

APPROACH OF INDIAN JUDICIARY TOWARDS DEVELOPMENT INDUCED DISPLACEMENT

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INTRODUCTION

In the absence of any law on rehabilitation, it was expected that the judiciary will take a dynamic stance while interpreting Article 21 of the Constitution, and grant relief to the oustees. In any case, the judiciary has recognized that Article 21 incorporates certain unenumerated rights in the enumerated Right to Life, and has given it a broad interpretation to include right to life with dignity¹ and to mean more than mere survival and mere animal existence.² Right to be rehabilitated is the logical corollary of the right to life with dignity. In the absence of any enumerated right to be rehabilitated, the judiciary could correct the legislative error by recognizing the same as an unenumerated right under Article 21 and it did the same in Narmada. However, it is important to contextualize the decision to ascertain whether the expansion of Article 21 has solved the problem at hand that is, providing rehabilitation to the displaced.³

In **Waman Rao v. Union of India**⁴ a constitutional bench had observed that, *“India being a predominantly agricultural society, there is a “strong linkage between the land and the personal status in the social system.” The tip of land on which they till and live, assumes them equal justice and dignity of their person by providing to them a near decent means of livelihood.”*

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¹ *Francis Coralie v. NCT Delhi*, AIR 1981 SC 746: Justice Bhagwati observed that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing with fellow human beings.

² *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180: The court observed that Article 21 means something more and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. The ambit of ‘right to life’ is wide and far reaching. It does not mean only that life cannot be extinguished as taken away but much more than that.

³ Bulbul Khaitan & Nitya Priya, *Rehabilitation Of The Displaced Persons In India*, 2 NUJS L. Rev. 111,115-121, (2009)

⁴ AIR 1981 SC 271

The judicial approach towards rehabilitation policy in India has been quite complex. The Supreme Court of India in several of its decisions⁵ has viewed that, It is desirable for the authority concerned to ensure that as far as practicable persons who had been living and carrying on business or other activity on the land acquired, if they so desire, and are willing to purchase and comply with any requirement of the authority or the local body, be given a piece of land on terms settled with due regard to the price at which land has been acquired from them. However, the State Government cannot be compelled to provide alternate accommodation to the oustees and it is for the authority concerned to consider the desirability and feasibility of providing alternative land considering the facts and circumstances of each case. In certain cases, the oustees are entitled to rehabilitation. Rehabilitation is meant only for those persons who have been rendered destitute because of a loss of residence or livelihood as a consequence of land acquisition. The authorities must explore the avenues of rehabilitation by way of employment, housing, investment opportunities, and identification of alternative lands. *“A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the Constitution hardly ever reach the most marginalized citizens.”* For people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic.

While the apex court recognizes the fundamental right of the farmer to cultivation is a part of right to livelihood. However, in case of land acquisition, the Supreme Court ruled that the plea of deprivation of right to livelihood under Article 21 is unsustainable.⁶

With respect to property rights of the displaced the court has consistently held that article 300-A is not only a constitutional right but also a human right.⁷ However, in **Jilubhai Nanbhai Khachar v. State of Gujarat**⁸ the Supreme Court held that, *Right to property under Article 300-A is not a basic feature or structure of the Constitution. It is only a constitutional right. The principle of unfairness of the procedure attracting Article 21 does not apply to the acquisition or deprivation of property under Article 300-A giving effect to the directive principles.”*

⁵ *Chameli Singh v. State of U.P.*, AIR 1996 SC 1051, para-3,4,9 and *Samatha v. State of A.P.*, AIR 1997 SC 3297

⁶ *Lachhman Dass v. Jagat Ram* (2007) 10 SCC 448; and *Amarjit Singh v. State of Punjab* (2010) 10 SC 43).

⁷ *State of M.P. v. Narmada Bachao Andolan* (2011) 7 SCC 639 at para 62

⁸ AIR 1995 SC 142

In the case of **Ram Chand v. Union of India**,⁹ the Supreme Court stated that, *“The power to acquire private property for public use is an attribute of sovereignty and is essential to the existence of a government. The power of eminent domain was recognized on the principle that the sovereign state can always acquire the property of a citizen for public good, without the owners' consent. The right to acquire an interest in land compulsorily has assumed increasing importance as a result of requirement of such land more and more every day, for different public purpose and to implement the promises made by the framers of the Constitution to the people of India. The claims that the local population should be granted inalienable rights to their lands, where state access is subject to a mutually defined process of negotiation, are denounced.”*

In rejecting the petition of the people displaced by the Rourkela Steel Plant, their claims for employment of adult population and for a preferential right of employment in the case of **Buta Prasad Kumbhar v. SAIL**¹⁰, the Supreme Court laid down that, *“Whose land was taken under the Land Acquisition Act, They were paid compensation for it. Therefore the challenge raised on violation of Art 21 is devoid of any merit”*. The Constitutional mandate that a deprivation of life, i.e. livelihood and dignity, will have to be only by the procedure established by law was believed to be fulfilled by applying the Land Acquisition Act.

