

Rehabilitation and Resettlement of the Displaced Persons

A Critique of the Policy and the Bill

K. B. Saxena

June 2008



COUNCIL FOR SOCIAL DEVELOPMENT
www.csdindia.org

Rehabilitation and Resettlement of the Displaced Persons

A Critique of the Policy and the Bill

K. B. Saxena

June 2008



COUNCIL FOR SOCIAL DEVELOPMENT
Sangha Rachana
53 Lodi Estate, New Delhi-110 003 (India)
<csdnd@del2.vsnl.net.in>

Preface

Development induced displacement has emerged as a major issue of political economy in recent times. This phenomenon has featured as a social outcome associated with development planning since Independence affecting nearly 60 million persons till 2000. Yet, it did not receive due attention from policy makers. This is evident from the dismal record of rehabilitation and resettlement of those who were displaced from their land, habitat and livelihood. The scale of displacement has increased considerably with the neo-liberal transformation of economy and has given rise to a number of resistance movements of peasants against acquisition of their land across the country. In several states, the governments had to use force to break this defiance. Social activists, researchers and NGOs have, for a long time, been pleading for a drastic overhaul of the Land Acquisition Act 1894 under which land is usually acquired and formulation of a just and humane rehabilitation policy for the displaced persons. They have deliberated on both these issues and submitted their detailed suggestions to the Government.

In response to the above developments, the Government of India has notified the National Rehabilitation and Resettlement Policy, 2007 and has also introduced the Rehabilitation and Resettlement Bill, 2007 which provides a statutory backing to it.

This monograph attempts a critique of the two documents to see whether the proposals contained in them would persuade the affected peasantry to part with its land peacefully.

As the subject has been widely discussed for a long time, nothing new may be found in the comments and observations made in this monograph. The effort has been made in the hope that the material presented here would be of some use in exerting requisite pressure on the Government to introduce substantive changes in the policy and the Bill with a view to drastically reducing acquisition of land and guaranteeing the displaced persons protection from risks of multiple impoverishments and a life which is qualitatively better than the one enjoyed before.

K. B. Saxena

@ Council for Social Development
Sangha Rachana
53 Lodi Estate, New Delhi-110 003 (India)

Printed at
Kalpana Printing House
L-4, Green Park Extn., New Delhi-110016

Rehabilitation and Resettlement of the Displaced Persons A Critique of the Policy* and the Bill**

Displacement, until recently, remained a non-issue in the public policy discourse. The bureaucratic and political elites have no comprehension of the devastation it causes. The urban intellectuals and other members of the middle class tend to underestimate its disastrous effects since they are among the beneficiaries of projects which produce them. These elites rationalize the social trauma of development in terms of its inevitability and justify it in national interest. The affected people resisting displacement inducing projects are stigmatized as anti-development. Their concerns are, therefore, not considered worthy of scrutiny and accommodation. This explains why there was neither a law nor a national policy nor even a firm commitment to address the numerous problems created by displacement. Although the Constitution provided for relief and rehabilitation of persons displaced as a result of the partition and the Government of India did evolve a policy frame for their resettlement, the same concern was not extended to the persons displaced due to development projects. The administrative arrangements for resettling refugees of partition were wound up after the work was completed. While the pressure from the World Bank hastened the formulation of the National Rehabilitation Policy for displaced persons in 2003, the commitment to give a fair deal to the oustees remained weak. The policy that emerged was far removed from the formulation suggested by NGOs and social activists and even that diluted version was not enforced. This position continued until resistance of the affected persons across the country brought to a halt the process of acquisition of land for mega development projects.

Evolution of the policy

The State's approach to resettlement and rehabilitation until 2003 had been "minimal" and "residual" (Marsden, 1998). It was confined to the payment of compensation and construction of houses with the barest amenities for shifting people to the relocation site, leaving the rest to the affected people to manage through their own efforts. The Government did not feel obligated to arrange for income restoration, development of infrastructure, provision of core amenities and social facilities let alone reconstruction of social life and environment of the broken community. The resettlement and rehabilitation of development induced displaced persons were, therefore, never on its agenda of governance and development.

* The National Rehabilitation and Resettlement Policy, 2007.

** The Rehabilitation and Resettlement Bill, 2007.

The second dimension of the State's approach lay in the nature of commitment with regard to whatever little it offered to the displaced persons by way of mitigation of their multiple problems. The decisions taken in the matter were ad-hoc in nature and were project specific with no declaration that the package would apply to the same type of projects elsewhere. This resulted in the discriminatory treatment extended to the displaced persons in different places and at different times. On account of the federal nature of the polity, there was also no uniformity in the benefits provided to the displaced persons in the Central and State funded projects and in projects implemented in different states. A more nuanced approach emerged in 1980s when the nature of commitment progressed to a sectoral level package of measures such as those relating to irrigation projects. Recognizing that the benefits of irrigation projects go to the rich farmers, the guidelines issued by the Central Government advised the states that this skewness should be balanced by allotment of wasteland from command area or land taken from large landholders to the losers of land. They also stressed the need to protect the weaker sections of society in this exercise. In 1982, however, comprehensive guidelines were formulated by the Ministry of Home Affairs for the displaced tribals. This document stressed the need for checking excessive land acquisition, payment of full compensation before their eviction, taking up land based rehabilitation, adopting a community rather than individual centric design of resettlement and ensuring provision of house sites with core amenities and livelihood, at least, to one member of the land losing family in case of non-availability of land for replacement of the land lost. In 1986, the Bureau of Public Enterprises issued guidelines applicable to all public sector industrial undertakings which included setting up of a rehabilitation cell in every project, provision of developed homestead units with civic amenities, arrangement of vocational training etc. at the cost of the project. A Committee was constituted by the Government of India in 1984 for formulation of policy for rehabilitation of the displaced tribals. In its report, the Committee laid emphasis, among others, on participation of tribals in the design and execution of rehabilitation programmes and suggested a constitutional amendment to enable the Central and the State Governments to enact laws for this purpose. In the 1990s, resettlement policies were brought out by Coal India and National Thermal Power Corporation though they were limited in the framework of resettlement envisaged. But even the restricted commitment contained in the guidelines for different sectoral projects was not extended to central projects in other sectors. There was no national policy which applied to all development projects taken up by the Central Government or its organizations. There was reluctance, even resistance, to the framing of a national policy despite pressures to this effect from some political representatives

and civil society groups. In contrast to the Central Government, the states came out with their policies much earlier and, in some cases, even enacted laws for this purpose. Karnataka, Maharashtra, and Madhya Pradesh enacted laws for rehabilitation of the displaced persons which applied to projects in the specified sector. Punjab accomplished it later. The states of Orissa, Rajasthan, Gujarat, Andhra Pradesh brought out rehabilitation policies (largely sector specific) or a set of detailed guidelines. In quite a few of these cases, the initiative was taken to enable international funding for the projects to be obtained. The action towards preparing a national policy reluctantly started under pressure of the World Bank which tied its funding for projects to the declaration of a rehabilitation policy. Even so, the dithering and delay continued and the first national policy could emerge only in 2003. There was widespread dissatisfaction with this policy. Above all, it failed to enthuse persons faced with the acquisition of their land. This led to resistance against displacement and state violence to break it. The widespread condemnation of repressive State action forced the Central Government to review the National Rehabilitation Policy, 2003*. This exercise was completed towards the end of last year and a revised national policy known as the National Rehabilitation and Resettlement Policy, 2007* was notified. Simultaneously, the Government has also given a statutory backing to this policy. Accordingly, the Rehabilitation and Resettlement Bill, 2007 has been introduced in the Lok Sabha.

Conceptual framework

Resettlement and rehabilitation has been elaborately conceptualized in the international literature drawing upon empirical experience from several developing countries including India. Its framework and contents have been widely accepted by researchers and experts and have the stamp of approval of external funding agencies since the design had crystallized from the deliberations of the World Bank experts and consultants. The structure and processes of this design have been constructed into a model. As per this construct, resettlement [includes rehabilitation in its wider connotation] is basically a management issue since it involves prolonged administrative action to mitigate the adverse effects described as "risks" which a displacee faces in the process of his eviction from land, livelihood, and habitat. The Resettlement Management is, therefore, considered, at its core, the management of these risks (Cernea, 1998). The first step in this exercise is to recognize that displacement anywhere involves certain risks to the oustees. This is extremely crucial since the denial of risks is ingrained in development governance

* In the rest of the paper, the two policies would be referred to as the National Policy (2003) and the National Policy (2007).

(Mathur, 2006). The next step is to identify and analyze these risks. Based on experiences across the globe (India, no exception) these risks have been identified in terms of eight basic impoverishment processes of social, and economic deprivation occurring in varying intensities in different locations. These are: landlessness, joblessness, homelessness, marginalization, increased morbidity and mortality, food insecurity, loss of access to Common Property Resources, and social dis-articulation (Cernea, 1998). To this list, the ninth deprivation identified as loss of schooling (Mahapatra, 1999) and the tenth one as loss of access to public services ahead of displacement (Mathur, 2006) have been added. These risks have differential effects on different social groups. The modeling then involves planning and strategizing for their mitigation to enable the resettlee to recover from these risks by using the “Risks and Reconstruction Model”. This involves identifying and managing counter-risk actions. For example, land allocation can prevent landlessness. House construction can address homelessness. Joblessness can be countered through targeted re-employment. The loss of social capital can be mitigated by rebuilding communities and social networks. Increased morbidity and mortality can be minimized by provision of comprehensive health services. Food insecurity can be tackled by income generation to create purchasing power, public distribution system to ensure availability of subsidized foodgrains, setting up of grain banks to tide over lean period and provision of social security to meet the special situation of the aged and the physically challenged due to their inability to undertake wage earning activities. This management task requires formulation of a resettlement policy with statutory obligation covering public and private sector (Cernea, 2006), high degree of political commitment, systematic planning, efficient implementation and monitoring with participation of beneficiaries at all stages. This can be accomplished by making necessary administrative and institutional arrangements to signal the priority assigned to the task, creating structures for quick decision making and capacity building for execution with empathy for the beneficiaries. Since the work involved is not a one time activity, it would be a continuing process until the displacees have recovered from the multifaceted impoverishment. In short, the resettlement should be treated as a “development opportunity” rather than a burden or even an ad-hoc “welfare” measure and should be central to the national agenda of development and governance. It would require trained manpower to translate it into visible benefits. The World Bank has tried to incorporate major features of this model in projects funded by it. Other donor agencies have also adopted the essentials of it in their projects. This vision for resettlement is a more theorized version of what Indian researchers, activists and NGOs have proposed in their studies and advocacy documents. Civil society groups consisting of a loose alliance of NGOs and social movements involved in the issue have submitted at different times detailed formulations for an alternative policy addressing the above concerns.

National Rehabilitation and Resettlement Policy, 2007

The Policy accommodates some suggestions put up by the civil society groups and the other interested persons. The Rehabilitation and Resettlement Bill, 2007* also meets the demand that a rehabilitation and resettlement policy for the displaced persons must have statutory backing. Both these measures are, therefore, an important step forward in the ongoing public discourse on the subject.

In the context of the broad framework of rehabilitation and resettlement outlined above and the concerns raised on behalf of the displaced persons, it is necessary to evaluate the policy package that has been offered and the impact it would have on the resistance movements.

Objectives of the Policy

The Policy candidly recognizes the multi-faceted negative impact of displacement, particularly on the weaker sections of society. It comes to terms with the ground reality that a large number of the displaced persons do not possess legal or recognized rights over land on which they are critically dependent for their subsistence. It is also accepted that the existing efforts to mitigate displacement have not adequately assessed the economic disadvantages and the social impact of displacement. There has been a lack of articulation of the overall objectives of rehabilitation and resettlement in terms of improving all-round living standards of the affected people. The National Policy (2003) had the added disadvantage that it failed to quantify realistically the costs and the benefits of each project with a view to justifying the acquisition of land. It was also restrictive in its application and did not extend to all projects causing involuntary displacement. The adverse impact on the affected families — economic, environmental, social and cultural — was usually not assessed in a participatory and transparent manner.

