The Draft National Rehabilitation Policy (2006) and The Communal Violence Bill (2005)

A Critique of the Rehabilitation Policy of the Government of India

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Introduction

As India became independent and poised up for big leap forward in terms of industrial development, the installation of massively displacing hydroelectric projects did not seem to create even a flutter of resentment. We saw people who were ready to undertake little sacrifices for industrial development and eager to pay the price for the nation as a whole. As this nationalist consensus gradually gets fractured, the need for enunciating policies basically meant for reincorporating the fragments into the national body and re-establishing the consensus is more deeply felt. Globalization therefore coincides with a hitherto unprecedented policy explosion. We are now passing through a phase of policy explosion particularly since the 1990s. National Agricultural Policy, National Employment Guarantee Act, The Policy of Resettlement and Rehabilitation of Project-affected Families, A draft National Policy on Tribes 2004 etc. provide only some examples of this larger policy explosion. This obviously has two-fold implications: (a) The language of policies as we must remind ourselves is not the language of rights. Rights are basically defined as claims against the collective while policies aim at producing and reproducing the collective – that is to say the nation. (b) The fragments once re-placed and reunified with the national body will not make the latter exactly the same as before. As we argue we are passing through a phase of *rebuilding* the nation.

The national body that is sought to be recreated in the age of globalisation will be unrecognisably distinct from what it was in the earlier era. In this context we present a critique of the National Rehabilitation Policy (January 2006) attempting to analyse the state control over the natural resources, particularly land, legalising the concept of 'eminent domain'. In the past few months, certain states like Orissa, West Bengal and Andhra Pradesh have attracted huge FDIs and private investments. These investments require huge amount of land acquisition often agrarian and forestland, which has created an unprecedented uproar among various sections of the society. In this framework we propose to offer a critique of the way the Indian state has assumed and/or not assumed the responsibility for providing rehabilitation after such acquisitions. An attempt has been made to look at the policy from three relevant perspectives of the basis, the intention and the pitfalls immanent in this draft. The present policy draft fails to address the complexities of internal displacement and hardly brings into consideration conflict induced displacement and displacement induced by natural disasters seems to have rolled all such existing complexities into one and privileged only one of them – that is, displacement induced by development. We need to ponder why other varieties of displacement particularly one induced by ethnic and communal conflicts and violence are excluded from its ambit. To borrow Alain Badiou's famous phrase, violence beyond the state's domain constitutes, 'phenomenality without object' – for, its

recognition as a policy object implies an admission on the state's part its inability to completely monopolize the instruments of violence in the society.

The policy draft is also oblivious to population displacement induced by such natural calamities and catastrophes as Tsunamis, cyclones, earthquakes and floods etc. While development is responsible for displacement, strange but true, displacement in the present era has also become a tool of development. Frequent cycles of communal violence in such cities as Mumbai, Ahmedabad and Vadodara or even Kolkata etc. show how population shifts have occurred within and across the cities and how the cities are increasingly being divided into well-garrisoned space for the rich and the vast sections of the poor and underprivileged are herded into the interiors of the walled parts. Such displacement has spawned a new kind of urban development. As a result, the policy can never confer recognition on what we consider, people's inalienable right to home. The state has rather tried to address the issues of conflict induced displacement with a bill that the Indian Parliament has drafted and named as, Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005.This bill is an attempt on the part of the Government to deal with the issues of rehabilitation for the victims of communal violence.

Though the bill and the policy are not on the same platform for being different by nature and their potential enforceability, we have included it in this study as both the bill and the policy seek to deal with the question of relief and rehabilitation. More importantly both the drafts, if studied in a comparative way will enlighten the reader about the rationality of nation building and rebuilding and the instrument(s) though which the state makes such attempts according to this logic.

Section I traces the evolution of the draft and brings it to its present status under the UPA Government. Under it, the sub-sections i-iii deal with the specificities of NRP 2006. The first sub section argues that the principle of eminent domain has its legal roots in the colonial times. The second subsection focuses more on the draft itself and points out its shortcomings. The third sub section continues with the critique and raises the larger question of political will – or more accurately the lack of it that is held responsible for the shortcomings outlined in the second part. In Section II we have provided a short critique of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005. The study then attempts to conclude the combined critique of the bill and the NRP Policy.

The first draft of R & R (Resettlement & Rehabilitation) Policy was prepared in 1985 followed by drafts in 1993 and 1994. In 1998 another draft was tabled to amend certain aspects of the land acquisition act. This was followed by the National Policy of Relief and Rehabilitation (NPRR), 2003. Though the objective of the policy is to minimize displacement, it also mentions that the Displaced Persons (DP/s) and Project Affected Persons (PAPs) will only be involved in deliberating on rehabilitation. They are not expected to discuss industrial and developmental policies that displace population. This measure in itself assumes and takes displacement as given and unalterable. This crtique attempts to revisit the persons who were displaced by the Bhakra dam project. The oft-quoted Bhakra legend, through a study conducted by Manthan Adhyayan Kendra in April 2005, reveals that approximately 371 villages were affected**.** After 20 years of completion of the dam, Government's Rehabilitation Committee submitted its report in 1983 claiming to have rehabilitated all the displaced families. Today the ongoing struggles of the DPs in Narmada, Koel Karo, Tehri, Rengali, Tawa, Indira Sagar, Kashipur, and Kalinganagar among other regions are the lessons that the prevalent discourse of development should address and

incorporate. What is pertinent to us is the continued presence of such draconian measures as, the Land Acquisition Act of 1894 notorious for contributing to displacement and the state's failure to formulate a general R&R policy.

Initially, resettlement was undertaken on a case-by-case basis. Projects like the Nagarjunasagar, Hirakund, Tungabhadra and Mayurakshi dams, the Rourkela, Bhilai and Bokaro steel plants, several defence establishments, coal mines, etc, offered resettlement in the form of house sites to the displaced. Only National Thermal Power Corporation (NTPC), and Coal India Limited (CIL), two Government undertakings have formulated their Relief and Rehabilitation(R & R) policies and constituted R and R departments for administering it. On the other hand Maharashtra was the first state to institute a rehabilitation law in response to the demands of the DPs of a large number of dams constructed during the first 5 year plan and also established the Rehabilitation Directorate at Sachivalaya (Secretariat) to implement its policy. In Orissa, the Department of Water resources came up with a comprehensive policy on resettlement and rehabilitation - *The Orissa Resettlement and Rehabilitation of Project Affected Persons Policy, 1994* which was promulgated on August 27, 1994. At the national level, in 1980 the Government of India issued an order (No. 27/(9)/30-P.I. dt 19.05.1980) to all the State Governments that unless satisfactory safeguards are provided for protecting the interests of the oustees, particularly the weaker sections, the Government might not approve the project since rehabilitation issues could hold up the progress of the project and result in excessive cost escalation. Even though the order only reflects the concerns with regard to completion of the projects, it implied that a little more attention should have been paid to the problems of the DPs. Around the 1980's World Bank issued its first R&R policy, which became operational in 1990s. With the liberalization of Indian economy, World Bank, states like Orissa (1994), Karnataka (1994), Rajasthan (1997) and agencies like National Thermal Power Corporation (NTPC) (1993), and Coal India Limited (CIL) (1994) including the Govt of India, Ministry of Water Resources 1994, Ministry of Rural development (1993 and 1994) etc, all came up with their policy statements on resettlement and rehabilitation.

Apart from this, another unnerving stipulation is that this policy will be applicable to projects that displace 500 or more families in the plains and 250 in the hills or Scheduled Areas. No draft had mentioned the minimum number of families for the policy to apply. This measure could be read as an attempt to reduce the cost of rehabilitation. On one hand, those who are dependent on Common Property Resources (CPR) are included in the definition of project-affected families, on the other, the draft also mentions that they (CPR dependents) will get land only on its availability. NPRR 2006 should be read against the shortcomings of NPRR 2003. It goes beyond NPRR 2003 when it demands that resettlement and rehabilitation should be considered intrinsic to the development process (1.2) but it does not recognise them as a right of the DPs. It speaks in particular about the need to rehabilitate "those who do not have legal or recognised rights over the land on which they are critically dependent" especially those who cannot continue their occupation once their land is lost. Thus, its definition of displaced persons includes the landless labourers and others like petty businesspersons but not necessarily sharecroppers and unregistered *bargadars* who are an important category particularly in eastern India. Most rehabilitation measures of CRP 2006 are reproduced from NPRR 2003. Each displaced family is to get a 150 sq. m. house plot in the rural and 75 sq. m. in the urban areas. The addition of CRP 2006 is to include also the khatedars (7.4) and those reduced to marginal farmers because of acquisition (7.5) among those who are to be given land for land, *if* it is available.