In case of **Banwasi Seva Ashram v. State of Uttar Pradesh & Others**¹¹ the initial purpose of evicting the residents of several villages by the state Government was the creation of a Reserve Forest. The Supreme Court ordered for appointment of a Committee to look into the claims of the locals. On finding that the Committee, so established, was biased, another order was issued to substitute that Committee with another one. In the meantime, the government thought of changing the entire purpose of the project to set-up a Thermal Power Plant (Rihand Super Thermal Power Plant), instead of creating a Reserve Forest, as proposed by the National Thermal Power Corporation (NTPC), on the lands which were subject matter of the writ petition. NTPC got itself impeded

⁹ 1994 SCC (I) 44, at 49-50

¹⁰ (1995) 2 SCC 225

¹¹ On the basis of a letter received from Banwasi Seva Ashram operating in the Mirzapur District of Uttar Pradesh protesting against the non-observance of procedures established by law and for non-accommodation of interests of the local communities including tribals in the process, a Writ Petition (Criminal) No. 1061/82 under article 32 of the Indian Constitution was registered, AIR 1992 SC 920, para 1

as a party in the writ petition and claimed that the completion of the project was a time-bound programme and the land earmarked for the project be made free from prohibitive directions of this court in the writ petition.

While noting the importance of the forests as a national asset, the court agreed with the proposal of the government to embark upon a scheme to generate electricity as equally of national importance and to be taken up on a priority.

In **B D Sharma v. Union of India**,¹² it was ruled that, *“The overarching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of oustees. They should be rehabilitated as soon as they are uprooted.”*

In **Narmada Bachao Andolan**¹³ case the apex court speaking about displacement observed,

“The displacement of the tribals and other 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 those they enjoyed in their tribal hamlets. The gradual assimilation in the mainstream of the society will lead to betterment and progress.”

Similarly, in **State of Kerala v. PUCL, Kerala State Unit**¹⁴ the apex court held that,

“Article 21 deals with right to life and liberty. Would it bring within its umbrage a right of tribals to be rehabilitated in their own habitat is the question? 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 rights 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.”

In **N.D. Jayal and another v. Union of India**¹⁵ the court held that, *“The right to development encompasses in its definition the guarantee of fundamental human rights. Thus,*

¹² 1992 Supp (3) SCC 93

¹³ *Narmada Bachao Andolan v. Union of India*, AIR 2000 SC 3751

¹⁴ AIR 1998 SC 1703

¹⁵ (2004) 9 SCC 362

the courts have recognized the rights of the oustees to be resettled and right to rehabilitation has been read into Article 21.”

Thus, from the above judgments, it is evident that acquisition of land does not violate any constitutional/fundamental right of the displaced persons. However, they are entitled to resettlement and rehabilitation as per the policy framed for the oustees of the concerned project.

REHABILITATION POLICY DECISIONS

In the year 1986, in the matter of **The Collector of 24 Parganas & others v. Lalit Mohan Mullick & others**¹⁶ while defining the meaning of “rehabilitation”, the Supreme Court highlighting the object of rehabilitation observed as:

“By rehabilitation what is meant is not to provide shelter alone. The real purpose of rehabilitation can be achieved only if those who are sought to be rehabilitated are provided with shelter, food and other necessary amenities of life. It would be too much to contend, much less to accept, that providing medical facilities would not come within the concept of the word rehabilitation.”

In **B.D. Sharma v. Union of India**,¹⁷ it was ruled that, *“The overarching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of ousted. They should be rehabilitated as soon as they are uprooted. Further, the Court provided a time frame by which the rehabilitation must be complete: before six months of submergence. Such a time limit fixed by the Court was reiterated in the Narmada's case.”*

In the matter of **Narmada Bachao Andolan v. Union of India**¹⁸ the Supreme Court noticed that displacement of people living on the proposed project sites and the areas to be submerged is an important issue and a properly drafted R&R plan would improve the living standards of displaced persons after displacement, and held:

“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 inaccessible areas, where local population is, like in the present case, either illiterate or having marginal

¹⁶ AIR 1986 SC 622, para 13

¹⁷ 1992 Supp (3) SCC 93

¹⁸ (2000) 10 SCC 664, para 241

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. *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 the 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. *Realizing the fact that displacement of these people would disconnect them from their past, culture, custom and traditions, the moment any village is earmarked for takeover for dam or any other developmental activity, the project-implementing authorities have to implement 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, landowner or encroacher, farmer or tenant, employee or employer, tribal or non-tribal. A properly drafted R&R plan would improve the living standards of displaced persons after displacement.*”

