CHAPTER 8

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In theory, the international community has come down firmly on the side of gender equality in laying out guidelines on the protection of refugee women. As early as 1991, the UN Economic and Social Council, following the guidance of the UNHCR Executive Committee, stressed that all action taken on behalf of refugee and displaced women and children must be guided by the relevant international instruments relating to the status of refugees, as well as other human rights instruments, in particular, the Convention Relating to the Status of Refugees, adopted on 28 July 1951, and its 1967 Protocol, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child.

In referencing CEDAW, the Executive Committee, composed of governments (not all of whom signed CEDAW) recognized that UNHCR would be bound by universal human rights principles in its treatment of refugee women, just as it is bound to universal principles contained in the now 60 year old Refugee Convention. UNHCR's subsequent Guidelines on the Protection of Refugee Women and more recent Handbook for Protection of Women and Girls reiterated that CEDAW and the other human rights instruments provide a "framework of international human rights standards for carrying out protection and assistance activities related to refugee women."

In practice, achieving protection of refugee women, particularly where gender inequality is a barrier, has been much more difficult. The gap between rhetoric and reality for women and girls is still very large. They remain the civilian casualties of conflict and, with their dependent children, form a majority of the displaced. They remain the victims of sexual violence and exploitation. They remain without equal access to education and livelihoods. Women and girls remain the

principal target of traffickers. And cultural traditions remain a potent barrier to improving their lives.

Advocacy in support of the following interventions would help women who have been forced to flee from their homes overcome the formidable barriers that still exist. First, there should be renewed efforts to implement fully the various legal instruments and guidelines that set out norms and standards of protection for refugees generally and women and girls specifically. These include, *inter alia*, the 1951 UN *Convention Relating to the Status of Refugees* and its 1967 Protocol; the UNHCR *Guidelines on the Protection of Refugee Women*; the UNHCR *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response;* the *Guiding Principles on Internal Displacement*; the UNHCR *Handbook for Protection of Women and Girls*, and other policies offer guidance on ways to empower refugee and displaced women and protect their rights and physical safety and security.

Yet, further policies and programmes should be adopted to enable refugee and displaced women to participate actively in decisions that affect them and their families. Improvements are also needed in the socio-economic status of refugee and displaced women to enable them to support themselves and their families in dignity and safety. This means improving access to employment, credit, education and skills training as well as access to adequate and safe housing. Not only are women refugees entitled to the exercise of these rights, but access to them would have strong, positive protection ramifications. In particular, steps should be taken to help refugee and displaced women protect themselves from sexual exploitation, trafficking, involuntary prostitution and other exploitable situations. This means lessening dependence on international humanitarian assistance while increasing the potential for self-support.

Policies should ensure access for women who have been forced to migrate to primary and reproductive health care services, including programmes to address sexual and gender-based violence, trauma resulting from flight and conflict, and sexually transmitted diseases and HIV/AIDS. Education programmes should be

implemented that inform migrant women of their rights and responsibilities under international and national laws. These programmes should use an array of media techniques to reach the women in a culturally and linguistically appropriate manner.

In order to ensure that these reforms are made, improvements are needed in the collection of data on refugees and internally displaced persons, with particular attention to collecting sex and age disaggregated statistics. A specific focus on urban refugees and displaced persons as well as collection of data on those who spontaneously settle, including those with irregular status, would help to ensure that all refugee and displaced persons find adequate legal and physical, social and economic protection.

It is very evident to verify the rights of the vulnerable people throughout the world. Therefore the Researcher had made some of the variations on rights of the people. Very often in many countries of every region of the world, internally displaced persons are victims of violations of human rights. These span the whole range of civil, political, economic, social and cultural rights. At the same time, the internally displaced are also a group particularly vulnerable to violations of their rights, both during and after displacement. They face discrimination on account of their status as displaced persons, as well as exposure to discrimination on racial, ethnic and gender grounds. For internally displaced persons, this kind of "double discrimination" can prove devastating.

The two primary components of the definition of an IDP are coerced movement and remaining within national borders. The first establishes the importance of distinguishing between persons who must involuntarily leave from those who choose to migrate, for instance, to seek better employment opportunities elsewhere. The second component excludes persons who cross borders because other legal regimes pertinent to migrants, asylum seekers and refugees already cover their situation.

In armed conflict and gross human rights violations account for approximately 23.7 million internally displaced persons worldwide. Millions more are displaced by natural and technological disasters and development projects.

The International law is the set of rules that bind states (i.e. countries) in their relations with each other. They enter into a treaty, a written agreement by two or more states intended to be legally binding between them. Treaties are also sometimes called "covenants," "conventions," "protocols" and "charters." States can also create international law through "custom," when a group regularly behaves in a particular way over a period of time and comes to believe that the practice is required. States can also indirectly create law by empowering international organizations or international courts to develop binding rules or standards, or by accepting standards developed by other nongovernmental actors.

The Human rights are a relatively new branch of international law and one that, in some ways, challenges its central assumptions. In particular, human rights are considered to "derive from the inherent dignity of the human person" (Convention on Economic Social and Cultural Rights). It harks back to an early theory of international law (known as "natural law" theory) that held that some rules and principles of international law arose through the natural order (or through divine law) independent of the desires or actions of states. Human rights, in focusing on individuals, make the behavior of states within their own borders as an issue of international concern at a previously unprecedented level. Nevertheless, states still retain a primary role in recognizing and enforcing these "inherent" rights.