NPRR 2006b continues to be gender insensitive. It speaks of the head of the family as "he/she" while NPRR 2003 spoke only of "he". However, by continuing to include the unmarried sisters or daughters in the family (3.1j) it shows poor gender sensitivity. An unmarried adult son is considered an independent family but an unmarried adult woman belongs to her father's or brother's family with no identity of her own. Alternatives should have been found to it such as registering land in the joint name of the husband and wife.

The essential problem with rehabilitation and resettlement in India is lack of *political will*. Despite the widely reported recent promises of the Prime Minister, Dr. Manmohan Singh at the FICCI Annual General Meeting in New Delhi in January 2007 that, 'a new Rehabilitation Policy will be finalised in the next three months, which will be more progressive, humane and conducive to the long term welfare of all the stakeholders in our economy' the fact remains that 'for 50 years the Indian Government did not wish to promulgate a National Policy on R & R for serving its own people or discharging its constitutional responsibilities'. The lack of political will is implicit in the way these drafts asked for suggestions from people. While NPRR 2003 was advertised in newspapers in February 2004; the new draft was put up on the website of the Union Ministry of Rural Development only from 4-11 October, 2004 and people were given only seven days to respond to it. As comments were solicited only on the website the process excluded the participation of all those affected people who did not have access to the internet. For resettlement to lead to rehabilitation, it has first to prevent impoverishment. That is the main reason for the insistence on minimising displacement and for stating that those who pay the price should be the first beneficiaries of the project. These statements enunciate the principle that their lifestyle should be better after the project than before it because they pay the price of development. A basic condition for it is a democratic process that includes their prior informed consent.

Section I

The Draft National Rehabilitation Policy (2006)

From Compensation to Rehabilitation

In this section, we propose to delineate the patterns of displacement, resettlement, and rehabilitation since independence and trace the evolution of NRP. We have attempted to study the issues of displacement due to developmental projects in pre-independence era. This reflects the colonial attitude to development, both in terms of DPs and Project-Affected Families (PAFs), which unfortunately continues till today, even after 60 years of independence.

The scenario remains unchanged till date. The issues, debates and conflicts over the natural resources and the tendency to privilege a model of development that benefits the powerful and privileged continues till date. We see in fact a heightened conflict over the natural resources between the people who own it and the private corporations and the state, which use the principle of eminent domain to claim everything in the name of public purpose or national interest. Through this study, we also try and see how time and again the promises of development, dignity and livelihood to those affected have been betrayed. In the words of B D Sharma, "it is one of the shining examples of unbroken history of broken promises in the national history of India". Divided into four parts, part one deals with the colonial history of displacement and the loot of natural resources by the colonial Government under the Land Acquisition Act and Forest Acquisition Act for various developmental projects and the timber needs of the Raj. Section two looks into the disasters caused by the dams - the 'modern temples' of India in the early decades of independence. The project affected families, as this study will reveal have been made to suffer in the name of national interest. In section three, the evolution of the rehabilitation policies from post-independence to subsequent decades is traced to understand a gradual shift from compensation to rehabilitation package. Section four offers an insight into the continued lacunae in various policies and argues for legislations on national development planning, displacement and rehabilitation. One has consciously not dealt with two events in this critique - the relief and rehabilitation measures of the Government in relation to the partition refugees in 1947 and influx from Bangladesh in 1971 and the major influence of the Narmada Bachao Andolan struggles on the rehabilitation policy formulation in the country due to the limitations of space.

Development and Displacement in Colonial Times

The principle of 'eminent domain', the bedrock of all the policies, which ensures state control over the natural resources and its usurpation from citizens, has its legal roots in colonial times. The destruction of natural resources in colonial times was a by-product of Britain's own need fuelled largely by the Industrial Revolution. Around 1860, Britain had emerged as the world leader in deforestation, devastating its own woods and the forests of Ireland, South Africa, and north-eastern United States to draw timber for ship building, iron smelting and farming (Gadgil and Guha, 1992: 118). The imperial forest department was formed in 1864 to meet the growing timber need and increased expansion of the Railways network. Headed by Dietrich Brandis, this

department had a dual aim of checking the deforestation and at the same time bringing effective legislation to assert legal ownership right of the state over the forests and waste lands, leading to the enactment of Indian Forest Act of 1865, which was later replaced in 1878. The Act was a comprehensive piece of legislation establishing the 'rights' of state and reducing those of the village communities to that of 'privilege' thereby severely limiting the rights to forest produce. Starting with meeting the needs of railways, later the Act played a very crucial role in meeting the timber needs during the two World wars. The Act proved to be beneficial for the colonial designs and went completely against the interests of the tribals (indigenous peoples), jhum (slash and burn or swidden) cultivators, forest dwellers, settled cultivators, artisans and various other village communities. It was around 1878 that Poona Sarvajanik Sabha anticipated the resulting alienation of the peasantry due to the Act and contested its excessive reliance on state control (Guha and Gadgil, 1992: 144). This resulted in protests in the form of non-payment of taxes, non-cooperation, giving false information or other peaceful means, which turned violent when all peaceful means failed.

The attempted control of the natural resources and abrogation of the traditional rights of villagers brings forth the conflict between the commercial interests of the state and the subsistence ethics of the peasant or developing the corollary developed by E P Thomson first in the case of food riots, if the customary use of the forest rested on a moral economy of provisions, scientific forestry rested squarely on a political economy of profit (Guha and Gadgil 1992: 175).

During this period (19th Century), approximately 35 million persons were believed to have been displaced due to planned destruction of Indian industries. By 1947, an estimated 16 million people were displaced when 99,000 sq miles of forest were acquired under 1878 Forest Act (Fernandes and Paranjpye 1997: 7-10). In the absence of any provision for rehabilitation or compensation; they were forced to simply move to other places or ended up as labourers in the plantation colonies, textile mills, and urban centres.

The Struggles of the Displaced

The British exploited the natural resources for constantly feeding their industries and maintaining consumption levels back home. To facilitate this process they set up railways, textile mills, hydroelectric and irrigation projects on the lands of Indian peasants and in the process destroyed traditional artisans and skilled labour practices. However, one or two industrial conclaves of J N Tata and some others did develop. British regime exploited the seacoasts, forests, inland water bodies, grazing lands, farmlands, and created environmentally non sustainable urban centres and undermined the village ecosystems, political, social and economic structures. With the increasing need for land, they promulgated Land Acquisition Act in 1894, further extending the eminent domain to all kinds of private land as well, which since then became the chief tool of acquiring land of all kinds of purposes.

In the context of our discussion on development and displacement from that era, it is significant to remind ourselves of the construction and opposition to the Mulshi Dam to be built by Tatas near Poona in 1921. The opposition to the dam led by Senapati Bapat is perhaps the only documented evidence of protest movement against the construction of a hydroelectric project in India. The stands taken at that point still remains valid and shows how the notions of development has remained biased in favour of the rich, elites and powerful at the cost of the underprivileged and weaker sections of the society.

