
NATIONAL AND INTERNATIONAL LEGAL FRAMEWORK FOR HUMANE DISPLACEMENT

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ABSTRACT

The increasing pressure on economies to achieve development and economic growth have resulted in these countries undertaking widespread development projects such as construction of irrigation and hydel dams, setting of mines, infrastructure projects, etc. To unable government undertake such development activities often the acquisition of land becomes a necessity as government is not always owner of lands and land owners are not always willing to part with their land. Compulsory acquisitions of land results into large scale forced and involuntary displacement. Millions of people are rendered jobless, homeless and landless. They have to face various economic, social and cultural problems. They lose their productive assets and income sources, cultural identity, traditional authority and social community. The researcher through this paper is trying to analyse various human rights that are violated by such involuntary land acquisitions. Further, the researcher will also critically analyse various national and international conventions, declarations and laws that are existing at present, effectiveness of these conventions and laws in reducing these violations and the judicial response to the said violations in India. Lastly, the researcher will provide certain suggestions so as to reduce these violations.

Keywords: Human Rights, Displacement, Compulsory Land acquisition

Introduction

Over past few decades, India has been grappling with the world pressure of economic development. This increasing pressure has led to implementation of numerous development projects such as dams, industries, metros, railways. However, unlike pre-independence era when land was in abundance, implementation of the said development projects requires land redevelopment and acquisition of land. Large areas of land are acquired, displacing millions of people without providing adequate compensation, resettlement and rehabilitation plan. This involuntary displacement sets in motion a series of inevitable events such as disruption of life, production system, kinship which results into impoverishment and violation of numerous human rights of those displaced such as right to equality, food, shelter, property.

International Legal Framework for Humane Displacement-

Universal Declaration of Human Right (hereinafter referred as UDHR) is the umbrella charter at international level for protection of all forms of human rights. Article 1 of the charter asserts that all humans are born free and equal in dignity and rights. Therefore, no man can be subject to discrimination in protection of his dignity and rights. The charter further recognizes right of protection of law against interference with his home¹, right to freedom of residence², right to own property³ and right to adequate standard of living including food, clothing, housing, etc⁴. The broad parameters of human rights in UDHR have further been elaborated in the two covenants *International Covenant on Civil and Political Rights* and *International Covenant on Economic, Social and Cultural Rights*.

International Covenant on Civil and Political Rights recognizes right of freedom of residence which can be subject to restriction necessary to protect national security, public order, public health and morals or the rights and freedom of others.⁵ *International Covenant on Economic, Social and Cultural Rights* recognizes the right of self determination every person is free to determine his political status, free to pursue his economic, social and cultural development and free to dispose of his natural wealth and resources.⁶ Article 11 of the treaty obliges state

¹ Article 12, UDHR

² Article 13, UDHR

³ Article 17, UDHR

⁴ Article 25, UDHR

⁵ Article 12 ICCPR

⁶ Article 1, ICESCR

parties to recognize the right of everyone to adequate standard of living including adequate housing.

All the rights recognized in the UDHR and the two covenants are subject to Article 29(2) of the UDHR whereby these rights could be restricted for the general welfare.

ILO Convention No. 169⁷, concerning Indigenous and Tribal peoples in Independent Countries recognizes in part II of the convention, Article 13- 19 rights of indigenous and tribal people with respect to their land. Most important Article of the convention is Article 16 and 18. Article 16 provides that the peoples concerned shall not be removed from the lands which they occupy except where relocation of these peoples is necessary and such relocation shall take place only with their free and informed consent. These peoples will have right to return to their traditional lands, as soon as the grounds for relocation cease to exist. But when such return is not possible, these peoples will be provided lands of quality and legal status at least equal to that of the lands previously occupied by them and will be compensated for any loss or injury and Article 18 provides penalties in case of unauthorized intrusions.