Keeping the above in view, the National Policy (2007) spells out its objectives. The first in the order listed (not clear if this reflects the priority) aims at minimizing large scale displacement as far as possible, though it reiterates the theory of Eminent Domain for defending the compulsory acquisition of private land required for a public purpose. The second objective is to undertake, as far as possible, acquisition of waste land, degraded land or un-irrigated land so as to protect the multiple cropped

* Hereinafter also referred to as the Bill.

land. The need for considering alternatives that will minimize acquisition of the area, particularly the agricultural land and displacement has also been spelt out. The Policy seeks to provide adequate rehabilitation package with active participation of the displaced persons. It lays stress on accommodating the special needs of SCs and STs. The most important objective enunciated in the Policy is to provide to the displaced persons a better standard of living than enjoyed before and sustainable income. The Government also considers it imperative that the rehabilitation concerns are integrated with development planning rather than pursued as a peripheral exercise. It hopes to establish harmonious relationship between the body requiring land and the affected displaced families through these efforts.

Contents of the Policy

Coverage

Coming to the contents of the policy, the ambit of coverage has been conveyed by defining various expressions used in the Policy and the Bill. The “affected family” has been expounded to mean a family whose primary place of residence or property or source of livelihood is adversely impacted by acquisition of land for a project or involuntary displacement for any other reason. It includes, besides owner of land, tenant, agricultural or non-agricultural labourer, tenure holder, lessee, landless person, rural artisan or person engaged in trade or business or occupation etc. residing in the village for a period not less than three years. The policy has also recognized the members of Scheduled Tribes in possession of forest land prior to the 13th December, 2005 in the category of “occupiers” for this purpose. The agency responsible for causing displacement has been explained in the expression “requiring body” for which land is acquired. The definition makes it clear that a private company is not excluded from its purview which implies that the land would continue to be acquired for them under the Land Acquisition Act, 1894. The “Project” has been explained as an activity which involves involuntary displacement of people irrespective of their number. Besides the above expressions, other terms commonly used in the Policy and the Bill and having relevance for illuminating entitlements or clarifying the identity of the group or the status of the beneficiary have also been given meaning. This exercise includes, among other expressions, “affected area”, “agricultural labourer”, “agricultural land”, “family”, “BPL family”, “holding” “occupiers” etc. The scope of entitlement has also been widened. The Policy now applies to permanent involuntary displacement due to any reason and does not confine it to the displaced persons on account of acquisition of land.

Applicability

The second major feature relates to its applicability. Although the need for a National Policy to cover all projects where involuntary displacement takes place due to any reason is clarified in para 1.1 and 1.3 of the Policy and clause 2 of the Bill, certain provisions in the two documents seem to restrict it to the size of the project involving specific level of displacement. For example, “affected area” has been defined in para 3.1 (c) of the Policy as a village or locality notified under para 6.1. The corresponding provision in the Bill is contained in clause 3(c) and 20 (1). The provisions in the two documents, when read together, restrict the applicability of “affected area” to situations where involuntary displacement of 400 or more families *en masse* in plain areas and 200 or more families *en masse* in tribal or hilly areas, DDP blocks or areas mentioned in Schedule V or VI of the Constitution is involved. The title of the chapters in the two documents under which this restriction is contained relates to the rehabilitation and resettlement plan which corroborates this understanding (chapter VI of the Policy and chapter IV by the Bill).

Social impact assessment

The need for undertaking social impact assessment has also been included so as to bring out the adverse externalities caused by the project on assets, infrastructure, community property, public utility and social facilities. There is also a simultaneous obligation to incorporate ameliorative measures brought out in this assessment. This exercise has also been restricted to the size of the project specified above. The need for undertaking environmental impact assessment along with the social impact assessment has also been stressed. Care has been taken to ensure participation of the affected persons by giving them an opportunity to comment on the reports of EIA and SIA before they are examined by a multi disciplinary expert group and clearance is accorded. In terms of this provision, no rehabilitation and resettlement plan can be operated without prior SIA clearance for which a time limit has been prescribed. The mandatory nature of clearance stresses the importance of dovetailing the findings of these reports as also the corrective measures to address their deleterious effects in the Resettlement and Rehabilitation Plan. Only defense projects involving emergency acquisition of a minimum area in connection with national security have been exempted from this obligation.

Administrative arrangements

The Policy has provided a two-tier administrative structure for planning and implementation of rehabilitation and resettlement measures. The first tier of

this structure is referred to as the Administrator to be appointed at the level of the project while the second tier has been designated as the Commissioner who will function as a supervisory authority over the Administrator. The powers and functions of the two bodies have been laid down in detail. Each of them would deal with formulation and implementation of the rehabilitation and resettlement plan in his respective jurisdiction.

Rehabilitation and resettlement plan

The other major feature relates to the preparation of a rehabilitation and resettlement plan. This will start with the declaration of the “affected area”, followed by undertaking a comprehensive survey of the affected persons, assessment of available land and preparation of the draft rehabilitation and resettlement scheme. These processes would be carried out in a transparent manner and with participation of the affected persons before they are finally approved. A provision has been made to furnish requisite information to the affected persons at two stages so as to give them the opportunity to raise objections and make suggestions. The first stage relates to sharing of information regarding information gathered during survey and the second stage comes when the draft of the rehabilitation and resettlement plan has to be disseminated to them for getting their feedback. At both stages, the Administrator, after taking into account the views expressed by the affected persons, shall submit his recommendations to the Government for approval. The document would be released thereafter in public domain. A time limit has been prescribed for completion of the two tasks. The rehabilitation and resettlement plan would cover the affected persons and their entitlements and the list of public utilities, community property assets and infrastructure which would be provided. It would also include the time schedule for shifting and resettling the displaced persons. The provision regarding consultation of *Gram Sabha* in rural areas and through public hearing in urban and rural areas where *Gram Sabha* does not exist has also been incorporated. This consultation would be consistent with the provisions contained in the PESA, 1996 in respect of scheduled areas. The scheme would specify the estimated cost of its planning and implementation. After obtaining the approval of the Government, the rehabilitation and resettlement scheme would be notified. The body requiring land shall provide sufficient funds to the Administrator for its execution.

Compensation

The rehabilitation and resettlement benefits shall be extended to all families identified as affected on the date of publication of declaration under the

Land Acquisition Act. The Policy also includes some provisions on the entitlement to and methods of assessment of compensation. There is a stipulation for fast track updating of land records and proportionate compensation entitlement to those who have acquired rights before the issue of notification under section 4 (1) of the Land Acquisition Act. The determination of compensation shall take into account the market value of the property including location-wise minimum price unit area fixed or to be fixed by the State Government and conversion of the land being acquired to the intended category of use. The option to receive 20% (stretchable to 50%) of the entitled compensation in the form of shares or debentures where the requiring body is a company authorized to issue them also exists. The policy incorporates restrictions on transfer of acquired land except for a public purpose and after obtaining the prior approval of the Government, reversion of land to the Government, if unutilized for a period five years, and distribution of 80% of the financial gain, if State transfers the acquired land to a “person” for a consideration. But these provisions [para 6.21, 6.23 (b) and (c), 6.24.1, 6.24.2, 6.24.3 of the Policy] have not been included in the Rehabilitation and Resettlement Bill, 2007. This may be because most of them have been included in the Land Acquisition (Amendment) Bill, 2007. Para 6.22 (a) of the Policy has, however, been included in both. It mandates that payment of full compensation and adequate progress on rehabilitation and resettlement shall precede physical displacement of the affected persons. The provision in the Policy that payment of conversion charges for change in land use by the requiring body shall not to be deducted from compensation award [Para 6.22 (d)] has not been included in either of the Bills.

Entitlements

The entitlements to the affected persons include those relating to land, cash amount, employment, infrastructure and amenities and those specific to Scheduled Tribes. These are briefly enumerated as follows:

Land related entitlements

This set of entitlements cover land, house and water rights.

- Free of cost house site for each nuclear family to the extent of the loss of area of the acquired house but not more than 250 sq.m. in rural and 150 sq.m. in urban areas (in urban areas, a house with a carpet area of 100 sq. m. may be provided in place of land).

- A house of 100 sq.m. carpet area in rural and 50 sq.m. in urban areas to those BPL displaced households who have no homestead or suitable one time financial assistance not less than what is admissible under any programme of the Government of India for construction of a house in lieu thereof.
- Agricultural land or cultivable wasteland with a maximum ceiling of one hectare (irrigated) or 2 hectares (un-irrigated) to the land owners who have lost their entire land in acquisition, if the Government land is available in the resettlement area. The benefit shall also be available to those who have, as a result of acquisition, been reduced to the status of marginal farmers.
- In case of irrigation or hydel projects, preference in allotment of land-for-land in the Command area of the project to the extent possible by way of pooling available land. Where land cannot be given in the command area or a family opts not to take land there, monetary compensation on replacement cost basis for the land lost or for purchase of suitable land elsewhere.
- Sites or apartments in lieu of land-for-land or employment within the development project, if acquisition of land or involuntary displacement takes place on account of land development projects.
- Transit and temporary accommodation pending rehabilitation scheme or plan in addition to other benefits due under the policy to those affected by land acquisition in cases of urgency.
- Fishing rights in the reservoirs if such rights were enjoyed in the affected area.

Monetary entitlements

This category of entitlement covers financial grants for various purposes identified in the Policy.

- Financial grant not less than Rs.10000/- for agricultural production, if the land allotted is degraded or waste land.
- Financial assistance not less than Rs.15000/- for construction of a cattle shed for those who have cattle.
- Financial help not less than Rs.10000/- to meet the expenditure on shifting of the family, building materials, belongings and cattle.

- Financial support not less than Rs.25000/- to each affected rural artisan, small trader or self-employed for construction of a working shed or shop.
- Rehabilitation aid equivalent to not less than 750 days of minimum agricultural wages or higher amount to those not provided land or employment with option to take shares or debentures up to 20% of the rehabilitation grant if the requiring body is a company authorized to issue them.
- Monthly subsistence allowance equivalent to 25 days of minimum agricultural wages for a period of one year from the date of displacement.
- Annuity policies for payment of a minimum of Rs.500/- p.m. as pension for life to vulnerable affected persons (disabled, destitute, orphans, widows, unmarried girls, abandoned women or persons above fifty years of age) who are not provided with alternative livelihood and not covered as part of the family.
- Ex-gratia payment not less than Rs.20000/- in addition to compensation or any other benefits under the scheme where linear acquisition relating to railways, highways, pipeline etc. is involved and other rehabilitation and resettlement benefits if the affected person is reduced to the status of a small or marginal farmer.
- The monetary benefits entitlement shall be indexed to the Consumer Price Index with the first day of April and shall be revised at suitable intervals.

Employment related entitlements

The benefits here relate to job, training for self-employment, skill development, contracts and wage labour.

- Preference to at least one person per nuclear family for providing employment in the project where land has been acquired on behalf of a requiring body subject to the availability of vacancies and suitability of the affected persons.
- Training of the affected persons to take up suitable jobs.
- Scholarships and other skill development opportunities to the eligible persons.
- Preference in the allotment of outsourced contracts, shops or other economic opportunities in or around the project site.

- For willing landless labourers, and unemployed affected persons preference in labour work in the construction phase.
- Training facilities for development of entrepreneurship, technical and professional skills for self-employment.

Infrastructure entitlements

This includes physical infrastructure, social amenities and essential services.

