

Analytical Study of Rehabilitation and Resettlement Policy with special reference to Projects

Tejaswini Girishgouda Patil

Student, School of law, Christ University, Bangalore, India

Abstract : *Doctrine of eminent domain is the inherent power of the state to acquire private property for public purpose. It is an age-old concept but meant to be ever-green concept and still blooming in the present days because of the increasing developmental activities in the society for which the government is acquiring the private properties by way of compensating the owner. There are various problems other than the monetary compensation that needs to be addressed by the government and such issues have led to the new developments in this area of law. This article focuses only on the rehabilitation and resettlement policy that has been implemented in The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. This article later explains on the National Rehabilitation and Resettlement Policy 2003 and 2007. The last part of the article gives the detailed explanation of various projects that have led to rehabilitation and resettlement of displaced people and how far have they succeeded in providing justice to the displaced people by bringing the comparison of rehabilitation and resettlement policy of various states in India with the help of these projects.*

IndexTerms - Rehabilitation, Resettlement, Land Acquisition.

I. INTRODUCTION

“The farmers should be given remunerative compensation, wherever land is acquired.”

The relationship between land and human beings is an age-old bond; the concept of property rights has evolved from the time of evolution of human beings. The genesis of the structure of power and authority in Rural India can be traced back to land. Property rights are theoretical socially-enforced constructs which helps in determining how a resource or economic good is used and owned. A property right is the exclusive authority to determine how a resource is used and whether that resource is owned by the government or by an individual(s). Eminent domain is the inherent power of the state government to acquire private property for public purposes of welfare, infrastructural development or even security and so forth. It has greater application in terms of acquisition of land rather than any other form of property. Acquisition of land for developmental purposes has led to many other problems in the society, especially to the agricultural sector and to environment in our country. The fertile irrigated lands are acquired from farmers by the government for public purposes through exercising this doctrine. The developmental project had some adverse effect on the people and therefore, rehabilitation and resettlement were few of the solutions to counter it. Although it stands to be the solution to certain issues but it also has its own drawbacks while implementing them.

NATIONAL POLICY ON RESETTLEMENT AND REHABILITATION FOR PROJECT AFFECTED FAMILIES, 2003

The government enacted this policy after the legislations and policies that were enacted by certain states such as Madhya Pradesh, Maharashtra, Karnataka and Orissa, for rehabilitation and resettlement, which to some extent broke the legacy of the colonial government. However, public sector companies such as National Thermal Power Corporation and Coal India Ltd¹ also formulated policies in 1993 and 1994 with the force from the World Bank. This policy is being published in the official gazette of India on 17th February 2004². It aims to minimize the displacement and to identify non-displacing or least-displacing alternatives, to plan the resettlement and rehabilitation of project for the affected families, including special needs of the tribal groups and vulnerable sections of the society, to provide better standard of living to the affected families and to facilitate harmonious relationship between the Requiring Body and families affected by such Project through mutual cooperation³.

NATIONAL REHABILITATION AND RESETTLEMENT POLICY, 2007

There were some lacunas in the National Policy on Settlement and Rehabilitation for Project Affected Families, 2003 since it failed to quantify the costs and benefits of these projects in view of the acquisition of land and was limited to some projects and not being extended to all the projects that included involuntary displacement. This led to the formulation of National Rehabilitation and Resettlement Policy, 2007. This policy has a wider ambit and includes various new aspects relating to the displacement of affected families by such projects. This policy then was drafted to be the Rehabilitation and Resettlement Bill, 2007⁴. The main aim is to provide for the rehabilitation and resettlement of people affected by the acquisition of land for projects of public purpose or involuntary displacement due to any other reason. It also provided definition of affected families under Section 3(b)⁵ of the same Bill which means that a family whose primary place of residence or other the property or any source of livelihood is adversely affected by the acquisition of land for a project or involuntary displacement due to any other reason; any tenure holder, tenant, lessee or owner of other property, who on account of acquisition of land (including plot in the abadi or

¹ Rehabilitation and Resettlement of displaced person (last visited 11th September, 2018) <http://www.lawyersclubindia.com/articles/REHABILITATION-AND-RESETTLEMENT-OF-DISPLACED-PERSON-DUE-TO-D-1471.asp>

² Natures on Policy on Rehabilitation and Resettlement (last visited 10th September, 2018) http://www.indianrailways.gov.in/railwayboard/view_section.jsp?lang=0&id=0,1,304,366,540,976

³ The National policy on Resettlement and Rehabilitation of project affected families, 2003

⁴ Agriculture and rural development (last visited 12th September, 2018) <http://www.prsindia.org/billtrack/the-rehabilitation-and-resettlement-bill-2007-110/>