Article 26 – 28 of the **UN Declaration on Rights of Indigenous Peoples 2007**⁸ deals with indigenous people's right to land. Article 26 of the declaration recognizes indigenous people's right to lands which they have traditionally owned. It imposes a duty upon the State to give legal recognition and protection to these lands. Indigenous people have right to participate with the state in the process of establishment and implementation of laws and land tenure systems.⁹ It further recognizes indigenous people's right to redress and just and fair compensation for lands acquired by the state.¹⁰

Guiding Principles on Internal Displacement 1992¹¹ was the first document to deal with rights of internally displaced so comprehensively. It defined Internally displaced as "persons who have been forced to flee their homes suddenly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or human-made disasters, and are within the territory of their own country".¹² Principle 5 provides that the states

⁷ ILO Convention 169 (1989) adopted on 27th day of June 1989 replaced ILO Convention No. 107, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

⁸ Available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

⁹ Article 27 UN Declaration on Rights of Indigenous Peoples 2007

¹⁰ Article 28 UN Declaration on Rights of Indigenous Peoples 2007

¹¹ Available at <http://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>

¹² Guiding Principles on Internal Displacement 1992

has a responsibility to avoid displacement. Principle 6 provides that every human being shall have the rights to be protected against arbitrary displacement which includes displacement due to unjustified development projects. Before displacing such people the state will have to ensure that there is no alternative that exists and if just displacement is necessary proper accommodation is provided to the displaced persons. In addition, this principle also provides that the authorities also have to consider the safety, nutrition, health and hygiene condition of the displaced. According to principle 8 the state authorities have to ensure that such displacement does not violate the right to life, dignity, liberty, and security of those affected. Principle 15 provides that displaced people can freely choose their place of residence in any part of the country. Principle 18 provides that the competent authorities shall provide displaced persons with essential food, potable water, basic shelter and housing without any discrimination. Principle 21 prohibits the arbitrary deprivation of property and possession of internally displaced persons. Lastly, principle 28 provides that the competent authorities have the primary duty to provide the means to the displaced people which allow them to return voluntarily with dignity to their place of habitual residence or to resettle voluntarily in another part of the country.

Involuntary or forced displacement often results in violation of human rights such as the right to residence, right to shelter, right to property, right to food, right to education, training and economic opportunities.

National Legal Framework for Humane Displacement

To overcome the problem of violation of human rights and to provide for more humane development, laws in India provide for social impact assessment, resettlement and rehabilitation and compensation to the victims of development.

Constitutional Rights-

Part III and part IV of the Indian constitution provide for achieving a balance between individual needs and rights with social interest, and provide certain duties to achieve this balance. Individual interests have been recognized in Article 14, 19, and 300A. Article 14 provides that every person is equal before the law and is entitled to equal protection of laws. Therefore, laws cannot be applied in a manner to discriminate one person from another. Article 19 of the Constitution of India provides that every citizen in India has the right to reside and settle in any part of the territory of India. This right is not absolute and is subject to reasonable restrictions

imposed by the state in the interest of general public and for protection of interests of the scheduled tribes. Prior to [the Constitution \(Forty-fourth Amendment\) Act, 1978](#), the right to acquire, hold and dispose property was a fundamental right.¹³ Now right to property is only a constitutional right provided in **Article 300A**¹⁴. **This amendment also repealed** Article 31 of the Constitution which provided that no person shall be deprived of his property except with the consent of the proper authority and the person so deprived will be entitled to compensation. Due to this deletion, the constitution no longer obligates the Government to compensate persons whose land had been acquired as per a law passed by Parliament. In addition to rights which have been expressly provided in the constitution, the Supreme Court has recognized right to livelihood right to shelter and right to decent standard of living as fundamental rights implicit in article 21.

State derives its authority to acquire land from Article 39 and Article 31A. These two articles provides that state can make laws to acquire land if it will subserve the common good and no such law will be deemed to be void on the ground that it is inconsistent with rights provided in article 14 and 19. Supreme Court *Waman Rao v. Union of India*¹⁵ has held that this provision has made constitutional ideal of equal justice a living truth.