- The range of facilities and amenities to be provided would be specified but would include, among others, roads, pubic transport, drainage, sanitation, safe drinking water, community ponds, grazing land, land for fodder and social forestry, fair price shops, *panchayat ghars*, cooperative societies, post offices, seed-cum-fertilizer storage, irrigation, electricity, health centers, supplementary nutritional services for mother and children, schools, children's play ground, community centers, institutional arrangements for training, places of worship, burial/cremation grounds, security arrangements and land for traditional tribal institutions.
- Where the level of displacement is lower than the number specified in the definition of "affected area", the norms of entitlement would be specified by the Government but should include, among others, drinking water, electricity, schools, dispensaries and access to the resettlement sites.
- In case of relocation in an existing settlement area, the same infrastructure shall be extended to the host community.
- As far as possible, the entire community of a village shall be settled in a compact area so as not to disturb socio-cultural relations. SC families shall be settled in areas close to the villages. The resettlement colony shall form part of a *gram panchayat* or municipality.
- A defined area on the periphery of the project contiguous to the center of operation shall be earmarked for economic development by the requiring project agency for which a percentage of its net profit or where no such profit is declared, a minimum amount determined by the Government shall be earmarked each year.

Entitlements for STs

Considering the special problems faced by tribal families, additional benefits have been provided.

- Where displacement of ST families is involved, a tribal development plan shall be prepared laying down procedure for settlement of land rights due but not settled and restoring titles on alienated land, a programme of development of alternate fuel, fodder and non-timber forest produce on non-forest lands within a period of five years in cases where tribal communities are denied access to forests.
- Preference shall be given in allotment of land-for-land, if the Government land is available in the resettlement area.
- One-third of compensation amount due shall be paid as the first instalment at the outset and the rest at the time of taking over the possession of the land.
- Additional financial assistance equivalent to 500 days of minimum agricultural wages would also be provided for loss of customary rights or usages of forest produce.
- ST families shall be settled, as far as possible, in the same scheduled area in a compact block and shall get land free of cost for community or religious gatherings.
- ST families resettled out of their district, shall get 25% higher rehabilitation and resettlement benefits in monetary terms, fishing rights in a river, dam or reservoir if enjoyed earlier and shall get benefits of reservation in the resettlement area.

Grievance redressal arrangements

A three tier structure for grievance redressal has been laid down. This consists of the following institutional arrangements :

- A committee under the Chairmanship of the Administrator at the level of the project to monitor and review the progress of implementation and to carry out post-implementation social audits. It would have representation of women, SCs, STs, NGOs, lead bank, *panchayat/municipality*, MP(s), MLA(s), Land Acquisition Officer and the requiring body.
- A Standing Rehabilitation and Resettlement Committee at the district level under the Chairmanship of the District Collector to monitor and review the progress of the work.

Ombudsman appointed by the concerned Government for time bound disposal of the grievances who shall have the power to issue necessary

directions relating to the implementation of resettlement and rehabilitation policy.

- For inter-state projects, these institutional arrangements shall be established by the Central Government in consultation with the concerned State Governments.

Monitoring Mechanism

The monitoring set up has been institutionalized at three levels: It consists of structures to review progress of implementation and sharing of essential information.

- National Monitoring Committee chaired by the Secretary, Department of Land Resources to review and monitor the progress of resettlement and rehabilitation plans relating to all cases to which this policy applies. It shall be a body of officials consisting of secretaries of various Central Ministries.

The National Monitoring Committee shall be serviced by the National Monitoring Cell headed by a Joint Secretary who shall monitor and review the progress of the plans/schemes in respect of all cases to which this policy applies.

- **Internal oversight committee**

For each major project, a Committee for rehabilitation and resettlement will function in the Ministry/Department of the concerned Government.

- **External oversight agency**

National Rehabilitation Commission shall be set up by the Central Government for this purpose which shall have jurisdiction over all projects to which this Policy applies.

- **Transparency**

All information along with details on displacement, rehabilitation and resettlement shall be placed on the internet and shared with *Gram Sabhas* and *Panchayats* etc. by the project authorities.

Positive features of the Policy

The Policy is comprehensive in covering a wide range of dimensions of displacement. It is an improvement on the Policy, 2003 and the draft policy,

2006. It has attempted to address major points outlined in various documents. The positive features of the Policy relate to the following:

- Recognition of the negative impact of displacement and the need to view rehabilitation and resettlement of the affected persons as intrinsic to the development process.
- Commitment to minimize large scale displacement and avoid acquisition of irrigated agricultural land and to explore alternatives in pursuance thereof.
- Acceptance of the responsibility to provide adequate rehabilitation package which assures better standard of living and sustained income to the affected families.
- Wider coverage of the affected persons for rehabilitation and resettlement so as to include tenants, agricultural labourers, Traditional Forest Dwellers and those engaged in non-agricultural occupations.
- A mandatory social impact assessment of projects in a participatory mode along with environmental impact assessment, where applicable, and dovetailment of its findings in the rehabilitation and resettlement plan.
- Provision of a dedicated administrative arrangement for preparation and implementation of the rehabilitation and resettlement plan at the level of the project and its supervision at the district level.
- A transparent framework for preparation of the rehabilitation and resettlement plan in consultation with the affected persons besides firming up financial commitment to carry it out.
- Incorporation of benefits and entitlements covering land-for-land, employment, social amenities, physical infrastructure and cash assistance for various contingencies.
- Inclusion of components which cater to the needs of STs.
- A three-tier grievance redressal mechanism at the project, district and state level.
- A three-tier structure for monitoring and review of the progress of rehabilitation and resettlement plan.
- Participation of the affected persons at each major stage; transparency and sharing of essential information.

Critique of the Policy

Eminent Domain

The strongest criticism of the existing Land Acquisition Act 1894 is with regard to its application of Eminent Domain which deprives citizens of their land and property without their consent if it is required for a public purpose. The Eminent Domain does not give them a choice and considers compulsory acquisition as an integral part of State sovereignty. It does not require any dialogue with the holders of land with a view to arriving at a decision with their consent or even settling terms with them on which they would agree to part with their land. The Policy, 2007 retains the legal rationality of Eminent Domain and even refers to it (para 1.1) although the corresponding Bill omits a reference to it and so does the Land Acquisition (Amendment) Bill, 2007. The omission of reference to Eminent Domain, however, does not imply that the notion has been abandoned or diluted. All three documents view it as the legitimate locus of State power to take over privately owned land. The Government has, therefore, failed to utilize this opportunity to democratize and humanize the process of acquisition. It has ignored the need for effective participation of the affected persons in making a decision on the acquisition of land, leaving aside the symbolic opportunity given to them to raise objections under section 5A of the Land Acquisition Act, 1894, and disregarded the responsibility to discuss with them with a view to arriving at a consensual decision. By refusing to discard the colonial premise of State's absolute control over natural resources embedded in the Eminent Domain, the Policy has disappointed those who were looking forward to a liberal and compassionate transformation of the legal paradigm for acquisition of property and consequential perception of involuntary displacement.

Minimizing displacement

There are other concerns as well. The policy intends [para 2.1(a)] as the first in the list of objectives to minimize displacement and to promote, as far as possible, non-displacing or least displacing alternatives. The Bill also incorporates it in clause 9 (3) (i). But this intention is not reflected in the Land Acquisition (Amendment) Bill, 2007. The omission is significant and dilutes the seriousness of the intention. This is because such an exercise to be genuine and effective must be pursued prior to the issue of notification under section 4 (1) of the Land Acquisition Act, 1894 (hereinafter also referred as the Principal Act) or, at least, before the issue of declaration under section 6. Once the decision to acquire a specified area of land has been taken, there is no scope for exploring

alternatives. The level of displacement would become inevitable. Therefore, it was necessary to have built this provision into the Land Acquisition (Amendment) Bill, 2007 so as to be meaningful and the responsibility for exploring this option should have been entrusted to the land acquisition authority (the Collector). However, the Policy and the Bill have assigned this task to the Administrator entrusted with the rehabilitation and resettlement. There is also no requirement that the Administrator would complete this assignment and report to the Collector (land acquisition authority) prior to the issue of notification under section 4 (1) of the Principal Act in respect of the land under reference or, in any case, well before the Collector sends his recommendation to the Government for approval before the issue of declaration under section 6 of the Act. Such a requirement would have enabled the proposal of acquisition received from the requiring agency to be appropriately modified in advance of the issuance of declaration. The absence of such a provision in the Land Acquisition (Amendment) Bill, 2007 throws serious doubts on the sincerity of the Government to pursue this objective.

For other reasons too, the provision does not hold out any hope that a genuine effort would be made to explore such options. This skepticism is borne out by two limitations to such an effort emerging from the Policy. One is the caveat inserted in the construction of this provision. The need to promote non-displacing or least displacing alternatives is not mandatory but hedged by words "as far as possible". The formulation, thus, provides an escape route. Also, the promotion of non-displacing or least displacing alternatives is also not linked to the need for minimizing displacement but independent of it. It should have appropriately come first and minimization of displacement should have emerged as a consequence of it. The displacement is taken for granted. The provision is retrogressive when compared with 2003 Policy which had not prescribed such a limitation. Even a legal challenge to the decision so arrived at would be unsustainable with such a twisted construction of the provision. But a more serious limitation in the Policy and the Bill is that no method has been prescribed to undertake this exercise. In the absence of a procedure or a mode of exploring /promoting alternatives, it would entirely depend on the bureaucratic judgment, the seriousness of which would be difficult to accept. It would turn out to be a facile exercise. The provision contained in para 5.5 (i) of the Policy and clause 10 (3) (i) of the Bill amply sustains this apprehension. It confers this power in the Administrator for resettlement and rehabilitation and, worse still, prescribes that this exercise would be undertaken in consultation with the requiring body. There is no transparency in the process and the affected persons are not considered worthy

of consultation on the issue. It is strange that the very people who have a stake in avoiding / minimizing displacement are ignored purposely in this effort. On the other hand, the very agency (requiring body) which would have no interest in exploring non-displacing and least displacing alternatives and would be keen to acquire maximum land has been singled out for consultation. Is any proof needed for an inbuilt bias in favour of acquisition? This bias is doubly reinforced by the provision contained in para 5.5 (ii) of the Policy and clause 10 (3) (ii) of the Bill which mandates the Administrator to hold consultation with the affected families while preparing the rehabilitation and resettlement scheme/plan. The Policy and the Bill consider consultation with the affected families necessary for working out the scheme of resettlement and rehabilitation but not for minimizing displacement and identification of non-displacing or least displacing alternatives. The interest of the requiring agency thus overrides those of the affected persons. This is further buttressed by Chapters IV and V of the Policy and Chapters II and III of the Bill. Chapter IV of the Policy and Chapter II of the Bill mandate social impact assessment, prescribe scrutiny of its report by an independent multi-disciplinary group but do not include in the ambit of scrutiny findings on minimizing displacement. Chapter V of the Policy and chapter III of the Bill lay down elaborate procedure for preparation and approval of the Resettlement and Rehabilitation Plan but nowhere incorporate the findings of the enquiry into non-displacing /least displacing alternatives in the draft scheme prepared among the long list of particulars laid down for it. This appears intentional in order that any discussion on this aspect in the process of consultation with people through open public hearing on the draft scheme is eliminated. It is evident that the affected persons cannot be trusted to discuss this issue which is the main source of their problem while they are enabled to participate in the decision on scheme of their rehabilitation and resettlement. The Government have also foreclosed any possibility of legal challenge to the issue of non-displacing and least displacing alternatives to land acquisition because the Land Acquisition (Amendment) Bill, 2007 does not incorporate this requirement, where it should have really belonged. It has, thus, been ensured that there is no roadblock to the proposal of acquisition or judicial scrutiny of this issue in order that the land acquisition process is smoothened. The participation of people in the policy process, therefore, turns out to be selective whose contours are pre-determined by the State.

