



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

**Peer - Reviewed & Refereed Journal**

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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# **DEVELOPMENT DISPLACEMENT (OR)** **DISPLACEMENT AS DEVELOPMENT: TRIBES IN INDIA**

AUTHORED BY – SWATHI S

## **Introduction:**

India has the second-largest tribal population worldwide, constituting 8.9% of its total population.<sup>1</sup> They have been an integral part of Indian society since the times of Ramayana and Mahabharata. Tribal communities in India, residing in resource-rich forest areas, often find themselves at the crossroads of development initiatives, facing forced displacement from their habitats making them internal refugees. As a developing nation, India has witnessed numerous instances where tribal populations have been uprooted to make way for infrastructure projects and resource extraction. While such initiatives may be intended to foster overall development, the consequences faced by these marginalised communities upon displacement are profound and raise questions about the adequacy of government-led rehabilitation efforts. The question of government intervention in ensuring effective rehabilitation remains a critical aspect of this discourse. While policies and frameworks exist, their implementation and efficacy are often questioned. Adequate steps need to be taken not only to provide alternative living conditions but also to address the socio-economic and cultural dimensions of the displaced tribal communities.

## **Displacement:**

Displacement is when individuals or groups are compelled to leave their homes or usual living places. This is known as involuntary resettlement because people are forced to move, lacking any alternative. Displacement has a widespread impact, directly and indirectly affecting millions of individuals globally. Internally displaced persons, being separated from their homes, communities, and means of livelihood, often find themselves living in impoverished conditions and are susceptible to human rights violations. Displacement may be classified into two based on the reason behind the

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<sup>1</sup> Press Information Bureau Government of India [Honouring and Empowering the Adivasis of India](#) accessed on 16/12/2023

displacement,

- Displacement due to natural disasters
- Displacement due to development.

In these two scenarios, the first is beyond our human control, while the second is entirely a creation of human actions, involving pre-planned or forced displacement. Irrespective of the type of displacement, the ones facing its brunt are often individuals from economically underprivileged and socially vulnerable sections of society. These individuals lack the financial means and educational qualifications to move to safer areas. The most severely affected by displacement are indigenous tribal communities.

### **Development as a cause for displacement:**

Development-induced displacement (DID) has emerged as a widespread global occurrence. This involves the extensive displacement of individuals against their will from their homes, primarily due to land acquisition for various development projects such as dams, irrigation canals, roads, railways, coal and mining industries, and similar initiatives. Every year, a significant number of people experience displacement due to large-scale land acquisition and the appropriation of natural resources for public purposes. The needed land is vast, mostly in rural areas, where people rely on the land for their livelihoods. Losing this land means losing their main source of income. Displacement extends beyond mere physical eviction; it also involves the long-lasting impact of losing access to natural resources, affecting both the lands and livelihoods of the affected people.

### **Tribal Displacement:**

Development-induced displacement (DID) poses a global challenge, particularly affecting tribal communities, constituting 40% of those impacted despite comprising only 8% of the population.<sup>2</sup> Historically, governmental land acquisitions for projects neglected rehabilitation, disproportionately affecting non-landowners like tenants and labourers, often excluded from compensation. Minimal or no compensation was provided in the past, with a focus on the greater good.

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<sup>2</sup> Negi, Nalin & Ganguly, Sujata. (2011). Development Projects vs. Internally Displaced Populations in India: A Literature-Based Appraisal.



In the late 1950s, around thirty thousand villagers of Madhya Pradesh were first displaced for the construction of the Rihand Dam. The repeated displacement of thousands in Singrauli has been a consequence of ongoing industrial and infrastructural development. Dam construction was first started with the Mettur Dam of Cauvery in 1930. According to activist Vijay Paranjpye, until 1985, 210 lakh people were displaced due to the construction of dam projects.<sup>3</sup> Apart from the construction of dams, industries and mines, tribals are said to have been displaced even for national parks, sanctuaries, and tourist places. Data shows that around 20,000 families have been displaced so far due to national parks and sanctuaries.<sup>4</sup> According to an official report from 1990 by the Field Director, Karnataka, it is claimed that the government of India and state governments have acknowledged the relocation of tribals and other villagers from a Tiger Reserve as an accepted principle for proper management.