As quoted in (Gadgil and Guha 1995: 69) *The Times of India* in May 2 1921 edition published an account of the Mulshi Satyagraha where the correspondent succinctly notes the various positions and origins of the struggle:

1. A strong sense of wrong and deep feeling of resentment among the peasantry whose lands are affected by the project, against the Government for sanctioning the scheme more than two years ago, without taking them into its confidence, i.e. without consent, knowledge or consultation of the peasant-owners of the land.
2. Suspicion and distrust in both the Government and the Company, chiefly due to the procedure of acquisition, as to the bona fides of their intentions toward full compensation, or equivalent … land somewhere else, and other facilities enjoyed by them or necessary for fresh colonisation.
3. Reluctance to part with the land on account of its extreme productivity the natural facilities of irrigation and nominal amount of land revenue.
4. Reluctance to part with lands, ancestral homes, and traditional places of worship and see them submerged under water.
5. Natural reluctance in this class of peasantry to emigrate from one place to another.

On the other side the main claims of the project promoters were:

1. One and half lakh (1 Lakh = 100,000) of electrical horse power would be created by the Mulshi Peta dam.
2. It would save 5, 25,000 tons of coal every year. This quantity of coal at the present rate costs Rs.18,300,000.
3. The saving of coal means a corresponding saving of Rs.10,750,000 worth of fuel to the mill industry of Bombay.
4. The quantity of coal saved on account of the scheme would require 26,250 wagons for transport. These would be utilised and saved for other public purposes.
5. Water once used can be directed for agricultural purposes after electrical power is created.
6. Electricity thus created would give work to 300,000 labourers. If it is utilised for cotton mills, everyday 51 lakh yards would be manufactured.
7. The project electrification of the Bombay suburban railway lines would give to Bombay city much faster and most frequent trains, thus enabling the development of housing schemes in purer air and healthier circumstances.

This in a way is representative of the ideological conflicts which we witness even today, conflict of the livelihood interest of the farmers and others, communities to those of the needs of urban centres for power, and other resources. This is also illustrative of the fact that serving the needs of the urban centre as part of the larger public purpose than the livelihood needs of the villagers and other affected communities. Till today things have not changed much and the case is not much different.

The Mulshi Satyagraha ended with the agitators being divided by the Tatas and the Government with help of sahukars (local money lenders), but nevertheless farmers did get a better monetary compensation because of the Satyagraha.

Post-Independence Development Euphoria: The Case of Bhakra

"Bhakra Nangal project is something tremendous, something stupendous, something which shakes you up when you see it, the new temple of resurgent India, is the symbol of India's progress."

- Pandit Jawaharlal Nehru, during the dedication of the Bhakra dam to the nation. 22 October 1963.

Bhakra is a legend, used and abused by the politicians, bureaucrats, judges, ordinary citizens, media and many others to silence all opposition to the large dams in India. Built in the initial years of nationalistic euphoria and idealism of nation building, it is credited to be largely responsible for achieving self sufficiency in the foodgrains production; and Haryana and Punjab earning the distinction of the granaries of the nation. In April 2005, Manthan Adhyayan Kendra in a significant study however completely demystified the hallow around the Bhakra and the bitter truth stares at our face in the light of growing agrarian crisis in both these states along with that in all over the country.

We found that as in the most other dam projects, the figures put forward for areas to be irrigated by the Bhakra project were highly aggregated. Indeed, even the areas that it could ultimately serve, it was able to do so by virtually drying up the river and cutting off the areas previously irrigated. The startling finding was that Bhakra did not add any new areas under irrigation – it only transferred or shifted the irrigation from one set of areas to another – from areas that were already irrigated to other areas. Further it adds, "In the best analysis, contribution of Bhakra to India's foodgrains production and Punjab/Haryana's agricultural prosperity has been limited, and nowhere near the perception. Bhakra happened to be in the right place, at the right time, and has been given the credit for things it never did."

On the other hand, if one looks at the human cost which went into creating this myth then the findings are equally startling and even after 50 years when the process of displacement started people have not been fully rehabilitated, unable to integrate into the new social milieu, as they are called *Bilaspuriyas* in Hissar, Haryana where most of them were given semi-arid and bushy land. According to Bhakra Beas Management Board (BBMB), the Bhakra dam submerged 44,153 acres (17876 ha) of land due to which 371 villages were displaced. BBMB further states that 7,206 families were affected comprising about 36,000 persons. But these were only count for landowning families; there were no figures available for those affected by the project in other ways. There was no uniform resettlement policy for the displaced. Those displaced by the level of 1280 feet received cash compensation and those above 1280 feet - 1700 feet were either given an option for cash or land compensation. The policy was that no oustees would be given more than 25 acres of land, but also not less than his acquired holding, subject to his compensation amount being adequate to meet the cost. Landless tenants were also declared eligible for the allotment of land equal to the extent of their submerged tenancy subject to a maximum of 5 acres. The price of the land was to be recovered in 20 equal half yearly instalments with a 5.25% interest. Similarly, it decided to allot half acre of land free of cost to each artisan and labourer of the rural area who did not own or cultivate land provided he shifted and settled to the Hissar district. The price of such land was recovered from the other oustees allotted lands through a 1% surcharge.

In the initial euphoria and faith in the nation-building project the oustees cooperated at each and every step from land acquisition to the construction of the project. Oustees did not complain of any hardship due to inadequate resettlement plan and treated it as a case of

inexperience of the young nation in handling projects of this magnitude. However, as years have gone by, the experience of oustees suggested that the insensitivity of the officials was responsible for their plight and today the third generation of those displaced suffers from a sense of betrayal. The insensitivity is clearly visible in the way the cost of the land allotted was recovered from the oustees themselves, and the sole reason of settling them in Hissar was the fact that the unarable land, covered with thick overgrowth in a semi arid zone was available cheaply. Nehru once said that the oustees are 'going to another land; we will make such arrangements for them that they will forget their homeland … we will give them water, school, electricity, roads …'. However, reality is something else, as one of the oustees says that 'when we went, there was not even drinking water, there was no electricity, we were shifted in 1956, but we got electricity only in 1972'. In fact most of them received proprietary ownership only in 1980, which prevented them from taking any loan till then.

Those settled in Himachal Pradesh had no better luck; some of them got land by the HP Government but mostly got cash compensation and were left to fend for themselves. Some of them decided to move to the upper height of the mountains adjacent to the reservoir. But mostly they could never recover because the infrastructure in the region was completely disintegrated due to submergence and displacement. The biggest problem for these people continues to be that of drinking water. It is ironic that people displaced for such a huge reservoir, living on the banks of the same continue to suffer from such a serious water problem. There are other cultural, social and emotional problems, which the displaced communities face till now.

The status of resettlement can be gauged from the fact that after 20 years of completion of the dam, Government's Rehabilitation Committee submitted its report in 1983 claiming to have rehabilitated all the displaced families. However, in 1999, the Committee was called again to look into the 3,000 applications which were submitted claiming inadequate rehabilitation, out of these without specifying any parameters finally 787 were found to be valid by the committee and of which 153 families had been promised - land for lost land. This is shameful for each one of us who often cite the fact that *someone has to pay the price of development*. After all Bhakra people suffered willingly in the name of the nation but even then we could not give them a better deal. It is a breach of trust and an exemplary case, which forces us to rethink the various mega projects and deals the Government has been planning. It is also a reminder to us that Bhakra happened at a time when there was respect for public works and corruption was little heard of in any of the dealings, and even then the displaced people could not get what was promised to them. So, in today's corrupt world amidst the nexus of private capital, and those in power, how will the poor, marginalised and affected people by scores of developmental projects get their due?

The Case of Jaikwadi Dam

There are numerous documented instances of failure of justice and inability of the Government to resettle various project-affected people across the country. Another instance is that of Jaikwadi Dam in Paithan, Maharashtra on Godavari River completed in 1976 with a dam wall 10.2 Kms. long and a reservoir of 34,000 hectares. The project submerged 118 villages and 34,000 hectares of land and displaced 70,000 people. Since the beginning there was no provision for any land-based rehabilitation and each of them got compensation at a paltry rate of Rs. 700 and Rs. 1100 per acre only. Only few well-off people from the region after fighting it out in the court received compensation close to Rs. 6,000 per acre.

