

DEVELOPMENT INDUCED DISPLACEMENT

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INTRODUCTION:

Development programs, large and small, frequently cause population resettlement, voluntary or involuntary. Instances of development-induced involuntary population displacement, both economic and physical, and post-displacement resettlement and reconstruction have been brought to limelight quite often. Each year, millions of persons are forcibly displaced by development projects, whether dams, roads, reservoirs or oil, gas and mining projects. While such projects can bring enormous benefits to society, they also impose costs, which are often borne by its poorest and most marginalized members. The present paper examines the aspect of displacement of the poor due to development from the standpoint of the fact that the compensation paid by the government sector or private sector is not in itself enough to restore and improve livelihoods disrupted by displacement and that it impoverishes those forcibly relocated. Further in this paper the researcher has also tried to analyse whether all displacements are bad. And in the conclusion of the paper the researcher has submitted for changing the existing policies, laws and practices by adding investment financing and ex-post benefit sharing to full compensation.

Although internally displaced persons are often defined as those uprooted by conflict, human rights violations and natural or human-made disasters, they also include those displaced by development projects. In fact, Robinson points out: *“While victims of disaster especially natural disaster generally are the focus of sympathetic attention and international aid (as are many of those displaced by conflict), the same cannot be said for victims of development-induced displacement, although the consequences may be comparably dire.”*¹

¹ W. Courtland Robinson, Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement, An Occasional Paper, 2003,pdf, www.google.com (last visited. 15th March, 2011).

Overwhelming evidence documents pervasive and multidimensional distortions of compensation in practice even when compensation remains indispensable as long as losses are inflicted. What displaced populations receive is far less than the value taken away through expropriation and uprooting. But because its current norms levels modalities of valuation and calculation are unsatisfactory to the point of defeating its purpose the distortions of compensation in practice need to be exposed challenged and reformed. There are alternative modes of compensation possible not just one-size-fits all. Compensation levels must be increased and their calculations be delivered through more transparent mechanisms to gain in effectiveness as the existing laws and economic mechanisms prove impotent to regulate compensation practices fairly and to provide rights protection. Nonetheless the compensation for losses are fundamentally important economically justified, legally obligatory and in practice is immediately indispensable. However the imperfection of compensation has a bearing on the effective working of the development policies that rely on it which deeply aggravates rather than eliminating the problem that is intended to solve.

Compensation according to Ravi Kanbur's analysis is placed on losses and losers created by development caused forced displacement and resettlement processes is the only theoretical and historical analysis of compensation principle in context of forced displacement. He states that the compensation principle is not about actual payment of compensation rather about potential for payment i.e. if compensation is paid in principle so as to leave everyone better off the project should go ahead even if in real terms the compensation to the losers are not paid. Compensation delivery modalities (staggered installments, or once off payments) become another source of unanticipated problems for families left to depend only on compensation payments.² In turn simultaneous delivery of compensation has undesired effects on area prices while delayed payments erode the purchasing power. Compensation packages also include sometimes the promise of employment for those displaced. Potentially this may become a crucial element in resettlement strategies depending how employment is combined with vocational training if the promise is fulfilled. Legal recourse against structural or accidental distortions is made difficult by the political weakness of those affected, lack of education, undemocratic institutions, cumbersome grievance procedures, etc. However the judiciary's potential role is

² Michael M. Cernea, Compensation and Investment in Resettlement: Theory, Practice, Pitfalls and Needed Policy Reform, Michael M. Cernea, Hari Mohan Mathur, Can Compensation Prevent Impoverishment?, 1st ed. 2008, pp. 53-55.

weakened by the absence of the explicit resettlement legislation and of legal norms for calculating and processing compensation. Non-court responses to unfair compensation are multiplying and impoverishment right-transgressions and sheer desperation led those affected to political protests and violent opposition.

As a matter of public policy the word 'just compensation' has frequently encountered in the discourse on compensation. This wording is included in important legislations including the legislations on eminent domain and asset expropriation. The economic concept has been married to the concept of ethical notions of justness, thus resulting in an understanding that payment of compensation can be a matter of routine fairly retribute or imposed takings of productive systems, houses, etc. however with rare exceptions just compensation do not exist.

