribals and the people in un-developed villages should continue in the same condition without ever enjoying the fruits of science and technology for better health and have a higher quality of life style. Should they not be encouraged to seek greener pastures elsewhere, if they can have access to it, either through their own efforts due to information exchange or due to outside compulsions. It is with this object in view that the R&R plans which are developed are meant to ensure that those who move must be better off in the new locations at Government cost. In the present case, the R&R packages of the States, especially of Gujarat, are such that the living conditions of the oustees will be much better than what they had in their tribal hamlets.

6.8 Legal Protection of IDPs and Their Rehabilitation and Settlement

6.8.1 Forests’ Dwellers Rights

Apart from fundamental rights mentioned in Articles 19 & 21 and extended new rights under Article 21 and fundamental rights available to minorities and other ethnic groups under Articles 29 & 30. After T.N. Godavarman Case (2005) Central Government passed a law as The Scheduled Tribes And Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. This Act recognises and vests the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations.
The recognised rights of the forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwellers. The Act also recognises the tenurial rights and its consolidation for forest dwellers.

Under the Act following rights have been identified:

(a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;

(b) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;

(c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;

(d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

(e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;

(f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;

(g) rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;

(h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;

(i) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;

(j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;

(k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;

(l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses
(a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;

(m) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005. 44

The Act also provide for diversion of forest land under section 3(2) under a non-obstante clause it mentions that notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare, namely:

(a) schools;
(b) dispensary or hospital;
(c) anganwadis;
(d) fair price shops;
(e) electric and telecommunication lines;
(f) tanks and other minor water bodies;
(g) drinking water supply and water pipelines;
(h) water or rain water harvesting structures;
(i) minor irrigation canals;
(j) non-conventional source of energy;
(k) skill upgradation or vocational training centres;
(l) roads; and
(m) community centres.

But such diversion of forest land for aforementioned purpose must be less than one hectare in each case; and the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.

Section 4 deals with recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers. Section 5 provides for following duties of forest dwellers:

(a) To protect the wild life, forest and biodiversity;

44 Section 3 of The Scheduled Tribes And Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
(b) To ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected;
(c) To ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;
(d) To ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.

Section 6 provides for authorities for better administration of forest dwelling rights. It comprises of Gram Sabha and District Level committee and Sub-divisional Committee to be appointed by State Government. Section 7 says that, “Where any authority or Committee or officer or member of such authority or Committee contravenes any provision of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees. The offence shall not be deemed to be committed if any member of the authority or Committee or head of the department or any person referred to in this section liable to any punishment proves that the offence was committed without his knowledge or that he had exercised.

6.8.2 National Rehabilitation and Resettlement Policy, 2007

In India, the problem of land acquisition and payment of compensation is handled by the colonial Land Acquisition Act, 1894. The land acquisition procedure has become a complex one, prohibiting the payment of fair compensation to project ousters. The operation of the said Act has given the state the authority to abuse power and fix the rate of compensation in a most arbitrary manner. To address various issues related to land acquisition and rehabilitation and resettlement comprehensively the Department of Land Resources has formulated a National Rehabilitation and Resettlement Policy, 2007. The new policy has been notified in the Official Gazette and has become operative with effect from the 31 October 2007, based on which many State Governments have their own Rehabilitation and Resettlement Policies.

i. The National Resettlement and Rehabilitation Policy (NRRP) 2007 is applicable to all development projects leading to involuntary resettlement of people.
ii. The policy aims to minimize displacement and promote, as far as possible, non-displacing or least displacing alternatives.
iii. The policy also aims to ensure adequate rehabilitation package and expeditious implementation of the rehabilitation process with the active participation of those affected.

iv. The policy also recognizes the need for protecting the weaker sections of the society especially members of the Scheduled Castes and Scheduled Tribes.

To give legal backing to the policy, the Cabinet also decided to bring legislation on the lines of Resettlement and Rehabilitation Policy and to suitably amend the Land Acquisition Act 1894. In this direction, Government has introduced two bills on similar lines in Lok Sabha in 2009 named as the Land Acquisition (Amendment) Bill 2007 and the Rehabilitation and Resettlement Bill, 2007. Both of the Bills lapsed with the dissolution of the 14th Lok Sabha.

6.8.3 The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013

In May 2011, the National Advisory Council recommended combining the provisions of Land Acquisition and Rehabilitation and Resettlement (R&R) within a single Bill. In this direction, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, 2012 (formerly known as the Land Acquisition, Rehabilitation and Resettlement Bill, 2011) was introduced in Lok Sabha on 7 September 2011. The Bill was passed on 29 August 2013 in Lok Sabha and on 5 September 2013 in Rajya Sabha assented by President on 26th September and published on 27th September.

The landmark Bill on the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement, 2013 brings an end to the era of forced land acquisition. Integrating land acquisition with rehabilitation and resettlement and bringing transparency in the process of acquisition, compensation, and rehabilitation as a matter of right is a historic step. It was important to have a law to prevent forcible land acquisitions which have increased during the last few decades due to big industrial and development projects. Providing fair compensation and R&R to the farmers, land-owners and livelihood losers in all acquisitions becomes critical in the context of increasing alienation, displacement, deprivation, and disentitlement to the resources of livelihood.