In **State of Punjab v. Raam Lubhaya Bagga**¹⁹ the Supreme Court while examining the state policy fixing the rates for reimbursement of medical expenses to the government servants held, “When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints. *For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority. No State of any country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible.*”

With respect to rehabilitation and resettlement of the government, the court viewed that “judiciary cannot strike down a policy decision taken by the government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless

¹⁹ (1998) 4 SCC 117, See also, *Ram Singh Vijay Pal Singh v. State of U.P* (2007) 6 SCC 44; *Villianur Iyarkkai Padukappu Maiyam v. Union of India* (2009) 7 SCC 561; and *State of Kerala v. PUCL* AIR 1998 SC 1703

the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power."²⁰

Therefore, considering the above judgments it emerges to be settled principles of law that the government has authority under law to change the R & R policy on the basis of ground realities. A public policy cannot be challenged through public interest litigation where the state government is competent to frame the policy and there is no need for anyone to raise any grievance even if the policy is changed. The public policy can only be challenged where it offends some constitutional or statutory provisions 'as far as possible'.

Interpreting the aforesaid phrase the court observed that the phrase provides for flexibility, clothing the authority concerned with powers to meet special situations where the normal process of resolution cannot flow smoothly. The phrase can be interpreted as not being prohibitory in nature. The said words rather, connote a discretion vested in the prescribed authority. It is thus discretion and not compulsion. There is no hard and fast rule in this regard as these words give discretion to the authority concerned. Once the authority exercises its discretion, the Court should not interfere with the said discretion/decision unless it is found to be palpably arbitrary.²¹

In **N.D. Jayal v. Union of India**²² Supreme Court held that, "*Rehabilitation is not only about providing just food, clothes or shelter. It is also about extending support to rebuild livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is a logical corollary of Article 21. The oustees should be in a better position to lead a decent life and earn livelihood in the rehabilitated locations.*"

In the matter of **State of Madhya Pradesh v. Narmada Bachao Andolan & Other**,²³ the Supreme Court has clearly held that the land oustees are entitled to resettlement and rehabilitation as per the policy framed for the oustees of the project concerned and observed:

"It is evident that acquisition of land does not violate any constitutional / fundamental right of the displaced persons. However, they are entitled to resettlement and rehabilitation as per the policy framed for the oustees of the project concerned."

²⁰ *Iridium India Telecom Ltd. v. Motorola Inc.*, AIR 2005 SC 514; and *High Court of Judicature for Rajasthan v. Veena Verma*, AIR 2009 SC 2938

²¹ *State of Kerala v. PUCL, Kerala State Unit* (2009) 8 SCC 46

²² 2003 Supp(3) SCR 152

²³ (2011) 7 SCC 639

As a result of judicial pronouncement UPA²⁴ Government made the proposal to repeal the inadequate land Acquisition act, 1894. As such to find solution to the issue of rehabilitation and resettlement a unified legislation came into force since 1st January 2014. The Right to fair Compensation and Transparency in Land Acquisition, rehabilitation and Resettlement Act deals with the both acquisition and rehabilitation and resettlement in the process of acquisition.

Thus, it is evident that this phrase simply means that the principles are to be observed unless it is not possible to follow the same in the particular circumstances of a case.

BARTER OF LAND

In **Gramin Sewa Sanstha v. State of M.P. & Others**,²⁵ Court held that, “We are also informed that though land has been earmarked by the State Government for resettlement of the displaced tribals, such land is not available because it is already occupied by other persons who themselves will be uprooted if such land is acquired and made available for the tribals displaced on account of the Hasdeo Bango Dam Project. If this is true, the remedy might be worse than the disease because in order to re-settle one set of displaced persons the State Government would be displacing another set of persons. We would, therefore direct the State Government to consider in the meanwhile as to whether the cultivable land at any other place or places can be made available for the tribals who are displaced on account of the present project.”

In **State of Kerala v. Peoples’ Union for Civil Liberties**,²⁶ the Supreme Court of India held that, “While allotting land to the members of the Scheduled Tribes, the State cannot and must not allot them hilly or other types of lands which are not at all fit for agricultural purpose. *The lands, which are to be allotted, must be similar in nature to the land possessed by the members of the Scheduled Tribes. If in the past, such allotments have been made, as has been contended before us by the learned counsel for the respondent, the State must allot them other lands which are fit for agricultural purposes.* Such a process should be undertaken and completed as expeditiously as possible and preferably within a period of six months from displacement date.”

²⁴ The United Progressive Alliance (UPA) is a coalition of centre-left political parties in India formed after the 2004 general election and remained in power till 2014.