Applicability of the Policy

The policy applies to all projects where involuntary displacement takes place (para 1.3). The Bill lays down that it shall apply to the persons affected by land

acquisition or involuntary displacement due to any other reason (clause 2). The Land Acquisition (Amendment) Bill, 2007 also proposes that the provisions relating to rehabilitation and resettlement shall apply in respect of acquisition of land by the Government (clause 4). This implies that the persons displaced by companies or private agencies for development projects through procurement of land directly from the owners would not get the benefit of rehabilitation and resettlement since their displacement is on account of “voluntary” nature of sale and not a forced one as in the case of compulsory acquisition by the Government. It is conveniently assumed that the land transactions between a corporate agency and the land owner is on a “willing buyer - willing seller basis” and land owners are in no compulsion to do so if the terms of transactions do not satisfy them. This assumption is naïve and disregards the social reality of such transactions taking place in pursuance of the economic agenda of the Government. It is common knowledge that the poorer sections of the peasantry are resisting land acquisition whether by the Government or by companies. Various pressures are being exerted by companies on them to sell their land. It is difficult for them to withstand these pressures, given the resources, clout and muscle power mobilized by companies and covert assistance they get from the officials. Their morale would even be lower, if some sections of land owners have agreed to sell their land. The provision in the Land Acquisition (Amendment) Act, 2007 that the Government would acquire 30% of the land where 70% of the land has already been procured by the private agency would further exert the required pressure on those resisting to give in. Besides, the land transactions in market can never be voluntary where the parties involved in negotiations are unequal in status, knowledge, resources and bargaining power. Additionally, such transactions would completely ignore tenants, share croppers, agricultural labourers etc. who would lose access to land and livelihood but in turn get nothing when the owner sells land to the buyer. The Land Acquisition (Amendment) Bill, 2007 while externalizing the process of acquisition to market transactions to the extent of 70% has not enjoined the purchasers of such land to undertake rehabilitation and resettlement of persons displaced from such transactions. For poorer persons who have to sell their land under these circumstances and for others who were dependent on that land for livelihood, the displacement caused on this account is “involuntary” and deserves to be mitigated by mandatory rehabilitation and resettlement, more so because such procurement by private agencies is in pursuance of the economic agenda of the Government. But the existing framework of the Policy and the Bill does not extend to the affected persons of this category. This causes injustice to the affected poorer land owners and others subsisting on the land. The Policy and the Bill should, therefore, specifically address this issue.

Urban evictions

It is accepted that a National Policy on Rehabilitation and Resettlement must apply to all projects where involuntary displacement takes place (para 1.3). The principles of the Policy may also apply to rehabilitation and resettlement of persons involuntarily displaced permanently due to any other reason (para 1.7). However, in the very first para 1.1 of the Policy, the involuntary displacement is linked to the acquisition of private property. The corresponding Bill also states in clause 2 that its provisions shall apply to persons affected by land acquisition under any law in force but also extends it to involuntary displacement of people due to any other reason. Large scale eviction of persons living in urban slums is a recurring feature of cities for development of infrastructure, beautification and commercial utilization of land on which the affected persons are settled. The displacement involved in their case is involuntary and should ordinarily qualify for extension of benefits of the law and policy to the persons affected since the expression “any other reason” has not been defined. However, the contents of the two documents make it abundantly clear that they confine to the displacement caused by the acquisition of land. The unfortunate part of the urban displacement is that the affected persons have no land and the land on which they have constructed a dwelling is Government land. No right or interest in that land therefore, accrues to them. The Government considers such occupation as encroachment which is liable to be removed any time without even observing any legal procedure. It has armed itself with appropriate legal powers to resort to this action. The persons affected are among the poorest sections of the population, and, in many cases, include those who have been displaced from their rural settlements. The condition of those displaced from urban areas are more pathetic than their rural counterparts since more often their huts are bulldozed without prior warning, thereby damaging and destroying their meager belongings and no alternative site is provided to them for resettlement. Yet, the Policy and the Law fail to deal with their displacement. They are forced to find some vacant place where they can temporarily shift to until they are evicted again. Over the years, the Government has become increasingly insensitive to their plight as it totally disowns any obligation or responsibility to resettle them much less to compensate them for the loss caused by forced eviction. The apex Court has reinforced this attitude. The victims of this involuntary displacement suffer from double whammy – they are forcibly and summarily evicted without relocation. They also are stigmatized as “encroachers” and “illegal occupants” who do not deserve to get any justice. They are thus victims of class bias as well. Both the Policy and the law are, therefore, embedded in a property and legality centric paradigm of displacement and completely close their eyes to other forms of displacement which are not rooted in ownership of property and legality of rights of the persons affected by displacement. This is a serious flaw in the Policy because

urban displacement is integrally linked to the new pattern of urbanization and economic growth and is directly relatable to displacement in rural areas. Its incidence is progressively increasing. The displacement of such a large mass of people cannot just be wished away by the National Policy and the Bill reflecting it.

Definitions

The chapter on “Definitions” in the Policy and the Bill is important as it includes new expressions, widens the ambit of understanding currently associated with certain expressions in earlier documents and adds clarity to the meaning given to some others. For example, the “affected family” has been defined to include tenure holder, tenant, occupier, agricultural or non-agricultural labour, landless person, artisan, trader besides the owner of the property. This has enlarged the ambit of coverage for rehabilitation and resettlement. But these categories stand excluded for payment of compensation as the Land Acquisition (Amendment) Bill, 2007 does not include them in the meaning of the expression “person interested”. The inequity in the treatment of displaced persons for purposes of compensation and rehabilitation and resettlement has, therefore, not been addressed. The two documents continue to maintain segmented approach with regard to the terms used.

The definition of the term “occupiers” in the Policy (and the Bill) refers to the members of the Scheduled Tribes in possession of the forest land prior to the 13 December 2005 reflecting the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The Land Acquisition (Amendment) Bill, 2007 has also included such tribals and other traditional forest dwellers, who have lost any traditional rights recognized under the above Act in the definition of “person interested” which would entitle them to compensation for the loss of rights. But the definition excludes occupants whether STs or others of the Government/public/*panchayat* land without a title. There are a number of cases where persons belonging to the SCs/STs/OBCs and other landless poor have occupied/reclaimed the Government/public/wasteland in the hope of getting formal recognition. The SC/ST occupants are entitled to regularization of such occupancies in specified situations in terms of the prevailing policy of the State Governments. These occupants of the Government/public/*panchayat* land would, hopefully, get the benefit of rehabilitation and resettlement. The definition of the “affected family” in the Policy and the Bill would cover them as their primary place of residence and source of livelihood is affected by displacement caused by the acquisition of land. But they would fail to get any compensation because the Land Acquisition (Amendment) Bill, 2007 (clause-5) shuts them out from the expression “person

interested". While the loss of livelihood and shelter gets recognized as a valid principle for rehabilitation and resettlement, the scale of benefits admissible to those affected by this loss would be very different from those losing land. The dichotomy between the two continues to be maintained.

The definition of expressions "small farmer", "marginal farmer" has taken note of the differential impact of land acquisition on different categories of farmers in terms of the area of land held by them among the land losers to effect equity in the distribution of land. The inclusion of terms "BPL family" and "non-agricultural labourer" in the chapter on Definitions (para 3, chapter III of the Policy and clause 3 of chapter I of the Bill) is intended to identify groups on the basis of income and occupation for the purpose of conferring specific benefits. The clarity introduced in the explanation of "agricultural land" brings out its varied uses associated with different occupational activities. This has been done to correctly determine the area of agricultural land affected by acquisition for the purpose of allocation of alternative land and the facility of a cattle-shed etc. The inclusion of grazing land in this definition recognizes its importance for agriculturists. But the common property resources have not been defined. This omission has adverse implications since these resources provide a variety of benefits to the people. Village common lands are used for grazing by the entire community and particularly by landless persons. People using them cannot seek its replacement in the resettlement site or compensation for its loss if such resources are not distinctly recognized in the definition of land or as a separate category of asset. Though grazing land is included in the list of amenities to be provided, common property resources are used for obtaining multiple benefits and not merely for grazing. The Land Acquisition (Amendment) Bill, 2007 also fails to include common property resources in the definition of land. Users of these resources are not recognized as "persons interested" since the use is based on customary practices. Therefore, the benefit of compensation for its loss cannot be claimed by them. The chapter on Definitions has also ignored the existence of "community" in the village which manages common property resources and regulates its use. Its omission has the implication of destroying the age-old tradition of the collective decision making on issues of common interest and articulation of collective rights. There is a pronounced bias towards individualization of entitlements and resources.

Application to the area

There is considerable ambiguity on whether the policy applies to all projects where involuntary displacement takes place. Para 1.3 of the policy does create an impression that the National Policy must apply to all such projects. Clause

2 of the Bill categorically states that it shall apply to all those affected by land acquisition under the Land Acquisition Act, 1894 or any other Central and State law or involuntary displacement due to any other reason. However, when the definition of "affected areas" (clause 2 (c) of the Bill and para 3.1 (c) of the Policy) is read with clause 20 (1) of the Bill and para 6.1 of the Policy, its application is restricted to projects which involve involuntary 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, DDP blocks or areas mentioned in the Schedule V or Schedule VI to the Constitution. The "affected area" notified as per this norm would form the basis for preparation of the Rehabilitation and Resettlement Plan. There is no clarity on what is envisaged for a project where involuntary displacement is on a scale lower than the above norm. Would the same rehabilitation and resettlement plan be prepared for them? Neither the Policy nor the Bill provide a positive indication that it would be so. The only reference to a differential treatment on the basis of this norm is in respect of three matters: 1) Appointment of an Administrator, 2) Social Impact Assessment and 3) Range of entitlements in respect of infrastructure facilities. Para 6.2 of the Policy and clause 9.1 of the Bill lay down that for such areas, if the Government decides not to appoint an Administrator, it may provide alternative arrangements. Similarly, para 4.1 of the Policy and clause 4.1 of the Bill exclude such areas for social impact assessment. On the issue of infrastructural facilities, the Policy and the Bill clearly state that the scale of basic infrastructural amenities at the resettlement site (s) shall be different (by implication lower) though the desirability of essentials like water, electricity, schools and dispensaries has been stressed. But the actual scale would be specified by the "Appropriate Government" (para 7.22.2 of the Policy and clause 30 (3) of the Bill). This implies that where displacement affects a lesser number of people in the two types of areas or is not *en masse*, the entire range of benefits proposed in the scheme would not accrue to them. Even if the differentiation has been created only for scaling down infrastructure, appointment of an Administrator and carrying out social impact assessment, the rationale for fixing the numerical benchmark of 400 and 200 as the level of involuntary displacement in the two geographical areas is not clear. It is arbitrary and discriminatory and creates an artificial division between the displaced persons on the basis of numerical parameters. The requirements of rehabilitation and resettlement are not reduced because the number of persons affected is smaller. If the import of the Policy and the Bill is to restrict the application of the entire gamut of entitlements only to the size of projects indicated, it is a very serious lacunae, negates the very objectives defined in the two documents and is highly questionable. If this is not the intention, the dissonance between different provisions needs to be removed.

Neglect of earlier displacement

The Policy has been notified on the 31st October 2007. It, therefore, comes into effect from the 1st November 2007. The Bill would apply only when it becomes an Act and notified by the Central Government. This would happen only after it has been passed by the Parliament and receives the Presidential assent. It is evident that the Policy would apply to projects taken up after the date on which it has come into effect as there is no reference in it to displacement occurring prior to this date. In this view of the matter, the distress of millions of persons displaced by numerous projects earlier is not addressed. It has been recognized by the Government that nearly 3/4th of such displaced persons have not been rehabilitated (Fernandez and Paranjpye, 1997). There is no moral justification, therefore, of excluding these people from the benefits of the policy. The Policy and the Bill, therefore, end up discriminating between those who were displaced earlier and those displaced after the policy has come into effect. The Government cannot abdicate its responsibility simply because the suffering of displaced persons predates the declaration of the policy. The identification of such persons is not difficult. Their exclusion can only be considered intentional with a view to escaping the financial responsibility involved in their rehabilitation and resettlement.