Some salient features of the Act, here just a cursory overview of the Act as the detail is given in other chapter:

i. The Act applies to all strategic acquisition for defence, housing, infrastructure development and residential purposes;
ii. Consent of 80 percent of landowners required in case of land acquired by private companies and 70 percent for land acquired under Public Private Partnership (PPP) model for public purpose;

iii. Compensation up to four times the market value in rural areas and twice in urban areas;

iv. Mandatory Social Impact Analysis (SIA) to assess nature of public interest and estimation of socio-economic impact prior to acquisition;

v. Land cannot be vacated until the entire compensation is awarded to the affected parties

vi. Companies can lease the land instead of purchasing it;

vii. Private companies to provide for rehabilitation and resettlement if land acquired through private negotiations is more than 50 acres in urban areas and 100 acres in rural areas;

viii. Affected families include farm labour, tenants, sharecroppers and workers on the piece of land for three years prior to the acquisition;

ix. Compensation should be house, one time allowance and (either Rs 5 lakh or a job or inflation adjusted Rs 2,000 per month for 20 years) for the affected family;

x. Compensation of four times the market value in rural areas and twice in urban areas will be given to affected families. The market value of the acquired land shall be based on the higher of market value specified in the Indian Stamp Act, 1899 for the registration of sale deeds;

xi. Average of the top 50 percent of all the sale deeds in the similar type of land situated in the vicinity or the amount agreed upon as compensation for acquisition of land for private companies or PPPs.

xii. The value of the assets (trees, plants, buildings etc.) attached to the land being acquired will be added to this amount. The Act proposes that in cases where the ownership of an acquired land is sold to any person, without any development made, 40 percent of the profit made shall be shared among all the persons from whom the land was acquired.

xii. Originally, there was provision for social impact study to get the idea of particular society and there need, however recently NDA government brought an amendment through Ordinance to remove such provision, to minimise the time span of lengthy acquisition proceeding.
6.9 Tribals, Land Acquisition, Development and Displacement

6.9.1 Ethnic Minority or Tribal/Indigenous People & Their Rights

The Tribal people in India have a long history even before the arrival of the colonial government. The Tribal societies that existed prior to the colonial intervention had their own rights and duties within their autonomous sovereign framework. Apart from the encounter of the Tribals with the various civilizations, there was also the influence of the foreign missionaries in the past and of the dominant society through the fundamentalist forces in the recent past.

There is a little doubt that Tribal communities continue to be the most marginalized group in India. Social indicators of developments tell that Tribal people have life expectancies that are decades shorter than the non-tribals are. Any other social indicator, be it standards of health facilities education opportunities and attainment, level of employment or standard of housing, sees Tribal communities enjoying fewer opportunities, and suffering greater burdens, than the rest of the Indian population.

Human rights are the birth rights of every human being and they form an integral part of the socio-cultural fabric of humanity all over the world. However, they are vulnerable to abuse and violation. Human rights can be understood as abstract norms and values protected in laws, constitutions, and international conventions. At the same time, human rights are cultural concepts that are slowly evolving in response to social change or contestation. The paper explores how human rights have become applicable to the realities of Tribal lives, and how we can build on the international conventions and agreements that have accomplished this task to understand the dimensions of tribals’ human rights in the Indian society. Tribals’ human rights provide fundamental insights into the causes, manifestations and consequences of human rights violations experienced by Tribal communities.

In India, the last quarter of the 20th century has been a witness to the growing recognition of the place and relevance of human rights due to pressure from various collective movements. It is obvious that this concern in human rights is rooted in the denial of life and liberty that was a pervasive aspect of the emergency (1975–77). The mass arrests of the leaders of the opposition and the targeted apprehension of those who could present a challenge to an authoritarian state are some of the dominant images that have survived.

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46 R. Nair, Human Rights in India: Historical, Social and Political Perspectives (New Delhi, Oxford University Press2006).
The civil liberties movement was a product of the crisis. Preventing subjective detention, imprisonment, the use of the judicial process non-transparently and custodial violence were on the agenda of the civil liberties movement. For past two decades, movements of peasants, tribals, Dalits, women, students and working class movements have highlighted human rights concerns\(^47\).

Thus, human rights have become prominent on the national and international agenda. Coinciding with the United Nation Declaration, the Indian Constitution also replicates that, the State will not distinguish against any citizen on grounds of birth, place, ethnic, religion, caste and agreed that the promotion and protection of all human rights is a legitimate concern of the State. These include basic survival rights to health care, shelter, food and social security; the right to work; the right to education; and the right to participate in the cultural life of one’s society. However, there is a huge gap between the idea of the human rights laws and the reality of continuing gross human rights violations of Tribal communities in India\(^48\).

Indian constitution is known for its unity in diversity and respect for minorities in a plural federal constitutional frame work as it recognises the cultural and linguistic rights of minorities in a plural society. Tribal communities have been unable to safeguard and promote their language and culture; even though Article 19(5) of the constitution states that a cultural or linguistic minority has the right to conserve its language and culture. This means that Tribal as individual and groups have right to use their own language, to practice their own culture, to study their own history, tradition and heritage etc.\(^49\). The state cannot, by law, impose upon them any other culture or language. While the state may not have enforced any language or culture on them, neither has it taken any positive steps worth the name towards meeting this provision of the constitution. Rather, the steps taken are far from being in consonance with the provisions laid down in the constitution. The posture that they adopted has invariably been in the direction of assimilation into the language and culture of the major community, rather than protection and promotion of the distinct language and culture of the Tribal communities. Schooling extended to Tribal communities for example, has invariably been made in the language of the dominant regional community of the respective states or in English. The result is that Tribal communities are increasingly loosing knowledge of their own language and

culture. Indeed the promotion of language and culture has been left to Tribal communities themselves. Yet, because of lack of control over human, organizational and financial resources, the Tribal communities have not been able to take effective measures in this direction. Only here such support has been made available in some form or the other the Tribal communities have been able to protect and safeguard their culture.

