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Comments on the Rehabilitation and Resettlement Bill, 2007

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Introduction :

The doctrine of Eminent domain empowered the State or Sovereign to take over any property of the subject. However, with the erosion of the monarchy, the doctrine added two qualifications to this right. These were that 1) the property should be acquired for a public purpose and that 2) Compensation should be paid for the acquisition of property. Acquisition of land by the state is subject to these qualifications under the Common Law. There was no mention of any rehabilitation and resettlement.

In a number of states, monarchy was replaced by republics that is the rule of people without any king or monarch. These assumed the power of acquisition of private property under the Principle of Trusteeship. The principle asserts that the state or the Government is a trustee of property, particularly natural resources like land and water and can acquire it for the welfare of the people.¹

The Supreme Court of India has accepted the principle in the M.C. Mehta vs. Kamalnath and others. Even this principle is silent on the issue of resettlement and rehabilitation.

The question of involuntary or forced eviction was discussed at the conference on Human Rights organized by the United Nations at Vienna in 1993. The conference recognized forced eviction as a gross violation of human rights. India was a party to this Vienna Declaration and Programme of Action.

Indian Situation :

After Independence the Central and the State Governments began to acquire land for several infrastructure projects and also for public enterprises like steel plants. To reduce people's resistance to this involuntary acquisition compensation was supplemented by the schemes of rehabilitation and resettlement. Due to the organized resistance of the people displaced by dams in Maharashtra, the Government enacted a law called the Maharashtra Resettlement of Project Displaced Person Act in 1976. Two major deficiencies in the Act were that its applicability was at the discretion of the Government and that it had a narrow definition of the term project affected persons. It was reviewed and replaced by the Maharashtra Project Affected Persons Rehabilitation Act of 1986. The Act passed by the State legislature in 1986 received the President's assent in 1989.

² Some other States also enacted laws for the rehabilitation of the persons displaced by land acquisition, for example - Madhya Pradesh Pariyojana Ke Karan Visthapit (Punhsthapan) Adhinyam 1985, Kamataka Resettlement of Project Displaced Persons Act, 1987. Several public sector enterprises also prepared their schemes of rehabilitation e.g. National Thermal Power Corporation, COAL, India. The Orissa Government adopted the Orissa Resettlement and Rehabilitation of Project Affected Persons Policy Resolution in 1994. The Ministry of Rural Development of the Government of India prepared a draft of the National Policy for the Rehabilitation of Persons Displaced as a Consequence of Acquisition of Land in 1994. This was discussed at several meetings of the social activists who prepared an alternate citizens' draft in 1995.³ However, the draft prepared by the Ministry was not presented to the Parliament. In 1998 the Ministry

prepared drafts of National Rehabilitation and Resettlement Policy for the displaced person and of Land Acquisition, (Amendment) Bill. A meeting of activists was organized by the Ministry on the 21st January, 1999. A suggestion to incorporate the provisions rehabilitation and resettlement into the amendments to the land acquisition bill was proposed at the meeting. Following this a National workshop of the activist was organized by the national committee for the protection of natural resources on 30th and 31 January, 1999 at Bangalore. Representatives of over 60 organisations assembled there decided to prepare an alternate draft and formed a committee to do so. The committee prepared the draft that integrated the provisions for land acquisition and rehabilitation and resettlement in one bill. The same was submitted to the Ministry and was published. However, for reasons not revealed, the drafts were not submitted to the Parliament and were practically forgotten.

Later the National Human Rights Commission took up the issue and requested the Ministry to take proper action. It recommended action in three consecutive annual reports. In the Report for 2002-03 the Commission has noted the reactions of the Ministry as follows :

Project Affected Persons (Resettlement and Rehabilitation) Bill. The Ministry has submitted its proposal to the standing committee of secretaries (SCOS) and would consider the subject after comments from different Ministries / Departments have been received. The approval of the SCOS is still awaited.

Land Acquisition (Amendment) Bill- The Ministry of Rural Development subsequently received two new proposals on this subject. The two proposals were incorporated and submitted to the Ministry of Law for concurrence.

It was evident that the Ministry wanted two separate laws to amend the Land Acquisition Act and to provide for the Resettlement and Rehabilitation of the project affected persons.

National Policy on Resettlement and Rehabilitation of Project Affected Persons, 2004.

In February 2004, the Ministry adopted a National Policy for Resettlement and Rehabilitation. It was stated in the preamble that there is need to minimise large scale displacement and to handle the issues related to resettlement and rehabilitation with utmost care. Intention of the policy is 'to impart greater flexibility for interaction and negotiation so that the resultant package gains all round acceptability in the shape of a workable instrument providing satisfaction to all stakeholder / requiring bodies'. The policy resolution is an improvement over the earlier ones. However, it did not mention the need to amend the Land Acquisition Act to bring it in line with the policy.