Coverage of persons

Certain expressions used in the Policy and the Bill lack clarity. One such relates to persons to whom the Policy would be applicable. The expression “affected family” in the Policy and the Bill has a bearing on this question [para 3.1 (b) of the Policy and clause 3 (b) of the Bill]. This applies to persons covered by any one of the three categories constituting the “affected family” each defined by a different norm. The category (i) is wide enough to cover any family whose primary place of residence or property or source of livelihood is adversely affected by land acquisition or any other reason. The category (ii) is restricted to those losing land or property only. It covers tenure holder, tenant, lessee, owner of other property who have been involuntarily displaced from his land or property on account of land acquisition. The category (iii) is limited by condition of residence in the affected area and deprivation of livelihood. It includes agricultural or non-agricultural labourer, landless person, rural artisan, small trader or self-employed person who has been residing or engaged in his activities for a period of not less than three years (In the Bill, it is five years) before the date of declaration of the “affected area” and who has been deprived of his livelihood or alienated from the main source of business occupation, trade etc. by land acquisition or involuntary displacement for any other reason.

Of the three, (i) is wide enough to cover all those who lose their property, residence and livelihood irrespective of whether they have been residing in the affected area. In the second category, only those who have been displaced from such land or property are covered. The third category of persons are reckoned only with reference to a continuous residence of three years in the “affected area” which has been defined (para 3.1 (c) of the Policy and clause 3 (b) (iii) of the Bill) as an area notified as such under para 6.1 of the Policy and clause 20 (1) of the Bill. As per this provision, the notification of the “affected area” would be issued only where there is involuntary displacement of 400 or more families *en masse* in plain areas or 200 or more families *en masse* in tribal, hilly, DDP, or schedule V or VI areas due to acquisition of land or any other reason. This implies that the affected family in category (iii) outside the notified affected area would not be covered because the Resettlement and Rehabilitation Plan would only be prepared in respect of the affected area. This is further corroborated by para 7.1 of the Policy and clause 34 of the Bill. The anomaly arises because category (i) of the definition of the “affected family” has not been qualified with reference to the “affected area” while category (ii) of the definition applies only to those who lose land or property on account of acquisition of land in the affected area irrespective of where they reside. But the third category would be covered only if they have been residing for a specified period in the affected area. The issue lacking in clarity is whether those losing their primary source of livelihood/vocation even though not residing in the affected area would get the benefit of rehabilitation and resettlement. There is dissonance between category (i) and category (iii). The second issue is: Can a tenant whose tenancy is not recorded in the land records be said to have been displaced from his land due to acquisition of land in the affected area? Alternatively, can he be counted as one who has lost his source of livelihood if he is not residing in the area so as to claim the benefit of rehabilitation and resettlement?

Para 6.21 of the Policy also presents an anomalous situation. There is no corresponding provision in the Rehabilitation and Resettlement Bill, 2007. As per this provision, fast track updating of land records shall be undertaken concurrently with the land acquisition proceedings. Those who have acquired any right prior to the date of issue of notification under section 4 (1) of the Land Acquisition Act 1894 as per the updated land records shall have right to proportionate compensation. In the Land Acquisition (Amendment) Bill, 2007, Clause 9 makes a provision for the Collector to undertake and complete the exercise of updating land records, classification of land and its tenure, survey and standardization of land and property value. This process shall be initiated

after issuance of notice under section 4 (1) and accomplished before issue of declaration under section 6 of the Land Acquisition Act, 1894. This implies that rights which are recognized during the course of this exercise shall be taken into account for award of compensation as per law. This provision, however, comes into conflict with the provision made in para 6.21 of the policy because the process of updating itself will lead to recognition of new rights not yet recognized and recorded. The process of updating will only start after issuance of notification under section 4 (1). If the provision in the Policy were to be followed, the updating of land records would give no benefit to those who could not acquire such a right before issue of this notification. The ground reality is that there are a number of persons whose "right" bearing claim has not been decided by the competent revenue authority due to inefficiency or willful neglect or any other reason even though they may have a valid case. Though the provision in the Land Acquisition (Amendment) Bill, 2007, when notified, would take precedence over the provision contained in para 6.21 of the Policy, it may take time for the Bill to become an Act. During this interregnum the anomaly is likely to create confusion and may adversely affect persons who acquire rights during the course of updating of land records. They may fail to get compensation. The disharmony in the two documents, therefore, needs to be removed.

Secondary displacement

The definition of the "affected family" in the Policy covers those whose primary place of residence or other property or source of livelihood is adversely affected by acquisition of land or involuntary displacement for any other reason. It includes tenants, share croppers, agricultural/non-agricultural labourers, artisans, traders, self-employed etc. This definition is also incorporated in the Bill. The focus of the definition is on those who bear the brunt of land acquisition through direct and immediate physical displacement. But, when a land is acquired for a project, a whole lot of indirect and secondary displacement in the area not covered by land acquisition takes place. This is particularly severe in tribal areas. The displacement occurs as a result of influx of outsiders into the area and unleashing of forces which create pressure on natural and human resources, infrastructure and social amenities in the area surrounding the project. This pressure leads to alienation of land, loss of access to common property resources, erosion of livelihood opportunities, conflicts in access to social facilities, disintegration of the community, and adverse social and cultural developments. These consequences, at times, force the affected persons to leave the area as their ability to cope with the new environment and survive with

dignity gets progressively diminished. Some of this secondary displacement can be anticipated while some may be unanticipated. Neither the Policy nor the Bill take cognizance of this dimension and bring it in the realm of rehabilitation and resettlement. The secondary displacement that occurs is not "voluntary" as it is entirely produced by conditions resulting from the project over which the affected persons have no control. The victims of this displacement get neither protective assistance to prevent the adverse impact experienced by them nor affirmative intervention in terms of rebuilding their life and environment in the new situation. This is a lacunae in the Policy and the Bill which needs to be removed by expanding the ambit of their coverage to this dimension of displacement radiating from the project.

Inequity in treatment

In the context of discourse in this paper, involuntary displacement is an inclusive phenomenon. It has impact on the lives of all those residing in the area and displaced due to land acquisition or any other reason. Logic and equity demand that they be treated equally. But the Rehabilitation and Resettlement policies and practices in the past have made an invidious distinction among them based on the ownership of land. The major benefits of policies go to those who lose land. This property-centric approach to rehabilitation and resettlement is, in fact, inherited from the colonial obsession with it which is so pronouncedly reflected in the Land Acquisition Act, 1894. Under the land acquisition laws, compensation entitlement is reserved exclusively for the loss of property (ownership) only. The loss of livelihood and other benefits is externalized and bereft of any mechanism for compensation. The people so affected are expected to fend for themselves. They become invisible in the eyes of law and, therefore, in the vision of policy makers. The Land Acquisition (Amendment) Bill, 2007 continues to retain this bias. It fails to make a bold departure from this class bias despite the "socialistic" orientation of our Constitution. The Policy and the Bill on Rehabilitation and Resettlement also persist with this distinction. They grade the entitlements of individual benefits linked to ownership of property rather than bridge the iniquitous divide. Leaving aside provision of basic amenities in the resettlement colony which are in the nature of collective entitlements, individual benefits are virtually closed to them. The provision relating to allotment of agriculture land is applicable to those losing land. Others are only entitled to house sites. The benefit of organized employment to the extent incorporated would evidently be extended to the erstwhile land owners. The facilities for scholarship and skill development are selective entitlements and would be based on eligibility norm to be specified by the "appropriate Government". As per the entrenched practice, loss of land would determine

who would get this privilege. Though training is extended to all the affected persons, it is not clear whether agricultural labourers would ever get an opportunity given the limited supply of facilities and the norm fixed for prioritization. Those without property would only get opportunities which erstwhile property holders leave out or which do not attract them. The only provision specifying entitlement to landless persons (to which category, the agricultural labourers and others losing livelihood would belong) is with regard to outsourced contracts, shops or economic opportunities in and around the project and wage labour opportunities. In respect of outsourced contracts, shops etc. land losers would obviously command priority. Next in order would be those who were engaged in trade and business activity before displacement. They are the ones most likely to mobilize capital for this purpose. Only when the land losers have been provided with alternative land or regular employment, would they leave the available opportunities for others to seek. The sole entitlement admissible to landless persons would be "preference" to work as labourer in the project during the construction phase. It is also not clear whether even provision contained in para 7.14 of the Policy and clause 42 of the Bill regarding 750 days of minimum wages as rehabilitation grant would apply to those losing livelihood since it is being restricted to those who have not been provided with agricultural land or employment and this assured benefit has been given to the land losers. They may not, therefore, be entitled to it. The benefit available to them would be restricted to 25 days of agricultural wages for a period of one year since this provision specifically refers to all displaced families. The livelihood losers, therefore, emerge as the second grade displaced persons and condemned to an inferior status even in a socially engineered new colony at the resettlement site.

Social impact assessment

The Policy (para 4.2.2) and the Bill [clause 4 (2)] specify aspects to be covered for social impact assessment. The focus of the exercise seems to be entirely on the impact of the project on infrastructure and institutions and ignores the impact on people, their economic, social and cultural conditions such as the access to productive resources, employment, income generating opportunities, health status, emotional equilibrium, continuity of social networks, relationship in and the stability of the family, position of women, future of children etc. The mode of carrying out this assessment and the selection of institutions entrusted with this task have also not been spelt out. These aspects would be later specified by the Government. They have implications for the quality of social impact assessment and the confidence it inspires in the affected persons about the fairness of its outcome.

The provision has also to be read with para 4.7 of the Policy and the clause 8 of the Bill which exclude the requirements of land for Ministry of Defence for national security involving emergency acquisition of a minimum area. While this kind of exemption for small acquisition of land when confronted with sudden and unanticipated external conflict or natural disasters is understandable, the apprehension is that the provision maybe stretched to cover most requirements of defence or national security. This anxiety arises because defence establishments constitute the largest instruments of displacement of tribals and instances exist where local people have agitated against land required for defence, as for example, in Jharkhand for a firing range. The institutional safeguards for protecting the interests of the affected families in such cases shall be prescribed later. This leaves the task to the requiring body which may not be adequately sensitive to the adverse impact of their project on the people and responsive to their views in the matter.

The utility of this provision has been considerably diminished by restricting the exercise to cases where physical displacement of specified numerical dimensions is involved. This would exclude a large number of projects from this obligation, particularly those, which are taken up in sparsely populated tribal areas. This numerical benchmark is irrational and arbitrary and detracts from the utility of the provision. The social impact of a project would not fail to manifest if the persons affected are smaller in number or scattered over a large area. By laying down such a norm, the intention appears to be to avoid the legal and financial responsibility of accepting its findings and taking corrective measures. The possibility that the total requirement of land for a project may be split into smaller size with extension/expansion later in phases so as to avoid this exercise also cannot be ruled out. There is also the added apprehension that the cases of land acquisition under urgency may also escape this mandatory requirement. The logic similar to the one advanced in respect of projects for national security may be invoked for getting away from the commitment in these cases. The exemption provides a convenient escape route for expanding the ambit of its application. This apprehension, together with the numerical benchmark of involuntary displacement, may enable a larger number of projects to ignore the imperative of Social Impact Assessment.

Compensation

The Policy, 2007 also contains some provisions relating to compensation (paras 6.22, 6.23) and utilization of acquired land (paras 6.24 and 6.25) which are not included in the Bill, 2007. This is because these provisions strictly relate to the domain of land acquisition rather than rehabilitation and resettlement. The

Land Acquisition (Amendment) Bill, 2007 duly reflects them. The only point not included is para 6.22 (d) of the Policy which says that the applicable conversion charges for change in land use category shall be paid by the requiring body and no reduction shall be made in the compensation award on this account. The rationale for placing this provision in the Policy is not clear at all because people who are losing land are not seeking change in land use. It is the land requiring agency which seeks its conversion. The provision has been inserted perhaps in the context of another provision contained in para 6.22 (c) that conversion to the intended category of use of land being acquired shall be taken into account for determining the award. If this is so, this provision should have been included in the Land Acquisition (Amendment) Bill, 2007 as a sub-clause after clause 3 (b). This has not been done. The Rehabilitation and Resettlement Bill, 2007 too does not incorporate it. This is a slip which needs to be corrected.