Indian encounter of displacement:

In India and elsewhere issues of displacement, rehabilitation has become major focus in the public policy analysis as well as in governance, as the latter is viewed in terms of the way it effectively rehabilitate large number of displaced from their original location. Displacement is caused as a result of development paradigm introduced from above, causing cultural, crisis for large number of social categories, in which tribals, dalits, backward castes etc have become the major victims. There are three problems while detailing displacement: numbering, location and also social background of categories. Compensation for taking of land has become a routine element but it has to be analysed as to whether the compensation as defined under the Land Acquisition Act (LAA) is able to perform the functions of restoring those expropriated to their prior situation.³

While development of a constitutional discourse over state takeover of property grew around zamindari lands (the famous case of *Kesavananda Bharati v State of Kerala*⁴ which dealt with the issue of land being acquired from the zamindars) it is the LAA 1894 that has been the site of contest. Although for several decades development projects in India have expropriated and forcibly displaced people without providing adequate protection that a formal policy and legislation on development induced displacement should give to the affected. Compulsory acquisition of land for development projects has not been exclusively for the state; industry and

³ Walter Fernandes, India's Forced Displacement Policy and Practice: Is Compensation up to its Functions, Michael M. Cernea, Hari Mohan Mathur, Can Compensation Prevent Impoverishment?, 1st ed. 2008, pp.180-181.

⁴ (1973) 4 SCC 225.

enterprise in the private domain or with public participation have been at the centre of much of the controversy around displacement. It was with the scale of project displacement which acquired visibility with people's movements that the focus shifted from feudal landlords to the displacement of the communities of people.⁵ The State often in such cases of projects initiated by private companies act as the acquiring agency and acquires land under the LAA 1894. The issue of State acquiring land for the private companies as public purpose has been elaborately discussed by the Supreme Court in *Somawanti v State of Punjab*⁶. The intervention through acquisition that the state makes for companies is an area of contention and this has been displayed by two celebrated judgments, the first one being *Samatha v State of AP*⁷ and the other one being *BALCO Employees Union v Union of India*⁸ in which the Supreme Court expressed strong reservations with regard to the majority decision of the former case which had held the transfer of tribal land to non-tribals through the agency of the state had been held to be illegal.

The LAA 1894 prescribed as to how land could be expropriated with payment of compensation but was silent on the people's entitlement to being resettled and rehabilitated. And even though the Constitution of India recognized a fundamental right to property the LAA 1894 was initially protected by Article 31⁹ (5) (a) of the Constitution which saved existing law from the unconstitutionality in the matter of acquisition or requisition of property. This was observed in a celebrated judgment of *Aflatoon v Lt Governor of Delhi*¹⁰.

Land Acquisition through Eminent domain and the resulting displacement:

It is the doctrine of eminent domain that has directed the understanding of state power over all land within its territory. So in the case of *State of Bihar v Kameshwar Singh*¹¹ the Supreme Court had observed that the property of the subject was under the eminent domain of the state so the state or he who acts for it may use and even alienate and destroy such property not only in cases of extreme necessity but for ends of public utility. But it was added that the state is bound to make good the loss to those who lose their property.

⁵ Usha Ramanathan, *Eminent Domain, Protest and The Discourse on Rehabilitation*, Michael M. Cernea, Hari Mohan Mathur, *Can Compensation Prevent Impoverishment?* 1st ed. 2008, pp. 210-211.

⁶ (1963) 2SCR 774

⁷ (1997) 8 SCC 191

⁸ (2002) 2 SCC 333

⁹ Article 31 and 19 (1) (f) which set out a fundamental right to property stand repealed since 1978.

¹⁰ (1975) 4 SCC 285.

¹¹ 1952 SCR 889.

In yet another case of *State of AP v Goverdhanlal Pithi*¹² the court discussed the issue of compensation. The Court observed that compensation provides the moral wand that converts appropriation into acquisition. And the language of 'sovereign power' of the state in its executive manifestation continues into the present. The power of eminent domain of the state is sovereign power over power and the rights of private persons to properties.

It can be argued that displacement with compensation is at least an opportunity for redistribution in favour of the poor. This can be strengthened only when resettlement and compensation procedures are complete before the construction contracts are made. The best way to ensure that the compensation is sufficient is to give the oustee the right of refusal. However the issue gets complicated due to lack of property rights. Absolute right of refusal would also counter the legitimate use of eminent domain in cases where it truly serves the public purpose.