National Rehabilitation and Resettlement Policy 2007 :

Then again the Ministry came up with a new National Rehabilitation and Resettlement Policy that came into operation on the 31st Oct. 2007. This incorporates a number of points made in the earlier resolutions. Two major points mentioned in the objectives are 1. to provide a better standard of living, making concerted efforts for providing sustainable income to the affected families and 2. to integrate rehabilitation concerns into development planning and implementation process. Many provisions in the

statement are included in the Rehabilitation and Resettlement bill 2007 that has been discussed later.

However, some general comments are necessary 1. Those who drafted the policy resolution has ignored the basic difference between a policy statement and a bill proposed to be made into a law. A policy resolution should be precise and should lay down only the major guidelines for the Government and the people. This has been done in the case of the Forest Policy Resolution of 1988 and also the National Water Policy Resolution 2002. The present resolution is full of details.

2. National policy resolutions are generally adopted by the Parliament. This was the case in Industrial Policy Resolution, Forest Policy Resolution and the Water Policy Resolution. This convention has not been followed in the case of the National Policy on Resettlement and Rehabilitation of the Project Affected Persons Resolution of 2003/4 and also in the case of this resolution of 2007. It appears that the Ministry has taken up the role of the Parliament to announce and to adopt a national policy. This is not a desirable practice. If all the Ministries of the Government follow this practice, one may come across a national policy resolution or a state policy resolution every month, is not every week. This will reduce the importance of a policy resolution. 3. The practice of issuing policy statements frequently also reduces their importance. The first forest policy resolution was adopted in 1894, the second came in 1952 and the third came in 1988. Frequent announcement of national policy resolution make a mockery of the whole exercise.

The Rehabilitation and **Resettlement Bill, 2007** :

In a candid admission of the non-justiciability of the policy resolutions, it is stated in the Statement of Objects and Reasons that 'since the inception of the Land Acquisition Act, 1894 **for the first time** a legislation namely, the Rehabilitation and Resettlement Bill 2007 has been developed on the lines of the provisions of the new policy, so as to give a statutory backing to them and provide for Social Impact Assessment making of scheme and plans well defined rehabilitation and resettlement benefits for the affected families' (emphasis added). The statement further adds that 'in brief, the Rehabilitation and Resettlement Bill 2007 will provide for the basic minimum that all projects leading to involuntary displacement must address the grievances of the affected persons. A social impact assessment of proposals leading to displacement of large population **through participatory, informed and transparent process involving all stakeholders including the affected persons will be necessary before these are acted upon**. The rehabilitation process would augment income levels and enrich quality of life of the displaced person, covering rebuilding socio-cultural relationships, capacity building and provision of public health and community services. Adequate safeguards have been proposed for protecting rights of vulnerable sections of the displaced persons', (emphasis added)

Important Provisions :

- 1) The Act shall apply to the rehabilitation and resettlement of persons affected by acquisition under the Land Acquisition Act, 1894 or any other act of the Union or State for the time being in force, or involuntary displacement of people due to any other reason (S2). Thus there is no necessity of any notification to cover any specific project. This is a good provision.

- 2) The definition of the affected family is also quite existing. Besides the land holder and tenants and lessees of the acquired land it includes 'Any agricultural or non-agricultural labourer, landless person (not having homestead land, agricultural land or either homestead or agricultural land), rural artisan, shall trodden or self - employed person; who has been residing or engaged in 'any trade, business or occupation or vocation continuously for a period of not less than five years in the. affected area preceding the date of declaration of the affected area, and who has been deprived of earning his livelihood or alienated wholly or substantially from the main source of his trade, business, occupation or vocation because of the acquisition of land in the affected area or, being involuntarily displaced for any other reasons (s.3 (iii))
- 3) A provision is made in the Amending Bill to the Land Acquisition Act to ensure that a social impact assessment shall be carried out in cases involving the physical displacement of 400 or more families en masse or 200 or more * families on mass in tribal or hilly areas or areas specified in V schedule or schedule VI to the Constitution. The R&R Bill adds that the assessment will include impact on public and community properties, facilities for roads, provision of drinking water, public utilities, schools and educational or training facilities, places of worship, land for traditional tribal institutions, burial and cremation grounds (s.4)

However, the assessment will be in such manner and within such time as may be prescribed by rules made by the Central Government. The provision for social impact assessment is very desirable but it must be made clear as to who will conduct the social impact assessment. In view of the proclaimed principles of participatory, informed and transparent process, leaving at least the important issues of the agency and its composition to the rules is contrary to the claims and these must be specified in the Amending Bill and the R&R Bill. Unless these provisions relating to the agency entrusted with the task of carrying out the assessment are made clear, it will be difficult to call the related provisions as informed, participatory and transparent.