⁵ The Rehabilitation and Resettlement Bill, 2007

other property) in the affected area, has been involuntarily displaced from such land or other property, also includes any agricultural or non-agricultural labourer, landless person (not having homestead land, agricultural land, or either homestead or agricultural land), rural artisan, small trader or self-employed person; who has been residing or engaged in any trade, business, occupation or vocation continuously for a period of not less than five years in the affected area preceding the date of declaration of the affected area, and who has been deprived of earning his livelihood or alienated wholly or substantially from the main source of his trade, business, occupation or vocation because of the acquisition of land in the affected area or being involuntarily displaced for any other reason. This definition of affected family was not clear as per rehabilitation and resettlement policy, 2003.

The policy provides new concept known as Social Impact Assessment⁶. This is the study that need to be conducted before the implementation of the project as to how many people will be affected by the project, what are the benefits of the project and to assess whether the benefits exceed the amount of loss and various other details required to be estimated before the implementation of the project. It also provides many other recommendations that would be helpful in assessing the rehabilitation and resettlement scheme to the concerned project. This policy later was formulated in The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The legislation provides the detailed provisions with respect to rehabilitation and resettlement.

1.1 POSCO-VEDANTA PROJECT

This is one of the peculiar projects among the projects in Orissa. The South Korean steel company signed a Memorandum of Understanding in 2005 with the Government of Orissa to set up an integrated steel plant and a captive port in the Ersama Block of Jagatsinghpur District, Orissa. POSCO had plans to invest about 12 billion US dollars to produce 12 million tons of steel per annum⁷. The project however created a lot of disruptions in the state and led to many protests. The project has a good impact on the economic growth of the country but was delayed for five years because of the Regulatory Clearance being not obtained for various reasons. It is sensitive natural resources involving project and requires massive infrastructural developments which is possible by ways of destructing the forests, environment and displacement of large number of people.

There was also one more project involving bauxite mining in the Niyamgiri hills of Orissa for Vedanta Aluminium project. Saxena committee⁸ was appointed to look into the forest clearance of this project, it stated that this project would lead to displacement of large number of tribal people especially primitive tribal people being deprived of their forest rights affecting their livelihood. The POSCO and Vedanta project are both the mining industry projects which are a key mark in the minds of the people of Orissa. The POSCO-India project has more of socio-economic effect on the society. Almost 471 families in the three villages in Jagatsinghpur district will be displaced, among which 90% of the people's life is completely dependent on the land and farming. The total area required for the project is around 4,004 acres out of which 438 acres is required from private individuals and remaining land is owned by the government as "under forest" or "anabadi" which is under the possession of local people. There are different in which the displaced people are addressed as landless, homeless, marginalization, joblessness, food insecurity, increased morbidity, loss of access to common property and social disarticulation. Hence, it is practically difficult to tackle with all these problems of displacement.

1.2 INDRAVATI PROJECT

With the aim to achieve rapid economic growth and to bring new developmental activities in the state of Orissa. The government came up with the certain innovative projects which mandated the displacement of around 5 lakh people which was almost 86,110 families⁹. Hence there was a need for the concrete state level rehabilitation and resettlement policy for the displaced people in 1994 so the Water Resource Department of Government of Orissa came up with the detailed Rehabilitation and Resettlement policy for Orissa.

In 1978, Government of Orissa started the Upper Indravati Hydro-irrigation Project and the heavy construction activities were initiated during 1980s. During the evaluation phase of the project in 1989, there was no uniform policy to rehabilitate the displaced people, so different guidelines that were given by the government at different stages¹⁰ of the project were followed until 1992. In the first phase of the project, the policy laid down that each displaced family shall be entitled to receive 5 acres of re-claimed unirrigated land or 2.5 acres of reclaimed irrigated land or 0.5 acres of home stead land and if in case the concerned authorities cannot find the land then the displaced family would receive the amount required by the family to purchase the land on their own. All the displaced families had to choose to take the monetary compensation as the authorities could not provide the rehabilitated land to the people. The rate of cash grant made in lieu was Rs 3,650 per acre. Hence it was decided that each displaced family would be awarded with the monetary compensation of Rs 29,575 for the first phase of evacuation. In the second phase it was decided that Rs 20,075 would be paid as the rehabilitation assistance but the mode of payment was modified, a separate savings bank account was created in the name of the one of the person from the displaced family and the amount was to be released in instalment after the proper verification and negotiation for the purchase of suitable agricultural and homestead land. During the third phase, 1992 the policy made further changes that the monetary compensation to the displaced family would depend on the extent of land lost by the family and it was ranged from Rs 34600 to Rs 50,000. During the fourth phase, the solatium was decided on the uniform basis. In the last phase of the project only 7 tapu villages (island villages) were displaced by this time the new Rehabilitation and Resettlement policy was formulated by the Orissa government and the solatium was decided accordingly. Also the policy laid down certain civic amenities that have to be provided for the rehabilitated families.