But large number of those displaced got a sum which did not even ensure purchasing of some land for their survival. The promised 4-acre land in the command area to be made available to the displaced people was also never made available to them. Another provision announced at the time of commencement of dam in 1965 that 5% of Government jobs would be reserved for the dam affected people in recruitment never happened. After 30 years of the completion of the dam the displaced people are struggling for their rightful claim under the banner of *Jaikwadi Prakalpagrasta Sangharsha Samiti* (Jaikwadi Project Affected People's Organisation) and *Nisarga Mitra Mandal* (Nature friend's organisation). They have petitioned the Government on many occasions, held demonstrations and took out rallies but all their pleas had fallen on the deaf ears. The mention of Jaikwadi DPs is deliberate because Maharashtra is one of the first states, which came up with a rehabilitation law in 1976 for the DPs by irrigation projects. The Act was amended in 1986, which received the presidential assent in 1989. It was considered as a bold move in those times because as opposed to the Government of India, or other states which started working on a rehabilitation policy in the 1990s due to various other factors, Maharashtra law was solely guided by its own experience of constructing many big irrigation and power projects such as Koyna and other industrial and infrastructural projects. The Law had many flaws, to be discussed later, but nevertheless it marked the beginning. Yet in spite of a law being in place and Government showing its concern for the DPs, not much headway has been made to properly rehabilitate the oustees.

The Continuing Saga of Sufferance

The sacrifice of millions of Indians who gave their land, houses, and sources of livelihood and suffered in the name of 'national interest' will only be recorded as footnotes in the history of development of the country. Their pain, suffering - all will be forgotten in the Government's project files and never find a mention anywhere as is evident from the stories of Bhakra and Jaikwadi DPs. One need not go into a detailed analysis of the various 'developmental' projects initiated after the independence, and the development mania which continues even today, but the fact remains that nobody cares for the DPs/PAFs. It is only their sheer resolve to build lives in spite of all the adversity and their spirit of struggle to keep pushing for better rehabilitation measures that things have improved. The struggles of DPs both in Narmada, Koel Karo, Tehri, Rengali, Tawa, Indira Sagar, Kashipur, and Kalinganagar and all over the country have gone a long way in broadening the scope of the development discourse and also contributed to the deepening of the democratic norms and ethos in the country.

One might not talk here of the Narmada Valley development project, comprising 30 big, 135 medium size and 3,000 small dams over the Narmada and its tributaries referred to as "one of the worst planned environmental disasters of the century" by Claude Alvares. It is not the intention of this critique to discuss the facts and figures of the total numbers of displaced in the country since independence and how many of them have been resettled but is intended to show the ways in which the state has dealt with the displaced populations. Narmada Bachao Andolan, the case of which has been documented at many places, has led one of the long drawn and sustained battles for the resettlement and rehabilitation. We are not going into the specificities of this case in this critique.

Even though the Central Water Commission brings out a detailed directory of the various power and irrigation projects; there is no information available regarding the numbers of DPs and

PAFs. The data that exists today is the outcome of the efforts of the people's movements, NGOs, academics and researchers. A look into the available data will give us a picture of the real victims of the development – none other than the tribals and scheduled castes whose combined population would amount to at least 50% of the total displaced.

A Conservative Estimate of the Number of Total Persons Displaced and Tribals Displaced by Development Schemes 1951-1990 in India (In lakhs)

	All displaced persons			Tribals displaced		
Category of Projects	All DPs	DPs resettled	Backlog	Tribals	Resettled	Backlog
Dams	164.00	41.00	123.00	63.21	15.81	47.40
Mines	25.50	6.30	19.20	13.30	3.30	10.00
Industries	12.50	3.75	8.75	3.13	0.80	2.33
Wildlife sanctuaries	6.00	1.25	4.75	4.50	1.00	3.50
Others	5.00	1.50	3.50	1.25	0.25	1.00
Total	**213.00**	**53.80**	**159.20**	**85.39**	**21.16**	**64.23**

Source : Fernandes*: Tribals displaced; the price of development,* New Delhi: Indian Social Institute 1997)

The data presented above is only up to 1990 but the situation has not changed much whether in terms of continuance of displacement due to developmental projects, in fact it has increased in this much hyped-up economic boom as never before. The percentage of those rehabilitated is still as low as 25-30 percent of the total number of displaced population. A discussion at this point on the evolution of the rehabilitation policies in the country since independence would be of some significance to us.

Toward a Displacement, Resettlement and Rehabilitation Policy

Displacement due to 'development' in India is not new, though resettlement and rehabilitation as a response certainly is. The colonial period has produced a vast segment of displaced people. The forest resources, river systems and mineral base that attracts the 'developmental projects' have already seen a 'displaced' segment of the Indian society. In the Indian context, it is of interest to note that most of the developmental projects are located in the most backward areas and populated by various small nationalities – otherwise called tribals. These segments, with the enactment of land settlement laws, forest laws and commercialisation of forest products and minerals, have undergone a metamorphosis, where legally the access to the various natural resources are denied and these segments are treated as hostages within their environment. Another productive segment was also a part of displacement due to the process of de-industrialisation and forced commercialisation of agriculture – these comprise the differentiated peasantry, the artisan groups and the traditional service groups. (Bharathi and Rao, 1999). Resistance to the displacement was treated as a 'law and order' problem. There was no space for R & R policy. Land was acquired by the draconian provisions of Land Acquisition Act 1894,

which still continues, with some amendments in 1967 and 1984, to be a weapon in the hand of independent Indian state for acquiring land from its citizens. The situation post independence has not been much different. Independent India's Nehruvian development model based on development of heavy industries found a nationalistic fervour with planners and its privileged citizens. That there would be large-scale displacement was not a hidden fact and Nehru while speaking to displaced persons of Hirakund Dam in 1948, said, 'If you are to suffer, you should suffer in the interest of the nation'. Barring a few exceptions, most pre-1980 projects did not have a clear-cut resettlement plan. In most of the cases, till 80s much attention was not paid to the sufferings of those displaced by these projects and on most occasions they simply vacated land without much resistance and moved to cities or other such places after getting whatever little compensation they could get. It was much more a matter of Government's largesse and depended solely on the whims and fancies of the project authorities. In those days "rehabilitation" and "resettlement" as terms did not exist in the Government lexicon and it was all a matter of dealing with displaced people. This was marked with complete callousness and insensitivity on the part of the Government, which meant very little allocation and institutional arrangement for relief to DPs as part of the total project planning and costing.

Resettlement was undertaken on a case-by-case basis. To mention a few, there were projects like the Nagarjunasagar, Hirakund, Tungabhadra and Mayurakshi dams; the Rourkela, Bhilai and Bokaro steel plants, several defence establishments, coal mines, etc, which offered resettlement in the form of house sites to the displaced. Only National Thermal Power Corporation (NTPC), and Coal India Limited (CIL), two Government undertakings have formulated an R and R policy and constituted R and R departments to administer it. In addition, resettlement colonies have been demarcated near all their project sites to resettle the displaced (Asif 2000). As a result of this ad hoc approach many of the displaced were left out of the process and even though there is an absence of accurate national database studies on displacement a study for 1951-1995 completed in six states and other research show that their real number 1947-2000 is probably around 60 millions (Fernandes 2004).

Recognising Displacement as a Problem

As mentioned before, the state of Maharashtra was the first to enact a rehabilitation law in response to the demands of the DPs of a large number of dams constructed during the first five 5 year plans. In fact in 1965 only the Government officially accepted the need to rehabilitate DPs and declared that:

1) The DPs will preferably be allocated land for cultivation.
2) A residential plot will be provided.
3) A Gaothan (settlement) necessary for it is to be established.
4) In the newly established Gaothans various civic facilities will be provided.
5) All the expenditures incurred for these rehabilitation measures should be met from the budget of the project.