- 4) There is no provision in the Amending Bill as well as in the R&R Bill to publish this social impact assessment. This also goes against the proclaimed principles in the statement of subjects and reasons.
- 5) According to the provision in the Amending Bill and the R&R Bill, the social impact assessment report shall be submitted to the independent multi-disciplinary group consisting of two non-official social scientists, secretary of the Tribal Welfare Department or his nominee and a representative of the requiring body, all to be nominated by the appropriate government. There is no provision for appointing any representative of the affected persons. This can not be called informed and participatory.
- 6) Section 7 of the R&R Bill provides the social impact assessment clearance shall be granted in such manner and within such time as may be prescribed. It appears that the clearance is to be given by the Expert Group and that it can be conditional. However, there is no provision that it should be published and made available to the public. This is quite necessary to ensure that the people and in particular the likely to be affected know the details of the clearance of the Expert Group. The report of the Expert Group must be made available to the people in the interest of making the process participatory,

- informed and transparent involving all stakeholders including the affected persons. The term clearance suggest that the notification under section 6 of the principal Act can be issued only after the clearance. This needs to be clarified.
- 7) It is provided that in case of projects displacing 400 or more families etc. the state government shall appoint in respect of that project, an officer not below the rank of District Collector to be the Administrator for Rehabilitation and Resettlement for the formulation, execution and monitoring of the R&R plan (sections 9 & 10) one of his functions is to minimize displacement of persons and to identify non displacing or least displacing alternatives in consultation with the requiring body. (10.3 i). This is a cruel joke on the project affected persons. The requiring body prepares the project, the Collector notifies the intention to acquire lands under section 4 of the principal Act, social impact assessment is done and clearance of the Expert Group is received. How can the Administrator appointed after all these minimize displacement or identify non displacing or least displacing alternatives? This function should be deleted to ensure some honesty.
 - 8) Apart from the notifications under the Land Acquisition Act, the appropriate government is to issue a notification declaring affected areas where displacement affects 400 or more families etc. (section 20). After the publication of this declaration the Administrator has to undertake a baseline survey and census for the identification of persons and families likely to be affected. This should contain village wise information of persons and families including vulnerable persons like disabled, widows and orphans. This is to be completed within 90 days of the publication of declaration. Administrator has to publish a draft containing the details of the findings of the survey and invite objections and suggestions from all persons **likely to be affected**. This excludes organization and not-affected social activists or scholars to offer suggestions or raise objections. The words **likely to be affected** should be deleted.

There is a good provision that the final details of the survey shall be published in the official gazette.

- 9) The Administrator has to prepare a draft scheme for the rehabilitation and resettlement of the affected families **after** consultation with their representatives. This draft shall be published for discussion in the concerned gramshabhas (section 23). This is a good provision that will enable the affected persons to know in advance the scheme for their rehabilitation.
- 10) This draft scheme shall be submitted to the appropriate government and the approved scheme will be published in the gazette. After such final publication the scheme shall come into force (section 24).
- 11) *In* case of a project *involving land* acquisition the requiring body shall provide requisite funds to the administrator (section 28)
- 12) It is clearly provided that the compensation award, full payment of compensation and adequate progress in rehabilitation and resettlement shall **precede** the actual displacement of the affected families (section 29). This will reduce the harassment of the affected families that have till now been practically forgotten after the land is acquired.
- 13) The requiring body shall contribute to the socio-economic development of such geographic area on the periphery of the project site as may be defined

by the appropriate government, and for this it shall earmark a percentage of its net profits or in case no profits are declared in a particular year, such minimum alternative amount determined by the appropriate government in consultation with the requiring body (section 33). This will help the residents of the area adjacent to the project, particularly in case of acquisition for companies and other public sector projects.