6.9.2 Land Acquisitions & Tribal

The constitutional safeguards as provided in the 5th Schedule of the Constitution of India and various other State level laws which among others prohibit transfer of the lands of the Tribal communities have failed to prevent widespread land alienation of the Tribal people. The core cause of the land alienation has been the Land Acquisition Act, 1894 under which the government can exercise its sovereign power to take away any land in the name of ‘public purpose’.

The non-tribals have also illegally occupied hundreds acres of land belonging to Tribal communities by force in Andhra Pradesh, allurement and acquiring Tribal lands by marrying Tribal women. There is ample of evidences that a majority of these non-tribals are from coastal Andhra upper caste and ruling classes. Many scholars who worked on Tribal issues have raised these issues very often. Even Girglani, J.M in his report on Tribal Land issues in Telangana Area submitted to the Government in 2005 says that Telangana have been losing land to non-tribals since long back. The Gonds of Adilabad in the 1930s lost land to Marathis and during 1940s to Hindu and Muslim settlers invited by the Nizam from neighboring districts. The famous Regulation of 1/1970, Scheduled areas in Telangana saw an arrival of non-tribal population, which in due course of time has passed into the hands of Telugu non-tribals mostly from four central coastal Andhra districts. The onslaught of non-tribals from costal districts over scheduled areas in Telangana continued unabated. According to estimates as much as 1.5 lakhs acres of fertile lands along Godavari River banks of Warangal and Khammam have passed into hands of dominant caste people such as Kamma, Rajulu, Reddy and Kapu landlords and cultivators belonging to the coastal area due to ineffective implementation of the Land Transfer Regulation Acts (LTR). In similar lines with Kerala, Andhra Pradesh Land Transfer Regulation, 1959 was amended in 1970, in an attempt to accommodate the interest of non-tribals as a result Khammam district has

become a victim to most atrocious non-tribals penetration from coastal areas.

### 6.9.3 Failure to ensure Forest Rights of Tribes

After the emergence of private property and the emergence of modern nation states, as Tribal communities have no legal rights over the lands they have been living on and cultivating for generations, it became easy for the non-tribals to acquire the land of Tribal people. Often, the law declares these unregistered lands as reserved or protected forests, or sanctuaries and national parks. The access of Tribal communities to forest produce or to the grazing of cattle is rendered illegal, they are threatened and penalised for entering into the forest. A large number of these people belong to the Tribal communities. They live every day under the unpredictable threat of being evicted from their homes; the only legal protection they have is the due process of law. Over the years, when these people have protested against oppression by the forest department or raised their voices to demand legal rights, the State has used force to suppress them to the extent of denying them the right to life.

The National Forest Policy of 1988 recognizes symbiotic relationship between forest and Tribal communities yet; the Tribal people have been systematically victimized under the Forest Act, 1927. When the Forest Conservation Act, 1980 came into implementation, thousands of acres of land of Tribal communities were encroached overnight. In 2006, the government of India brought the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act. The Act is aimed at undoing the age-old injustice done to Tribal communities by restoring and recognizing their pre-existing rights. The Act has been dealt in detail above. The recognition and restoration has been, however passing through rough weather in respect of its implementation. The Government of India till today has failed to notify the Rules of Procedures of the Forest Rights Act, 2006. In the meanwhile, Tribals continue to be prosecuted for accessing minor forest produce. There were 2,57,226 forest cases pending against 1,62,692 Tribal communities between 1955 and 30 June 2006 under different Sections of the Forest Act of 1927.

### 6.9.4 Development; Disadvantage to Displaced Tribes

Dam building is one of the most important causes for development related displacement. According to a report, ‘during the last fifty years, some 3,300 big dams have been constructed in India. Many of them have led to large-scale forced eviction of vulnerable

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51 B. Thipper, ‘Right over forest land for tribals in the offing’ The Indian Express, 17 Feb 2014 P. 6.
groups. Tribal people who constituted 8.6% of the total population of India as per 2011 census also constituted 55.1% of the total development project-induced displaced persons up to 2010 on account of mega developmental projects like industries, mining, dams, wild life sanctuaries, parks and conservation of nature, etc.

The brutality of displacement due to the building of dams was dramatically highlighted during the agitation over the Sardar Sarovar Dam. It has been called ‘India’s most controversial dam project’. Medha Patekar, spearheaded the anti-dam movement known as the Narmada Bachao Andolan. This movement for the first time systematically revealed how building dams can result in total dislocation of tribal societies. Beneficiaries of the dam are meant to be large landowners; but the tribal people are paying the price. The Narmada Valley Development Project (NVDP) is supposed to be the most ambitious river valley development project in the world. It envisages building 3,200 dams that would reconstitute the Narmada and her 419 tributaries into a series of step-reservoirs. Of these, 30 would be major dams, 135 medium and the rest small. Two of the major dams would be multi-purpose mega dams. The Sardar Sarovar in Gujarat and the Narmada Sagar in Madhya Pradesh, would, between them, hold more water than any other reservoir in the Indian subcontinent. The official figure indicates that about 42,000 families would be displaced but non-governmental organizations such as the Narmada Bachao Andolan (NBA) puts the figure to about 85,000 families or 500,000 people. They argue that the official figure has not counted people who would lose their livelihood as a result of these dams as ‘Project Affected Families’ (PAFs). The official figure counts families who would lose their land or homes as the only PAF. The Narmada Valley Development Project would affect the lives of 25 million people who would in the valley and would alter the ecology of an entire river basin. Pooja Mehta questioned the whole rehabilitation process of Sardar Sarovar Project (SSP) on Narmada River. She says that “The only way to establish and implement these broad reforms is to develop a legal framework that will ensure that IDPs are equitably treated. India's existing legal infrastructure is inadequate for ensuring the protection of human rights in the implementation of the SSP. Thus, India should develop and adopt a comprehensive legal and policy framework that avoids involuntary resettlement, minimizes displacement
when it is unavoidable, and makes certain that displaced people receive adequate assistance to restore their living conditions to at least pre-project levels.\textsuperscript{52}