The United Nations adopted the Universal Declaration of Human Rights (UDHR), the most comprehensive international human rights instrument as of that date. The UDHR itself was not originally intended to be binding, but spawned a number of binding treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights that were both adopted in 1966 and entered into force in 1976. Together, these instruments and the UDHR are considered the "International Bill of Human Rights." They have been followed by a number of more particular human rights

treaties that mainly elaborate on the same themes. Extremely important regional human rights regimes have also developed in the Americas, Africa and Europe.

Most human rights laws may be broadly divided into "civil and political rights," which include, among others, the rights to life, physical integrity, and political participation as well as freedom from discrimination, arbitrary detention, and suppression of opinion or expression, and "economic, social and cultural rights," which include, among others, the rights to adequate food, shelter, clothing, health care, an adequate standard of living, as well as guarantees concerning work, social welfare, education and participation in cultural life. In theory, it is asserted that all human rights are interdependent and indivisible, and both sets of rights were included in the UDHR. In practice, however, most other human rights instruments – and human rights mechanisms – fall primarily into one or the other of these categories.

With the encouragement of the UN Human Rights Council's predecessor, the Commission on Human Rights, and the General Assembly, he convened a team of international legal experts and developed the Guiding Principles on Internal Displacement in 1998. The Guiding Principles compile, restate and interpret the existing rules of human rights and humanitarian law applicable to IDPs and also refer to refugee law standards by analogy, where appropriate.

The Guiding Principles are divided into four sections, articulating guarantees against arbitrary displacement in the first instance, the rights of persons once they have been displaced, rights and obligations connected with humanitarian assistance, and the rights of IDPs to voluntary, safe and dignified solutions to displacement. In some areas, they clarify how general rules apply to the specific situations of IDPs. For instance, Guiding Principle 12 provides that IDPs "shall not be interned or confined in a camp" absent exceptional circumstances. This is a particular application of more generally-worded rules in human rights instruments concerning freedom of movement and residence and arbitrary detention.

The growing use of the Guiding Principles has been welcomed by the UN General Assembly as well as the UN Human Rights Council's predecessor, the Commission on Human Rights. The General Assembly's 2005 World Summit Outcome recognized the Guiding Principles as "an important international framework for the protection of human rights."4 A number of regional organizations have adopted similar resolutions or declarations encouraging their implementation. Similarly, a number of national legislative bodies, executives and courts have made use of the Guiding Principles in the development of domestic law and policy concerning IDPs.

There are other two major branches of international law that are also of interest to IDPs: Humanitarian law (also known as "the law of war") applies only in situations of armed conflict, and provides protections for persons not, or no longer, taking part in hostilities. Humanitarian law requires combatants to refrain from attacks on or abuse of civilians and civilian property and to ensure that civilians receive items necessary for their survival. Its best-known codification is in the Geneva Conventions of 1949, their two Additional Protocols of 1977 and the third Additional Protocol of 2005.

While providing crucial legal protections for IDPs and other civilians, humanitarian law has not spawned the multitude of interpretive and enforcement mechanisms that have grown up in the field of human rights. However, the International Committee of the Red Cross is acknowledged as the primary "custodian" and promoter of the implementation of humanitarian law and it has an acknowledged role to monitor and formally consult with parties to armed conflict about their obligations and conduct. Moreover, the International Criminal Court tries and punishes war crimes defined by humanitarian law in addition to crimes against humanity and genocide.

Nearly all of the mechanisms compiled in this guide refer primarily to human rights law; however, they will sometimes also make reference to provisions of humanitarian or refugee law. The relevant provisions of human rights and

humanitarian law and analogous concepts from refugee law have been compiled and restated in the Guiding Principles on Internal Displacement.

Following to the realities of the shame of having different type of world's worst disasters, India has become a glowing example for other countries to follow in not only responding within the country during regional catastrophic disasters, but also to respond simultaneously in the neighboring countries.

The recent year's rehabilitation and resettlement of project affected families has turned out to be the most vital and sensitive issue for the development projects, for examples like Narmada Sagar or Subarnrekha Multipurpose project in India. The developmental projects are being opposed by the inhabitants of these areas and being delayed because of the opposition from the PAFs (Project Affected Families). The most affected are the Tribal communities who represent a substantial and important proportion of Indian population and heritage. Less than ten countries in the world have more people than we have tribals in India. Not only are they crucial components of the country's human biodiversity, which is greater than in the rest of the world put together, but they are also an important source of social, political and economic wisdom that would be currently relevant and can give India an edge. There is a great deal to learn from them in areas as diverse as art, culture, resource management, waste management, medicine and metallurgy. They are being more humane and committed to universally accepted values than our urban society.

The development model which has been adopted and which is sharply embodied in the new economic policies of liberalization, privatization and globalization, have led in recent years to a huge drive by the state to transfer resources, particularly land and forests which are critical for the livelihood and the survival of the tribal people, to corporations for exploitation of mineral resources, SEZs and other industries, most of which have been enormously destructive to the environment. These industries have critically polluted water bodies, land, trees, plants, and have had a devastating impact on the health and livelihoods of the people. This has resulted in leaving the tribals in a state of acute malnutrition and hunger which has pushed them to the very brink of survival. It could well be the

severest indictment of the State in the history of democracy anywhere, on account of the sheer number of people (tribals) affected and the diabolic nature of the atrocities committed on them by the State, especially the police, apart from the enormous and irreversible damage to their habitat.

