International Journal of Applied Social Science
Volume 6 (5), May (2019) : 1304-1311
Received : 27.03.2019; Revised : 12.04.2019; Accepted : 27.04.2019

RESEARCH ARTICLE
ISSN : 2394-1405 (Print)

Forest Dwellers' Right to Land- The Need for a Comprehensive Policy and Legal Frame Work in India

K.R. REGHUNATHAN
Principal
Government Law College, Ernakulam (Kerala) India

ABSTRACT

Land is always a hot topic irrespective of tribal community or not. Status of person measured on the basis of land owned by him. And acquisition of land in the name of development violates the basic rights of an individual. Tribal people are born and brought up in the forest. Displacement always a major issue to the tribal community. They are the most vulnerable people in the society. Their right to land should be protected. The construction of major hydro-electric projects and dams lead to massive evacuation from their natural environment. The statutory provisions are not enough to wipe out the sorrows of the tribal people. In a welfare State, it is the duty of the government to protect the rights of the Tribal people on their land.

Key Words : Tribal Persons- Indigenous and Tribal Peoples Convention-Statutory Protections-The Scheduled Tribes and Other Traditional Forest Dwellers Act-Indian Constitution - The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act – Conclusion

INTRODUCTION

The questions relating to the rights of indigenous and tribal people over their dwelling land always remain as one of the controversial topics in all civilized societies. Civilization engulfs the forest area and destroys the benefits and resources enjoyed by the tribes. Development and progress of the society always take place at the cost of the forest land. Taking note of these aspects, many initiatives have been taken at international, regional and national levels to preserve the inalienable rights of the forest dwellers. As far as India is concerned, many statutes have been enacted exclusively for the protection of their rights. The tribal population in India is not a negligible one. As per the census report 2011, the total tribal population in India is 104,545,716.[1] However, the sad reality is that many of their rights remain un addressed. Hence, the present article tries to portray the significance of protection of tribal rights, especially in the forest land; underlines the role of the legislature, executive and judiciary and explore the feasibility for a comprehensive policy and law in this regard.

Tribal Persons: The Problem of Definition and Categorization:

For the effective understanding of any social issue, the first step is to identify what the problem is; and who are the affected parties. In the context of the present discussion, the questions as to who is a tribe; and what communities come under the category of tribes, must be answer firstly. The term "tribe" is not susceptible to any precise definition; and there is a great difficulty in identifying tribal communities. The term 'tribe' was first used by Biblical people of Israel; and was prevalent in certain divisions of political units of ancient Rome from Latin 'tribuz.'[2] Evans-Pritchard stated, "A tribe is the

1. *https://www.census2011.co.in/scheduled-tribes.php*

2. H.P Chattopadhyay and S.K Sarkar (ed.), *Ethnic Composition and Crisis in South Asia* (1st Vol., Global Vision, 2003), p. 46

How to cite this Article: Reghunathan, K.R. (2019). Forest Dwellers' Right to Land- The Need for a Comprehensive Policy and Legal Frame Work in India. *Internat. J. Appl. Soc. Sci.,* **6** (5) : 1304-1311.

largest group of people who, besides recognising themselves as distinct local community, affirm their obligations to continue in warfare against outsiders and acknowledge the right of their members to compensation for injuries."[3]

Various local names based on the concept of man, religion, ancestral workship and place name are used to denote tribal community. British people called them as 'primitive' people or even noble 'savages.' During 19th century they were called 'tribes' and 'castes.' In the post independent era, the nomenclature is 'tribe,' 'aborigines,' 'adivasis,' 'jats' or 'indigenous people.'[4] The Indian Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 uses the term "forest dwelling Scheduled Tribes."[5] The Constitution (Scheduled Tribes) Order, 1950 published a detailed State wise list of communities that come under the category of Schedule Tribe;[6] and Article 342[7] empowers the President of India to specify tribal communities.