The Tehri project is a multi-purpose irrigation and power project in the Ganges valley, 250 km north of Delhi, located in the Tehri Garhwal district of Uttaranchal state. Initially in 1969, the Tehri Dam Project Organization (TDPO) estimated that about 13,413 persons would be affected by the construction of the dam. But a working group for the Environment Appraisal of Tehri Dam established in 1979 put the figure of expected internal displacement to 85,600 persons. According to the 1995 report of TDPO, out of 135 villages affected, 37 would be fully submerged once the dam is completed. The total land affected by the project is 13,000 hectares.

Development projects have become more problematic particularly in Andhra Pradesh during the last few decades. In this context take the Polavaram dam, which is to be built across the Godavari River which will displace around 400,000 people in the three states; Andhra Pradesh, Chhattisgarh and Orissa. Of them at least 150,000 are Tribals (the submergence area includes 170 habitations of Koya and Kondareddy) particularly vulnerable Tribal groups dearly in terms of livelihood and preservation of distinctive cultural heritage are in shock and the rest mostly Dalits dependent on minor forest produce for their livelihood. Displacement not only disrupts the lives of the individuals and families concerned, but also their entire communities and societies. In many cases, due to displacement, socio-economic systems and community structures breaks down\textsuperscript{53}. As a result, Tribal communities are at the lowest point in every socio-economic indicator. Moreover, they are seldom rehabilitated. As India’s active economy involves further resources, Tribal communities face more displacement. In the last three years, the National Policy on Resettlement and Rehabilitation for Project Affected Families of 2004 was amended twice in 2006 and 2007, but failed to address the problems of displaced people. Tribal communities must resist for their right and democratic conscious people should support them in this respect.

\textbf{6.9.5 Violation of PESA Act in India}

As we see that Local self-Government authorities like Gram Sabha, Gram Panchayats, and Land Management Committee have been given due and important role in land


\textsuperscript{53} Cao. Huhua, \textit{Ethnic Minorities and Regional Development in Asia} (Amsterdam University Press 2009).
acquisition, compensation, rehabilitation and settlement of displaced. To reinforce the constitutional provisions for protection of the Tribal communities, this important Panchayat (Extension to the Scheduled Areas) PESA Act, 1996, has been enacted in recent years. The Act empowers the scheduled Tribes to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of dispute resolution through the Gram Sabha. Interestingly, the provisions of the Panchayat Act hardly find its due place in letter and spirit. However, there are extensive violations of the PESA Act, 1996, in mining and land acquisition in the Scheduled Areas of Andhra Pradesh, Chhattisgarh, Jharkhand and Orissa. The Panchayats (Extension to the Scheduled Areas) Act, 1996, provides that every Gram Sabha shall approve the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation; the Gram Sabha or the Panchayat at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects. And before resettling or rehabilitating persons affected by such projects in the Scheduled Areas, the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level. Despite the above provisions for the rights of the Tribal communities, no necessary initiations are taken up during any developmental project to take the opinion and consent of the Gram Sabha, which constitutes people’s opinions.

The recommendations of Gram Sabha are not made mandatory prior to granting prospecting license or mining lease in many cases. For example in the case of Polavaram a multipurpose project, Gram Sabhas are not conducted in villages and peoples consent has not been taken. This process is neither followed in Andhra Pradesh nor in the neighbouring states like Orissa and Chhattisgarh. Even though this project did not get environmental clearance, construction of project has been initiated.

The Constitution entrusts the Governor the task of ensuring peace and good governance in Schedule Five Areas, with absolute powers over the state government towards this end. Governors were also required to submit an annual report to the Parliament, which was meant to be an independent assessment on administration in Schedule V areas. However, since the enactment of PESA, Governors have slowly but surely been neglecting their

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54 B.D.Sharma, (2010), Report of the sub-committee appointed by the Ministry of Panchayati Raj to draft Model Guidelines to vest Gram Sabhas with powers as envisaged in PESA.
duties towards the law, and towards the welfare of the Tribal communities. Even
The government of India has also failed to materialize Tribal sub plan in the country. Violation of human rights creates many economic and emotional problems. It affects the nature and welfare of human beings, and creates many disorders. It is possible to imagine the life chances of Tribal communities improving through the implementation of practical measures along with considering the rights accorded. However, silence on rights will always carry with it the danger of a return to paternalism and the treatment of an identifiable group of people as a problem worthy of charity, not as a group of human beings to whom society has responsibilities and duties. The constitutional guarantee which governs and protects the rights and sovereignty of Tribal communities, need an immediate implementation. Otherwise, this would lead to a disappearance of the various Tribal communities from the human picture. The Tribal communities, sovereignty is at stake by the intervention of non-tribes in their area. Therefore, there is an immediate need to constitute Tribal autonomy councils so that the Tribal communities themselves can look after the rules, implementation and development of the localities.