These people suffer from joblessness and homelessness as many of them live in tinsheds; they have lost their traditional houses and cannot afford to build new ones; they suffer from a loss of access to commons, which creates fodder and fuel wood shortage and decline in income and food diversity. Women face even further hardship when community support structures disintegrate and family and kinship networks break down. Systems of care, protection, compensation, resettlement and rehabilitation (R&R) remain largely insensitive to women's needs leading to a fundamentally disenfranchising experience. Among this the women and children make up the majority of displaced population, insensitivity to the needs of women has shaped post-rehabilitation programs in a way where women face impoverishment, income decline, and destitution.

In this patriarchal society, women have been denied compensation for land that they cultivate for years but did not have a registration in their name. Cases of ineligibility have been identified in many women headed households and widows where women have been excluded from compensations in the resettlement package. Men are the recognised to be the heads of household; so, compensation is often paid only to them. The resettlement process is fraught with impoverishment risks and the reconstruction remains incomplete. Women are forced into adopting a culture that they have never known, and limitations in their social space have prevented them from rebuilding their daily practices in a new environment.

Women remain marginalised at the community level as well as at the national level policy-framework because of their disadvantageous position ascribed by patriarchal gender relations, traditionally excluding women from political participation, even at the community level. The narratives of women clearly brought out the insensitivity of state discourses to the needs of women. All policies are conceptualised with male biases in mind. Though the national R&R policy

acknowledges gender as a category in resettlement processes, the actual resettlement and rehabilitation is a state issue.

The processes of displacement transform the everyday lives of women from a community owned network to individual private property ownership that undermines the socio-economic status of women. The State policies should take into consideration these problems to enable participation of women and move towards gender justice. Ensuing narrative based approach highlights the concerns of women affected by displacement processes, for consideration by policy planners while making decisions that make far reaching transformations in the lives of women in the name of 'development and public purpose'.

In countries of every region of the world, internally displaced persons are victims of violations of human rights. These span the whole range of civil, political, economic, social and cultural rights. At the same time, the internally displaced are also a group particularly vulnerable to violations of their rights, both during and after displacement. They face discrimination on account of their status as displaced persons, as well as exposure to discrimination on racial, ethnic and gender grounds. For internally displaced persons, this kind of “double discrimination” can prove devastating.

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Development has found favour with a planner which makes displacement of large number of people which is an avoidable event. The oustees who bear the pain never share the gains of development. Thus displacement caused by large development projects resulted in Transfer of land of the weaker section of society to

more privileged ones. The large projects particularly mega dams, hydel power, urbanisation and industrialisation creates problem to mainly tribals and other weaker section of the society not only these their legal rights according to Part III of Constitution embedded also being violated.

International and National Human Right Commission has adopted Universal Declaration of Human Right for adequate resettlement and land right which means adequate privacy, adequate space, physical accessibility, security, basic infrastructure, Sanitation, suitable environment, health and related factors. These are the basic tights which should be at an affordable cost.

Forced evictions without adequate resettlement violate the affected people's fundamental right to life and livelihood as enshrined in Article 21 of the Indian Constitution. Reaffirming the principles of indivisibility of all human rights, the fundamental right to life encompasses the right to live with human dignity. Article 14 of the Constitution of India guarantees equal Protection under law.

The Supreme Court framed broader question decided by judges that law placed under constitutions decided 9th Schedule, providing immunity of scrutiny of court if they violate fundamental rights. The Constitution of India has been amended 13 times so far for incorporating 2007 land legislation in 9th Schedule. Land under Indian constitution is a state subject; every State has its own land laws.

The Rehabilitation Policy of DPs/PAP it may be said that, the NPRR 2003 did not met any such demands of the displaced people. But after the announcement of the draft policy NPRR of 2004 by the Government of India it is found a reality and regressive in comparison to previous draft and also with some of the existing state or project R & R policies. This policy, as we shall see later, is far from that and has a strong cash-based component, provides space only for consultation with PAFs and has no provisions for addressing second generation problems and making the livelihood sustainable. At best the policy has provision for 'resettlement' or 'relocation' but attempts no 'rehabilitation' even though it admits that displacement has other traumatic psychological and socio-cultural consequences.

The NPRR extends its mandate to include landless agricultural workers, forest dwellers, tenants and artisans in its definition of PAFs, but on the whole remains gender blind. Contrary to the centrality of the idea that, 'avoidance of involuntary resettlement where feasible or minimising it by exploring all alternatives' should be an integral part of any R & R policy, the policy accepts displacement and then appoints the Administrator for Resettlement & Rehabilitation who will work to minimise displacement of persons and identify non-displacing or least displacing alternatives in consultation with the requiring body.

The overall policy is poor in details and specificity of provisions of R & R and rich only in ambiguities and probableness, leaving much to the interpretation of officials concerned. It has a very restricted mandate and covers only development induced displacement in rural areas and has no provisions for disaster induced or conflict induced displacement. but very unfortunate that, it fails to introduce provisions which would allow participation of DPs, IDPs and civil society in the process of planning of the project, seeking non-displacing alternatives, or in sharing intended benefits accruing out of the project.

The core of the right to property is a right to the thing itself not a right to the value of it. Therefore, compensation is not a replacement for property, it is only indemnification for the losses of the private owner. So, the right to property cannot be regarded as merely a right to compensation and it cannot be said that a state has a power to take private property as long as it compensates the owner. Therefore in order to take private property by paying compensation there should be strong public necessity. Displacement is increasingly being understood a multi-dimensional phenomenon affecting people's lives in their entirety, encompassing not only the economic but also the social and cultural spheres, all of which feedback into each other. Once people are shifted they lose bargaining power sense of mutual obligation disappears amongst them. In the wider interest of the nation; the state has exercised its prerogative of eminent domain. In the greater goal of greater number of pole sorrows and problems of the project affected minority are lost sight of or else they are treated on par with the constitutionally guaranteed 'marginal' or the 'disadvantaged'. In other words, they must be treated specifically and uniquely.

