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A STUDY OF REHABILITATION AND RESETTLEMENT IN TRIBAL AREAS

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ABSTRACT:-

A major finding of my previous work on Land Acquisition in tribal areas was poor implementation of Rehabilitation and Resettlement. This issue becomes more glaring in the case of tribals who bear the brunt of acquisition and large scale displacement for infrastructure



projects by the government. Estimates show that 90 percent of the coal reserves are in tribal or forest areas. A 2005 National Advisory Paper titled 'Tribal Welfare and Development' notes that in the last 50 years over 9 million tribals were displaced of which 6 million are yet to get compensation, leave alone R&R.

This figure could be much more considering the large scale bungling and corruption in registering the affected tribal families. During the Eighth Five Year Plan, the Working Group on Development and Welfare of Scheduled Tribes (1990-1995) reports that out of 16.94 lakh people displaced due to 110 projects studied, 8.14 lakh were tribals. (Thukral, 1992).

Displacement and improper or non resettlement and rehabilitation have social and political consequences apart from enormous social, economic and psychological costs to the displaced and the dispossessed. In fact, most of the extremist affected areas in the country have a background of tribal displacement, especially in the coal belts of Chhatisgarh, Jharkhand and Orissa.

That there are adequate provisions for monetary compensation for land acquired is well known. However, it is also well known that monetary compensation alone is not enough to address the issue of R&R. For a people living in a largely un-monetized economy, valuation of land and forest resources in terms of cash forces the already marginal into pauperization. This increases the need for resettlement and rehabilitation of tribals. Largely, the planning and implementation of resettlement and rehabilitation has varied from state to state and has proceeded on a very ad hoc and incremental basis. (Thukral 1992; Fernandes and Thukral 1989; Dreze et al. 1997).

Most attempts to address the issue have been in the form of strengthening of the resettlement and rehabilitation rules, leading to greater complexity of these rules. The new Act itself relating to Acquisition of Land has made specific provisions relating to tribal areas. A case has also been made for No-Go areas, specifically tribal areas.

For a long time tribals have lived in harmony with nature and there are natural forest lands which have been preserved due to the harmonious way in which tribals have lived within them. The case for preserving these lands in a sense also is a case for preserving and protecting the tribals living on those lands.

The Constitution incorporates many safeguards for tribals. Apart from constitutional provisions for

reservations in jobs and elected bodies, there are special provisions in the 5th Schedule of the Constitution regarding administration of tribal areas and special rights and privileges that are accorded to tribals and their land. The PESA Act and the Forest Act provide further safeguards to the tribals. The Rehabilitation and Resettlement Policy of 2007 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (also Land Acquisition Act, 2013) provide for special safeguards for tribals. Why it is then that tribals still continue to get a raw deal in Resettlement and Rehabilitation when it comes to their displacement due to acquisition of their lands for large infrastructure projects?

KEYWORDS: Rehabilitation, Resettlement, land acquisition, displacement, tribal areas.

LITERATURE REVIEW

There is a lot of journalistic and anecdotal literature on Resettlement and Rehabilitation of Tribals displaced due to land acquisition for large infrastructure projects. However, academic research in this particular area is sparse and focused on specific aspects of displacement and R&R.

A good starting point is a study done by Sujit Kumar Mishra, wherein four large projects in Orissa were taken up for study relating to Displacement and Rehabilitation of Tribal People (Mishra 2014). The main conclusion of the study is that displaced Tribal populations are pushed to a lower level of economic status. However, there is no insight into why R&R efforts, specifically when it comes to Tribal displacement, do not succeed. The efforts for implementation of R&R can be seen in policies and procedures framed for the Sardar Sarovar Dam oustees by the following agencies namely, Narmada Water Disputes Tribunal Award, the directions by the Indian Supreme Court in 2001, the rehabilitation and resettlement policies of Gujarat, Madhya Pradesh and Maharashtra, World Bank policies as well as human rights policies (Mehta, 2005). Furthermore the Tribal People's Policy clearly states that wherever tribal people are involved in large scale displacement due to government projects, projects must be designed to safeguard the special interest and well being of the tribals. Although there is law and there are efforts to resettle and rehabilitate, these efforts fail. There is law for R&R. There are well meaning officials. But the inherent contradictions in the relationship between the contracting parties (government and displaced), their inequality and the overall milieu in which they operate 'dooms' all R&R efforts. The case being made here is that unless the displaced have an equal say in the contract between them and the government, either through strong law or through political mobilization, or through market operations, all efforts at R&R are bound to fail.