It also admitted that independent machinery for rehabilitation is required and established the Rehabilitation Directorate at Sachivalaya to implement its policy. (Bhuskute 1997). The act was only applicable to the irrigation projects in Maharashtra and not to the inter-state projects but could be applied to other kinds of projects if Government felt to do so. This however, did not mean that Government recognised rehabilitation as a legal right of DPs. It remained enshrined in

the language of the welfare and relief necessary to ensure timely implementation of the various developmental projects. We will take the problems of various legislations cumulatively in next section. The agitation of DPs of Rengali dam in the 70s forced the Government of Orissa to formulate a rehabilitation package and approach the resettlement issue in a systematic manner. These guidelines were then amended and applied for all medium and major irrigation projects in the state and promulgated through a Government Order on April 20 1977 (resolution no. 13169). A number of other Government orders followed in 1978, 1989, 1990, and 1993. Finally in 1994 all these orders were put together by the main displacing agency, Department of Water resources. They came up with a comprehensive policy on resettlement and rehabilitation. Known as The Orissa Resettlement and Rehabilitation of Project Affected Persons Policy, 1994 it was promulgated in August 27, 1994. Recently the Government has again initiated discussion to address the various problems in the policy and also extended it to other projects in the state. (Dey 1997)

By the 1980s a substantial awareness was beginning to emerge from these issues and experience of the DPs by then meant unrest and option to the new developmental projects. Even though the resettlement of the oustees was the responsibility of the state Governments and project authorities, in 1980 Government of India issued an order (No. 27/(9)/30-P.I. dt 19.05.1980) to all the State Governments that unless satisfactory safeguards are provided for protecting the interests of the oustees particularly the weaker sections, the Government might not accept the project for approval, since rehabilitation issues might hold up the progress of the project and result in excessive cost escalation (Verma 1997). Even though the order only reflects the concerns with regard to completion of the projects, it implied that a little more attention should be paid to the problems of the DPs.

It was also during the 1980s that the World Bank, one of the major financiers of these big projects, issued its first R&R policy titled, 'Social issues associated with involuntary resettlement in Bank financed projects' which finally after subsequent revisions became a mandatory operational directive in 1990 to be taken seriously by the project holders and borrowers. This policy is based on the feedback from the field experiences and can be still described as one of the most progressive ones framed as a major conditionality for financially assisting any project that involves coercive displacement, in Bank's parlance 'involuntary displacement' (Paranjpye 1997). Even though it has now been pointed out that in current neo-liberal era, bank has now come to dilute its own provisions in order to facilitate quick clearance of the projects; the bank's guidelines have been accepted and applied more or less by the OECD countries for the developmental projects it is financing.

With regard to the formulation of the rehabilitation policies, mention needs to be made with regard to NTPC and CIL, two of the biggest public sector agencies responsible for a large number of population displacements. Initially like any other agency they also considered displacement as a non-issue and not of much concern and only paid cash compensation to DPs at the market rate. In some cases, they also started the practice of giving jobs in category C and D to the DPs and as a result their record has been slightly better. For example as in September 1996, NTPC successfully rehabilitated 10,342 families (40.5% of the total displaced), 2,977 i.e. 11.6 percent were given employment with NTPC, while another 4,321 were employed with other agencies working for NTPC, and 134 were issued contract licences. It also engaged in imparting vocational training in over 20 different trades to DPs (Paranjpye and Kewalramani 1997).

In case of Coal India Limited, all its activities were earlier guided by the Coal Bearing Areas (Acquisition and Development) Act, 1957 which was very much similar to the provisions of Land Acquisition Act 1894 and does not have much in way for the rights of those affected. However, only concession has been provided in terms of the jobs allocated under category C and D to those affected apart from the resettlement colonies built by Coal India Limited.

The Decade of the 1990s: A Significant Watershed?

With the liberalisation of the Indian economy in 1991, a rush for investment in major infrastructure projects, the heightened agitation by the people's movement due to increased awareness and increasing pressure on the international financial institutions, there was a sudden flurry of activities in this front. Starting from the World Bank itself, other states and agencies like Orissa (1994), Karnataka (1994), Rajasthan (1997), NTPC (1993), and CIL (1994) including the Government of India Ministry of Water Resources 1994, Ministry of Rural development (1993 and 1994), all came with their policy statements on resettlement and rehabilitation. This is seen largely due to two significant happenings. Firstly due to strident opposition from the Narmada Bachao Andolan and a significant worldwide pressure World Bank had to withdraw from the Sardar Sarovar Project after the negative reports and irregularities in the resettlement and rehabilitation procedures by the Morse Committee. Secondly, as a result the World Bank and other lending institutions and Governments became stricter about these issues and made it a mandatory condition for the sanctioning of developmental loans. This condition is very much visible in two of the clauses in the Government of India's 1994 draft policy:

1. with the advent of the New Economic Policy, it is expected that there will be large scale investments, both on account of internal generation of the capital and increased inflow of foreign investments thereby creating an enhanced demand for land to be provided within a shorter time-span in an increasingly competitive market ruled economic structure.
2. an interesting feature of the growing protest movement has been the creation of a national awareness of the problem. The Press, the activist groups, the social workers and judiciary have combined together to not only educate the masses about the problem but also to build up by the political parties and even by the international organisations to give to it a wider connotation. The international conference of nations on environment at Rio de Janeiro in 1992 has served sufficiently to internationalise the issue. The world financial institutions can go to the extent of withholding loan and aid so as to get fulfilment for its ecological concerns. Another significant but retrograde development in the 1990s was the constitution of World Commission on Dams (WCD) comprising all the stakeholders in the issue. Ramaswamy Iyer, former water resources secretary who has been involved in the whole process in some way or the other for past two decades notes recently that:

In the earlier period (prior to 1998), a degree of enlightenment was gradually beginning to emerge; there was a growing awareness of environmental and displacement problems in the context of big projects; new guidelines started appearing; and as mentioned earlier, a debate began on a National Rehabilitation Policy. However, the appearance of the WCD changed all that. Official attitudes to the WCD were perhaps more hostile in India than anywhere else; and eventually the Government of India rejected the Report of the WCD (November 2000) in toto. There was a hardening of attitudes, a strident re-assertion of the engineering point of view and a down gradation of other concerns, and a *volte face* on our own principles and guidelines. Two

decades of slow emergence of enlightened thinking were washed out in the flood of rhetoric against what was perceived as an international conspiracy to prevent India from developing. [Iyer 2007.

This meant a rejection of all the discussions around the issue in the mid 1990s going down the drain and a much-watered down 2003 draft by the then National Democratic Alliance Government.

Shaping of a National Legislation

At the national level, the first policy draft was prepared in 1985 by a committee appointed by the Department of Tribal Welfare when it found that over 40 percent of the DPs and PAFs 1951-1980 were tribals (Government of India 1985). The next draft came from the Ministry of Rural Development eight long years later in 1993 and the third in 1994. In response to it, the Civil Society Alliance struggling for a national rehabilitation policy proposed its own draft to the ministry in 1995. There was silence till 1998 when another draft was tabled but the ministry that prepared it also prepared amendments to the Land Acquisition Act 1894. The civil society alliance found about half of the policy provisions acceptable but thought that the amendments rejected all the principles enunciated in the draft policy. So they came together to engage in a dialogue with the ministry and work on alternatives. Many principles evolved out of this interaction. A meeting convened by the Minister of Rural Development in January 1999 ended with an implicit and unwritten understanding that a policy would be prepared first and that any amendment to the Land Acquisition Act would be based on the principles it enunciated. However, the subsequent draft policy prepared in 2003 by the then Government completely ignored the whole process, which went in the 1990s (Fernandes, 2004). Once again the peoples' movement lobbied together to get a draft policy statement on 'national development planning and displacement' passed to the Government through the National Advisory Council. This draft has not been accepted completely by the Ministry of Rural Development but the 2006 draft based on which the Government now intends to enact a Rehabilitation Act draws from it. It is an improvement over all the past policies but nevertheless the problems persist, as discussed later.

The recent decision of the Government of India to finally move towards enactment of a National Rehabilitation Act rather than a policy is commendable because it will provide the provisions much needed teeth for implementation and DPs to demand their due share. We have seen in Part 3, a gradual evolution from the policy of compensation enshrined in the principle of relief and welfare to recognising displacement as a problem and then finally agreeing to recognise rehabilitation as a due entitlement to the displaced people. There have been many different critiques offered to these various policies at different points of time by popular movements of DPs themselves, academics, researchers and NGOs. However, to conclude, I would like to point towards some continuing malaise in the various policies till date brought by different agencies.