6.9.6 Public Purpose: Illusory Phrase
The deemed consent instead of informed and free consent continues the real even now after 2013 Act. Under Section 4 of the Act, the Government is required to make a public notification of the intention to take over the land for a 'public purpose, the definition of which under Section 3(f) is inclusive, and is often interpreted very liberally to include a variety of uses such as housing schemes, roads, play grounds, offices and factories, benefiting only a portion of the society by the Collector and State Government taking advantage of the wide definition. In fact, the Supreme Court in various cases has laid down that not only is 'Public Purpose hard to define, the Government is the best judge to decide whether a purpose falls under this definition. Under the existing legislation, even private corporations are granted the right to acquire land under certain sections.

6.9.7 Development: Illusory Perceptions
What is development? Is it availability of choices, access to bare necessities or any other thing? Everyone has his own definition which causes the real problem in development, land acquisition and displacement of people. While referring to the acquisition of land

for development purposes, it is important to understand what constitutes development itself. Since last few decades, development has been looked at as something beyond a mere growth in GDP, that is, an overall Human Development. The Human Development Reports look at Development as, increasing people’s choices. There have also been theorized certain basic needs or basic capabilities that all people are entitled to, for a society to ensure true development. If this be so, it is essential that the laws of a democratic country ensure that due to acquisition of land for the growth of few, the displaced persons are not made worse-off.

Reference may be made to criticism of large scale development projects, which have been increasingly criticized by different institutions and by theorists such as E.F. Schumacher. In the context of India displacement caused due to dams etc. has often been a product of the ideologies like Nehruvian socialism. There is something intuitively and morally wrong about the idea of having development at the cost of some person’s well-being. At this juncture, it is relevant to consider the Gandhian approach of Inclusive Development, which is a decentralized and less anthropocentric approach, and aims at internalizing , happiness through moral obligations. Gandhiji also replaced the idea of rights with duties. One of the moral gaps that have often been exploited by those in power has been due to the idea that there is no duty unless someone has proved his/her right in the court of law. Why should duties presuppose the existence of rights? This is a larger philosophical issue, and shall not be addressed here, but it is still worth-while for those in power to put a greater emphasis on their duties, and make political and policy decisions only after fully realizing the burdens of these moral and legal duties.

**6.9.8 Defects in Compensation, Rehabilitation and Resettlement Policy**

For the Government and its agents of development, cash compensation seems to be the only panacea for the problems induced by displacement and only policy for rehabilitation. It's hard to believe that how land, natural resources, means of livelihood, social and cultural loss resulting from displacement can be quantified and compensated in monetary terms? Moreover, the manner in which the law is framed and interpreted ensures that the displaced land-owner or house-owner is always the loser. The limited provisions in The Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and

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Resettlement Act, 2013 to challenge the rate of compensation are, in practice, inaccessible to the indigent and illiterate oustees. Even, only those landowners who were familiar with the legal details of the Land Acquisition took their cases to court. The ill-effects of the displacement induced by development ought to be taken care off by the state and necessary arrangement thereof made, i.e. the displaced persons be resettled in a safe habitat wherein they can start their life afresh. However, this would require more than mere allocation of certain piece of land for resettlement or mere construction of make shift camps for temporary settlement. What is needed is the "rehabilitation" of the persons affected by the projects; rehabilitation means to "restore to the former condition", and thus, all that was lost by displacement, the emotional, cultural, social, political and economic losses must be restored at a priority basis than to the Project itself, which is the cause of the impoverishment. In dealing with issues of development and displacement, important ethical questions are raised such as why is displacement often considered morally objectionable? Under what conditions, if ever, can a development project justify displacement? Is it ethically just to displace people so long as they are compensated? If so, what type of compensation is owed to displaced?

According to Peter Penz\textsuperscript{60}, Three broad ethical perspectives that can be used to justify development-induced displacement are public interest, self-determination, and egalitarianism. The public interest perspective, embodied in cost-benefit analysis, supports the decision that brings the greatest net benefits to the population as a whole. The self-determination perspective privileges freedom and personal control. In its form, forced displacement (at least of those who legally own property) is unjust because it violates property rights. The egalitarian perspective privileges actions that reduce poverty and/or inequality\textsuperscript{61}. Theoretically, can be justified here if it benefits the poor at the cost of the wealthy, but questions are raised when a project benefits an under-privileged group at the cost of another such group. As Penz points out, is an ethically complex issue, in which public interest and distributive concerns stand in tension with self-determination and individual rights. He concludes that there are conditions under which can be justified, but that these conditions must be strong\textsuperscript{62}. They include the avoidance of coercive displacement in favour of negotiated settlement, the minimization of resettlement

\textsuperscript{60} Peter Penz is the Director of Centre for Refugee Studies, York University, Toronto.
\textsuperscript{61} International Development Ethics Association< http://www.development-ethics.org/> accessed on 23\textsuperscript{rd} November, 2014.
\textsuperscript{62} Ethics of Development-Induced Displacement (EDID) Research Project, York University, Toronto, Canada <http://www.edid.yorku.ca/> accessed on 4\textsuperscript{th} September, 2014.
numbers, the full compensation of displaces for all losses, and the use of development benefits to reduce poverty and inequality. Unfortunately, in most cases of DIDR, these conditions have been violated.

The other lacunas of The Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 are that it has too wide a definition of ‘Public Purpose, assumption that the seller is willing to sell; arbitrary, inadequate and only monetary compensation; uncertainty in rehabilitation caused by case-by-case approach; no provision for compulsory Social Impact Assessment; non- recognition of indigenous rights; need for participation by the people affected in the process; larger issues of Governance such as a lack of political will, only Utilitarian considerations and a denial of moral obligations towards fellow citizens.