A number of reasons have been provided to explain the implementation shortfall (whereas we do have the policies at place with its revision time to time), like poor coordination between implementing agencies, absence of political will and commitment, weak institutional structures and the lack of proper monitoring and evaluation mechanism (Kangave, 2012). Therefore the question specifically remains that why is there no implementation or poor implementation in spite of stringent policies on Rehabilitation and Resettlement? R&R has been successful in many areas not because specific laws and policies were followed but because of the participation of people, mass movement and voice. In fact the policies were created because of mass movement and protests (Mehta, 2005). The case being made is that in the case of tribals, because of their lack of political mobilization and ability to 'negotiate', R&R efforts fail.

Kothari is of the view that the debate on displacement and rehabilitation and resettlement needs to be placed in a wider socio political context otherwise minimizing displacement and improving rehabilitation and resettlement will only remain marginal, palliative and temporary (Kothari, 1996). Despite the large displacement of people the process of rehabilitation and resettlement has been minimal (ibid). Data reveal towards the apathy and indifference of the government and its agencies towards R& R. As an illustration of the above data, after 25 years of the building and completion of the Bhakhra Nagal dam which displaced nearly 2, 108 families, only 730 had been resettled and rehabilitated. People displaced by the Hirakud Dam in Orissa and Rihand Dam in Uttarakhand have never been rehabilitated and resettled (ibid). The oustees of the Pong Dam in Himachal Pradesh numbered nearly 30,000 families as an official record, only 16000 out of 30,000 have been rehabilitated and that too at a very far flung area in Rajasthan with different cultural, linguistic and ecological zone (Kothari,

1996).

It has also been seen that the official data and figures of the displaced are being tapered. The trend has always been of underestimating or neglecting the actual number of displaced people. The independent studies done on Hirakud Dam oustees, the number soared up to 1,80,000 whereas the government data estimated about 1,10,000 only. Sardar Sarovar Dam project reveals the fluctuating data of displacement between 10,758 families to 30,134 families. While Morse Report and other World Bank research have revealed the displacement of 1,75,000 and the Narmada Bachao Andolan has given the data of more than 2,00,000 displacement by the canal and dam over the Narmada river. Of course these data do not reveal the number of affected people who face displacement as a consequence of dam related activities such as those dependent on sites chosen for resettlement. If these numbers get included then the number of displaced would rise up to 4,00,000 (Kothari, 1996).

The Sardar Sarovar Dam project, with the help of public pressure and long years of struggle had managed getting significant gains in terms of policy making but the actual gain on the ground has been minimal and shoddy with no implementation at all or somewhat a poor implementation of these policies (ibid).

The injustices done on people by these developmental projects, both pre and post implementation are inadequately acknowledged and recognized. But just this acknowledgement is not enough, the bigger question lies somewhere else. When the policies of R & R are in place, why the actual implementation of it becomes almost impossible? Policies and laws are really not the answer. The need is to implement these policies if displacement is inevitable. R&R should become an opportunity promising wellbeing of the people, improving standard of living, restoring community and kinship relations and minimizing the conflict with the host community (Kothari, 1996).

The other constant theme running in the literature on the subject is about the raw deal given to tribals and the failure of R&R. Most often these displaced are the ones who are marginally weak sections of the society. Often these marginal sections are the tribals who are unable to contest decisions and have inability to bargain for more favorable terms as far as legal and political frameworks are concerned (Kangave, 2012). Literature around also supports the widely accepted norm that displacement is an inevitable outcome of displacement by large infrastructure projects. But they also accept the fact that this displacement need not result in the impoverishment of those displaced. Rather the preparedness and construction of the infrastructure projects and the rehabilitation and resettlement projects should go hand in hand. Rehabilitation and resettlement should also be considered as a development project as this would restore or at least ensure the livelihood and resettlement of those displaced (Kangave, 2012).