1) Each of the policies takes displacement as given and does not makes it a priority to put the onus on the agencies concerned to find least displacing measures, alternative projects and plans etc.
2) Problem always persists in determining the identity of PAFs and never encompasses every directly or indirectly affected person from the project in widest sense of the term.

3) All the policies lack in institutional mechanism to enforce strictly the provisions of the resettlement and rehabilitation policy.
4) Till today there does not exist any definition or parameter, which can determine a project being considered as in the public interest or purpose.
5) There is no strict provision for time bound resettlement of DPs and PAFs from the time their land is taken till they are fully rehabilitated and their economic status is better than or at par with their existing condition.
6) There is no limit to the amount of land to be acquired by an agency as a result many a time excess land is acquired which remains unutilised and later sold to private agencies for other purposes but not returned to those from whom land was acquired.
7) None of the policies recognises rehabilitation as a right of the oustees and there is no provision under the natural justice or law.
8) Oustees, NGOs, or Gram Sabhas are never consulted when a project is planned, executed, or during the process of displacement or rehabilitation and neither they are made a shareholder of the benefits accruing from the project.
9) Rehabilitation provisions are always meagre and never satisfactory to restore to the oustees their condition prior to displacement, if not better.
10) Last but not the least, none of the policies ever addresses needs of DPs/PAFs who have been displaced due to projects planned prior to the enactment of that particular policy.

One can only hope that the Government of India does not lose this historic opportunity and recognises the pains and suffering of millions of uprooted and disappeared citizens in 60 years of independence and creates a legislation which not only takes into account the points mentioned above, various critiques and suggestions offered by the stakeholders but also moves ahead to creating a *National Policy on Development Planning, Displacement and Rehabilitation* and not just a National Rehabilitation Policy.

Formulating the Benchmark: Six Principles of Rehabilitation

The 2003 rehabilitation policy (NPRR 2003) has been criticised for its lack of sensitivity to persons displaced (DP) or otherwise deprived of their sustenance without physical relocation (PAP). One expected the revised draft of the Ministry of Rural Development (NRP 2006) to deal with the issues that made NPRR 2003 unacceptable but a reading of the document leaves one equally dissatisfied. Like the 2003 policy, this draft too begins with statements that sound sympathetic to the DPs but its contents have changed only marginally. One's dissatisfaction grows when one realises that in 2006 the National Advisory Council (NAC) has sent another draft to the Government of India that looks close to what people's movements wanted. Instead of opting for it the Centre seems to be planning to promulgate NRP 2006. We shall, therefore, study NRP 2006 by using the set of principles that emerged in the mid-1990s from the process coordinated by a civil society alliance of researchers, legal and social activists and DP/PAPs. The alliance critiqued the draft policies and the *Land Acquisition Act 1894* (LAQ) and prepared alternatives to them. The 1998 draft rehabilitation policy (NPRR 1998) had accepted more than half of it. The NAC draft of 2006 accepts much more of it. But both NPRR 2003 and NRP2006 have gone back on NPRR 1998. In order to understand NRP 2006 we shall at first give the principles on which a policy should be based, look at some points of criticism of NPRR 2003 and see to what extent NRP 2006 responds to them.

Six main principles were enunciated during the process coordinated by an alliance that came into existence in 1994 when they got hold of the policy drafts of 1993 and 1994.

1. ***Minimising displacement:*** Most policy-makers consider displacement sad but inevitable, and make no effort to minimise it (e.g. Rau 1990: 30). The present approach to land acquisition is based on the State's eminent domain. The laws enabling displacement emanate from it. Once the principle of minimisation is accepted one has to go beyond the eminent domain, the public purpose, the norms for compensation and the laws founded on it. The decision-makers will have to begin with a search for non-displacing and least displacing alternatives and accept only proposals that keep to this norm. Instead of a public purpose all acquisitions would be based on the principle of "public interest" that is to be defined in a restrictive manner. It also demands regional planning to avoid multiple displacement (Ramanathan 1999: 19-21).

2. ***A transparent decision-making process on acquisition:*** No democratic society can accept a decision without the participation of the affected persons. The DP/PAPs should be actively involved in deciding whether a project is in public interest. Deprivation even for a public interest requires their prior informed consent (PIC) based on proper information given in a language and manner they can understand. Displacement will remain a difficult process even after it but the knowledge of it being for a genuine public interest will make it less traumatic. Their involvement should continue at the stage of identification of the assets to be acquired and of the DP/PAPs and fixing the norms for compensation. They should include also the dependants of the common property resources (CPR), nomadic tribes, tenants and sub-tenants with or without a written agreement, all male and female adults in the family (Dewan and Chawla 1999). In Eastern India special attention will have to be paid to the sharecroppers (Guha 2007).

3. ***Recognising land and other resources as people's livelihood:*** In this approach, land understood as people's livelihood becomes the basis of decisions on its alienation. It takes one beyond the LAQ that treats land only as a commodity to be acquired at its market value for the profit of the investor. Today the State defines even the market value according to the needs of the requiring body (RB) and compensates only individually owned land at a price that is much lower than its real value. It does not recognise the rights of the CPR dependants, the non-*patta* holders, agricultural labourers and those who sustain themselves by rendering services to the village as a community (Dhagamwar 1989: 175) though the land acquired has been their sustenance for hundreds of years. Viewing land and other assets as people's livelihood would involve recognition of "the historically established rights of the tribal and rural communities" over the natural resources, their sustenance. Full compensation and prior consent apply also to the CPRs. The cost-benefit analysis that depends only on the formal economy and marketable commodities would be questioned and alternatives evolved to it that include all the losses that the people suffer. No project that disrupts irreversibly the culture of a community would be permitted (Dewan and Chawla 1999).

4. It also means that ***the principle of compensation should be "replacement value", not the "market value" or "present depreciated value" of assets.*** Replacement includes economic components such as the land taken over and intangibles like the social and psychological trauma of dislocation, the cultural and social systems lost because of loss of their assets, psychological, cultural and social preparation to deal with the new system they are pushed into, training them for jobs in the project, preparing the host community to receive them, replacing the human, environmental and social infrastructure such as the CPRs, cultural and other community support systems. Many of the components may look like intangibles but they are real losses because the people depended on these cultural and social systems to live as human communities. To treat compensation as replacement of their livelihood one has also to give the policy a tribal-Dalit-gender bias in order to ensure that their special needs are met and that their impoverishment and marginalisation are prevented. Justice to all the DP/PAPs should be the norm of compensation and rehabilitation (Dewan and Mhatre 1997: 44-45).

5. **Project benefits should reach the biggest possible number, beginning with those who pay its price.** It is based on the principle that the DP/PAPs should be the first beneficiaries of a project. Monetary compensation is not adequate for them to begin life anew. It is true particularly of the CPR dependants since they are not sufficiently in touch with the monetary economy. A possible alternative is to ensure that they get permanent income from the project even if it were to mean their communities becoming shareholders in it. They can be trained to manage it or may get others to manage it on their behalf but they have a right to its permanent benefits. Another possible alternative is to give land on long-term lease. The basic principle of the options is that none should be worse off after the project. They should in fact be better off after it because they are paying its price. Training them for jobs and giving them preferential employment in the project is one possible way of ensuring that they get its benefits. Persons displaced more than once should get double benefits. The details of the benefits can be worked out locally but the principle that they should be its first beneficiaries and that their right to a life with dignity should be maintained is non-negotiable (Fernandes forthcoming).

6. Finally, a policy is not judiciable, so ***there should be a law*** that recognises the assets lost as people's livelihood, takes the LAQ away from eminent domain and recognises rehabilitation as a right of the DP/PAPs under Article 21 of the Constitution on right to life. The Supreme Court has interpreted it to mean every citizen's right to a life with dignity (Vaswani 1992: 158). It would bind the displacing agency legally to rehabilitate the DPs. Viable implementation mechanisms too need to be set up, possibly through a written contract between the project authorities and the DP/PAPs, that imposes personal liability on the land acquisition and rehabilitation officials (Singh 2006).

