

company in an area that had been notified as a Scheduled Area under the provisions of the Fifth Schedule of the Constitution. The state contended that the provisions of the Fifth Schedule regarding the non-transfer of adivasi land or government land in a Scheduled Area to non-adivasis is not binding because the operative word in the Constitution is that the governor of a state "may" advise the government to enact such affirmative laws for the adivasis but it was not mandatory for the state to do so or having done so not to repeal them. In a fascinating majority judgement quoting extensively from legal luminaries across the world and from the debates in the Constituent Assembly, the Supreme Court laid down that even though the operative word is "may" the intention of the framers of the Constitution was that it should be "shall" and that the provisions are binding on the state to protect the adivasis' entitlements. Similarly, even if the Supreme Court did not acquiesce with the Narmada Bachao Andolan's demand for scrapping the Sardar Sarovar dam altogether, it upheld the fairly just provisions of the Narmada Water Disputes Tribunal with regard to rehabilitation and resettlement and the NBA has consistently used this to intervene on behalf of the oustees of not only the Sardar Sarovar dam but also of other dams upstream on the Narmada and its tributaries.

We need such judgements to further deepen liberal democratic principles in the country and also against unjust laws of colonial vintage used by the state in favour of industrialists. The post-independence struggles of the peasantry and the working class in general, and the intensive mass struggles against displacement since the 1980s have in many ways been able to democratise the functioning of the Indian state but there is still much more to do.

The Land Acquisition Act of 1894 (LAA) is one such instance of laws with colonial vintage. The proposed amendments to the existing LAA are a vast improvement but nevertheless a crucial area still remains unaddressed especially in the context of the inability of the vast majority of the poor people to take recourse to legal remedy against the misuse of the provisions of the Act due to both poverty and ignorance. In most instances of legal recourse having been taken, there has been the involvement of people's organisations and NGOs acting on behalf of the oustees. Moreover, even though private companies have been excluded from the benefits of the Act, they still can use it by acquiring

70 per cent of the land on their own if it is for a purpose that is in public interest.

Thus the proponents of an alternative land acquisition statute are demanding that the decision to implement a development project should first be discussed in the Gram Sabhas of the villages which would be displaced by it. The detailed project report, the environmental impact assessment and the social impact assessment should be placed before the Gram Sabhas in a language that they can understand so that they can offer informed opinion on them. There should be no frauds, force or inducement used to manufacture consent or the decision regarding the public interest and viability of the project or the appropriateness of the rehabilitation and resettlement. These should be arrived at through free and fair consultation.

The Rehabilitation and Resettlement Bill, 2007 (R&R) similarly has a few problem areas even though overall it does make fairly comprehensive provisions for the protection of the rights and entitlements of the oustees. These are as follows -

1. *Threshold for a Social Impact Assessment (SIA)* (Section 4. land 6.1) - If a new project involves displacement of four hundred or more families *en masse* in plain areas or two hundred or more families *en masse* in tribal or hilly areas, an SIA study including a baseline survey and census will be carried out. The SIA will be subject to a public hearing, while the baseline survey and census data will be made public to enable objections and suggestions from the affected population.

Implications: It is problematic to define a threshold for when an SIA is required because:

The SIA including the baseline survey and census is the instrument to determine the number of affected families and without the SIA there will be lack of clarity regarding the number of impacted families, and whether the threshold entitling to community facilities has been reached.

Land acquisition impacts affect individual families who each requires compensation and assistance, and some form of SIA involving a census of affected families along with an inventory

of assets lost and other impacts is needed irrespective of the scale of land acquisition.

The concept of *en masse* displacement focuses on entire communities and overlooks that, depending on their scale, linear projects can have severe impacts on a large number of families dispersed across many communities.

2. *Linear projects* - The new R&R Bill 2007 recognizes formal claims of affected people over land that will be 'acquired' including 'abadi and 'other property' [Section 3.b (ii)]. However, Section 7.19 which applies to linear projects (roads, railway lines, etc.) stipulates that only those who have clear title to land - i.e. *khatedars* whose names are included in the revenue records are owners and will be eligible for asset compensation plus an ex-gratia grant. In addition, only *khatedars* would be entitled to other rehabilitation and resettlement benefits if, as a result of the land acquisition, their land is less than the recognized small and marginal holding.