The Resettlement and Rehabilitation Policy of 2007 is a comprehensive document which looks at various data on displacement and rehabilitation and resettlement measures undertaken. This document is useful in that the Working Papers leading to this Policy paper are a mine of official information on displacement and resettlement statistics. The National Policy on Resettlement and Rehabilitation of Project Affected Families 2013, is another document which not only lays down laws and rules relating to R&R, but makes special mention of tribals and tribal areas. Section 41 (1) of the above act states that as far as possible no acquisition shall be made in the Scheduled Areas and in case of acquisition of any land in Scheduled areas. Sub section (2) states that prior consent of Gram Sabha or the Panchayats or the autonomous District Councils at the appropriate level in Scheduled areas under the Fifth Schedule to the Constitution shall be obtained in all the cases of land acquisition in such areas including acquisition in cases of urgency. There are special arrangements for tribals including sub section (7) where the affected families of the Scheduled Tribes shall be resettled preferably in the same scheduled area so that they can retain their ethnic, linguistic and cultural identity. Further in sub section (11) where the affected families belonging to the Scheduled Tribes are relocated outside of the district then they shall be paid an additional twenty five percent rehabilitation and resettlement benefits which they are entitled in monetary terms along with a onetime payment of fifty thousand rupees.

The literature on large projects and the displacement and consequent resettlement and rehabilitation is again documented mostly in government working papers and policies. The Working Group on Development and Welfare of Schedule Tribes during Eighth Five Year Plan (1990-95) reports that out of the 16.94 lakh person

displaced by 110 projects studied, 8.14 lakh were tribal (Thukral, 1992). Till 1990 Fernandes (1994) estimates that 2,13,00,000 people were displaced by development projects in India. A vast numbers of them are tribals. Out of a total of 74,10,000 tribal people displaced, only 24.9% have been rehabilitated and a staggering 75.1% still await rehabilitation (Fernandes, 1991).

Most of the displaced believe that Rehabilitation and Resettlement is a process of facilitating the surveillance of state rather enhancing their quality of life. Asil (2000) is of the view that the effective R&R process can only be ensured through cooperation and participation of the displaced and project affected people. Further he says that in its absence even the best intended R&R is bound to fail (Asil, 2000).

Weber and Brooke in their paper – “Dams and Displacement: Raising and Broadening the Research Agenda” note that a lack of commitment or capacity with displacement or to consider civil rights of, or risks to displaced people led to the impoverishment and suffering of tens of millions and growing opposition to dams by communities worldwide. The question as to why there is a disregard of the civil rights of the displaced has not been answered.

An interesting study is by Hugh Brody (1999) on the James Bay settlement. He notes that the settlement by the project authorities did not emerge through a wish to mitigate the suffering of the aggrieved. Rather it was the risks to the proponents and financiers from organized opposition and litigation.

The Sardar Sarovar Dam has given fodder to many articles on rehabilitation and resettlement. Flood (1997) has given a good exposition of the impairment of livelihoods due to massive displacement and the problems with implementation of poor R&R. A similar study by Mallavarapu (2006) titled “Development, Displacement and Rehabilitation: An Action Anthropological Study on Kovvada Reservoir in West Godavari Agency of Andhra Pradesh” explains the R&R problem. This paper also focuses on the issues of tribal displacement and land alienation due to construction of the Kovvada reservoir, without proper rehabilitation and resettlement, although there are well defined guidelines, procedures and norms for the rehabilitation of Project Affected Persons (PAPs) (Mallavarapu, 2006).

A comprehensive article on Developed Induced Displacement and Resettlement is by Jason Stanley (2004) wherein the various components of Displacement and R&R are discussed. Some key areas that he discusses are firstly, the role of powerful multilateral agencies in designing and delivering R&R and secondly, the ethics of displacement – primarily to answer the question of who pays for development. Although this is a comprehensive overview of the main issues involved in Development Induced Displacement, it does not attempt to answer the question of why implementation of R&R fails in areas where the displaced are marginal and weak.

Mohanty Biswaranjan (2005) expounds on how tribals lose out in the displacement due to large infrastructure projects. There are similar articles and studies by Murdia (1975) and Rao (1998) wherein the special plight of tribals in development induced displacement has been highlighted.