Further in many major projects government have typically followed an incremental approach to the resettlement of the displaced people. In that people were shifted and resettled according to construction and submergence schedule.

The Bill to amend the land acquisition Act is specifically mandatory for Resettlement & Rehabilitation of the displaced to be internalized and integrated with the acquisitioned process. Further, the proposed legislative amendments to the Acquisition law and the brand new draft of law on R&R are yet to be passed by the Congress Government i.e., called as Acquisition, Rehabilitation and Resettlement Act 2012. Since then the state first exercised its prerogative to acquire land for public and private developmental and industrial projects the issue of the resettlement and rehabilitation of people and communities displaced by the projects has been a subject of great controversy. The issue of just compensation for people whose lives are disrupted and lands are acquired by the state gets aired with each large industrial or infrastructure project.

The repealed Land Acquisition Act, 1894 provides for payment of cash compensation and to those who have a direct interest in the title to such land. Thus, under the Act, the legal obligations of the project authorities do not go beyond monetary compensation to a narrowly defined category of project affected persons. The Act by restricting monetary compensation for land ownership forecloses taking account of the multiple dimensions of loss and dispossession that occur as a result of displacement, some of which are very difficult if not impossible to quantity in monetary terms. The researcher had made some provisions of the land acquisition Act 1894 and found that the Act is grossly be inadequate of its scope which does not go beyond cash compensation to person who hold legal land titles, thereby excluding several other categories of losses and making ineligible for compensation vast number who are genuinely project affected but without any formal land titles. Cash compensation appears to be clearly defective as a basis of resettlement policy. There is no obvious way of putting a 'price' on many of the losses experienced by displaced persons and experience also suggests that large cash payments tend to be poorly used by their beneficiaries. Till then no specific law to address resettlement and rehabilitation exists. A draft rehabilitation and resettlement bill largely the

consequences of the land related agitations of the last decade was introduce in parliament in 2007 and in 2011. Its passage through parliament, like the Land Acquisition Amendment Bill, has been delayed because of political considerations. Rehabilitation & Resettlement policies will be first step in the right direction. Its critics see the policy as a whitewash; it does not give the state a mandate to act, but only suggests that it should do so. Its proponents see a policy, however, flawed, as better than no law at all.

Lastly the researcher may give concluding remark regarding the disaster management programme which Follows to the realities of the shame of having different type of world's worst disasters, India has become a glowing example for other countries to follow in not only responding within the country during regional catastrophic disasters, but also to respond simultaneously in the neighboring countries.

India has also shown the path to the world for starting disaster management education from middle and high school. This generation of middle and high school students will make probably near revolution in community based disaster management, which is the only proven method of disaster management; and it is hoped that India would be world leader in disaster management. Probably casting legal duty on citizens for providing help during disasters would also make India leading the way.

There is paradigm shift in India from reactive approach of responding and calamity relief after the disaster to proactive approach of disaster prevention, preparedness, and mitigation. The enactment of Disaster Management Act, 2005, establishment of National Disaster Management Authority with the Prime Minister as its Chairperson, and disaster management training by the National Institute of Disaster Management along with the Disaster Management Cells of the state Administrative Training Institutes will help in India becoming disaster resilient.

There are no long-term, inclusive and coherent institutional arrangements to address disaster issues with a longterm vision. Disasters are viewed in isolation from

the processes of mainstream development and poverty alleviation planning. For example, disaster management, development planning and environmental management institutions operate in isolation and integrated planning between these sectors is almost lacking.

Absence of a central authority for integrated disaster management and lack of coordination within and between disaster related organizations is responsible for effective and efficient disaster management. State-level disaster preparedness and mitigation measures are heavily tilted towards structural aspects and undermine nonstructural elements such as the knowledge and capacities of local people, and the related livelihood protection issues.

The Researcher may conclude by recommending that, with a greater capacity of the individual/community and environment to face the disasters, the impact of a hazard would be reduced.

The provisions of the major international human rights instruments are reflected in our constitution which establishes the desire of the members of the Constituent Assembly towards the respect for the philosophy of human rights. The provisions of UDHR and ICCPR are reflected in Part III of our Constitution as fundamental rights whereas provisions of ICESCR are reflected in Part IV of the Indian Constitution as Directive Principles of State Policy (not enforceable).

Part IV of the Indian Constitution titled 'the States', Article 152 defines 'States'. For the interpretation of the constitution, by operation of Article 367, unless the context otherwise requires or modifies, the General Clauses Act shall apply. Section 3(23) of the General Clauses Act thereof defines 'Government' to include both Central Government and State Government. Section 3(8) (b) of the General Clauses Act 1897 defines 'Central Government' and Section 3 (60) of the General Clauses Act, 1897 defines "State Government', which reads, "State Government, as regard anything done or to be done, shall mean the Governor." The Governor of each State is its executive head and the Executive power of the State shall be exercised by the Governor either directly or through officers subordinate to him in accordance with the Constitution as envisaged under Article 154.