Indigenous and Tribal Peoples Convention, 1989:

The General Conference of the International Labour Organisation (ILO) held in 1989 approved the rights of the tribal people all over the world: their social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.[8] The Conference mandated that the right of ownership and possession of the people concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the people concerned to use lands not exclusively occupied by them, but to what they have traditionally had access for their subsistence and traditional activities. Particular attention shall be given to the nomadic peoples and shifting cultivators.[9]

Indian Constitutional Provisions:

The genesis of provision for acquisition of land by the Government can be traced back to Government of India Act, 1919.[10] Similar provision was incorporated in the Government of India Act, 1935 also.[11] The implications of these provisions are: (i) In India, persons had the right to property; (ii) The right to property could be taken away by the authority of law; (iii) The legislature had the power to make law for compulsory acquisition of property; (iv) Property included land, commercial or industrial undertaking, or any interest in or in any company owning, any commercial or industrial undertaking; (v) The law for compulsory acquisition of property should provide for the payment of compensation for the property acquired; and (vi) Such a law had to fix the amount of the compensation, or should specify the principles on which,

3. E.E Evans-Pritchard, *The Nuer*, (Clarendon Press, Oxford, 1940), p.5

4. *Supra* n. 2 at p. 45

5. Section 2 (c), the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006: "Forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities."

6. *http://www.legislative.gov.in/sites/default/files/19.pdf*

7. Article 342, Constitution of India, 1950: Scheduled Tribes—(1) The President may with respect to any State or. UnionTerritory and where it is a State, after consultation with the Governor thereof by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purpose of this Constitution be deemed to be Scheduled Tribes inrelation to that State or Union Territory, as the case may be.

8. *https://www.un.org/en/genocideprevention/documents/atrocity-crimes/pdf.*

9. See, clause 14 of the Convention

10. Section 127: Acquisition of land for Federal purposes

11. See Section 299 (1): No person shall be deprived of his property in British India save by authority of law. The genesis of such a provision can be traced back the Government of India Act, 1919. Section 299 (2) says, Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.

and the manner in which, it is to be determined.

Prior to the Forty Fourth Constitutional (Amendment) Act, 1978, the right to property was a fundamental right under Article 19 (1) (f) and Article 31 of the Constitution. In *State of West Bengal v. Subodh Gopal,*[12] the apex court held that the said fundamental right dealt only with the natural rights inherent in a citizen to acquire, hold, and dispose of property; and had no relation to concrete property rights like interest in a particular piece of property or business. However, in *Commissioner, Hindu Religious Endowments v. Lakshmindra,*[13] the court enquired why the word 'property' as used in Article19 (1) (f) should not be extended to those well recognized types of interests which have the characteristics of proprietary rights; and further held that Article19 (1) (f) applies equally to concrete as well as abstract rights of property; and that the administration of property by a religious denomination is a fundamental right which no legislature can take away.

Though the Constitution and judicial interpretations upheld individual's right to hold property as a fundamental right, the Parliament changed the entire situation by amending the Constitution. The recognition of the right to property as a fundamental right led to serious problems regarding use of land by Government for various purposes. Every case involving the infringement of property rights led to litigation leading to issue of writs by the High Courts and the Supreme Court. In *Kesavananda Bharati v. State of Kerala,*[14] the apex court upheld the power of the government to acquire land for implementing the 'Directive Principles' incorporated under Part IV of the Constitution.

However in 1978, the Constitution Forty Fourth Amendment Act made a sweeping change regarding property rights by omitting Articles 19(1) (f) and Art. 31 from the chapter of fundamental rights; and inserting article 300 – A; and making the right to property an ordinary civil right under the Constitution. Art. 300 - A was inserted in Part XII, Chapter IV of the Constitution under the heading of 'Right to Property.' The effect of these changes is that (a) the right to hold property has ceased to be a fundamental right; and (b) it has been left to the legislature to deprive a person by the authority of law. The validity of such laws cannot be challenged before the Supreme Court as unconstitutional because no compensation has been sanctioned by such laws. If, however, one's property is taken away by the action of the State without the authority of law, one would be entitled to legal relief on the ground that such State action is in contravention of Article 300-A.[15]

Articles 29[16] and 30[17] of the Constitution protect the cultural and educational rights of minority sections. These rights also contribute to preserve the rich diversity of the country and give minority a sense of security. In *A.M Patroni v. E.C Kesavan,*[18] it was held that "any religious or linguistic community which is less than 50% of the total population shall be considered as a "minority". The apex court in *TMA Pai Foundation v. State of Karnataka*[19] held that 'a minority either linguistic or religious is determinable only by reference to demography of the State and not by taking into consideration the population of the country as a whole.'