In one of the studies done by World Bank Independent review, it has been highlighted that one of the probable reasons for the failure of implementation of Rehabilitation and Resettlement policies is the failure of consulting women. This is not helped by cultural norms and is hindered by language differences. Virtually none of the women in the remotest villages speak official state languages. Therefore, under these circumstances are the needs and concerns of the women met? Are there staffs who have been trained in tribal languages? Does consultation draw on accumulated understanding and experience of people’s cultures (World Bank Independent Review, 1992)?

Michael Cernea clearly defines the role of State in the rehabilitation process. He is of the view that the State assumes responsibility when it forces people to relocate and has a responsibility of not leaving them impoverished. For the state, recovery of resettlers’ livelihoods is first a matter of political will and financial resources. Allocation of resources is more a political matter than an economic one. He simply argues that because government agencies carry the weight of the state and the force of law to carry out expropriation and therefore displacement, it is incumbent upon the same government to also enable those displaced to get back on their feet and benefit from the development for the sake of which they were displaced (Cernea, 1992). He is of the view that the implementation of the processes of Rehabilitation and Resettlement require precise policy guidelines and legal and institutional mechanisms are required to achieve the goals of R & R.

There is a paucity of literature on implementation issues with R&R. Most of these are articles based on secondary research of government reports, which themselves are suspect. Also the above literature review mainly focused on lack of precise policies for poor or non implementation of R & R whereas we know that from 2007 onwards we do have national policies on rehabilitation and resettlement but has it made any difference? The question which is of the utmost importance is, are these policies binding on state? What is the nature of these policies? Are they a part of soft law? Klabbers is of the view that soft law does not include political or moral commitment but if they exist in any meaningful way these are commitments of political and moral nature and therefore are on their own terms rather on the interpreters' terms and thus not legal at all (Klabbers, 1996). The government is under no obligation or legal commitment to implement its policies. One of the reasons for the non implementation of R& R policies could be the nature of these policies which leaves no legal responsibility on state for its implementation. What is the sanctity of these policies? Are these policies enforceable on the ground? What is the status of soft law in India?

CONCLUSION

Studies have been done on the various aspects relating to land acquisition, tribal rights, international law relating to indigenous people, and development induced displacement. However, this paper highlights on the reasons for non or poor implementation of R&R in Development Induced Displacement, particularly among tribals in India.

Studies on this subject throw light on the inequalities and poor bargaining position of these groups (Marino, 2012). There are constitutionally hundreds of safeguards for the protection of the tribals but are these safeguards operational on the ground? Rao, Deshingkar and Farrington are of the view that tribals are not homogenous as the upwardly mobile sections have already emerged (Rao, Deshingkar and Farrington, 2006).

As a preliminary view I posit that there is an inability of tribals to present their case as a single entity for various reasons. Firstly, different areas have different ethnic groups and often their individual differences outweigh collective interests. In the current Indian polity we are seeing this in the northeast in a very marked manner. Secondly, unlike the Scheduled Castes, there are no effective pan India Scheduled Tribe political organizations. Thirdly, when displacement takes place, specifically where tribals are involved, these populations are often dispersed and in small groups. There is a lack of communication and a 'coming together' of these groups, unlike the case of other social groups like the SCs for example, some of who have very strong state and national level political organizations. For example, in Chhattisgarh, when tribals were being displaced to make way for power plants in the Janjgir Champa in the eastern part, their brethren were fighting the police in South Chhattisgarh on other issues under different political banners. In a state where 35% of the population is tribal, their disparate social and political set up lends itself to exploitation.

Without bargaining strength, all projects which depend on government machinery to deliver rights to the citizens are set up for inefficiency, corruption and non-delivery. This is because the contract between the government and the concerned affected group (tribals) is not one of equality.

I further posit that wherever tribals have been able to come together as a political group, R&R has been better implemented. The case being made here is that creating interest groups is important. Tribals with their geographical inaccessibility, lack of education, distance from mainstream urban based politics, often are unable to make interest groups to ensure proper R&R. In the absence of their ability to 'demand' proper R&R, implementation suffers.

I intend to show in my paper that mere structures and regulations relating to R&R will not work until there is a political system which ensures that the government is obliged and is enforced to carry out proper implementation. The focus on R&R for the displaced, especially tribals, is topical and symptomatic of the development conundrum that we as a nation are facing today.

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