Under Article 163(1) of the Constitution the Governor has been given discretion only in relation to his function under the Constitution, he is required to exercise in his discretion. The grant of sanction under 197 of Cr. P.C is statutory function of the State Government and cannot be said to be discretionary function of the Governor under the constitution. This is not a matter in respect to which the Governor is required under the Constitution to act in his discretion and he has to act on the advice of the Council of Ministers.

No law actually exists for the protection of the rights of IDPs in fact no executive decision has been taken to protect the rights of IDPs. The government has failed to provide them relief and rehabilitation. This response of the government is evident from the situation prevailing in the north region of India or in the northeastern region of India. Millions of people have and are still being displaced. The reasons for displacement may be diverse but the consequences of it are one, i.e. displacement and loss of livelihood. The States have failed in their front of looking after the affected person's and the displaced populations are made to spend their live in camps which are lacking in basic facilities.

The internally displaced women and children are basically under the care and protection of the State authorities are totally dependent upon the authorities in providing relief and resettlement which is one of the basic obligation of the State after the displacement has taken place. The State needs to have a humanitarian approach towards them simultaneously providing them with access to food and potable water, basic shelter and housing, appropriate clothing and essential medical facilities.

The State authorities have to involve itself with Non-Governmental Organisations to initiate the task of collecting information of internally displaced women and children. The reason for this is that the Indian Government does not have any figure for the population which makes the job providing them with rehabilitation and resettlement more cumbersome. The involvement with NGOs is more necessary to the study the situation of internal displacement in the area concerned as making the return of the affected persons possible.

The role of higher judiciary and National Human Rights Commission (NHRC) plays a vital role in implementing and protecting the human rights of the internally displaced women and children in India. The essence of judicial review is within a constitutional basic structure doctrine. The role of higher judiciary under the constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by the Supreme Court that in matter of policy the court will not interfere.

It can be said that any challenge to government policy must be before the execution of the project is undertaken. Any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced, should be thrown out at the very threshold on the ground of latches if the petitioner had the knowledge of such a decision and could have approached the court at that time. Just because a petition is termed as PIL does not mean that ordinary principles applicable to litigation will not apply.

There are three stages with regard to the undertaking of infrastructural projects. One is conception or planning, second is decision to undertake the project and the third is the execution of the project. The conception and the decision to undertake a project is to be regarded as a policy decision while there is always a need for such projects not being unduly delayed, it is at the same time expected that a thorough study as is possible will be undertaken before a decision is taken to start a project. Once such a considered decision is undertaken, the proper execution of the same should be taken expeditiously. It is for the government to decide how to do its job. When it has put a system in place for the execution of a project and such a system cannot be said to be arbitrary.

In respect of public projects and policies which are initiated by the government the courts should not become an approval authority. Normally, such decisions are taken by the government after due care and consideration. If a considered policy decision has been taken, which is not in conflict with any law or is

not mala-fide, it will not be in public interest to require the court to go into and investigate those areas which are the functions of the executive. For any project which is approved after due deliberation, the court should refrain from being asked to review the decision just because an opposite view against the undertaking of the project, which view may have been considered by the government is possible.

The courts also feel that putting mere allegations of failures and lapses on the part of the government in providing relief measures to the displaced victims is not a ground for substitution of the government machinery. At times, the government is unprepared for disasters but this does not mean that we attribute failure to the government machinery. In work of such nature of providing relief and rehabilitation, administrative lapses are likely to happen, such lapses are likely to happen but such lapses require immediate attention and are worthy of rectification.

Public purpose cannot and should not be precisely defined and its scope and ambit be limited as far as acquisition of land for the public purpose is concerned. Broadly speaking public purpose will include a purpose in which the general interest of community as opposed to the interest of an individual is directly or indirectly involved. Individual interest must give way to public interest as far as possible in respect of acquisition of land is concerned.

After the long discussion on violence against the internally displaced women and children it is found that, CEDAW General Recommendation No. 19, and the other human rights instruments, promote non-discrimination against women and girls are operational, at all times and under all circumstances, even during armed conflict. Further the researcher had found a review of humanitarian law, human rights law and international criminal law reveal a growing tendency to define forms of sexual violence, including rape, and use their investigation and prosecution to redress impunity for gender-based violence. These areas of law appear to be developing the precept that reduces or eliminates the legal relevance, and thus requirement of a victim's lack of consent to acts of sexual exploitation, especially rape as a prerequisite for prosecution. Jurisprudence of rape is more likely to qualify its examination based upon the context of the coercive physical or mental

circumstances, abuse of power, or the status of the victim/survivor. Coupled with judicial acknowledgment of a victim's inherent sexual integrity, sexual autonomy, sexual equality and right to human dignity, judicial pronouncements have broadened their understanding of gender-based violence. Human rights protection now augurs for more refined and responsive right to equal access to justice under the humanitarian norms and international criminal law for women and girls.

These rights must encompass procedural and substantive aspects of access to justice, which are not mired in gender-weighted myths about sexual violence nor legal inaction nor inappropriate actions, especially when dealing with the crime of rape. If the "impact" of the lack of consent element in rape, is sanctioned and raised more frequently with female victim/survivors, even when rape is prosecuted under another crime, like persecution or torture, or sexual slavery, a disproportionate gendered chilling effect will descend on the females' exercise of their rights to access humanitarian norms.