Former Minister Mr P. Balaraju says, “The tribal people are not opposed to tourism promotion but any attempt to deprive them of their livelihood in the name of development will be opposed tooth and nail”.<sup>5</sup> He further expressed disappointment that elected representatives, instead of supporting the victims, are backing the government and neither compensation nor employment was provided for the farmers who were displaced. Yamuna Singh, the Minister of Environment and Forest in Jharkhand belonging to the Kharwar tribe claims that those occupying forestlands are not considering national interests.<sup>6</sup> Acquiring land for public sector projects aimed at building industrial infrastructure in a country that the colonialists left underdeveloped might have had some justification. However, there seems to be no rationale for the state to acquire land for the benefit of private companies, as observed in India following the 1984 amendment to the Land Acquisition Act.

Despite the resistance, developmental projects cannot be overlooked, considering the fact that India is a developing country. The government should focus on the rehabilitation of the tribal community who are being displaced, as the state owes a duty to all its citizens. Tribals occasionally sell their land well in advance of project commencement. Frequently, non-tribals purchase these lands anticipating

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<sup>3</sup> “In - Depth Developing distress” accessed on 15/12/2023 [Developing distress](#)

<sup>4</sup> Antoine Lasgorceix, Ashish Kothari “Displacement and Relocation of Protected Areas: A Synthesis and Analysis of Case Studies” Economic and Political Weekly Vol. 44, Issue No. 49, 05 Dec 2009

<sup>5</sup> B. Madhu Gopal “Justice for tribals displaced by tourism project sought” The Hindu April 07, 2018

<sup>6</sup> “Have India's tribal leaders failed their people?” Published on Thursday 31 July 2003 [Have India's tribal leaders failed their people?](#)

the possibility of securing higher compensation as "oustees". The percentage of tribal displacement has increased to 50% over the past two decades. Research indicates that a majority of those displaced are tribals and impoverished rural individuals without assets who have traditionally relied on common property resources (CPR) or sustained themselves by providing services to the village. In the tribal-belt project situated in Damanjodi, Koraput district, 58% of the acquired land was common property.

<b>Year</b>	<b>Development Project</b>	<b>State</b>	<b>No. Tribals Displaced</b>
1936	Corbett National Park	Uttarakhand	411 (Families)
1946	Polavaram Dam Project	A.P	79,350
1947	Hirakud Dam	Orissa	110,000
1954	Rihand Dam	U.P and M.P	200,000
1954	Rourkela Steel Plant (RSP)	Orissa	4,094 (Families)
1957	Maithon & Panchet	Bihar	53,001
1961	Pong	H.P	45,000
1963	Hindustan Aeronautics Limited (HAL)	Orissa	3,639
1972	Mahi Bajaj Sagar	Rajasthan	29,291
1973	Koel Karo	Bihar	58,080
1976	NPTC thermal power projects	Madhya Pradesh	3,000 (Families)
1982	Chandil	Bihar	32,530
1982	Icha	Bihar	24,640
1983	Rajaji National Park	Uttarakhand	451 (Families)

1984	Upper Kolab Project	Orissa	50,771
1987	Sardar Sarovar	Gujarat	115,200
1995	Tadoba Andhari Tiger Reserve	Maharashtra	527 (Families)
2008	Inchampalli	A.P. and Maharashtra	29,062

*Table 1: Major Developmental Projects and Tribal Displacement* <sup>7</sup>

### **Resistance Movements:**

Development projects in India have triggered a host of social, economic, and environmental challenges, particularly regarding the equitable distribution of benefits and the burdens imposed on affected communities. The struggles against displacement have led to a series of notable protest movements across India.

Mass mobilization resulted in the discontinuation of the Silent Valley Project in 1983.<sup>8</sup> Similarly, movements against the Rathong Chu Project in Sikkim (1997) and the Bedthi Project (1998) showcased the power of collective action. In Orissa, movements like Kashipur opposed industrial activities. At the same time, protests in Erasama resisted the establishment of a greenfield steel project by a South Korean multinational corporation and the Jindal Steel Project.<sup>9</sup>

On February 2, 2001, the Tapkara incident marked a violent turn in a three-decade protest by the Munda tribal community against the Koel-Karo dam in Jharkhand. Police fired on a gathering of 2,000 to 5,000 tribal people, resulting in eight deaths. The resistance movement wasn't successful in eliminating the project despite the protests.