6.10 Land Acquisition & Gender Justice

6.10.1 Gender Justice Development and Land Acquisition

One of the principal prerequisites of post-independence development projects has been land acquisition. Most of these projects have caused major changes in land use, leading to dispossession and displacement of a large number of people and their involuntary resettlement in other areas a process that still continues. Development induced displacement brings loss of productive assets, dismantling of social networks, destruction of ancestral property, and even increased morbidity and mortality rates in some instances. The question that can be asked is, since displacement is a traumatic experience for anyone undergoing it, how does it affect women differently? If whole families are being affected, why should there be a need to focus separately on women? The already prevalent gender inequalities persist, and are often accentuated, in some form or the other, across the various social inequalities created by developmental processes. The transition to moderm economy has meant the exclusion of an increasing number of women from active participation in the development process, stagnation and increasing misery, greater vulnerability, and sometimes even a decline of opportunities and status. This is because women, both urban and rural, are precluded by law and customs from owning and inheriting and managing property and from access to credit. This is essentially a human rights issue. People who cannot own property are forever dependent and run a greater risk of being excluded from their homes and livelihood. Therefore, a just development

policy is one which has provision for women to have access to productive resources and to own and manage property.

A review of the existing information on displacement and rehabilitation reveals that while there is a lot of data available on the overall impact of this process on communities, and some information is available on some vulnerable socio-economic groups, such as the tribals, there is very little available on the gender dimension of the problem. In almost all analyses on displacement and in the policies on relocation, it has been assumed that the ‘household’ or the 'family' is the smallest unit of convergent interests wherein the benefits and burdens of existing policies are shared by all its members. But there is growing evidence to the contrary that points to the fallacy of this assumption. While there is an overall negative effect on the poor, women and female children are bound to be affected more because of intra-household in equalities that already exist in the levels of literacy, health, nutrition, etc. These disparities tend to get aggravated at times of economic stress. Bina Aggarwal, therefore, emphasises that the challenge for alternative strategies cannot be posed adequately without taking into account the gender dimension. Involuntary resettlement, according to Cernea, destroys productive assets and disorganises production systems, and creates a high risk of chronic impoverishment that typically occurs along one or several of the following dimensions: landlessness, joblessness, homelessness, marginalisation, food insecurity, morbidity and social disarticulation. To this list he adds loss of access to common property. If we examine the position of the displaced women in the light of Cernea's model of 'impoverishment risks through displacement', we find that all the sub-processes get aggravated in their case. Of course, it would be dangerous to even attempt to club all women into one homogeneous category. Their experiences, even as women, would be different depending on their caste,
class and ethnicity. However, in the family context, as women, they suffer greater vulnerability, even within their own social groups.

6.10.2 Gender Bias in Ownership Laws

Compensation and rehabilitation is determined on the basis of ownership to land. However, despite international and national recognition of rural women's contribution to food production and their rights to own land, attempts to incorporate this principle in land development and land-distribution policies have remained marginal. It is therefore not surprising, that the Land Acquisition Act, 1894, the main law governing acquisition, reveals a gender bias and merely reinforces the existing situation of women's lack of ownership of land and property. Sec. 42 (2) of this act specifies that if the 'person interested' is not available to receive the notice for acquisition then it may be handed over to, or served on, any other adult male member of the family who resides with him. If no 'adult male' is present then the notice may be placed on the outer door of the house, or in some conspicuous place in the office of the collector or court house, etc. In other words, if the notice is served on a woman, it is not legal. The act does not mention what is to be done if the 'person interested', or one of the 'persons interested' (in case of joint ownership), is a woman, which may well be the case. But now under The Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013, this anomaly has been resolved. Now female have full proprietorship like male in Tenancy laws as well as The Hindu Succession Act, 1956 after 2006.

All policies for resettlement and rehabilitation go by the 'ownership' of land or property, when working out compensation, and reflect similar gender bias. The Narmada Water Dispute Tribunal's (NWDT) Award which governs rehabilitation of the people displaced by the Sardar Sarovar Project assumes a family to include “husband, wife and minor children and other persons dependent on the head of the family example, widowed mother”. It adds in sub-clause I (3) (ii), that every major son will be treated as a separate family. It has been left to the three states concerned, to re-interpret this as they deem fit. To begin with, Maharashtra has clearly stated that daughters of none of the oustees shall be considered separate families. (Revenue and Forest Department, Resolution No RPN 3188/CR/30/88/R-5 dated June 29, 1989, Clause V.) They have however modified it

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subsequently to add "major unmarried daughters" as project affected persons (PAPs). Though Gujarat also defines the family in the same way as does the Award, it has decided to include all women widowed after 1980 as separate family. However, the women widowed prior to 1980 will continue to be 'dependents' of the head of the family. Gujarat, however, categorically leaves out major unmarried daughters. Madhya Pradesh does not mention women at all. Though its interpretation of the Award reflects a lack of gender sensitivity, the Madhya Pradesh Rehabilitation Act (Madhya Pradesh Pariyojana Ke Karan Visthapit Vyakti (Punasthapan) Adhiniyam 1985) is more gender sensitive, at least to begin with. While defining 'family' it says, "family in relation to displaced persons means the family of displaced persons consisting of such persons or his or her spouse, minor son, unmarried daughter, minor brother or unmarried sister, father or mother and other members residing with him and dependent on him for livelihood under Section 2 (9). Even they seem to slip up towards the end of the sentence and forget that they had included women! However, the definition of a 'displaced person' in the same act reveals a gender bias. A displaced person is defined as "any tenure holder, tenant, government leaser or owner of other property who on account of acquisition of his land ... has been displaced from such land or other property" (Section 2 (8)). The law of rehabilitation of project affected persons in Maharashtra, ‘Maharashtra project Affected Persons Rehabilitation Act, 1986’, defines an affected person as an occupant whose land in the affected zone including land in the 'gaothan' is acquired under section 14 for the purpose of the project. It is the explanation to this clause which is significant. It says, "for the purposes of this sub-clause where any agricultural land is recorded in the relevant village records in the name of one of the brothers as a 'karta' then every brother (or sons or sons of deceased brother altogether as one unit) who has share in the land whether his name is recorded in such village record or not, shall be treated as an affected person. The definition is not at all clear regarding the position of a daughter or a widow (especially if she has no sons). It has also been found in some cases, as in the case of the policy governing the Tehri dam oustees, even if the woman is a 'khataholder' (owner) and she and her husband are together entitled to only one plot of land, compensation has gone to