Women and girls are securing the right to equal access to the judicial process as a means to redress discrimination, including gender-based violence. Exercising these rights and further securing them necessitates an analysis of the procedural and substantive aspects of investigation, prosecution and adjudication of IHL norms and international criminal law. Sexual violence, in particular rape, serves as a beachhead and a yard stick to dissect and discern the female community's real ability to exercise its access to justice during war or times of national emergencies or in their immediate aftermath. The hard law gains of the specialized international courts and tribunals still require a vigilant, even handed application of the appropriate sex-based crimes, and their attendant liability forms. Due diligence, on the part of judges to resistance any sexist interpretations of the laws, elements, procedural rules and the evidence, remains critical to the endeavour of constructing a non-discriminatory international justice system. Gains must be constantly safeguarded, questioned and then further developed, especially at the ICC. Regional human rights courts and appropriate national *fora* must also ensure that females retain comprehensive, dynamic protection and full enjoyment of the human rights.

The researcher must confront sex crimes and find ways to understand and prevent them. It is also to emphasize deconstructing the harmful stereotypes and practices that have resulted in the endemic marginalization of women and a systemic indifference to the crimes committed against them. Only when we accept that victims of sexual violence should not bear the shame and stigma that society traditionally imposes on them, and when we acknowledge that rape is a crime of serious sexual, mental, and physical violence that deserves redress will we truly be able to tackle the underlying causes of sex crimes. When reverse the stigmas and the stereotypes associated with sex crimes, we take away much of the power held by the perpetrators of these crimes. Further when we place the shame on the perpetrators of sex crimes instead of on the victims, recognize perpetrators as weak and cowardly, typically men with weapons preying on civilians in far more vulnerable positions, and formulate rape as a despicable crime that brings dishonor to all men, then we can also take away at least some of its potency and thus its use as a weapon.

The gender jurisprudence of the ICTY and ICTR will help in the struggle to ensure that gender crimes in other places, such as Afghanistan, Burma, Bangladesh, Guatemala, Congo, Chechnya, and Cambodia, are prosecuted and punished. The Serious Crimes Unit in East Timor, the Special Court in Sierra Leone, and the International Criminal Court join other international, regional, mixed, and local accountability initiatives to resoundingly demonstrate that justice has turned a corner and impunity is no longer the norm. It was evidence of gender-related crimes before the ICTY and ICTR, indefatigable efforts by individuals and organizations working alongside or under the auspices of the Women's Caucus for Gender Justice in the ICC, and the participation of gender-sensitive delegates that secured the inclusion of rape, enforced prostitution, sexual slavery, forced pregnancy, enforced sterilization, sex trafficking, and other crimes of sexual violence within the war crimes and crimes against humanity provisions of the ICC Statute. The unequivocal inclusion of a broad range of sex crimes within the jurisdiction of the ICC, which have largely been reproduced in the statutes for the Sierra Leone and East Timor courts, indicates a new global awareness of the dangers of continuing impunity for gender and sex crimes.

The explosive development of gender-related crimes in international law within the last ten years reflects the international community's denouncement of the crimes and the commitment to redress them. The inclusion and enumeration of several forms of sexual violence in the ICC Statute acknowledges that these are crimes of the gravest concern to the international community as a whole, and their inclusion in the ICTY/R Statutes situates them amongst the crimes regarded as constituting a threat to international peace and security. Further, the large and ever increasing number of human rights treaties, declarations or reports, conference or committee documents, U.N. resolutions and decisions by human rights bodies promulgated since the 1990s that condemn, protect against, prohibit, or outright criminalize gender-related violence reflects the commitment of the international community to afford accountability for these crimes, irrespective of the presence of an armed conflict.

As noted above, genocide, slavery, torture, war crimes, and crimes against humanity are violations of jus cogens, subject to universal jurisdiction. Many forms of sexual violence constitute forms or instruments of genocide, slavery, torture, war crimes, and crimes against humanity, making them subject to universal jurisdiction when they meet the constituent elements of these crimes. However, there is now a strong indication that rape crimes may be subject to universal jurisdiction in its own right. The landmark jurisprudence of the Yugoslav and Rwanda Tribunals recognizing sexual violence as war crimes, crimes against humanity, and instruments of genocide, the inclusion of various forms of sexual violence in the ICC Statute (including crimes that had never before been formally articulated in an international instrument), the increasing attention given to gender violence in international treaties, U.N. documents, and statements by the Secretary-General, the new efforts to redress sexual violence in internationalized/hybrid courts and by truth and reconciliation commissions, the recent recognition of gender crimes by regional human rights bodies, and the increasingly successful claims brought in domestic court to adjudicate gender crimes all provide compelling evidence that crimes of sexual violence are now considered amongst the most serious international crimes. This in turn supports an assertion that sexual violence, at the very least rape and sexual slavery, has risen to the level of a jus cogens norm. Such an attribution

provides increased means of protecting women and girls, bolsters efforts in enforcing violations of the laws, and challenges traditional stereotypes of gender crimes being less grave or important. It has taken over twenty-one centuries to acknowledge sex crimes as one of the most serious types of crimes committable, but it appears that this recognition has finally dawned.

The people in North Bengal Region, though they are aware of the problem of displacement, cannot be compared with the displaced population of Madhya Pradesh, Gujarat and Kashmir. The displaced populations of North Bengal Region are in a much better position than their counterparts. The degree of violations they are subjected to is much less then that compared to other State. But in days to come the situation will surely change and create problem, not only for the people, but also for the Government and project authorities. Things might change and the story may go otherwise.