Rehabilitation or Development?

A policy is best understood by analysing the process that led to it. The process in its turn depends on the social environment of a given age. The struggle for independence developed in many freedom fighters an ideology of social commitment as an integral part of nation building. Post-

independence decision-makers expressed it through their move away from the colonial profit motive and declaring India a welfare State. However, most leaders who were educated abroad, attributed the progress of the West to technology alone. They were convinced that through technology India could achieve in a few decades what the West had taken a century to do. As a result, most development projects gave priority to economic growth (Vyasulu 1998).

Jawaharlal Nehru knew that exploitation of the colonies and of the working was basic to the progress of the West but both he and P. C. Mahalanobis, the brain behind the mixed economy, considered technology the main solution to India's problems. They assumed that by taking control of the commanding heights of the economy through the public sector the State could ensure social equity. Nehru (1946: 64-65) spoke of the need to industrialise India within a democratic structure, without the capitalist exploitation of the working class and socialist dictatorship. To achieve it India had to free itself from its superstitions, change its traditions and modernise itself. Not surprisingly he declared Hirakud and other schemes, the temples of modern India.

This thinking was well articulated in the five-year plan documents. For example, the second plan stated its aim as a movement towards equality (Planning Commission 1956: 236) but the 3rd Plan (Planning Commission 1961: Approach Paper No. 7) said: "India has an old traditional society rooted in thousands of years of history. Far reaching changes in social customs and institutions are necessary—and have been started—to build up a technically advanced society which offers more equal opportunities and accords priority to economic growth over social justice." The stand of the second plan reflected the idealism of the first decade after independence when it was assumed that the benefits of planned development would reach every Indian. While continuing this thinking the third plan states that tradition should be abandoned in order to get the benefits of modernisation that is *its sine qua non.* However, modernisation was introduced without changing the unequal society. Ignored was the fact that, growing inequalities were intrinsic to the technology and capital-intensive system of the five-year plans. The subaltern classes are not equipped to deal with the technical and other inputs that such modernisation demands (Kurien 1997: 134-135). But because of their faith in technology as the only solution, the planners made very little effort to ensure that the hitherto neglected classes gained access to education and other services required for them to get its benefits. Institutions were built i.e. made available but their access to every class was not ensured (Naik 1975: 5-7). As a result inequalities grew.

Since land acquisition was a major cause of growing inequalities, already from the 1960s some administrators felt that the five-year plans had intensified the process of development, of displacement and of inequalities. They felt that to remedy it, major changes had to be introduced in the process of land acquisition. So the Ministry of Food, Agriculture, Community Development and Cooperation appointed a committee to study laws and procedures around it. In its report submitted in 1967, the 17-member Group of Experts dealt with the procedure of acquisition, principles to determine compensation and the delays in completing the process. It observed that most delays are caused by administrative inaction. It added that ordinarily acquisition of good agricultural land for non-agricultural purposes should be avoided. At times the requiring body asks for more land than required. It should be asked to apply for the minimum area required. Most importantly, in section 8.2 it said that the State has a moral responsibility to rehabilitate the DPs. It insisted that though it is not easy to lay down exact norms for rehabilitation, the State should accept its responsibility (Guha 2007).

The T. N. Singh Formula of the same year stipulated that a job be given to each family displaced by public sector mines and industries. Till the promulgation of NPRR 2003 it was the only central measure having a semblance of a policy. It had many shortcomings but as principle No. 5 enunciated above shows, it was a step in the right direction. That it did function is seen from the number of jobs given. For example, Coal India (CIL) gave a job each to 11,901 (36.34%) of the 32,751 families displaced 1981-1985 (Govt of India 1985). The number began to decline in the 1980s with the first steps towards liberalisation. Mechanisation that cuts down jobs is intrinsic to it. One of its results is that the Standing Committee of Public Enterprises (SCOPE) abandoned the T. N. Singh Formula in 1986 (MRD 1993).

Its result is seen in many projects. For example, in the mid-1980s Coal India began to mechanise its mines and to transfer workers to other mines instead of giving jobs to new DPs. Its impact was seen, among others, in the 25 mines in the Upper Karanpura Valley of Jharkhand that were to displace 1,00,000 persons. Till 1992 the first 5 of them gave a job each to only 638 (10.18%) of the 6,265 families they displaced (BJA & NBJK 1993: 36). With traditional transport the NALCO mines in the Koraput district of Orissa would have created 10,000 jobs that could have rehabilitated 50,000 DPs of the Upper Kolab dam and 6,000 of the NALCO Plant displaced in the same district in the mid-1980s. Their income would have created more jobs in the informal sector. But the fully mechanised mines created some 300 skilled and semi-skilled jobs and all of them went to outsiders (Pattanaik and Panda 1992). According to a study the SEZs will spend Rs 100,000 crores to create 500,000 jobs on 400,000 acres in the near future, at a rate of Rs 20 lakhs per job. However, in an agricultural economy each acre provides work to two persons. As a result, at least 300,000 jobs will be lost. Moreover, only a few of these jobs will go to the farmers and others they displace because not many of them have the skills required for them (Fernandes 2007: 204).

Another major change of these decades was dilution of the social concern that had developed during the freedom movement. Planned development that increased inequalities also created a middle class of 25 to 30 percent of the Indian population (Desrochers 1997: 142). The private sector that had taken control of the consumer sector and had left the infrastructure to the public sector, had failed to produce the goods that this class wanted (Vyasulu 1998). By the 1980s it began to demand more and better goods with no concern for its effects on the poor. Thus, the supportive social environment that could have led to a good law and policy in favour of the DP/PAPs was weakened. Profit became the main motive (Ghosh 1997: 7).

The Policy Surge

That is the social context of the explosion of policies in the 1990s. Occasionally some administrators with a social concern woke up to the need to minimise displacement but by and large economic growth got precedence over the social imperatives. The next move after the 1967 Report was the appointment of a Committee of the Department of Welfare in the Home Ministry to study the rehabilitation of the tribals because the Commission for the Scheduled Castes and Scheduled Tribes had found that 40 percent of the DP/PAPs 1951-1980 were tribals. In its report submitted in 1985 this Committee stated that the policy should apply to all the DPs, not merely tribals and that it should be legally binding (Govt. of India 1985).

The Ministry of Rural Development waited for eight years till the withdrawal of the World Bank from Sardar Sarovar to draft a policy (MRD 1993) and revise it in 1994 (MRD

1994). The 1993 draft acknowledged the injustice done to lakhs of persons displaced and not rehabilitated. It also mentioned that SCOPE had abandoned the T. N. Singh Formula and that justice demanded a policy that attended to the special needs of the tribals and Dalits. Thus it shows the concern of the Ministry for those who were paying the price of development. It was revised after getting the reaction of 16 Ministries and Departments of the Government of India. As such it represents the views of the Government as a whole. This totally betrays a lack of concern for the DP/PAPs by deleting all references to all past failures, to the plight of the DP/PAPs or to the fact that the T. N. Singh Formula had been abandoned. Instead, it begins by stating that with the new economic policy more land than in the past will be required by Indian and foreign private investors, much of it in the tribal areas. That shows the need for a policy (MRD 1994: 1.1-1.4). Thus, its motivating force is liberalisation, not the good of the DP/PAPs.

The civil society alliance mentioned above was formed to analyse the drafts and prepare alternatives to the policy as well to the LAQ. The process lasted more than a year and involved over 1,000 voluntary agencies, social and legal activists, researchers and many thousands of DP/PAPs. This alliance evolved the principles given above, prepared alternatives to the policy drafts and to the LAQ based on them and presented the documents to the Secretary, Rural Development, Government of India in early October 1995. (for the text of all the policies, laws, drafts and critiques till February 1997 see Fernandes and Paranjpye (eds) 1997). Three years later, the Ministry of Rural Area and Employment prepared another policy draft (NPRR 1998) as well as amendments to the LAQ (LAB 1998). The civil society alliance found about half of the policy draft acceptable but felt that the LAB rejected all its principles. So they came together once again to dialogue with the Ministry and work out alternatives. A meeting convened by the Minister for Rural Development in January 1999 ended with an unwritten understanding that a policy would be prepared first in consultation with civil society groups and a law would then be drafted based on the principles it enunciated. But the Union Cabinet reportedly rejected the policy in October 1999 and approved LAB 1998 that attempted to reduce the already limited rights of the DP/PAPs under the LAQ.