Statutory laws

Land acquisition laws are a gift of Britishers to India. When they came to India, India was predominantly an agrarian economy. Most of land was being used for agriculture purposes; industries and infrastructure such as road, railway networks were not there. In order facilitate trade, Britishers felt the need for undertaking development projects, which required land and willingness of the landowners to part with their land, but all landowners will not part with their land. Therefore, they came up with Land acquisition act, 1894. This law facilitated state to take over land pursuant to its power of eminent domain, upon showing of public purpose and upon payment of compensation. Major drawbacks of this law were restricted definition of persons entitled to compensation¹⁶, inadequate of compensation¹⁷, inclusive definition of public

¹³ Article 19 (f), The Constitution of India, 1950

¹⁴ Article 300A- Persons not to be deprived of property save by authority of law.- No person shall be deprived of his property save by authority of law.

¹⁵ AIR 1981 SC271

¹⁶ Section 2 (g), The Land acquisition act, 1894

¹⁷ Section 23, 24, The Land acquisition act, 1894

purpose¹⁸, no provision for public participation in decision making, and unregulated urgency clause¹⁹. This draconian law was in force in India for a period of almost 120 years until it was replaced by the current law the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred as the LARR act) tried to overcome all the shortcoming of the previous act. It broadened the group of affected people and provided that consent of 80 percent of such affected people is required for private projects and 70 percent such people is required for Public Private partnerships.²⁰ It mandates social impact assessment in consultation with village panchayats and municipalities whenever government proposes to acquire land. This social impact assessment has to completed within a period of 6 months from the date of its commencement.²¹ This report has to be appraised by an independent expert group.²² In order to ensure public participation in decision making, it provides for public hearing in the affected area.²³ When a land is required for any public purpose a notice under section 11 of the Act will be issued. However, if such notice is not issued within a period of 12 months from the of the social impact report submitted a fresh social impact assessment will be conducted.²⁴ Further, the acquired land should be returned to the original owner if it is not used within a period of five years from the date of acquisition .²⁵ To ensure food security the act provided that multi- cropped, irrigated land cannot be acquired unless it is a case of exceptional circumstance and where it is so acquired an equivalent area of culturable wasteland shall be developed.²⁶ Compensation provided in this act ifs better and higher than previous act. The quantum of compensation in rural areas *will be four times the market value of land and two times the market value in urban areas and a solatium upto 100 percent has been provided in the Act.*²⁷ The act also mandates the incorporation of resettlement and rehabilitation plan in each project causing displacement. It imposes obligation on the project owner to frame

¹⁸ Section 2 (f), The Land acquisition act, 1894

¹⁹ Section 13, The Land acquisition act, 1894

²⁰ Section 2, The LARR Act, 2013

²¹ Section 4, The LARR Act, 2013

²² Section 7, The LARR Act, 2013

²³ Section 5, The LARR Act, 2013

²⁴ Section 14, The LARR Act, 2013

²⁵ Section 101, The LARR Act, 2013

²⁶ Section 10, The LARR Act, 2013

²⁷ Section 27, The LARR Act, 2013

rehabilitation and resettlement plan with the main project objective, design and budget.²⁸ In this way, this act places responsibility on project owner for successful rehabilitation and resettlement of affected families. This act has been mainly criticized for high cost of acquisition and mandatory consent requirement. Various states are coming up with their own amendments to nullify provision of consent requirement.

Land can be acquired under other laws as well such as the National High Ways Act, 1956 the Railways Act, 1989 and the Metro Railways (Construction of Works) Act, 1978, etc. The National High Ways Act, 1956 provides that the land acquired for the purpose of building National highways.²⁹ The compensation amount provided in this act was not adequate. Therefore, Ministry of Road Transport and Highways issued a press release that compensation for acquisition of land for NHs projects is determined in consonance with the First Schedule to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, with effect from 01st January, 2015.³⁰

The Railways Act, 1989 confers wide powers on the railway administration to execute any 'necessary works' for making and construction of railway networks³¹. The legislation further empowers the authority to provide compensation but no suit can be filed against railways to recover the amount of damage and loss by acts under provisions of this Act.³²