In order to appreciate the need for a national resettlement law it has to be realized that the country has witnessed enormous magnitude of forced displacement and will continue to have such displacement in future. However the compensation has proved to be constitutionally insufficient for reconstructing the resettlers' economic base and therefore reforms in strategy appear indispensable.¹³ Yet despite best efforts India has not been able to come out with a proper rehabilitation policy including the fact that more than 75 per cent are yet to be rehabilitated. It can be argued that one of the major reasons is the failure of governance understand the nuances of displacement.¹⁴

Features of the National for Resettlement and Rehabilitation, 2003:

The most damning feature of displacement is the impoverishment of those caught in its grinding grip. While much has been provided for reducing the disparities between the 'haves' and 'have-nots' forced displacement creates with every instance new, large cohorts of 'have-

¹² (2003) 4 SCC 739.

¹³ Michael M. Cernea, *Compensation and Investment in Resettlement: Theory, Practice, Pitfalls and Needed Policy Reform*, Michael M. Cernea, Hari Mohan Mathur, *Can Compensation Prevent Impoverishment?*, 1st ed. 2008, pp.56-57.

¹⁴ Prof. MUZAFFAR ASSADI, *Interface between Displacement, Rehabilitation and Governance in India: A Critique*, pdf., www.google.com, (last visited 17th March, 2011).

notsø Worldwide research literature on displacement testifies that majority of displacement causing projects fail to restore and leave most people destitute and poorer.¹⁵

The National for Resettlement and Rehabilitation, 2003 had missed on the principle that the livelihood of the displaced people would be better after the project than before it because they had to pay the price for the development. This principle is based on Article 21 of the Constitution that protects every citizen's right to life. It is relevant to note that the Supreme Court of India has interpreted it to mean life with dignity but sadly the benefits of the policy could at the best keep the victims poor and at the worst pushed them further below the poverty line.¹⁶

Further the policy did not accept rehabilitation as a right. In fact it did not even make rehabilitation mandatory. People may be resettled if the project so desires. The policy only gave benefits to the displaced but not a guarantee to resettlement with livelihood improvement. Even if there is resettlement done the policy had a limitation prescribed on such financial allocations. An examination of the policy reveals that compensation continues to be based on the market value which had the policy of 2003 had failed to define and was taken to mean an average of three years of registered price in an area. However the inherent fallacy can be analysed as to how does one determine the market value of the tribal areas where community ownership has been recognized by the sixth schedule and thus compensate the individuals. Despite the existence of provisions for compensation it remains largely inadequate to the nature and severity of the impoverishment problem of the tribal people. Such people are often forced out of their habitat without any economic support to begin a new life. It is relevant to note at this juncture that impoverishment does not refer to the state of poverty in which many displaced people already live prior to their alienation but to the additional loss of income and assets. Marginalization goes beyond material aspect to social and psychological spheres of impoverishments as the people who are alienated from their source of livelihood in favour of another class are usually already powerless and deprived.

¹⁵This research documented by Mathur and Marsden 1998; Mahapatra 1999; Aronsson 2002; Srcdder 2005; deWet 2006) has taken the onset of impoverishment risks and actual processes along fundamental dimensions: landlessness, homelessness, joblessness, marginalization, loss of access to common property resources.

¹⁶ Supra n.3, p. 189.

Although the Rehabilitation and Resettlement Bill 2007 is a promising piece of legislation but the success of its implementation so far has been less as regards to project displacements which have increased manifold in the recent years.

Conclusion:

For better or worse compensation remains currently in most countries the lone major financial tool to assist the recovery of displaced groups. However the evaluation of the development caused forced displacement and resettlement (DFDR) are affected by the hazards of valuation biased calculations and a range of distortions in delivery, integrity and timeliness.¹⁷In situation of massive development caused displacement necessary compensation payments must be complemented with additional financial tools, while compensation norms and mechanisms must be corrected. Public policies can mobilize such financial tools provided political will is present. Private sector programmes predicated on displacement also can mobilize tools complementary to compensation. As a matter of development theory that informs public policy the gap between compensation in theory and in practice needs to be bridged by not only providing better compensation but also by addressing the fundamental issue of losers from the development. Revision of conventional pattern of compensation is necessary in parallel with introducing patterns of benefit sharing. So the government should regulate the direct transactions between the private companies who are promotes projects for profit and the poor people. There should be an analogous law to that of labour law which would regulate the private deal between the private companies and the poor in the same line as provided in the labour law between the employer and employee. Further the compensation should be based on replacement value and not the market value. By saying that land is livelihood it is primarily the sustenance of the loser and such livelihood cannot be determined strictly by the market forces as it forms a basis of Article 21 which confers on every citizen right to life with dignity. So the compensation should be such that the lifestyle of the family improves after the land loss. Also the compensation should take into consideration those who are dependent on the actual loser for their sustenance.

¹⁷ Supra n. 3, pp. 44-45.

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