Implications'. Land provided under welfare schemes for the landless (e.g. Bhoodan land, Kesari Hind land in Rajasthan, UP, Bihar, Jharkhand, and un-demarcated forest land in HP) and the homeless (shelter under IAY, EWS schemes) to which people do not have formal rights - i.e. '*khatedar* rights' - cannot be legally acquired under the LA Act. The Government already holds the right over such land, and if it is required for a project, the government will transfer the land. The people dependent on such land are not eligible for compensation for lost assets and may get excluded from any R&R support. Moreover, they will no longer be eligible for any other welfare scheme, as they were beneficiaries of schemes prior to the project that deprived them of their land. Similarly, those who in search of livelihood have settled on government land but have no formal claim will also not be considered 'eligible' for R&R support, as such land cannot be acquired under the LA Act, but is repossessed by the state.

- I. *Cut-off date for entitlements* [Section 3.1(b)(iii)] - All displaced non-title holders (agricultural and non-agricultural labourers, artisans, small traders, and landless persons) will be entitled to assistance

only if they have resided for not less than three years prior to the date of declaration of the affected area.

Implications'. Some of the poorest and the most vulnerable may be excluded from assistance when displaced:

While a cut-off is needed to determine eligibility for compensation and assistance, it may be difficult to determine who has actually stayed prior to the three year cut-off date, since non-title holders, precisely because they are non-title holders, may not have the required documentation. The cut-off date could instead be defined as the date upon the declaration of the affected area when the SIA is undertaken.

In situations where less than 400/200 families are displaced *en masse*, and an SIA is not required, the basis for clarification of claims by those affected would be weak because no attempt may have been made to document the duration of their residence in the affected area.

4. *Benefit sharing* (Section 6.23) - The Bill in principle accepts long-term benefit sharing with the affected people. However, the entitlement limits the scope to ensure this benefit sharing arrangement. Only those who are entitled to compensation for land and other assets, and is calculated on the basis of the compensation they have received for these assets (20 to 50 per cent of the compensation amount as shares or debentures in the 'requiring body') will be eligible to purchase the shares, etc.

Implications'. This provision overlooks the fact that people require compensation and R&R benefits to restore their lost assets. In effect, the provision on benefit sharing included in the policy is not over or above the compensation and R&R. The principle of benefit sharing is based on the fact that the communities directly impacted by the project need to have secured stream of income from the profits over the life of the project. In addition, both people who do not enjoy legally recognized rights over land (e.g. beneficiaries of welfare schemes for the landless or shelter schemes) and those affected by income losses alone (e.g. share croppers) will be excluded from receiving long-term benefits from the revenue generated by the project. This exclusion of the poorest and the

most vulnerable sections of an affected community is likely to generate conflicts within the community and create risks that the projects will not be realized or yield intended benefits.

5. *Urban Resettlement:* Although the new Bill applies to resettlement and rehabilitation in all sectors covering both rural and urban settings, its focus is on rural contexts.

Implications: Although the text makes occasional references to urban situations (e.g. para 7.2 and 7.3 on urban replacement housing), its application to an urban environment will require careful consideration and application of the general policy provisions (e.g. assistance to rural tenants and squatters is described but not to urban; surveys and consultations refer to rural contexts, as does the outline of the content of a Rehabilitation and Resettlement Plan).