Metro Railways (Construction of Works) Act, 1978 provides that metro rail administration can acquire land for metro construction.³³ Section 13 of the act provides for payment of compensation for such acquisition. The competent authority shall consider the market value of land and damage caused by such project to calculate the amount of compensation. Section 17 of the act oust the application of Land acquisition act 1894 for such acquisition. In *Shanta Talwar & Anr vs Union of India & Ors*³⁴, Supreme Court has held that the discretion is with the authority concerned to choose whether it wishes to invoke Land acquisition Act or Metro railways Act for acquisition of railways. As far as applicability of LARR act is concerned, the

²⁸ Section 16, The LARR Act, 2013

²⁹ Section 3 A, The National High Ways Act, 1956

³⁰ http://www.business-standard.com/article/government-press-release/compensation-for-land-acquisition-for-nhs-117020901179_1.html

³¹ Section 11, The Railways Act, 1989

³² Section 15, The Railways Act, 1989

³³ Section 6 The Metro Railways (Construction of Works) Act, 1978

³⁴ *Shanta Talwar & Anr vs Union Of India & Ors* (2011) 5 SCC 287

centre has still not taken decision on applicability of this act for calculating compensation for land acquired the Metro Railway Act.

Even though the Constitutional as well the statutory provisions attempt to reconcile the conflicting interests of the State and the individuals, the laws still are inadequate to address this conflict.

Judicial Effort to Humane Development

In the case of *Jilubhai Nanbhai Khachar vs. State of Gujarat*³⁵ the Supreme Court has observed that the “Property is an essential guarantee to lead full life with human dignity. In order that a man may be able to develop himself in a human fashion with full blossom, he needs a certain freedom and a certain security. The economic and social justice, equality of status and dignity of person are assured to him only through property.” “Due to lack of land and property man suffers from economic disadvantages and disabilities to gain social and economic inequality leading to his servitude. Providing facilities and opportunities to hold property furthers the basic structure of egalitarian social order guaranteeing economic and social equality.”³⁶In other words, it removes disabilities and inequalities, accords status, social and economic and dignity of person.³⁷

This right has been recognized by the Supreme Court in various judgments³⁸ in the form of right to shelter. The Supreme Court in *Chameli Singh vs State Of U.P*³⁹ has observed that, “Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society...Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter

³⁵ *Jilubhai Nanbhai Khachar vs. State of Gujarat* AIR 1995 SC 142

³⁶ *Waman Rao And Ors vs Union Of India And Ors.* (1981) 2 SCC 362

³⁷ *Ibid*

³⁸ *Shantistar Builders v. Narayan Khimalal Totame* 1990 (1) SCC 520,

³⁹ 1996 (2) SCC 549

when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right.”

State, however, has the power to deprive a person of his property. This power of state is often referred as power of eminent domain⁴⁰. It was observed by Supreme court in the cases of *Dwarkanadas Shrinivas v. Sholapur Spg. and Wvg. Co. Ltd.*⁴¹, *Charanjit Lal Chowdhury v. Union of India*⁴² and *Jilubhai Nanbhai Khachar v. State of Gujarat*⁴³, “Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good.” it must be remembered that compulsory acquisition of the property belonging to a private individual is a serious matter and has grave repercussions on his constitutional right of not being deprived of his property without the sanction of law and the legal rights. Therefore, the State must exercise this power with great care and circumspection.⁴⁴ If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the court is not only entitled but is duty-bound to scrutinise the action/decision of the State with greater vigilance.⁴⁵

State generally exercises its power of eminent domain for undertaking development projects. In the case of *Samatha Vs. State of A.P.*⁴⁶ it was observed that “the right to development pronounced by the UN Declaration of 1986, to which India was also a signatory, makes the Fundamental rights under Articles 21, 14, 15 etc. and the entire chapter on Directive Principles more meaningful” Acquisition of land being indispensable for development, state can acquire land to give effect to fundamental rights and Directive Principles of State of Policy.