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the husband. Thus, in the absence of any affirmative clauses including them, women are automatically left out, since they seldom possess ownership rights.

6.10.3 Access to Community Property Resource

In the matter of non-wood forest produce (NWFP) and the common property resources, again, women have no rights, although it is they who collect fuel wood, fodder, and minor forest produce for the family. As a result, when displacement occurs, their loss of access to these resources is seldom focused upon. In Kohadia villages of Korba, an industrial area in Madhya Pradesh, the women found that with no forests in the vicinity, they had to depend on the market for fuel. But since most of the people were unemployed or under-employed, this proved to be a major strain. Collection of water is almost always a woman's responsibility. Taking over of the water source by dams, or water pollution by 'development' projects, affect women's lives the most. In Kohadia, since the river was full of fly ash, the women had to depend on private wells owned by the better-off members of the colony. With no grazing lands, cattle had to be got rid of. Kohadiya was not the only village in the area to face this problem. This has been the experience of women in other areas too. The resettled oustees of the Sardar Sarovar Project had lost access to the forests and the river. They were also finding the maintenance of cattle and goats problematic due to lack of grazing lands. They too, like the oustees of Kohadiya, had been forced to sell their cattle. Interestingly, for these women, certain types of housework, such as collection of water and grinding of grain, required less time and energy. However, like in the case of their sisters in the Korba and Singrauli regions, firewood remained a major problem. Some oustees had installed gobar-gas plants to overcome this shortage. But the time gained from not having to collect fire wood was spent in collecting cow-dung. When we visited Singrauli in 1989, the women, complaining about their present circumstances said that life prior to displacement was hard, but at least there was water available from the Rihand River, and fuel and fodder was available from the forest. Now the dam had monopolised the water, which in any case was too polluted for consumption, and mining operations had taken over the forests. Sanitation is a major problem specific to the displaced women. But since this is a problem peculiar to women, it seldom draws attention. The women in Singrauli, who had earlier gone to the forests,

without alternative sanitation facilities provided to them, now had nowhere to go. The women of Kohadiya said sanitation was a major problem—an embarrassing experience every day. There were no toilets, no forests and no fields—since they did not receive agricultural and in exchange for land lost. Not only did this make their lives physically uncomfortable, it also made them more vulnerable to physical and sexual harassment. A study of impact of displacement in Odissa, notes that NALCO had provided housing without toilet facilities to the displaced persons. They were therefore forced to use a plot that the neighbouring village had set aside for pasture. Quarrels were frequent and they were mainly between women. Displacement often forces people to migrate out of the area as daily-wage labour. Under such circumstances too they face problems of sanitation. The study on the ASIAD Construction Workers in 1982 revealed that the contractors had not provided proper housing and toilet facilities to the labourers and about five hundred families were forced to use a small plot of land for their daily needs. As a result, hygiene in that area was deplorable, and women were left with no private space to use during the day. A similar situation is pointed out in a study on women's status in the slums of Delhi.

The transition period between actual displacement and resettlement is a difficult phase, in which, again, the women suffer somewhat more. Let us take the example of the Sardar Sarovar Project (SSP) oustees once again. In the absence of sensitive handling and a supportive atmosphere, the oustees found it difficult to shift to the new site. Many, therefore, continued to maintain two homes one in the submerging village and the other in the resettlement, resulting in fracturing of families. Most often, it is the women, the old, and children who are left behind. “Family life is disturbed and it is difficult on the women for whom responsibilities increase with divided households and parallel activities in both locations. It has been seen that whenever there is unemployment, i.e. jobs are scarce, the first ones to lose are the women. This is not only because they lack the skill, but more because they have to make way for the men. The report of the National

Commission on Self Employed Women and Women in the Informal Sector 75 "as modern capital intensive technology is introduced, women lost out because men dare preferred to tend the new machines". This has been the experience of the women in the textile industry, mining as well as agriculture-something that is truly important to the rural women's life.

Jobs are scarce in a displacement situation, because most projects have very limited number of jobs to offer to the affected. Till SCOPE abandoned it in 1986, many rehabilitation schemes followed what was popularly known as the T N Singh formula, i.e. one job for every displaced family. In such cases it was always the most eligible male member who was selected for the coveted job. "...there is a strong gender bias as jobs are offered mainly to the men and not the women". They found that in NALCO, Damanjodi, out of 443 jobs created, only 25 had gone to women, all of whom were widows or otherwise single and were, as such, considered heads of families. Clearly, forced resettlement too, like transition to modern economy, has meant the exclusion of an increasing number of women from active participation in the productive process. In their study of displacement in Orissa, Fernandes and Raj 77 have found that in many cases tribals, whose women traditionally occupied a relatively higher status, had internalised the "mainstream ideology". As a result, despite there being a custom of women going out to work, men and women both now stated that the woman's place was in the house and that she should not expect anything else. More than a quarter of the respondents justified women's getting only unskilled jobs, on the grounds that women were not intelligent or not capable of taking initiatives and should therefore be satisfied with their subordinate status. It was found that of the eight-hundred respondents, 189 had a job in the project area, 27 of them were semi-skilled, 79 were on monthly wages. Of them only 49 women were employed, all of them unskilled thirty on daily wages, nineteen on monthly salaries. 78