Assessment of the market value

With regard to provisions relating to compensation in the policy, the Principal Act already lays down that the determination of compensation shall be based on the market value of land though the method of such determination has not been specified. The provision in the Policy (2007) adds two factors to be taken into account for such determination which are at variance with the corresponding provision in the Land Acquisition (Amendment) Bill, 2007. One is the location-wise minimum price per unit area fixed by the State Government and the other is the intended category of use of land. As regards the first, the Land Acquisition (Amendment) Bill, 2007 provides a different formulation. It has laid down three options. Of these, only that option has to be adopted which gives a higher market value. It has, thus, revised the norm contained in the Policy. These three options are: 1) minimum land value if specified in the Indian Stamp Act for registration of sale deeds; 2) average of sale price for similar type of land in the village or vicinity; 3) average of sale price ascertained from prices paid for not less than 50% of land already purchased for the project where higher price has been paid for purchase of land acquired for planned development from public funds and was subsequently disposed of on sale or lease. Only where minimum land value for the area is not fixed under 1) above, the State Government will specify the floor price per unit of area based on average higher price paid for similar land situated in the adjoining area ascertained from around 50% of sale deeds. Thus, the provision in the Policy in this regard would become irrelevant once the Land Acquisition (Amendment) Bill, 2007 is endorsed by the Parliament and comes into effect. In any case, the purport of

this provision is to firm up the market value by cross verification through a transparent and objective criteria with a bias for choosing a higher price from the information gathered. It does not change the framework of compensation determination.

With regard to the second provision about the intended category of use for determining award also, there is a slight variation in the provision made in the Policy and the Land Acquisition (Amendment) Bill, 2007. The latter specifies that the value of the land of the intended category in the adjoining areas or vicinity shall be taken into account while the Policy omits this mode of ascertainment. Leaving aside this minor difference, the provision in both is designed to take into account the appreciated value of land due to change in land use from agriculture to urban, industrial, commercial, as the case may be, in order that its benefit accrues to the land losers. Since land revenue codes in the States contain provisions to levy certain charges for converting agricultural land to urban/industrial/commercial use and the intended use of the land to be acquired is known in advance, the new method would take that into account for determination of compensation. This may enable the land losers to get enhanced/higher compensation since, till now, the "agricultural" nature of land formed the basis for choosing sale transactions in land for arriving at an average price.

But neither of the two additions in the Policy and the Land Acquisition (Amendment) Bill, 2007 addresses the concerns of the affected families. They do not concede the basic demand of the affected persons that they should get "replacement value" of land which implies an amount with which they can purchase alternative land of the same potential close to the resettlement site. The Policy (2007) and the Land Acquisition (Amendment) Bill, 2007 continue to be fixated on the "market value" for determination of compensation which fails to provide sufficient amount for obtaining alternative land. Strangely, the principle of "replacement value" has been conceded in an isolated case where the Government fails to provide land for the land lost in the command area or the family opts not to take land there in case of irrigation and hydel projects (para 7.4.2 of the Policy and proviso to clause 36 (2) of the Bill, 2007). This tends to discriminate between land losers on the basis of the category of "public purpose" for which their land was acquired. This invidious distinction between different categories of land losers is as iniquitous as it is indefensible. Since the provisions contained in the Land Acquisition (Amendment) Bill, 2007 would fail to neutralize multiple distortions in market transactions, it would require an altogether different basis for determination of compensation than the dogged reliance on "market value" fundamentalism to render justice to the displaced land losers. Land markets have not developed in India and even developed markets suffer from distortions and imperfections. Besides, there

are restrictions on transfer of land in some cases. Therefore, using a market driven norm for compensation assessment is flawed in principle and practice both.

The intended use category of land in advance is also a very poor determinant of the appreciation in the value which the acquired land achieves through its activities. The appreciated value of the intended use of land cannot be realistically assessed in "advance" of the use. Such an assessment would either be based on the norms for fixation of conversion charges paid for such use or from the land transactions in the adjoining areas or vicinity at the time of making the award. Both methods would be inadequate. It can only be reasonably assessed when the project is completed, activities have started as per projection and consequential development of land takes place influencing the growth of the local economy. The appreciation of land is a dynamic factor. For the purpose of determination of compensation on this basis, it would require fixing a minimum period for intended land use to emerge and mature before the appreciated value is taken into account. The provisions in the Policy (2007) and the Land Acquisition (Amendment) Bill, 2007 while seeming to be liberal to land losers, let the requiring body off cheaply by assessing the appreciated value from intended land use at the time of preparing the award which would be decidedly low and fail to realistically reflect its appreciation. In the suggested arrangement, the requiring body would continue to be the beneficiary of much of the appreciated value.

Compensation payment

The Policy also provides option for land losers to take a part of compensation amount in the form of shares/debentures where requiring body is a company authorized to issue them. The Land Acquisition (Amendment) Bill, 2007 makes a similar provision. The option provided has little relevance for most of the peasants who are small or marginal farmers not socialized in the practice of speculative investment or conversant with corporate governance. They would have little inclination to dabble in this investment game much less the competence to take any advantage of it. The provision has little to enthrall them. They would rather have the cash and get on with their lives. What would have seriously interested them as an option is the provision for taking their land on lease rather than outright transfer so that they could retain the ownership of land and get regular lease rent as income for subsistence. This arrangement would have created their genuine stake in the project with the prospect of periodical increase in lease rent. At the time of renewal of the lease, the enhancement of lease premium would have given them the benefit of appreciation in the value of their land. This alternative was seriously advocated

particularly in the case of tribal land losers by the Inter-sectoral Group on Tribal Development of the Planning Commission (Planning Commission, 2006) as also some civil society groups. But neither the Policy nor the Land Acquisition (Amendment) Bill, 2007 have incorporated it. It is not difficult to guess why the agencies requiring land and the decision makers would have rejected this option. These interest groups wish to have conclusive transaction where owners sever all links with their land. This enables them to appropriate the benefits of appreciation of land exclusively and to have total control over its use for value maximization.

Unutilized land

Three provisions have been made in the Policy and the Land Acquisition (Amendment) Bill, 2007 regarding the acquired land which has not been utilized by the project agency to which it was transferred. Of the three, one lays down that the land acquired for a project cannot be transferred to any other purpose except a public purpose and this decision should be taken after obtaining the Government approval. This contingency usually arises because requiring agencies inflate their demand and the Government endorses it for acquisition without a rigorous scrutiny. The requiring agencies tend to transfer such unutilized land for purposes which are not always public in nature. The restriction against such a transfer while preventing misuse of the unutilized land fails to address the issue of inflated demand for land placed by the project agencies without adequate forethought and the absence of an expert scrutiny of their requirement at the level of the Government before initiating land acquisition proceedings.

Neither the Policy nor the two Bills make any intervention in this regard. The absence of a provision to address this deficiency has resulted in distortions such as widely varying quantum of land sought for a similar project (in size and purpose) in different locations, quantum of the land acquired much in excess of the need and the lavish use of land the acquired for township, housing of officials and for purposes not strictly related to the project. The low rates of compensation paid to the land losers and the lack of concern for them in general encourage this tendency. The land acquiring agency (the Collector) does not have the expertise to scrutinize the demand of requiring agencies for different types of public purpose. The affected persons would not have the required information or competence to raise objections against the quantum of land sought for different categories of projects under section 5A of the Principal Act. Once the land is acquired, no social audit takes place of how rationally, efficiently and ethically the acquired land has been utilized. Currently, no

objective norms exist nor are they envisaged for fixing a minimum level of requirement of land for different types of projects and their varying sizes and capacities. The lack of provision for an expert scrutiny prior to the initiation of acquisition proceedings and the dissemination of its findings to the affected persons to enable them to raise objections under section 5A of the Principal Act would continue to encourage the existing practice of excessive acquisition. The absence of norms for utilization of the acquired land for its equitable use particularly relating to township, housing, social amenities etc. would fail to restrain unethical practices of project agencies.

Besides, the excessive acquisition of land not justified by rational and efficient use as well as its proposed transfer to another public purpose different from the one declared at the time of acquisition are a misuse of law and must, therefore, carry some punitive consequences. The Policy and the Land Acquisition (Amendment) Bill, 2007 merely shift the decision on alternative use from the project agency to the Government through the mechanism of prior approval. Strictly speaking, if the acquired land or a portion of it is not utilized for the public purpose declared at the time of acquisition, it should revert to the Government and thereafter be returned to the land losers without any charge since the acquisition itself (to that extent) becomes untenable. If the Government had wished to avoid this contingency and opt for a quicker utilization of land elsewhere, the least it should have done was to provide for additional financial compensation to the erstwhile land owners. In other words, the Government approval to the utilization of land for a different public purpose other than the one declared at the time of acquisition should have carried a cost in the form of a lump-sum penalty which should have been distributed among the land losers in proportion to the land lost. The lump-sum amount should have been fixed based on the market value of the unutilized land at the time of the decision for its alternative utilization minus the compensation paid. Where circumstances beyond human control such as natural calamities are responsible for failure to utilize land necessitating its use for a different public purpose, an exemption could have been provided from the suggested recourse to reassessment of compensation and its distribution. The current provision, besides being unjust to the land losers, would fail even to exert any pressure on the project agencies seeking land to place their requisition after careful consideration and in the "appropriate Government" to rigorously scrutinize their proposals before endorsing them for acquisition.

The second provision has fixed a time limit for utilization of the acquired land. If the land is not utilized within a period of 5 years, it would revert to the Government. This may curb the tendency to acquire land quite disproportionate to the need of the project though it would fail to check its unethical use. It may

also create pressure on the project agency to speed up its utilization by adequate and advance planning and resource mobilization. But the provision does not benefit the land losers in any way. It only benefits the Government. No obligation is cast on the Government to return the unutilized land to the original owners or their heirs, as the case may be, in proportion to the quantum of land lost. As a provision to this effect would have rendered modicum of justice to the land losers, there is no convincing reason why the Government should not have agreed to this arrangement. Five years is not too long a period to trace the erstwhile land owners or their heirs. Since resettlement is usually arranged on a location near the project site, it would have easily facilitated this identification. This alternative was suggested in many policy reform proposals submitted to the Government. By failing to take the matter to its logical conclusion, the Government has shown its disinclination to alter its mindset with regard to the conclusiveness of acquisition and total control over property once acquired. The Government has not even conceded the option to distribute the unutilized land among the landless persons of the village, if erstwhile land losers are not traced, to demonstrate its commitment to social justice. For the land losers and other landless displaced persons, therefore, the provision has no real value. When the two provisions discussed above are read together, the intention of the Government becomes pretty clear. It wants to appropriate the benefits arising from non-utilization of land by promptly utilising that land for another public purpose without conceding any benefit or concession to the land losers. Thus, the two provisions carry no benefit for the affected persons. They merely serve the interests of the Government.

The third provision requires the Government to share to the extent of 80% of the net unearned income resulting from the transfer of acquired land to an individual or organization for a consideration. The net earned income as explained in the Land Acquisition (Amendment) Bill, 2007 is the difference in the acquisition cost and the consideration received. The provision is a recognition that the Government was making money by acquiring land cheap from farmers and selling it at a hefty price to the corporate agencies. The land acquisition of this type makes a mockery of the "public purpose" and turns it into a profit making venture. Though the provision is a positive step, one fails to understand why the entire gain (100%) of the net unearned income is not transferred to the land losers since the acquisition cost is already deducted from its calculation and the Government does not incur any expenditure on the transaction relating to the transfer. In any case, the proposal fails to address the inequity in the existing compensation regime which yields low compensation to the land losers at the time of acquisition but fetches a higher price from the buyers while transferring land to them after it.