⁴⁰ The term "eminent domain" was taken from the legal treatise *De Iure Belli ac Pacis*, written by the Dutch jurist Hugo Grotius in 1625, which used the term *dominium eminens* (Latin for *supreme lordship*) and described the power as follows:... The property of subjects is under the eminent domain of the state, so that the state or those who act for it may use and even alienate and destroy such property, not only in the case of extreme necessity, in which even private persons have a right over the property of others, but for ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way. But, when this is done, the state is bound to make good the loss to those who lose their property.

⁴¹ AIR 1954 SC 328

⁴² 1950 SCR 869

⁴³ AIR 1995 SC 142

⁴⁴ *Darshan Lal Nagpal & Ors vs. Govt. Of Nct Of Delhi & Ors* (2012) 2 SCC 327

⁴⁵ *Radhy Shyam and others vs. State of U.P. And others* (2011) (5) SCC 553

⁴⁶ (1997) 8 SCC 191

State derives its power to acquire property from [Article 300A](#) of the Constitution of India, but the same must be for a public purpose and reasonable compensation therefore must be paid.⁴⁷ Supreme Court in the case of *K.T. Plantation Pvt. Ltd. & Anr vs State Of Karnataka*⁴⁸ has observed that , “The concept of eminent domain which applies when a person is deprived of his property postulates that the purpose must be primarily public and not primarily of private interest and merely incidentally beneficial to the public. Any law, which deprives a person of his private property for private interest, will be unlawful and unfair and undermines the rule of law and can be subjected to judicial review. But the question as to whether the purpose is primarily public or private has to be decided by the legislature, which of course should be made known.” Regarding compensation it has been observed by Justice Subha Rao that if the compensation fixed was illusory or the principles prescribed were irrelevant to the value of the property at or about the time of acquisition, it could be said that the legislature has made the law in fraud of its powers⁴⁹

In *Narmada Bachao Andolan vs Union Of India And Others*⁵⁰ Supreme Court has observed that the displacement of persons would not per se result in the violation of their fundamental or other rights. The effect is to see that on their rehabilitation at new locations they are better off than what they were. At the rehabilitation sites they will have more and better amenities than which they enjoyed in their tribal hamlets. The gradual assimilation in the main stream of the society will lead to betterment and progress.

Most of the judgments are based on the 1894 Act and not on the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 but the general principles developed by judiciary, for protection of displaced people, will remain same.

⁴⁷ Hindustan Petroleum Corpn. Ltd vs. Darius Shapur Chenai & Ors AIR 2005 SC 3520, State of Bihar vs. Maharajadhiraja Sir Kameshwar, 1952 (1) SCR 889

⁴⁸ AIR 2011 SC 3430

⁴⁹ P. Vajravelu Mudaliar v. Special Deputy Collector, Madras and Another (1965) 1 SCR 614, Justice Subha Rao stated that "If the legislature, through its ex facie purports to provide for compensation or indicates the principles for ascertaining the same, but in effect and substance takes away a property without paying compensation for it, it will be exercising power it does not possess. If the Legislature makes a law for acquiring a property by providing for an illusory compensation or by indicating the principles for ascertaining the compensation which do not relate to the property acquired or to the value of such property at or within a reasonable proximity of the date of acquisition or the principles are so designed and so arbitrary that they do not provide for compensation at all, one can easily hold that the legislature made the law in fraud of its powers."

⁵⁰ (2000) 10 SCC 664

Conclusion

Involuntary displacement sets into motion a series of inevitable events such as disruption of life, asset, kindship, production system of those displaced. It gives rise to various social, political and economic issues. Over the past few decades, the legal framework at national and international level has tried to make the said involuntary displacements more humane by recognizing various rights of those displaced such as right to property, shelter, participation, food, compensation. The Government of India has replaced the draconian British enacted land acquisition law viz. Land acquisition act, 1894 with the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013. The Act although is aimed at making the legal framework relating to displacement more humane, is not free from criticism and is still a new enactment whose implementation will have to be monitored in coming years. While involuntary/forced displacement has become an inevitable consequence of development, government should ensure that the said displacement is humane and rights of those displaced don't get effect disproportionately affected.