Statutory Protections:

The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013[20]

12. AIR 1954 SC 92
13. [1954] SCR (1) 1005
14. AIR 1973 SC 1461
15. No person shall be deprived of his property save by authority of law.
16. Article 29 (1) of Indian Constitution says: Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
17. Article 30 (1) of Indian Constitution; All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
18. AIR 1965 Ker 75.
19. AIR 2003 SC 355
20. Section 41:- Special provisions for Scheduled Castes and Scheduled Tribes; As far as possible, no acquisition of land shall be made in the Scheduled Areas.

are the king pin legislations in India for protecting the right of the tribal community in the country. In India, most of the developmental activities were carried out in the forest or tribal areas. The unorganised nature of the Tribes, illiteracy, lack of opposition and the economy in acquisition are the major factors that attracted industrialist. Further, since the Government is the owner and occupier of the forest land, getting sanction from the government is also much easier.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006:

The Act was enacted for the protection of rights of Scheduled Tribes, especially those who are living in the forests.[21] The Act not only recognizes the rights to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood, but also grants several other rights to ensure their control over forest resources. Some of the rights are:[22] (a) right to hold and live in the forest; (b) right of the community to administer; (c) right of ownership, access to collect, use, and dispose of minor forest produce; (d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities; (e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities; (f) rights in or over disputed lands under any nomenclature in any State where claims are disputed; (g) rights for conversion of *Pattas* or leases or grants issued by any local authority or any State Government on forest lands to titles; (h) rights of settlement and conversion of all forest villages, old habitation, un-surveyed villages and other villages in forests, whether recorded, notified or not into revenue villages; (i) right to protect, regenerate or conserve or manage any community forest resource; (j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State; (k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity; (l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes and excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal.

The Gram Sabha shall be the authority to determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction.[23]

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013:

The Act which repealed the Land Acquisition Act, 1894 is a general legislation applicable to all acquisition of land for public purpose. The Act contains special provisions for Scheduled Castes and Scheduled Tribes.[24] The Act prohibits, as far as possible, acquisition of land notified as the Scheduled Area. Acquisition shall be done only as a last resort. In case of acquisition or alienation of any land in the Scheduled Areas, the prior consent of the concerned *Gram Sabha* or the *Panchayat* or the autonomous District Councils, shall be obtained. In case of a project involving land acquisition on behalf of a Requiring Body which involves involuntary displacement of the Scheduled Castes or the Scheduled Tribes families, a Development Plan shall be prepared laying down the details of procedure for settling land rights due, but not settled and restoring titles of the Scheduled Tribes as well as the Scheduled Castes on the alienated land by undertaking a special drive together with land acquisition. The Development Plan shall also contain a programme for development of alternate fuel, fodder and non-timber forest produce resources on non-forest lands within a

21. An Act to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

22. Section 3 (1) (a) to (m) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006

23. Section 6,the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

24. Section 41, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

period of five years, sufficient to meet the requirements of tribal communities as well as the Scheduled Castes.

In case of land being acquired from members of the Scheduled Castes or the Scheduled Tribes, at least one-third of the compensation amount due shall be paid to the affected families initially as first instalment and the rest shall be paid after taking over of the possession of the land. The affected families of the Scheduled Tribes shall be resettled preferably in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic and cultural identity. The resettlement areas predominantly inhabited by the Scheduled Castes and the Scheduled Tribes shall get land, to such extent as may be decided by the appropriate Government free of cost for community and social gatherings. Any alienation of tribal lands or lands belonging to members of the Scheduled Castes in disregard of the laws and regulations for the time being in force shall be treated as null and void, and in the case of acquisition of such lands, the rehabilitation and resettlement benefits shall be made available to the original tribal land owners or land owners belonging to the Scheduled Castes. The affected Scheduled Tribes, other traditional forest dwellers and the Scheduled Castes having fishing rights in a river or pond or dam in the affected area shall be given fishing rights in the reservoir area of the irrigation or hydel projects. Where the affected families belonging to the Scheduled Castes and the Scheduled Tribes are relocated outside of the district, then, they shall be paid an additional twenty-five per cent rehabilitation and resettlement benefits to which they are entitled in monetary terms along with a onetime entitlement of fifty thousand rupees.[25]