Although the process of development of the policy was slow, but had its own drawbacks to the policy. There was no proper structure made during the implementation of the plan made for the rehabilitation. In the later stage, the policy prescribes certain civic amenities to be provided for the displaced families but it did not reach to the all the families and hence failed in its implementation. But the one good

⁶ The Rehabilitation and Resettlement Bill, 2007

⁷ Coping with external shocks: displacement in the name of development (last visited 11th September, 2018) http://shodhganga.inflibnet.ac.in/bitstream/10603/13330/13/13_chapter%208.pdf

⁸ G Seethraman, The story of one of the biggest land conflicts: no mine now, but is it all fine in Nyamgiri (last visited 10th September 2018) <https://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/theres-no-mine-but-is-it-all-fine-on-niyam-hills/articleshow/63763978.cms>

⁹ Sathya Prakash Dash, Resettlement and Rehabilitation in Orissa: A study of the Upper hydro-electric project (last visited 10th September, 2018) <http://journals.sagepub.com/doi/abs/10.1177/004908570803800406>

¹⁰ http://shodhganga.inflibnet.ac.in/bitstream/10603/15156/12/12_chapter%204.pdf (last visited 11th September, 2018)

outcome of the project is the lack of rehabilitation policy during the early stage of the project led to the formulation of proper Rehabilitation and Resettlement policy.

1.4 KARNATAKA

1.4(a) NAGARAHOLE PROJECT

The Rajiv Gandhi National park at Nagarahole is one among seven protected areas in Karnataka. It covers around 643.36 sq.kms across Mysore and Kodagu districts in Karnataka¹¹. So the land based activities and human settlement is restricted and hence around 1,073 families are displaced from the place. These are people belonging to smaller ethnic groups such as kuruba, betta-kurba and yerawa. The government has offered to provide relocation package of benefits under the Beneficiary Oriented Tribal Development Scheme and Eco-development scheme.

However the project is still in progress. According to the study made by the STEM¹² of 155 families, it was found that the 69% of the population moved voluntarily where remaining moved out on persuasion and the promise to provide better facilities for living. Based on the report it can be concluded that the expectations of the relocated people was much more than what was provided. The promise to provide other facilities is yet to be provided. The Muzzafar Azadi committee¹³ has submitted its report on the relocation of 3418 families. The report has also provided various recommendations in relocating the adivasis and protecting their cultural identity.

1.4(b) BHANDIPUR PROJECT

Certain NGO's are on the root to the people of Bhandipur who were displaced from the area in 1970 and 1973. There were around 3000 tribal people who were evicted from the place. There certain claims brought about by various NGO's to provide the same kind of resettlement and rehabilitation provided for the nagarahole project. This kind of objection means to be valid because the Bhandipur project has left so many displaced families to suffer till date. The government has to provide certain schemes that will benefit the affected families. The government has taken up initiatives by the committee report in constructing the houses for the displaced families and the basic civic amenities also has to be provide to such people. It is important to protect the wildlife sanctuary but at the same time this should not be a burden to the people around the place and should lead the people into trouble.

1.4(c) UPPER KRISHNA IRRIGATION PROJECT

The Krishna River is an inter-state river that flows along three states that is Maharashtra, Karnataka and Andhra Pradesh. The river inflow is high during monsoon and is low during summer and so to bring the balance between the two and to provide irrigation facilities to drought areas, to improve agricultural production and to generate more electricity the government of Karnataka proposed a project known as upper Krishna project. It mainly covers certain districts of Karnataka such as Bagalkot, Bijapur, Gulbarga and Raichur. There are also two dams constructed for this purpose one is the Almatti dam and Narayanpur dam. This project is beneficial to around 833,600 hectares¹⁴ of agricultural lands to be irrigated providing a full reservoir approximately 524 metres also on completion it generates power of 150 megawatt. Although this project is beneficial to extreme to the farmers living in the command area, it also has huge negative impact on the displaced families for this project. Around 487,576 farmers are displaced from the area and displace 271 villages.

Table 1: UKP Implementation, Land Acquisition, and Displacement¹⁵

Sl. No	STAGE	DAM	IMPLEMENTATION PERIOD	NO. OF VILLAGES AFFECTED	POPULATION DISPLACED	LAND ACQUIRED
1	I	Narayanpur and Almatti	1982-1997	138 (+54)	320000	38668
2	II	Almatti	1997-2000	41 (+1)	80000	66338
3	III	Almatti	2000-2011	22	87576	45875
	TOTAL			202(+55)	487576	150881

Note: Figures in the parenthesis indicate the partly submerged villages.