However, given the situation of landlessness, much reduced land assets, joblessness of the men, and impoverishment, it becomes imperative that women work. Yet, traditional occupations, such as agriculture, fishing, basket-making, etc., become unfeasible, either

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77 Ibid.
78 Ibid.
because of unavailability of raw material once the forest or the water source is taken away, or due to the dispersion of the clientele as a consequence of the breakdown of the community network. As a result, the women find that they have to settle for unskilled wage labour which is most often irregular and underpaid. In the Korba area we found that the men were not willing to move out of agriculture into daily-wage labour. Consequently, the women, old and young, were the ones seeking unskilled daily-wage jobs, sometimes as hazardous as emptying cylinders of explosives, for recycling. Others sought employment as domestic help or construction workers. And, even though the women were moving out of their houses to earn a living, the power equations within the household remained unaltered. The women oustees of the SSP too were forced to seek wage labour, following their resettlement. In fact, in 36 per cent of the Maharashtra PAP households in Parveta, women contributed significantly to the household income. It is, quite obviously, the case that despite the economic need for two incomes, control of that income as well as responsibility for the additional burden of work within the household, continued to be guided by patriarchal norms79 . Migration of the men in search of employment, undoubtedly, is another outcome of displacement, which increases the workload and responsibilities of the women. Added to this is the social pressure of living alone. Given the high mortality rates among women, it is likely that they will be the worst affected by displacement-induced morbidity. Similarly the nutritional and health status of the women, which is lower than that of the males even under normal circumstances, is bound to proportionately go down in the event of an overall decrease in the health status caused by displacement. In some of the resettled villages of the SSP the per capita intake of calories has shown a fairly significant drop. This is due to the low yields and poor employment opportunities in the resettlement area80. Dislocation and relocation in another area, unless very carefully executed, means a breakdown in community networks. For women, community and family networks are extremely important support systems. Since their dependence on them is greater, breakdown of these networks creates tremendous insecurity and trauma, which the women experience more than the men who are usually mobile and relatively less dependent on these networks. Even collection of fodder and fuel or water is often not a purely economic activity. It is an opportunity to socialise and exchange confidences and news, and therefore, have a social relevance. If

80 Supranote 75 p. 28.
these activities stop, the social life is also altered. We found that in the villages along the Narmada, one of the worries voiced by the women was regarding the marriage of their daughters. Some were worried they would never see them once they moved to a new area. Others said they were finding it hard to get their children married because "...the other party does not know where we will be". Some even found people reluctant to get into alliances with 'oustees'. Scott Guggenheim notes that the displaced villages of the Rengali reservoir in Orissa came to be known as the 'buriloka', the submerged destitutes 81. During our visit to Kohadiya a young man observed that there was a sudden increase in the incidence of break-ups in marriages in the village. He attributed this largely to the increased unemployment, insecurity, and poverty after displacement. He also noted a rise in alcoholism among the displaced population. The rise in social disturbances reflected by alcoholism, prostitution, gambling and theft has also been noted in earlier instances of displacement, e.g., Ukai 82, Hirakud 83 and those affected by the Kutku dam in Bihar. This increase in social problems is bound to have affected directly the lives and status of the women by way of violence inflicted on them. Loss of self-esteem or fall in status of the men, especially in their own eyes, often manifests itself in increased violence against the women and children. It is difficult, however, to make any definite' statement as to whether the changes brought about in women's lives due to displacement have been for the better or for the worse. A lot of it has been dependent on individual experiences, their social and economic backgrounds and their own perceptions. While some women have experienced loss of status, some others, especially in cases of urbanisation and industrialisation, have experienced greater freedom having moved away from their traditional village community. A degree of freedom in the new surroundings has meant greater independence, particularly for those from traditional families which observed purdah. In Tehri, for example, we found more girls were going to school. On the other hand, among some other people, like the Chattisgarhis, who had no tradition of dowry, it is now becoming a 'fashion', which is an outcome of the sudden 'outside' influences. If the man of the house got a 'pucca' job in the industry, even if he did not receive land for

land acquired, the woman's status correspondingly rose - both in her own eyes and also in the eyes of the community. However, in the same area women from the mining colonies found themselves pushed into their homes, falling into a purdah system that did not exist before. This was being justified by the increase in violence in the area owing to the mining activities. The TISS team had noted that the status of the women had been affected by the status of women in the host villages. According to the team, "this will undoubtedly influence the position of the women who are relocating, over a period of time as co-option occurs. This type of economy reducing them to wage labour and non-parity values in the two situations, will affect their status adversely".

The above deliberation shows that development induced displacement affects most severally and adversely the female members of family so in the rehabilitation and settlement process the second sex must not be ignored.

**6.11 Conclusion**

The development and displacement go hand in hand. LARR Act, 2013 has made a sea change in the land acquisition process. Constitution and various legislations provides adequate safeguards to forest dwelling Scheduled Tribes. However all these legal framework and enforcement agencies demand one idea to implement that in idea of inclusive growth where development induced displacement is abysmally low and fairly compensated and displaced are rehabilitate and settled with minimum friction and alteration from their natural habitat and with their ethnic indigenousness in a plural society like India.

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84 Supranote 75 p. 34.