²⁵ 1986 Supp SCC 578, para 2

²⁶ (2009) 8 SCC 46

Similarly, in **Narmada Bachao Andolan v. Union of India**²⁷, the court observed that, “*When the removal of the tribal population is necessary as an exceptional measure, they shall be provided with land of quality at least equal to that of the land previously occupied by them and they shall be fully compensated for any resulting loss or injury.*” The rehabilitation package contained in the Award of the Tribunal as improved further by the State of Gujarat and the other States prima facie shows that the land required to be allotted to the tribals is likely to be equal, if not better than what they had owned.”

It has been observed that during resettlement the displaced persons encounter several problems relating to the location, quality and quantity of land and other ancillary resources necessary for agricultural activities. Sometimes disputed lands are allotted and at times authorities take long time allocate land.²⁸

PAYMENT OF COMPENSATION

Compensation means anything given to make the things equivalent; a thing given to or make good for loss. The term ‘compensation’ is used to indicate what constitutes or is regarded as equivalent or recompense for loss or privation.²⁹ On the other hand, constitute sum of money claimed or adjudged to be paid as compensation for loss of injury sustained, the value estimated in money of something lost or withheld. The term ‘compensation’ etymologically suggests the image of balancing one thing against the other.³⁰

Mere payment of compensation to the displaced may not be enough. Where the displaced is not able to purchase the land after getting the compensation; it is like having nothing at all.

The question of the quantum of compensation payable by the Government for the property acquired has been one of the most controversial aspects over the years. Under the normal circumstances, the compensation must be just (value and normal measure of a just value is the market price). It was on the basis that in **State of W.B. v. Mrs. Bela Banerjee**,³¹ the Court held that: To be just compensation one must pay the market value as on the date of acquisition together with compensation for being deprived of property.

²⁷ (2000) 10 SCC 664., See also *Gramin Sewa Sanstha v. State of M.P.*, 1986 Supp SCC 578; *State of M.P. v. Narmada Bachao Andolan* (2011) 7 SCC 639; *State of Kerala v. PUCL, Kerala State Unit* (2009) 8 SCC 46

²⁸ *K. Krishna Reddy v. Sp. Dy. Collector, land Acqn.*, AIR 1988 SC 2123.

²⁹ Dr. Awasthi’s, ‘Law of Land Acquisition and Compensation’, 14, (2008)

³⁰ id

³¹ AIR 1954 SC 92; AIR 1954 SC 170.

In **Food Corporation of India v. Makhan Singh**,³² it was observed by court that, the Court must take into consideration the market value of the land on the date of publication of notification under sub- section (1) of section 4 of the land acquisition Act 1894. This is the reason why Courts have looked for comparable sales of lands at or close to the date of the notification. Somewhere in the process, where difficulties crop up, the Courts employ the rule of thumb, since compensation has to be assessed and arms cannot be raised in despair. *It is the bounded duty of the Court while ascertaining compensation to see that it is just, not merely to the individual whose property is taken, but to the public which is to pay for it; even if it be a public corporation set up for public needs.*

In **K. Krishna Reddy v. Spl. Dy. Collector, Land Acqn. Unit II, LMD Karimnagar**,³³ the Supreme Court of India expressed grave concern on the issue observing:

“After all money is what money buys? What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even half of it. It is a common experience that the purchasing power of rupee is dwindling with rising inflation. The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated.”

In **Suresh Kumar v. Town Improvement Trust Bhopal**³⁴ the Supreme Court has been observed that:

“In determining the amount of compensation the Court should not only look at the present use to which the land has been put to, but also the probable uses of the land. The agreement between government and claimant cannot defeat the statutory right of compensation. Another interesting aspect with regard to the payment of compensation is whether the claimants are entitled for compensation under the provisions of the Act, when the assigned lands are resumed by the Government for a public purpose. There was a dichotomy of judicial opinion on this point.” However the legal position was finally settled in the case of LAO-Cum-

³² 1992 SCR (2) 615

³³ AIR 1988 SC 2123

³⁴ 1989 SCR (1) 908

Revenue Divisional Officer, **Chevella Division & Orsection** v. **Mekala Panda & Orsection**.³⁵

In **Pawan Bawri v. State of Meghalaya and Others**³⁶, the apex court has held that where the acquisition proceedings under the old Act were pending on the date of commencement of the LARR act 2013, section 24 of the new Act shall govern the pending acquisition proceedings.

CONCLUSION

Development qualifies to be an integral part, when it comes to accessing the efficiency of the National economy. However, this term '*development*' has to be understood from a wider perspective that is along with economic development, there has to be parallel human development. The same idea is being reiterated at length in this study focusing upon the agony of the development induced displacement people.

An analysis of the cases reveals that the courts have given decisions that helped in legitimizing government's abuse of power. Thus, even though the court granted formal rights by expanding the scope of Article 21, it desisted from applying the same to real fact situations such that the abstract could be contextualized.

³⁵ AIR 2004 AP 250

³⁶ 2014 CC 6721/2014, para 16