- 14) For each project displacing 400 or more families there shall be a committee called the Rehabilitation and Resettlement Committee to monitor and review the progress of the implementation of the rehabilitation scheme and to carry out post implementation social audits. This is good provision ensuring the association of the representatives of the project affected persons. The Administrator shall be the chairman of the committee. The members shall be, in addition to the officers of the appropriate government, representative of women residing in the affected area, one representative each of the scheduled castes and the scheduled tribes in the affected area, a representative of a voluntary organization working in the area, a representative of nationalized bank, the Land Acquisition Officer of the project, chairpersons of the panchayats or municipalities located in the affected area or their nominees, the member of Parliament and the member of legislative assembly of the concerned area and a representative of the requiring body (s.12). In section 28 it is provided that adequate progress in rehabilitation and resettlement shall **precede** the actual displacement. Who will decide the adequacy of the progress is not made clear. It should be mentioned that this shall be decided by the Rehabilitation and Resettlement Committee for the project. This should be included in section 12.
- 15) There shall be a standing Rehabilitation and Resettlement Committee under the chairmanship of the collector at the district level (s.13). This is quite unnecessary. The collector is a chairman of many committees and many of these never meet let alone function. It is not necessary to add one more committee at the district level particularly when there is a project level committee. This section should be **deleted** to avoid complications.
- 16) The Bill provides for the appointment of an ombudsman for the time bound disposal of the grievances regarding R&R. There is no mention of his qualifications, position or worth. The form and manner and period within which the petition to him is to be made are to be prescribed. This again appears quite unnecessary as there is already a commissioner at the state level.
- 17) For projects covering more than one state, the Central Government shall appoint the Administrator for R&R, the Commissioner and a common R&R Committee besides the ombudsman.
- 18) The Central Government shall constitute a National Monitoring Committee for reviewed and monitoring the Implementation of the R&R schemes or plans under this Act. The Committee shall consist of the representatives of the concerned ministries and department of the Central and State Government. The Committee **may** associate with it eminent experts from the relevant fields.

The provision is very vague. This is a permanent committee and it will have a large number of member, if the representatives of several ministries at the Central and the State Government are to be accommodated. It is not clear if

the eminent expert are to be associated as consultants or members. The functions and powers of this committee are not described

- 19) In every major project there shall be an Oversight Committee for R&R in the ministry or the department of the appropriate government. The composition, functions and procedures of the committee shall be prescribed in the rules. This is an unnecessary addition to the committees and authorities provided for in the bill. For every project there is an administrator and also a R&R committee. At the State level there will be a commissioner for R&R and also an ombudsman. There is no need for any oversight committee. This provision should be deleted.
- 20) A National Rehabilitation Commission shall be set up by the Central Government with power to supervise and exercise general oversight over rehabilitation and resettlement of the affected families covered under this Act. The composition of the Commission is left to the rules.

This again is very vague. The better way will be to merge the National Monitoring Committee with the National Commission. The commission should have independent experts and should be empowered to monitor the implementation of the Act. This will do away with a large committee of more or less ornamental type. The composition of this important commission and its powers and functions should be a part of the Act and should not be left to the rules.

- 21) Guidelines are given for the survey of affected families, for the rehabilitation scheme, purchase of land and provisions for infrastructural facilities (sections 23 to 50). Many of these are recommendatory with qualifications like as far as possible.
- 22) A major provision rules out the jurisdiction of civil courts in matters relating to the R&R. The purpose is to do away with the injunctions issued by the civil courts.

Summary and suggestions

It should be noted that only the main provisions of the bill are covered in this note. The suggestions made in the note can briefly be presented as follows:

- 1) In fact the provisions for the social impact assessment, being a precondition for the final declaration of acquisition, should be a part of the Amending Act. This provision is very important and meets a long standing demand of the organizations and activists dealing with displacement and R&R. It is not desirable to leave the details of an agency doing it to the Rules. It is necessary to ensure that an independent expert is attached to the study team and also to ensure its publication before submission to the expert group.
- 2) The provision relating to expert group also pertains to the Amending Bill. There is no provision for associating a representative of the affected persons or their organization with the Expert Group. Such a provision should be made.
- 3) The most undesirable part of the Bill is the over-abundance of authorities and committees. These includes

A) At the project level -

1. Administrator for Rehabilitation and Resettlement, (s.9)
2. A Rehabilitation and Resettlement Committee (s.12).
3. An Oversight committee for R&R for every major project under the Act in the concerned ministry or department of the appropriate government. Thus there will be as many oversight committees in the State or at the Centre for each major ongoing project (s.18).

B) At the district level -

1. A standing rehabilitation and resettlement committee

C) At the state level -

1. An Ombudsman (2.14)
2. Commissioner for Rehabilitation and Resettlement (s. 11).

D) At the central level -

1. A National Monitoring Committee (s.16).
2. National Rehabilitation Commission (s.19).
(These are in addition to the administrator of the project, R&R committee at the project level and a oversight committee in the concerned department for each project.)

As already described about it is necessary to reduce this undue emphasis on committees and authorities to facilitate direct and speedy disposal of the matter relating to the R&R.

- 4) A provision should be made to publish the Report of the Expert Committee.
- 5) In section 20, **likely to be affected** should be deleted.
- 6) The Administrator may have to certify that, the compensation is paid in full and that adequate progress is made in the implementation of the R&R scheme or plan. (s. 29) It should be provided that the administrator and the

appropriate government shall concerned the R&R Committee at the project level before certifying this.

All these suggestions and comments should be discussed by the Ministry and be placed before the Parliamentary Committee.

Note : Section numbers given in brackets refer to the sections in the R&R Bill. References to the sections in the Amending Bill or the Principal Act are referred to separately.