The affected people are provided compensation in terms of monetary and non-monetary forms of compensation. But most of the displaced farmers are affected as some of them were not able to find the land that is similar to their acquired lands, some of them being jobless as there only profession that they profess being agriculture which is being deprived off. This has resulted in small and marginal farmers becoming landless laborers.

¹¹ Antoine Lasgorceix, Ashish Kothari, Displacement and Relocation of protected area: A synthesis and analysis of case studies (last visited 11th September, 2018)

http://www.kalpavriksh.org/images/CLN/Media_Displacement%20from%20PAs_EPW_5Nov.pdf

¹² Stem Reporter, Taking Stock of Resettlement & Rehabilitation (R&R) Schemes (last visited 12th September, 2018)

http://www.stemgroup.org/pdf/sr_17.pdf

¹³ R Krishna Kumar, Concern over plan to rehabilitate tribal families displaced from nagarahole (last visited 9th September)

<https://www.thehindu.com/news/national/karnataka/concern-over-plan-to-rehabilitate-tribal-families-displaced-from-nagarahole/article19596539.ece>

¹⁴ http://waterresources.kar.nic.in/salient_features_ukp.htm (last visited 10th September, 2018)

¹⁵ Vikram S Patil and Ranjan Ghosh, Farmer displacement and marginalisation: A transaction cost explanation from an irrigation project in India (last visited 9th September, 2018) https://ageconsearch.umn.edu/bitstream/229378/2/Patil_GhoshFinal.pdf

The data in the above table clearly indicates the number of villages being displaced and the land that has been taken by the government for this project. The after-math consequences of the implementation of this project are greater than the benefits of it. Most of the farmers in the north Karnataka region are dependent on the water supply made through these dams and it becomes the only source of water during the summer season this project is indeed a beneficial one but at the same it is the duty of the government to not leave such projects affect the nearby villages by way of displacement.

CONCLUSION

Karnataka, Orissa, Madhya Pradesh and Maharashtra are some of the states that have their own rehabilitation and resettlement policy. In some of the states these policies are formulated because of the increasing difficulties in the progress of the developmental projects. The next question on this is the implementation part of it. Every issue ultimately revolves around the implementation part of the subject because that is where the practical implication of the plans of the project exists. The POSCO-Vedanta project is the project reflecting the developmental project with respect to mining. Although these kinds of projects result in economic growth of the country but they should not take place at the cost of harming the environment and the people living around. As per the projects in Karnataka as mentioned above the Nagarahole project, Bhandipur project and the upper Krishna irrigation project, in all these projects the rehabilitation and resettlement of the displaced people is not completely successful. These projects started almost around 20 years back but the still the project affected families keep suffering every single day some of these problems are not yet addressed and cases are still moving further. In some cases the facilities that the policy has implemented has failed to reach every person who is victim to these projects. To tackle all these issues the right to fair compensation and transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is very much elaborate on the rehabilitation and resettlement of displaced people, which is the outcome of national Rehabilitation and Resettlement Policy, 2003 and 2007. There are so many cases in which the issue of resettlement is pending from years together, hence such problems have to be focused more by the concerned government and the speedy justice has to be provided.

China's Rehabilitation and resettlement scheme states that the land owner cannot directly enter into agreements with the investors to sell the land, instead first the government has to acquire the land in the public interest and then certain time period is given for the landowner to raise objections otherwise it is deemed that owner has given consent for the land acquisition. This is in some way a beneficial scheme so that the uneducated farmers do not prey into the hands of investors. But the other way round this scheme provides absolute power on the government to decide on land governance. The farmer's land rights are being taken by the government. This scheme also lacks the social impact assessment factors which are a important step in the land acquisition process as followed in India. When compared to other neighboring countries India has a better policy on rehabilitation and resettlement scheme and would provide better results if the procedures and requirements are followed as per the legislation.

II. ACKNOWLEDGMENT

The author would like to thank all the teachers for giving guidance at every stage of writing this article.

REFERENCES

- [1] Diganta Biswas, *The doctrine of eminent domain and private property* (2016)
- [2] Sthithapragyan Ray, *People and Protected Areas: Protest Dynamics in a Conservation Project in Odisha*, Indian Sociological Society.
- [3] Abhijit Guha, *Resettlement and Rehabilitation: First National Policy*, Economic and Political Weekly
- [4] S. Parasuraman, *Development Projects, Displacement and Outcomes for Displaced: Two Case Studies*, Economic and Political Weekly.