Allocation of land

The Policy fails to address the core of the problem which relates to the economic impoverishment caused by displacement. The provisions relating to the allocation of land and the benefit of employment to address this problem turn out to be illusory. There is no commitment to provide land-for-land (agricultural) whether in the case of irrigation/hydel or other projects. This is evident from the word "may" used in the formulation for conferring this benefit and also carries a conditionality for its accrual. This condition is specified in terms of the availability of the Government land/waste land in the resettlement area. It is widely known that no Government land, certainly not of the magnitude required for the purpose of distribution to the displacees, is available. The major part of the land with the Government, either vesting in the Government through land reforms – ceiling surplus land, *Bhoodan* land – or recorded in the name of the Government/*panchayat* in the land records, has already been distributed to eligible poor persons or transferred to agencies for various purposes. The remaining Government land consists of: a) common lands accessed by the village community; and b) non-common lands available for discretionary utilization. The common land should not be utilized for distribution as it is encumbered by collective rights and such allocation may be resisted. It would also be undesirable as such a move would hurt the people and particularly the poorer sections who, notwithstanding iniquitous access, still depend upon it for crucial income generation activities. The non-common land, whatever remains of it, is largely encroached, some by poorer sections but largely by dominant groups. Some available lands may be hilly or barren incapable of being put to cultivation. It would be an uphill task to identify if any un-encroached and unencumbered Government land capable of being put to cultivation is still available which is fit for distribution to the displacees. Therefore, neither in terms of scale nor in terms of its status as a safe asset, sufficient land would be available for allocation. The allocation of encroached or encumbered land, if resorted to, as is often done in episodes of distribution by the VIPs occasionally, would only entangle the recipients in costly litigation and social conflict. Besides, such land would be in scattered fragments and least likely to be in the neighbourhood of the resettlement site. Wasteland available at the disposal of the Government would be a component of the Government land and not a separate category. The stress on allotment of huge areas of this land to industry for various purposes in the past has already hurt the potential of its distribution to poor landless persons besides trampling on the rights of use enjoyed by the village community in the vicinity. Even in respect of the Government/ceiling land allotted to the poor in the past, beneficiaries

have not received possession of it in several cases due to various factors such as existing encumbrances, disputed claims, resistance by interested persons and litigation. Forest land which has turned degraded is out of bounds for such settlement due to the provisions of the Forest Conservation Act, 1980. The Government has also disregarded the possibility of acquiring private land for such distribution in the Policy itself. In fact, even for resettlement purposes [housing and infrastructure], the option of acquiring private land has been subjected to the condition that it does not create any physical displacement. The condition is least likely to be fulfilled. There is not even a commitment to acquire part of the land in the command area from those who benefit from the irrigation and hydel projects for the purpose of distribution to the displaced persons. Neither the Policy nor the Bill have suggested this course of action. Besides, the provision for allotment of land-for-land in the command area is only for giving "preference" to the land losers and "to the extent possible". Further, the allotment of land in the Command area of projects is to be done by pooling of lands that are available or could be made available in such areas [paras 7.4.2 and 7.4.3 of the Policy]. The Bill even omits this conditionality [clause 36 (2)]. There is thus little prospect of sizeable Government land being available. The land could only be made available if a part of the land is taken away from those who own land in the command area by compulsory acquisition and if the revised ceiling limits are applied to such land under the existing ceiling laws. The reality is that State Governments have not had the political will to apply the ceiling limits specified for irrigated land to lands which have become irrigated after the enactment of ceiling laws but were un-irrigated prior to it. This has permitted the concerned land-owners to retain larger area of land than they would be entitled to if their lands were classified in the land records as "irrigated". It is most unlikely that the State Governments would do that now when the commitment to land reforms has virtually disappeared from the public policy discourse. This course of action has also not been suggested in either of the two documents. The Policy and the Bill, therefore, settle for payment of monetary compensation where a family cannot be given land.

Employment

The promise of employment to one person from each affected nuclear family also lacks positiveness and credibility. The entitlement is only a "preference" and not an assurance which implies that the project affected persons would have to compete with the other aspirants for jobs from the country. The chance for a displacee succeeding in this competition is next to impossible, considering that most of the project affected persons would be illiterate or semi-literate.

Besides, even this preference would arise only if vacancies are available and persons seeking employment are suitable. This further negates the possibility of obtaining an employment. The project agencies in the current phase of globalised economy employ the least number of persons to reduce the cost of establishment and to stay competitive. In fact, they resort to outsourcing of works, wherever possible, to keep their organization lean and to avoid the botheration of personnel management and the liability to provide necessary benefits as per the existing labour laws. Even the meager employment opportunities that may get created would largely pertain to the "skilled" category. This removes any hope of lending a job on the basis of "suitability" determined by the eligible technical qualifications and their certification from a competent institution. The temporary work that may be available would be that of a wage labourer in the "construction phase". Contractors may import outside labour even for that work. The only substantive promise in the policy is in respect of some scholarships and skill development opportunities for self-employment. The provision of scholarships would apply to those who have requisite qualifications to pursue a technical/professional course. This would eliminate most of the candidates from the displaced families. Skill development opportunities depend upon market demand for them, proficiency and experience all of which are demanding conditions unlikely to be fulfilled in many cases. The prospects of getting any employment are, therefore, bleak.

Infrastructure and amenities

The Policy envisages (para 7.22) provision of comprehensive infrastructural facilities and amenities in areas notified for resettlement. This notification would be restricted to areas where involuntary displacement of 400 or more families *en masse* in plain areas or two hundred families or more *en masse* in tribal or hilly areas, DPP blocks or areas included in schedule V or VI to the Constitution are displaced. The list of such facilities and amenities would be notified by the "appropriate Government". But the Policy mentions some of the major facilities and amenities which shall be included in the notification to be issued. However, the Bill omits the enumeration and identification of these essential facilities and amenities and leaves this discretion entirely to the "appropriate Government" [clause 30 (1) of the Bill]. This implies that while the Policy would bind the "appropriate Government" to include in the notification at least the listed items, the Bill would fail to enforce this provision if the notification issued by the "appropriate Government" does not include them. This discrepancy is too important to be ignored. Whether this lapse is intentional or a drafting oversight is not clear. But this omission would dilute the commitment of the "appropriate Government" to provide the identified facilities and amenities let

alone add more to the list, given the widespread tendency to reduce financial expenditure. The problem would be more acute where involuntary displacement of a level lower than the norm is involved. Here the Policy itself is very conservative in listing identified facilities considered desirable for inclusion in the norms to be specified by the "appropriate Government" (para 7.22.2). The Bill omits listing of most essential items for guidance of the "appropriate Government" from this provision as well [clause 30 (3)]. A major distinction in the level of entitlement in this regard between the two areas is conveyed by the use of the word "comprehensive" in the former and "basic" in the case of the latter. This leaves too much discretion to interpret the terms with the "appropriate Government" which would hurt the interests of the displaced persons. Various excuses may be advanced to scale down the norm in both cases.

The provisions with regard to the infrastructural facilities and amenities both in the Policy and the Bill are also iniquitous as an invidious distinction has been made between two category of areas based on the numerical benchmark of displacement for admissible entitlement. The norm based on the voluntary displacement of a number of families *en masse* for this purpose lacks any convincing rationale. The requirement of facilities and amenities do not get reduced because fewer families have been displaced. The provision would lend itself to arbitrary decisions. The nature of the area, the level of population, the existing level of infrastructure and amenities and difficulties involved in accessing them, the specific local problem faced by the people in this regard are some of the factors which may determine the level of entitlement. This would differ from area to area even within the two categories of area identified in the two documents for this purpose. The distinction made, therefore, is as unnecessary as it is unjust and undesirable.

Gender bias

The earlier resettlement/rehabilitation policies/efforts reflected a pronounced gender bias. This emerged primarily from the conception of the "family" used as the unit for providing benefits. The definition failed to recognize every unmarried adult daughter as an independent unit deserving separate rehabilitation. It also created other difficulties. If there was no distribution of land from the father to the adult sons or even when land was so divided but not mutated in their individual names and incorporated as a separate *khata* in the land records, the adult sons were also clubbed with the family of the father as a unit of rehabilitation and resettlement. This ended up doing great injustice, particularly to the tribes where no formal distribution of land within the family

usually takes place as long as the father is alive even though separate parcels are cultivated by the adult sons as per their customary share. In respect of other communities, land, even when formally distributed, remains pending for mutation due to the inaction of the local revenue authorities. In both cases, the definition of “family” that was adopted for rehabilitation and resettlement created enormous frictions within the family since only one adult son was entitled to benefits. While the Policy (2003) itself had recognized adult member as a separate family, it was nonetheless gender insensitive in limiting the conception of “family” to those headed by a male adult member. The Policy (2007) and the Bill (2007) persist with this gender inequality as unmarried adult sisters and daughters have not been recognized as a separate family unlike their male counterparts. They have been considered as a part of the household headed by the father or the brother. They fail to get a share in the family property and are also ignored in the Policy and the Bill on rehabilitation and resettlement in the allotment of land, consideration for employment and other benefits which a separate family is entitled to. The women headed households do not even attract the attention of policy makers. This is particularly harsh as the number of widows, deserted women and spinsters is sizeable. They suffer multiple indignities due to their social and economic dependence on the larger family headed by a male member. Their difficulties would aggravate in the resettlement arrangement.

The Policy has largely ignored the concerns of women among the displaced persons because no specific affirmative action has been incorporated in either of the documents except a symbolic representation in the Rehabilitation and Resettlement Committee. The major concerns of women include access to productive assets, income generating opportunities, common property resources for fuel wood and fodder, drinking water and sanitation facilities. They also need physical protection in the new location where social networks and community support would be lacking. Women also require effective measures to counteract discrimination in the labour market both in terms of work and wages and in the credit market for accessing credit. Their distinct needs are not reflected in the provisions because neither the baseline survey and census collect such information nor the draft rehabilitation and resettlement scheme or plan incorporates specific measures for them. The provision concerning survey and draft plan has failed to recognize them as a distinct social category whose concerns and interests deserve to be looked into independent of the overall considerations of the family (para 6.4 and 6.14.2 of the Policy and clause 21 (2) and 23 (3) of the Bill). With no gender specific information collected, it is no surprise that the plan for rehabilitation and resettlement makes them virtually invisible.

Rehabilitation and resettlement of STs & SCs

The Policy and the Bill contain special provisions for the project affected families belonging to the Scheduled Tribes and Scheduled Castes. In respect of the Scheduled Tribes, a provision has been made for preparation of a Tribal Development Plan. This plan would lay down procedure for settling land rights not settled and restoring titles of tribals on alienated land. It shall also contain a programme for development of fuel, fodder and non-timber forest produce resources on non-forest lands where access to forests is denied in the resettlement arrangements. The provisions also mandate consultation of the *Gram Sabha* or the *Panchayat* as per the PESA, 1996 and a mode of settlement which helps them retain their ethnic, linguistic and cultural identity.

While referring to the settling of land rights, no indication has been given of what all it would involve. Tribals have extensive rights in forests enjoyed traditionally which have lacked legal backing. Lately, some of these rights have been recognized in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Tribals also use non forest vacant land which is classified in land records as Government/public/*panchayat* land. In many tribal areas, there are lands under the control and management of the community which have no individual ownership configuration. Besides, there are extensive shifting cultivation areas where tribals use a large swathe of hilly land by rotation. The arrangement has the sanction of the community. The tribes generally referred to as “primitive” (usually identified by their mode of cultivation pre-dating settled agriculture) belong to this category. The area of land under their use for rotation is large which usually remains unsurveyed beyond 10° slope and arbitrarily categorized as the Government land. Land records, where available for such areas, do not even record uses of such land. In the VIth Schedule areas, the pattern of land holding is communal with customary use and land records do not exist. Thus, there is an extensive variety of rights and interests in land relating to access, use, practices and management systems governed by customary law. In addition, there are some hunter and food gatherer tribes entirely dependent upon forests with no fixed habitat as they move from area to area in search of food. Besides, there are nomadic tribes and pastoralists with different patterns of habitat and access to land. Identification of rights and interests of the affected displaced STs has to be, therefore, a highly localized operation which cannot be fitted into the Anglo-Saxon individualized land ownership and a standardized ethnic pattern. The nature of rights, interests and needs of groups cannot be neatly categorized or standardized even within a specified unit of tribal area, as the social configuration may be characterized by different ethnic groups widely differentiated by access to natural resources, mode of subsistence, pattern of economic activities and social and

cultural life. Therefore, the preparation of a Tribal Development Plan cannot be based on an uniform, homogenized model which is applicable to the non-tribal communities. The distinctness of tribal communities cannot be accommodated merely by adding a few concessions or making some additional provisions to the general framework of rehabilitation and resettlement for others. The conceptual and structural frame of rehabilitation and resettlement for them would have to be designed taking into account their specific situation. This is particularly necessary for tribes in the remote areas who are least exposed to the larger society and its pattern of living. There is no indication in either the Policy or the Bill that this complexity has even been conceived let alone recognized and accommodated in their contents. The approach inherent in the two documents is antithetical to the need for situation/tribe specific effort. The numerical benchmark laid down for application of the Policy is a classic illustration of this lack of understanding and appreciation. The plan for rehabilitation and resettlement for Scheduled Tribes in an affected area would, therefore, have to take into account a wide variety of factors which may not be the same even for all affected persons of a single project. Considerable freedom would have to be given to local officials both in terms of framework as well as contents and resources in designing such plans suited to specific groups entirely in consultation with the concerned communities, experts and anthropologists well versed with their situation. A numerical benchmark and general set of guidelines just cannot determine this operation. As the current phase of acquisition/procurement of land penetrates the interior most areas, the resultant displacement could lead to extinction of some tribes if they are exposed to a rehabilitation and resettlement pattern radically different from their traditional existence. This may cause unbearable strain of adjustment on them affecting their capacity and will to survive.