<sup>7</sup> "Study on Development Projects, Displaced Tribals & Their Living Conditions" [Study on Development Projects, Displaced Tribals & Their Living Conditions](#)

<sup>8</sup> Jayashree Nandi "World Environment Day 2013: Remembering silent valley movement" The Times of India Jun 5, 2013

<sup>9</sup> Mayank Aggarwal "A small village in eastern India is resisting a mega steel project—again" Quartz March 5, 2020

Punjab witnessed movements against forced land acquisition for projects like Trident Group in Barnala, an international airport in Ludhiana, and a thermal power plant in Nabha. The Manesar movement in Haryana opposed the Special Economic Project of Reliance Industries. West Bengal saw movements against the Tata Group's small car project in Singur, a proposed steel plant in Jagdalpur, and the acquisition of farmland for a Tata Company car manufacturing plant in Nandigram. The Save The Narmada Movement (Narmada Bachao Andolan), initiated in 1988, has been a prominent protest against large dams, employing Gandhian techniques to resist displacement.<sup>10</sup> Similarly, the Adivasi-Moolvasi Raksha Manch in Jharkhand is actively resisting the acquisition of tribal land by Arcelor-Mittal for a steel plant.<sup>11</sup>

### **Impacts:**

The displacement of tribal communities from their own habitats leaves them with nothing, leading to homelessness. Tribal people, who are primarily forest dwellers, depend heavily on forest produce for their livelihoods, with some relying on common property resources. However, due to displacement, they are now forced to seek jobs to meet their everyday expenses. This situation exacerbates joblessness, especially among those who are illiterate or lack formal educational qualifications suitable for available jobs. Consequently, they are pushed further below the poverty line, resulting in food insecurity and increased mortality. As tribal populations mostly live in isolation, sudden displacement makes it challenging for them to socialize and adapt to their new surroundings, leading to social disintegration. Moreover, migration to different lands disintegrates their families.

The severity of impact also depends on the social strata to which individuals belong. For instance, women and children often face a greater impact than men within a family. This can be observed in compensation schemes, where only the breadwinner of the family receives compensation, similar to government-provided jobs. Before displacement, although women did not have full rights over property, as tribals were dependent on common property, women also had significant control over it. Except for matriarchal families, women tend to suffer more than men due to displacement. This leaves women in the position of housewives, depending solely on men's salary. Apart from the financial

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<sup>10</sup> Ashish Kothari "It did not stop the dam, but is it a failure?" 23rd February 2023 [It did not stop the dam, but is it a failure? - Ecologise](#)

<sup>11</sup> Nandita Kaushal "Displacement: An Undesirable and Unwanted Consequence of Development" The Indian Journal of Political Science Vol. LXX, No. 1, Jan.-Mar., 2009

aspect, studies show that displaced women suffer from domestic violence perpetrated by men due to alcoholism, and malnutrition, as well as sanitation issues, which are other problems that women face. Resettlement after significant displacement is a tough phase; thus, this displacement also has a gender dimension where women tend to suffer more than men.

### **Government initiatives:**

Part X of the Constitution encompasses specialized provisions about the administration of Scheduled Areas and tribal areas in India. Article 244(1) empowers the Governor to establish regulations for maintaining peace and good governance in any area designated as a Scheduled Area within a State. Sub-paragraph 2 of Paragraph 5 of Part B of Schedule-V outlines specific powers of the Governor to make regulations, including the authority to prohibit or restrict land transfers among Scheduled Tribes, regulate land allotment to them, and oversee money-lending activities by those lending to Scheduled Tribes.

In the realm of Panchayati Raj, the Panchayats (Extension to the Scheduled Areas) Act of 1996 extends Part IX of the Constitution to Scheduled Areas. This legislation mandates the consultation of Gram Sabhas or Panchayats before acquiring land or resettling affected persons in these areas for development projects. The aim is to ensure local participation and address the unique concerns of Scheduled Areas in the decision-making process.

The Forest Conservation Act (FCA) of 1980 shifted authority over forests from the state to the concurrent list, requiring Union government approval for non-forest use. However, implementation neglected settling tribal rights. The FCA prohibited shifting cultivation on government forests, adversely affecting communities whose lands were wrongly classified as forests during colonial rule, and hindering their ability to secure title rights.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, aims to acknowledge and confer forest rights to Scheduled Tribes and Other Traditional Forest Dwellers who have resided in forests for generations. Under the act, 14 specific rights related to forest land and its produce were vested to two community categories: scheduled tribes (indigenous people listed in the Indian constitution's schedule) and "other traditional forest-dwellers," defined as those

residing in forests for a minimum of three generations, some of the major rights are,

- Right to possession and enjoyment of forest land
- Right to utilize forest produce
- Right to fish and graze cattle
- Intellectual property rights
- Right to follow customary rules other than hunting