In *Narmada Bachao Andolan v. Union of India,*[26] the apex court held that the development and rehabilitation must in *paripassu*. The court observed, expression "*paripassu*" has a direct nexus with raising of the height *vis-a-vis* implementation of relief and rehabilitation progress both of which must proceed `equably' or `rateably' which would mean that relief and rehabilitation measures must be undertaken as and when the height of the dam is further raised. The said expression should be construed in a meaningful manner."

Whenever the affected families belonging to the Scheduled Tribes who are residing in the Scheduled Areas referred to in the Fifth Schedule or the tribal areas referred to in the Sixth Schedule to the Constitution are relocated outside those areas, then, all the statutory safeguards, entitlements and benefits being enjoyed by them under this Act shall be extended to the area to which they are resettled regardless of whether the resettlement area is a Scheduled Area referred to in the said Fifth Schedule, or a tribal area referred to in the said Sixth Schedule, or not.[27]

The Collector shall pass Rehabilitation and Resettlement Awards for each affected family in terms of the entitlements provided in the Second Schedule.[28] The award shall contain(a) rehabilitation and resettlement amount payable to the family; (b) bank account number of the person to which the rehabilitation and resettlement award amount is to be transferred; (c) particulars of house site and house to be allotted, in case of displaced families; (d) particulars of land allotted to the displaced families; (e) particulars of one time subsistence allowance and transportation allowance in case of displaced families; (f) particulars of payment for cattle shed and petty shops; (g) particulars of one-time amount to artisans and small traders; (h) details of mandatory employment to be provided to the members of the affected families; (i) particulars of any fishing rights that may be involved; (j) particulars of annuity and other entitlements to be provided and (k) particulars of special provisions for the Scheduled Castes and the Scheduled Tribes to be provided.

The State Government shall appoint an officer of the rank of Commissioner or Secretary of that Government for rehabilitation and resettlement[29] of affected families, to be called the Commissioner for Rehabilitation and Resettlement. The Commissioner shall be responsible for supervising the formulation of rehabilitation and resettlement schemes or plans and

25. Section 41 (1) to (11), *Ibid.*

26. [2000] 10 SCC 664

27. Section 42 (2), The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013

28. Section 31,*Ibid.*

29. Section 44, *Ibid.*

proper implementation of such schemes or plans. The Commissioner shall be responsible for the post-implementation of social audit in consultation with the *Gram Sabha* in rural areas and municipality in urban areas.

Where land proposed to be acquired is equal to or more than one hundred acres, the appropriate Government shall constitute a Committee[30] under the chairmanship of the Collector to be called the Rehabilitation and Resettlement Committee, to monitor and review the progress of implementation of the Rehabilitation and Resettlement scheme and to carry out post-implementation social audits in consultation with the *Gram Sabha* in rural areas and municipality in urban areas. The Rehabilitation and Resettlement Committee shall include, apart from officers of the appropriate Government, the following members: (a) A representative of women residing in the affected area; (b) A representative each of the Scheduled Castes and the Scheduled Tribes residing in the affected area; (c) A representative of a voluntary organisation working in the area; (d) A representative of a nationalised bank; (e) The Land Acquisition Officer of the project; (f) The Chairpersons of the *panchayats* or municipalities located in the affected area or their nominees; (g) The Chairperson of the District Planning Committee or his nominee; (h) The Member of Parliament and Member of the Legislative Assembly of the concerned area or their nominees; (i) A representative of the Requiring Body; and (j) Administrator for Rehabilitation and Resettlement as the Member-Convenor.

The Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1999:

In the State of Kerala the alienation of land by a Scheduled Tribe to non-tribe is extremely alarming. The data produced before the Supreme Court in *State of Kerala v. Peoples Union for Civil Liberties, Kerala State Unit*[31] showed that, out of 4724 applications for restoration filed, 1475 applications involved transfer of less than 50 cents, 898 applications involved transfer of 'extent between 50 cents and 1 acre', 904 applications covered cases of 'transfer of extent between 1 and 2 acres and 1074 applications related to 'transfer of extent between 2 acres and 5 acres and 373 applications involved cases of transfer of more than 5 acres or 2 hectares. The appeal petition further stated that, the state had conducted further studies wherefrom it came to learn that about 12,000 tribal families in the State did not possess any land of their own and 30,000 families did not have any house of their own.

The Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act was enacted in the year 1975 and subsequently it was repealed by the new Act- the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1999. The purpose of the Act is to restrict the transfer of lands by members of Scheduled Tribes in the State of Kerala and for the Restoration of Possession of lands alienated by such members and for matters connected therewith. The Supreme Court in *State of Kerala v. Peoples Union for Civil Liberties, Kerala State Unit* observed, "The 1999 Act, therefore, if given a holistic view, is more beneficial to the members of the Scheduled Tribe than the 1975 Act. If the State contemplated a legislative policy for grant of more benefits to a vast section of people, taking care of not only restoration of land but those who have not transferred any land at all or otherwise landless, the statute by no stretch of imagination can be treated to be an arbitrary and an unreasonable one."

The term transfer is defined as that "made by any person belonging to the Scheduled Tribe of lands in his ownership and possession to a person other than a member of the Scheduled Tribe by way of sale, mortgage, lease, gift and includes *vilapanayam*[32] and *unduruthy*.[33] District Collector of the district in which the land is situated is the "competent authority"[34] for the purpose of this Act. In *Chandran Kannikkaran v. State*

30. Section 45, *Ibid.*

31. (2009)8SCC46

32. Section 2 (g) (i): ˜Vilapanayam' means hypothecation of crops on payment of consideration

33. Section 2 (g) (ii) "Unduruthi" means an assignment of the right to collect the usufructs available or anticipated to be available to any land during a specified term for a specified price

34. Section 2 (a)

of Kerala,[35] the court observed that, the authority or power to grant consent for the purpose of Section 4 is a statutory power. One of the finest shades of guarantee of Rule of Law is that when a particular power or authority is vested in a particular officer or institution or office in terms of the law, it has to be exercised only by that authority. Any intervention of any external agency with the exercise of such power by the authority in whom it is vested, takes away the purity of the process relating to the exercise of such power". Section 4[36] is the major provision of the Act. Section 4 restricts the transfer of agricultural land by tribal person to a non-tribal person: without the prior permission of the Collector, the transfer is void.

Sustainable Development v. Tribal Community:

Forest land and Tribal inhabited areas are massively occupied by the non-tribal and the government in the name of development. Major displacement was done during the 19th and 20th century. The British government enacted the Chotanagpur Tenancy Act 1908[37] to restrict the transfer of land from tribals to non-tribals. Study report of Fernandes and Paranjpye in the area of Jharkand in 1997[38] showed that 35 million tribes were displaced in the 19th century and between 1950 to 1991, 25 to 30 million were displaced. The Narmada projects are the epitome of unsustainable development.[39] A tug of war between development and existence was occurred in Gujarat. Two of the largest proposed dams, Sardar Sarovar and Narmada Sagar, have been under construction since 1961. According to Narmada Bachao Andolan, the dams forced the displacement of about a million people and affected many more, largely poor peasants and tribals. They also caused immense ecological damage through the inundation of forests, including prime habitats of rare species. Resettlement and compensation have been totally inadequate and there is not the remotest prospect that the displaced people will be adequately compensated for.

In the State of Kerala, there are sixty river valley projects and half of which are Hydel and the other half is irrigation dams.[40] The hydel dams have all come up in the forest hill areas in Western Ghats and the irrigation dams are located amidst the foot hills, both submerging large tracts of forests and/or fertile valleys. The tribal people living within the Reserved Forests were extensively displaced without any documentation, compensation or rehabilitation. A recent study conducted by the Indian Social Institute, Bangalore and Loyola College of Social Sciences, Thiruvananthapuram, is the only attempt for collecting data regarding land acquisition. According to them most projects do not have Resettlement and Rehabilitation (R&R) Plans. Adequate data is not available even for projects having R&R Schemes to accurately implement meaningful rehabilitation measures.