With regard to the Scheduled Castes, the Policy and the Bill have virtually made no provisions except suggesting preference in allotment of land if the Government land is available in the resettlement area. The Scheduled castes suffer from extensive exclusion in the pattern of settlement, denial of access to resources, labour and credit markets, employment opportunities and social facilities, along with burden of economic dependency and a wide variety of socially humiliating practices. There is no indication that this reality has been recognized let alone appropriately dealt with by provision of empowering measures. Besides, Scheduled Castes also are a differentiated group and a suitable design for their rehabilitation and resettlement plan has to create space for this accommodation. The economy of Scheduled Caste communities has a substantial component of livestock rearing, processing and artisan activities based on resources drawn from the common property. Some of these activities also create conflicts with other caste groups. Scheduled Castes

also face problem of insecurity and physical violence. None of these issues have been taken into account so as to provide for a SC specific development plan which can assure them a more dignified life. In failing to do justice to their needs and interests, the Government has also missed an opportunity for social engineering and change provided by the situation.

Integration with development planning

The Policy has listed, as one of the objectives, the need to integrate rehabilitation concerns into development planning and implementation process. However, the Bill omits this objective altogether. This itself indicates that requisite seriousness is not attached to the realization of this objective. The Policy itself has failed to provide a framework for pursuing this objective and the manner and method of accomplishing it. No processes have been outlined for dovetailing the rehabilitation and resettlement of the displacees in the ongoing development programmes in the area. There are no guidelines on how the displaced persons would be enabled to overcome multiple impoverishments, rebuild their lives and link themselves with current and future development of the area and the project. To accomplish this complex task, a long term intervention is required with appropriate administrative arrangements to look after the interests of the displaced persons long after the resettlement work is completed as per the schedule laid down. There is no hint that any such arrangement is envisaged with defined tasks. The structure created for implementation of the Policy would be wound up after the enumerated measures have been carried out. Perhaps, the lofty intention has been left entirely to the displaced persons themselves to accomplish through their own efforts with no commitment, support and intervention by the Government. This, sadly, underlines the lack of sincerity in pursuing the objective. The displaced persons are sought to be enticed by the radical rhetoric with no vision and will to translate it into tangible outcomes. This is the overall message one gets from the latest policy initiative on the displaced persons.

Right based entitlement

The policy reflects a commitment to provide rehabilitation and resettlement to persons involuntarily displaced as a result of acquisition of land or due to any other reason. The earlier efforts in this direction including the Policy (2003) suffered from lack of enforceability since they were not backed by any law. This deficiency is sought to be removed by the Bill. A scrutiny of the two instruments brings out sharply how inadequate this commitment is in respect of the affected persons it covers, areas it extends to, entitlements it creates, degree of the enormity, intensity and complexity of problems it seeks to address and space it concedes to the

displacees for articulating their needs and designing a scheme to rebuild shattered lives. There is too wide a gap between the statements in the Preamble and what emerges from the contents. Even what is conceded is hedged by caveats or diluted by escape routes which reflect an unwillingness or inability to accept the underlying responsibility involved therein. The enforceability of such a faltering commitment provides no solace to the affected persons. Clearly, the commitment has to be rooted in a firmer soil; its contours have to emerge from those affected.

The starting point for such a commitment is the recognition that the State is entirely responsible for forcing displacement and, therefore, those affected have a right to demand adequate rehabilitation and resettlement in return. A right based entitlement to the rehabilitation and resettlement alone has the potential to bridge the gap between what the State provides and what the displacees expect as the minimum necessary to meet the ends of justice. States' development trajectory would continue to apportion costs and benefits inequitably among different sections of society unless those lacking power to influence such decisions and, therefore, paying cost on this account get empowered to insist on obtaining necessary compensatory benefits for this sacrifice. For this empowerment to emerge, this right to rehabilitation and resettlement should be embedded in the Constitution as an extension of the Right to Life (Article 21) the comprehensive connotation of which the Supreme Court has already interpreted in other contexts. Nothing short of such a fundamental right can induce the State to strike a balance between the costs its policies impose on some sections and benefits they confer on others. Such a right may also persuade the courts to evolve the outline of an acceptable rehabilitation and resettlement plan. This exercise cannot be left to the discretion of the State to define and confer it as a concession. The affected persons should have the *locus standi* to seek satisfactory rehabilitation and resettlement as a condition for parting with their land. The Policy and the Bill do not provide such a right. Rather, they reinforce the existing tilt in the State power of land acquisition, legalise the iniquitous development imperatives and deeply disappoint with their skimpy and niggardly compensatory package to neutralize its adverse impact. The Parliament is the right forum and the discussion on the Bill provides the right occasion to push the Government to come up with a legislation which confers a fundamental right to rehabilitation and resettlement where involuntary displacement takes place.

Delay in enforcement

The Policy and the Bill leave quite a few tasks to the "appropriate Government" to specify or notify. This relates to paras 4, 4.1, 4.2, 4.2.3, 4.4.1, (Social Impact Assessment) 6 (rehabilitation and resettlement plan) 6.14.3, 6.22 (b),

6.23, 6.25 (compensation), 7.9.1, 7.9.2, 7.10, 7.11, 7.12, 7.14, 7.15, 7.17, 7.20 (benefits and entitlements), 7.21.1,(rehabilitation of STs), 7.22.1, 7.222 (infrastructure and amenities), 8.1.3, 8.22.2, 8.3.1, 8.3.3 (grievance redressal mechanism), 9.1.2, 9.4.2, 9.5.2 (monitoring arrangement), among others of the Policy. The corresponding delegated legislation to be undertaken in respect of the Bill relates to clauses 4 (1) and 7(1) (Social Impact Assessment), 12 (3) (emergency acquisition by defence agencies), 12 (2) (Rehabilitation and Resettlement Committee), 14 (1) and (3) (Ombudsman), 16 (3) (National Monitoring Committee), 18 (2) (Oversight Committee), 19 (2) (National Rehabilitation Commission), 20 (2) (declaration of affected areas), 21 (4) and 23 (2) (publication of the findings of survey), 27 (agreement for purchase of land), 28 (3) (upkeep of books of account), 36 (3) and (4), 38,39,42 (financial assistance), 43 (entitlement to land), 44 (entitlement to fishing rights), 46 (entitlement to monthly pension), 47 and 49 (1) (*ex-gratia* payment), 58 (2) (making of rules) etc. This implies that the Policy cannot be implemented unless the identified tasks are accomplished for which no time limit has been prescribed. The implementation would, therefore, get delayed until this is done. The statutory enforceability would have to wait even longer, first for the Bill to be passed by the Parliament and its notification thereafter and secondly, for the delegated legislation to be undertaken by the Central and the State Governments. The accrual of even the limited benefits from both instruments is therefore, a long way off.

Conclusion

The foregoing analysis indicates that in so far as the more fundamental issues agitating the peasantry are concerned, the new Policy really offers no commitment to meet them. These issues relate to the assured access to land and stable, decent and sustainable employment which alone can mitigate economic impoverishment. On both these issues, the Policy offers no certainty or guaranteed arrangement which may generate any hope. The conditionalities attached to the provision of land and employment make them illusory. Most of the affected displaced persons would continue to face a bleak future and forced to migrate in search of work to the destitute labour market of urban centers with uncertainty of work, rock-bottom wages, hazardous working environment, poor living conditions, severe competition and hostility from the locals. The Policy does promise basic amenities at the resettlement site and some more cash to tide over the immediate transitional period. The Bill, however, skips the list of amenities to be provided which raise doubts about the enforceability of even this stipulation. While the little cash the displacees get may save them from starvation in the period immediately following relocation to the resettlement

site, it would be of little help in even ensuring minimum food security much less in contributing stability to their lives. The absence of decent, regular and sustainable work which assures them a steady source of income is central to their concerns. The problem is more acute for those who have no skills other than farming. Given the precariousness and hopelessness on this score, the objective enshrined in the policy of providing a better standard of living sounds hollow. The Policy, therefore, fails to resolve the hostility to the paradigm of development with its induced displacement and resultant destitution which has brought the peasantry into serious conflict with the State. The provision of statutory backing to the new policy through the proposed Bill would offer little solace since no right to land or livelihood is embedded in it. Even a right to seek their rehabilitation and resettlement in case of involuntary displacement has not been granted to the affected persons. There would be no escape for them from the spiral of impoverishments and the inevitable social disarticulation. The much hyped New Deal for the displaced persons projected through the two documents is hardly the offer to convince farmers to part with their land and smoothen the penetration of capital for prestigious mega projects. The potential for social unrest to escalate would continue to exist. □

References

Cernia, Michael M (1998) : "Impoverishment or Social Justice? A Model for Planning Resettlement", in Mathur, H.M and Marsden David (ed). *Development Projects and Impoverishment Risks*.

Cernia, Michael M (2006): "Resettlement Management: Denying or Confronting Risks", in Mathur, H.M. *Managing Resettlement in India*.

Fernandes, Walter and Paranjpye, Vijay (1997): *Rehabilitation Policy and Law in India: A right to livelihood*.

Lok Sabha (2007): *The Rehabilitation and Resettlement Bill, 2007*; Bill No. 98 of 2007.

Lok Sabha (2007): *The Land Acquisition (amendment) Bill, 2007*; Bill No. 97 of 2007.

Marsden, David (1998): "Resettlement and Rehabilitation in India: Some lessons from recent experiences", in Mathur, H.M. and Marsden David (ed). *Development Projects and Impoverishment Risks*.

Mathur, H. M. (2006): "Resettling People Displaced by Development Projects: Some Critical Management Issues", *Social Change* Vol. 36, Number 1, March 2006.

Mohapatra, L.K (1999): *Resettlement, Impoverishment and Reconstruction In India*.

Ministry of Rural Development, Government of India: *The National Rehabilitation and Resettlement Policy, 2007*. ●

List of Acronyms Used		
EIA	:	Environmental Impact Assessment
MORD	:	Ministry of Rural Development
NGOs	:	Non Government Organizations
PESA	:	Panchayats (Extension to the Scheduled Areas) Act, 1996
DDP	:	Desert Development Programme
SCs	:	Scheduled Castes
STs	:	Scheduled Tribes
OBCs	:	Other Backward Classes
BPL	:	Below Poverty Line

About the Author

K. B. SAXENA retired from the Indian Administrative Service in 2001. He is currently Professor of Social Justice and Governance in the Council for Social Development. His major areas of interest are: Land Reforms, Agrarian Relations, Rural Development, Scheduled Castes, Scheduled Tribes, Labour, Health and Governance.