After having perused the entire opinion survey it may be concluded that the people are very much aware of the issue of internal displacement and the term 'displacement' is no more stranger for the people but the frequency is less as compared to other States in India. This does not mean that we are in a better situation then other States. The only thing which can be predicted is the fact that in near future the situation can be worse. As the State witnesses more of such developmental projects, the ratio of displacement is bound to rise proportionately. Though the authorities claim that there has been minimal displacement in North Bengal Region but the situation may not remain same in future. Specially so in view of the mushroom growth of developmental projects in the State.

The opinion survey has revealed that development induced displacement has a largest share of responsibility in causing internal displacement in the State. This share is bound to become even larger as more of such developmental projects come up. This situation is going to become a major challenge for the policy makers in a very near future.

It is a fact that people in North Bengal Region are very simple and basically their main avocation is agriculture. They have not known about power project or for that matter, development projects which are very recent origin in State. The politicians and project developers have caused the simple people to believe that such development projects will uplift their way of living and improve their standard, which, on a number of occasions, has not been true. Slowly, the project developers are encroaching upon land situated in notified protected areas which basically belong to the tribal. Further, there is no fixed or uniform criteria and procedure in acquisition of land. Different procedures are adopted for different areas and different kind of land which largely depends on the policies of individual project developer. The irony is the fact that no private person can directly acquire land from the people nor negotiate with him. But ultimately the Department/ agency of the State acquire the land and hand over the land to the concerned project developer. In fact, the State acts as a middleman and ultimately helps a private person. That is to say, what cannot be done directly is being done indirectly.

Further, it is pertinent to note that the people are not happy with the mode and quantum of compensation which is provided to them on acquisition of their land. They say that they are not provided with real value of the land while on the other hand, they are rapidly losing their means of subsistence.

The major lacuna is such development induced displacement is that there is no Rehabilitation and Resettlement policy though the State tends to assert that it has the Central Policy of R&R. the State also does not talk about any situation where due to any circumstances the project fails or the project cannot be completed due to any reasons. In such situation there should be clear provision to the effect that the land so acquired shall, as far as practicable, be returned to its original owners.

Therefore, in view of the present study and findings derived from this work, conclusion can be safely drawn as follows:

I. International Legal Instrument has to be developed which has more force than the Guiding Principle because internally displaced women and children has become a global crisis which needs more persuasive attention.

II. There is no 'institutional mechanism' which is wholly dedicated to the cause of displacement. Therefore, an institutional mechanism to deal with this crisis needs to be evolved at the earliest.

III. The international instrument should also specifically deal with different situation of displacement specifically because the need and desire of displaced population may vary from one cause to another.

IV. The question of return of displaced community must be guided by some agencies because the question of home and homeland is very important for a displaced person and as far knowledge of the researcher goes, we would always love to return to our homeland.

V. In India the position is more pathetic. The IDPs are a neglected lot and they do not have a proper redressal forum from which they can seek redressal of their grievances.

VI. The major cause of displacement in India has been development projects because India sees no other alternative in the process of nation development.

VII. Industrial projects, urbanization, mining, natural and manmade calamities, internal strife and multi-purpose mega projects have been the causes of displacement in India and the most important among them being dam projects which not only displace people but might result in submerge of a large area thereby causing irreparable loss to the ecosystem.

VIII. Controversial projects like Tehri, Narmada have caused huge loss to the people. The project what benefit it has done to the displace family is not known and whether they enjoyed the benefits accrued out of such projects or not, is a big question.

IX. The displace people in India who, like any other citizen, derive their strength and rights from the Constitution, are literally left with the only option to have recourse to constitutional remedies, since there is no legislation to address to their needs.

X. There is a need to recognise displace women and children as a class in itself and formulate law which could look after the rights of this class of citizen in the same way as we have law for protecting the

rights of women, child and disabled person. But the irony is that there is a law instead, in the form of Land Acquisition Act, which takes away the land of people in the name of 'eminent domain' and 'public purpose'.

XI. There is the Forest Act and the Wildlife Act which too takes away the right of tribal and forest dwellers. The tribal too are bearing the consequences of displacement. The constitutional law is also not respected when taking up projects in the Schedule areas and tribal areas.

XII. The Judiciary, which is respected, needs to play a proactive role in protecting the rights of displaced women and children. It is not expected that development project should not be taken up but this aspect need to be judged from the perspective of the displaced people who suffer due to such projects.

XIII. The social status of women must be uplifted not only in law but mainly in daily life. Efforts must be made to bring more attention to the heinous crimes committed against them and to the available remedies. Most importantly, awareness must be raised among them as well as in the society about their rights and their needs.

XIV. The question of Rehabilitation and Resettlement needs to be looked after by the Government, Legislature and of course, by the Judiciary also. It is also necessary that R & R be judged before the project is under taken, during the project period and also after the project is commissioned.

Displacement of people has caused international and nationwide concerns and an issue is to how the displaced women and children can be better looked after by the institution of the instrument as well as the International Institutions. The displacement of large number of people has raised issues like protection, reintegration and rehabilitation. The movement is not just about rehabilitating the displaced women and children but also substantial improvement in the quality of life of all people in the new rehabilitation site as compared with the erstwhile habitat.