The most glaring flaw of course is that the principle of land for land and alternative livelihoods based rehabilitation is given a complete go by and this will mean that by cheating on cash compensation, a project implementing agency whether government or private can easily spend much less than it should on R&R. Apart from this the ownership of the rehabilitation and resettlement process still remains with the state through the various authorities it has constituted and the affected persons can only file objections or petitions to these authorities in case of grievances. This is an unsatisfactory arrangement as once again the poor among the oustees are rarely in a position to be able to file such petitions and complaints and pursue them to their logical conclusion. Invariably, it is only when there is the intervention of an NGO or a people's organisation do the oustees get justice to a certain extent through legal action. In any case, in the present context, legal action is an extremely time consuming and expensive affair that should be the last resort only. Thus it is essential that People's Rehabilitation Implementation and Monitoring Committees be set up at the Gram or Ward Sabha level armed with veto powers which can stall the continuation of the development project if the rehabilitation and resettlement provisions agreed on are not being implemented properly. Rehabilitation and resettlement have become such a hot issue now that many international funding institutions and project implementing agencies have come up with rehabilitation policies of their own which try to mitigate the trauma of displacement. However,

these too are top down policies which do not always provide for adequate participation of the affected people and tend to dole out the benefits to them.

Finally, since land acquisition and rehabilitation are two sides of the same coin, it is a little odd that there should be two separate Acts for these two allied purposes. Instead, ideally the old LAA should be scrapped altogether and a new Land Acquisition and Rehabilitation Act should be enacted. It is with this in mind that such an alternative Land Acquisition and Rehabilitation Act has been drafted on the basis of a draft rehabilitation policy that had been developed by the erstwhile National Advisory Council before it was dissolved. This draft Land Acquisition and Rehabilitation Act (LAR) lays stress on properly defining "public interest" and determining the economic, environmental, social, cultural and rehabilitation and resettlement costs in a participatory manner with full involvement of the oustees through empowered Gram or Ward Sabhas and People's Rehabilitation Implementation and Monitoring Committees. Two levels of independent statutory authorities on the lines of the Election Commissions-the State Rehabilitation Commissions and the National Rehabilitation Commission - have been provided for, to which any Project Implementing Agency first has to submit detailed plans regarding all the costs of the project mentioned above and the rates of return expected. The parameters of determining public interest, social impact and rehabilitation and resettlement plans have been described in detail in the draft. Only if a project is sanctioned by the Rehabilitation Commissions can it be brought before the Gram Sabhas or Ward Sabhas as the case may be for their consideration through a transparent evaluation process. The local government bodies are free to accept, modify or reject the proposal on the basis of a reasoned decision which can then be either accepted by the Project Implementing Agency or challenged through legal means. Once the rehabilitation and resettlement plan is finalized, then its implementation too is to be monitored by a committee formed from among the oustees. The rehabilitation process will be monitored by the Rehabilitation Commissions and if it is not to the satisfaction of the oustees then the project can be suspended.

Given that capitalist development will invariably involve involuntary displacement we must have good laws in place to ensure justice to those affected. The crux of reconciling displacement and rehabilitation

with the basic liberal democratic principles of equality and justice is the participation of the affected people in the evaluation of the necessity and viability of a development project and in the planning and execution of the rehabilitation programme. This is even more pertinent in the Indian context where in most cases the affected people have neither the knowledge nor the financial wherewithal to approach the courts to seek justice. The drafts tabled before Parliament for the amendment of the LAA and the enactment of a new R&R Act thus fall critically short and therefore are not 'just' laws. There is every possibility that the state and the ruling classes will circumvent the provisions of these proposed laws and continue to deprive the affected people of their rights as in the past.

<title>Reconciling Displacement and Rehabilitation</title>
<author>Rahul Banerjee</author>
<keywords>TS 1-D LR1</keywords>
<publication>Social Action</publication>
<pubDate>01/07/2008</pubDate>

<description>Over the past two years or so, the normally un-newsworthy rural poor in India have time and again made headlines with their vehement opposition to forced acquisition of their lands by the state on behalf of industrialists at prices much lower than their market value. The role of the state has thus been seen by the people affected by this involuntary displacement as favouring the industrialists at their expense. This has brought the spotlight to bear on the role of the state in the prevailing framework of governance and development in this country that are liberal-democratic and capitalist in nature respectively. What will be attempted here is a review of the existing laws in India regarding land acquisition and rehabilitation and the proposed amendments to them in the light of the basic tenets of liberal democracy to see how far they conform to them.</description>
<classif>K02a</classif>
<entrydt>05/08/2008</entrydt>
<sd>GG</sd>