Number of Displaced Persons of major Water Resource Projects in Kerala:[41]

Project name	Families evacuated	Number of persons displaced
Idukki Hydroelectric Project	1,394	7,388
Kallada Irrigation Projec	410	2,000
Kanjirapuzha Irrigation Project	44	233
Karappuzha Irrigation Project	322	1052
Muvattupuzha Valley Irrigation Project	120	636
Venganallur Reservoir Scheme	45	238
Pooyamkutty Hydroelectric Project	184	773

35. 2008 (1) KLJ 862
36. Section 4:-Restriction on transfer- Notwithstanding anything to the contrary contained in any other law, or in any contract, custom or usage or in any judgment, decree, or order of any court, any transfer effected by a member of the Scheduled Tribe, of land possessed, enjoyed or owned by him on or after the commencement of this Act, to a person other than a member of a Scheduled Tribe, without the previous consent in writing of the competent authority, shall be invalid.
37. *https://indiacode.nic.in/bitstream/123456789/7796/1/the_chota_nagpur_tenancy_act%2C1908.pdf*
38. K.GopalIyer, "Land Alienation, Forest Rights and Displacement: Predicament of the Tribals in Jharkhand and Madhya Pradesh" in H.S Saksena, Vinay Kumar Srivastava (ed.), *Scheduled Tribes and Development*, (Serials Publbication,2006), p. 362
39. *https://www.rightlivelihoodaward.org*
40. *http://www.shram.org/uploadFiles/20170718010851.pdf*
41. *http://www.shram.org/uploadFiles/20170718010851.pdf*

As per the available data, for the construction of Idukki Hydroelectric project alone, 7,388 persons were displaced. There are no proper studies or document by the governmental agencies regarding the tribals displaced due to development projects in Kerala. The Peppara dam on the Karamana River was commissioned in 1984 for providing drinking water to the Thiruvananthapuram city and suburbs. The whole catchment area of the dam was declared as a Wildlife Sanctuary with an area of 53 sq.kms. Ten Kani villages were totally or partially submerged with an area of 5.82 sq.km and 44 Kani families were forcefully displaced due to the construction of dam.[42]

Conclusion:

Mahatma Gandhi used the term 'Girijans' for denoting the tribal people who are living in forest and hill stations. He condemned widespread alcoholism among them. Once the social evil in the tribal societies were removed, he believed in the gradual empowerment of tribes and their assimilation in the national stream through generation of able leadership.[43] He had rightly pointed out that the social evil which existed among the tribals is the root cause for all types of deceit. The land mafia behind the illegal transfer instigate the tribes in the name of black magic, supply of alcohol and narcotic drugs, unlawful criminal force and by inducing them for monetary benefits.

The legislature and executive have turned blind eye on the eradication of social evils existing among tribals. A detailed study report regarding the social, financial and educational development of the tribal community is required. Proper legislation for empowerment, medical facility and educational improvement are required. Though the legislation prohibits alienation, it is in adequate or fruitless. Following suggestions in this regard will help to eradicate the illegal transfer of tribal land:

– Stringent penal provisions for illegal alienation of tribal land. At present only one year rigorous imprisonment or fine of rupees five thousand is provided for violations.[44] The punishment may be enhanced to minimum seven years; and make it a non-bailable offence.

– All sale deeds in the notified areas shall be verified by a higher authority.

– Special courts may be established for deciding illegal gratification of non-tribes under the umbrella of tribal rights

– The Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1999, deals with transfer of agricultural land only. All types of land occupied by the tribal community should be included.

– Periodical 'in service training' to the officers of the government and NGO's who are working for welfare of the tribal community.

– Proper publication of tribal rights in the Print and visual Media.

– Steps may be taken to protect land and cultivation. Collect agricultural produce, by the government, at a high price. A co-operative system of development shall be developed among the tribes.

****

42. *http://www.shram.org/uploadFiles/20170718010851.pdf*

43. *https://www.jstor.org/stable/44155809*

44. Section 12, the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1999