Therefore, taking into consideration the findings as mentioned above, the following points of suggestions may be put forth:

a) There is an immediate need for formulation of an international standard under the auspices of United Nations, which is applicable to all nation-states and which can effectively address the needs and requirements of Internally Displaced Women and Children worldwide. A comprehensive, holistic and rights-based approach at the international level, which can effectively address the cause of displacement, is the need of the habitat.

b) Since the task of signing and fulfilling the obligation of treaty is a cumbersome problem and effective International Human Rights Instrument which can cater to the need of IDPs should be undertaken which would have a binding force upon the State part.

c) There is an immediate need to designate an institution like UNHCR which can dedicate itself solely to the cause and consequences of Internally Displaced Women and Children, because, the role of UNHCR and other specialised agencies have their own shortcomings and limitations.

d) India too is a home to millions of Internally Displaced Women and Children who have displaced due to ethnic conflict, partition, displacement is prevalent in India, but till date we have no law, which can address the situation of displacement. Hence, the legislature in accordance with the Guiding Principles on Internal Displacement can formulate law and policies which can cater to the needs of Internally Displaced Women and Children.

e) When the legislature undertakes the task of formulating laws then the causes of displacement should be separately examined because the needs persons displaced due to one cause may vary from the needs of those displaced due to other cause.

f) The Government should not only promulgate legislation, but also ensure its enforcement mechanism in consultation with NGO and guide the Internally Displaced Women and Children to another rehabilitation site and takes up the responsibility of resettling and rehabilitating them whenever necessary.

g) In case of development induced displacement, what is essential is that all such projects should scrutinise and analysed in respect of place, amount of people to be R & R should start. The question as to how to negotiate resettlement package would arise given the unequal power relation between the people to be displaced, the authorities and the project developers. Hence, laws and policies are formulated; a touch of social standard is to be undertaken in displacement and resettlement which could help in negotiating in favour of the displaced.

h) It is known that construction of large dams cause environmental damage. The project induce displacement exposes the displaced population to a set of risks that are typical for such projects. These risks need to be addressed when rehabilitation takes place.

i) As said, land is a necessary colloraryfor displacement but in this regard the Land Acquisition Act needs to be rectified to enable it to address to the following issus;

i. The public purpose should be defined in a restrictive manner as "public interest" or the good of the biggest possible number, beginning with the people affected by it.

ii. No democratic society can accept a decision without the participation of the affected persons. The DP/PAP should have a share in deciding whether a project is in public interest. Deprivation even for a public interest requires their prior informed consent, based on proper information given in a language and manner they can understand.

iii. The policy should recognise "the historically established rights of the tribal and rural communities" over the natural resources, their sustenance. Full compensation and prior consent apply also to the Common Property Resources (CPR).

iv. Alternatives should be found to the cost-benefit analysis that depends only on the formal economy and marketable commodities.

v. The principle of compensation should be "replacement value", not the "market value" or "present depreciated value" of assets. Replacement includes the economic cost, social and psychological

trauma and dislocation, psychological cultural and social preparation to deal with the new system, training them for jobs in the project, preparing the host community to receive them, replacing the environmental, human and social infrastructure like the CPRs, cultural and community support systems.

vi. Even after accepting the principle that the DP/PAP should be its first beneficiaries, monetary compensation is not adequate for the CPR dependents since they are not sufficiently in contact with the monetary economy. A possible alternative is to ensure them a permanent income from the project even if it were to mean their communities becoming shareholders in it. They can be trained to manage it or may get others to manage it on their behalf but they have a right to its permanent benefits.

vii. A policy has to have a tribal/Dalit/gender bias and ensure that it meets their special needs and prevents their marginalisation. Equal justice to all the DP/PAP requires that that no project that disrupts irreversibly the culture of a community to be implemented.

viii. Regional planning is required to avoid multiple displacements.

ix. Rehabilitation is a right of the DPs and a duty of the project which may delegate its implementation to someone else. It may take the form of "land for land" or some other but their right is sacred and there can be no compromise on it.

j) The stereotype Rehabilitation and Resettlement Policy needs to be changed and hence, the following suggestions are recommended in this regard:

i) There is an immediate and urgent need to prepare a comprehensive Rehabilitation and Resettlement Act for the \internally Displaced Persons and when the legislature does its job, the need of women and children should be taken care of.

ii) There is need to evolve a wide and comprehensive definition of 'Displaced Persons" and 'Displaced Families'.

iii) As has been stated earlier, the need of a person displaced due to one cause may vary from the need of the person displaced

due to another cause, as such; the Rehabilitation and Resettlement Policy should also take care of this.

iv) Provide training and agricultural and work assistance programmes to women, especially those who are displaced or have become single heads of households;

v) Engage women in the process of planning of displacement camps, take into account their needs and adopt practical measures for their safety (for example: "*involving female security officers in the patrolling of camps; appropriate fencing and lighting to deter night raids; appropriate location of sanitary facilities limiting women's exposure to abuse; provision of food which needs limited cooking; and types of heating and cooking stoves which reduce the need to collect firewood outside the camps, so reducing the risk of injury or attack*");

vi) Support women groups as means for dissemination of knowledge on women rights and an important part of rehabilitation programmes for victims of violence;

vii) Involve men in programming activities to secure their support, promote community based programmes;

viii) Rehabilitation and \resettlement policy should also make provisions of not only to rehabilitee and resettle the displaced persons but also make provision of reintegrating and returning them to their original habitation if that is possible.

ix) The rehabilitation and resettlement plan should be made known to the public at large. The help of dislocated person should be taken while setting up areas as it would be according to their need and convenience. The NGOs and local activists should be involved in carrying out rehabilitation task.

k) The suggestion made above in regard to Rehabilitation and Resettlement equally applies to the North Bengal Region, as it too can incorporate these suggestions while it may formulate policies in regard to R & R.

Nothing is impossible if we have the will to improve the plight and misery of these groups of people if we want to make a difference in their life. These humble suggestions too can make a difference if those can be taken seriously for the benefit of these people.

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