States and Union Territories are entrusted with the responsibility of implementing this Act. Section 4(5) of the Act prohibits the eviction or removal of any forest-dwelling Scheduled Tribe or Other Traditional Forest Dweller until the recognition and verification process is complete.<sup>12</sup> Addressing the challenges of land acquisition, rehabilitation, and resettlement, the "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013" introduces crucial provisions. Section 41 emphasizes minimizing land acquisition in Scheduled Areas, and if unavoidable, mandates obtaining prior consent from Gram Sabha, Panchayats, or Autonomous District Councils. Rehabilitation and resettlement are integral components of the land acquisition plan, outlined in Chapters V and VI of the Act, which elaborate on R&R awards and their implementation. Section 48 of the RFCTLARR Act establishes a national Monitoring Committee responsible for reviewing and overseeing the implementation of Rehabilitation and Resettlement Schemes. This committee plays a pivotal role in addressing issues related to displacement, compensation, rehabilitation, and the status of land acquisition. Despite all these initiatives, studies show that no tribal displacement so far has been provided with adequate compensation for their livelihood.

### **Judicial Pronouncements:**

The fundamental right to possess property under Article 19(1)(f) became a constitutional right after the 44th constitutional amendment. However, Article 300A was inserted which states that the state cannot evict a citizen from his property except by due process of law. Even though there is no express mention in the provision about compensation, the words “due procedure of laws” can be interpreted that the state has to provide compensation for the dispossessed population.

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<sup>12</sup>Walter Fernandes “India’s Forced Displacement Policy and Practice” accessed on 17/12/2023

The case *Vidya Devi v The State of Himachal Pradesh and Others* highlighted the failure of the Himachal Pradesh Government to provide compensation to the displaced individuals in a road project in Hamirpur District, and for 52 years, the compensation has not been paid. The Supreme Court directed the Government to provide compensation within 8 weeks.<sup>13</sup> This is the position of many tribal communities who have been displaced due to developmental projects. As the tribal communities are not aware of their rights, many cases go unreported, and they continue to suffer.

In the case of *Samatha v. State of Andhra Pradesh & Ors.* the Supreme Court held that at least 20% of the net profits should be allocated to affected tribals. Under the 73rd Amendment Act, 1992, Gram Sabhas have the authority to prevent land alienation in Scheduled Areas and rectify any unlawful alienation of tribal property. Land transfer or leases to non-tribals or private companies in Scheduled Areas is strictly prohibited.<sup>14</sup>

In the case of *Wildlife First & Ors. v Ministry of Environment and Forest & Ors.* on 13th February 2019, the Supreme Court ordered the eviction of forest-dwelling scheduled tribes after rejecting claims filed challenging the Forest Rights Act due to which 20.5 lakh people faced eviction across 21 states. This judgement faced much criticism and the Supreme Court subsequently issued a stay order on eviction.<sup>15</sup>

### **Conclusion:**

As India is a developing country, developmental projects are inevitable, but appropriately executing them and maintaining a balance between development and the prevention of human rights violations is necessary. A truly inclusive development process necessitates equitable benefits, ensuring that advantages extend beyond a privileged few. Emphasizing Social Impact Assessment (SIA) and safeguarding the rights of tribes and marginalized communities should be paramount in all development endeavours. Despite the existence of laws like the Forest Rights Act 2006, Land Acquisition Act 2013, and Panchayats (Extension to Scheduled Areas) Act 1996 aimed at empowering and safeguarding tribal rights, challenges persist in addressing land conflicts,

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<sup>13</sup> Vidaya Devi vs The State Of Himachal Pradesh on 8 January, 2020

<sup>14</sup> Samatha vs State Of Andhra Pradesh And Ors on 11 July, 1997

<sup>15</sup> Wildlife First & Ors. v Ministry of Environment and Forest & Ors. Writ Petition (Civil) No. 109 of 2008

rehabilitation, and resettlement. It's evident that very few resettlement programs in the country adequately compensate all displaced individuals, failing to improve their living standards. Delays in compensation payment, often below market rates, add to the complexity. There's also a gender bias as compensation is typically provided to the head of the family or men, despite substantial land being worked or owned by women. The Land Acquisition Act (amended in 1984) facilitates land acquisition for public purposes, emphasizing cash compensation to a narrowly defined category of affected individuals. The approach limits resettlement interpretation to monetary compensation, neglecting broader rehabilitation aspects. If individuals with customary rights over common property resources (CPR) face displacement, they should automatically be granted joint ownership of the industry or investment responsible for their displacement, along with any benefits derived from it. If a project is not commenced or substantially underway within two years of displacement, the displaced individuals should have the choice to regain ownership and full usage rights of the CPR. It is imperative that these legal frameworks not only focus on protection but also place a significant emphasis on the rehabilitation dimension.

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