Thus, the scope of the drafts was limited. All the documents took displacement for granted. The administrators of the Ministries that were concerned about its ill effects on the DP/PAPs tried to bring them as much relief as possible within this perspective. But more powerful Ministries with which the business interests interacted, undercut much of their effort. Amid these dynamics, the civil society attempted to make the voice of the voiceless heard at least to a limited extent. This interaction brought about some improvements in the drafts.

Looking Back: The National Policy Draft of 2003

One would have expected the national policy to build on this process. But NPRR 2003 promulgated on 17th February 2004 seems to have ignored it. It was finalised with no consultation with civil society groups or the DP/PAPs. If it had emanated from the process it would have been an improvement over the 1998 draft that had accepted more than 50 percent of the principles of the civil society alternatives, one of them being that the lifestyle of the DP/PAPs should be better after the project than before it because they pay its price. This principle is based on Article 21 of the Constitution that the Apex Court has interpreted as right to a life with dignity. However, the benefits that NPRR 2003 suggests can at best keep the DP/PAPs poor and at worst push them below the poverty line (Fernandes 2004).

The first clause that leads to this conclusion is its opening statement that the objective of the policy is to minimise displacement. It is a good objective but the document adds that it will be achieved through discussion with the requiring agency. The DP/PAPs are to be involved only in planning rehabilitation. One is yet to hear of a requiring agency reducing its demand without pressure from the affected groups. The trend today is to get as much land as possible. For example, one wonders why a small car factory needs 997 acres at Singur. The size of the special economic zones (SEZ) and the stipulation that 25 percent of it should be built up area for production leaves one with the impression that it is intrinsic to real estate speculation.

Equally disquieting is the stipulation that the policy will apply only to projects that displace 500 or more families in the plains and 250 in the hills or Scheduled Areas. No draft had mentioned the minimum number of families for the policy to apply. Three States have rehabilitation laws. The MP and Maharashtra Acts make rehabilitation applicable to projects that displace 50 families or a full village with fewer families. But NPRR 2003 comes to this magic figure with no explanation. One is inclined to believe that it is an effort to reduce the cost of the project by not rehabilitating the DPs. For example, much of the land to be acquired for the mines in middle India and for dams in Northeast India is CPRs while the LAQ recognises only individual ownership (IWGIA 2004: 314-315). Many large projects like the Golden Quadrangle and huge mines to be owned by private companies have been splitting land acquisition into small bits, each of them displacing fewer than 500 families. If each sector is taken as a project, the families they displace will not be entitled to the benefits of this policy.

It certainly has a few good points such as including the CPR dependants in the definition of project-affected families (PAF). But its shortcomings far outweigh its positive points. For example, it stipulates that a landowning PAF will be given land for land, subject to a maximum of one hectare of irrigated or two hectares of unirrigated, subject to the availability of Government waste or revenue land in that district. Other documents use the bureaucratic buck-passing phrase "as far as possible." NPRR 2003 has found this escape route of saying that the PAF will get land if it is available. Through it the policy abandons the stipulation of the 1998 draft that land for land is mandatory for the tribals and that it should be attempted for others too. The bureaucrat will not have to search far to use this clause to sabotage the scheme.

One can give many more examples of such escape routes. Of importance is the fact that the policy expresses many good intentions but does not evolve implementation mechanisms. For example, the statement about the need to minimise displacement cannot be effective if it is discussed only with the requiring agency and the affected families are excluded from its decision-making process. Thus the policy gives every indication of being a response to liberalisation. It takes more land acquisition than in the past for granted and also shows the lack of social concern that has been the hallmark of the last few decades. A policy is made because it is a task but the good of the DP/PAPs is almost absent from it (Fernandes 2004).

Reviewing the Rehabilitation Draft of 2006

That is the background also of NRP 2006. During the last decade the Centre as well as the States have accepted the intention expressed in the 1994 draft about the need to make more land than in the past available to the private sector. The Centre gave its legal backing to it through the Highways Act 1995, the SEZ Policy 2000 and the attempt to change the Fifth Schedule in 2001 to make acquisition of tribal land easier. The legal changes which many States have introduced or are

planning to do show that they have taken this statement of intention seriously. For example, Karnataka amended its Land Reforms Act in 1995 to make leasing of land possible for aquaculture and raised land ceiling to 108 acres. It is planning to remove the restrictions on tenancy. The Government of Goa amended its industrial policy in the late 1990s (Fernandes and Naik 2001: 12) and is planning to amend it further to encourage foreign investment without including employment generation as one of its priorities (Goswami 2007). Gujarat too is contemplating changes (Lobo and Kumar 2007: 22-23).

It is seen also from the extent of land acquired or committed to private companies, especially for the SEZs. For example, West Bengal has committed 232,167 (93,994.7 ha) to industries alone (Ray 2006). Orissa had used 40,000 ha for industries 1951-1995 but planned to acquire 40,000 ha more in the succeeding decade (Fernandes and Asif: 1997: 69-70). AP has acquired in 1996-2000 half as much for industry as it did 1951-1995 (Fernandes et al. 2001: 69-70). Goa had acquired 3.5 percent of its landmass 1965-1995. If all its plans go through it will acquire 7.2 percent of its landmass in this decade (Fernandes and Naik 2001: 37-39). Gujarat is planning to acquire land for 27 SEZs (Lobo and Kumar 2007). The private sector is eyeing mining land in Jharkhand, Orissa and Chhattisgarh. Thus, there will be more displacement than in the past, much of it tribal for mining in Middle India and dams in the Northeast (IWGIA: 2004: 314). One does not know how many persons it will affect but the numbers are enormous.

Reviewing Draft NRP, 2006

Since the policy should be to deal with these issues and addressing the shortcomings of NPRR 2003, draft NRP (2006) will be analysed according to the six principles enumerated above. Its statement of intentions is laudable from this perspective. It acknowledges that displacement should be minimised but does not specify the modes of doing it. Like NPRR 2003 this document too limits the involvement of the DPs to the preparation of the rehabilitation package and does not include them in the discussion on the development design per se that produces displacement. It adds that the consequences of displacement and deprivation of resources are traumatic, particularly for the weakest sections like the tribals. The policy is meant to remedy it (1.1). Like NPRR 2003, this draft recognises that monetary compensation is inadequate for them to get over this trauma.

It goes beyond NPRR 2003 when it says that resettlement and rehabilitation should be recognised as intrinsic to the development process (1.2) but it does not recognise them as a right of the DPs. It speaks in particular about the need to rehabilitate "those who do not have legal or recognised rights over the land on which they are critically dependent" especially those who cannot continue their occupation once the land is lost. Thus, its definition of displaced persons includes the landless labourers and others like petty businesspersons but not necessarily sharecroppers who are an important category in East and Northeast India. Another positive step is the recognition of the need to make an assessment of the social, environmental and other costs that the people pay. Chapter 4 calls it social impact Assessment (SIA) and makes its assessment mandatory. Where many of the displaced persons are tribals, "a tribal development plan should be put in place." It also demands a definite timeframe for implementation and grievance redressal mechanisms (1.3). Thus, most of the principles informing NRP 2006 imply an improvement on those of NPRR 2003.

However, even after expressing concern for the welfare of the DPs, by reasserting the eminent domain NRP 2006 restates the State's right to deprive even individuals of their assets without their consent. The DPs can discuss their rehabilitation but are excluded from decisions concerning the project and land acquisition that affect their livelihood. Thus, it excludes a transparent process. As such it is not a democratic process. No serious participation is possible if it is imposed on the people without their consent, in the name of an eminent domain. It also excludes a law that can take development and land acquisition beyond the eminent domain.

It also continues the contradiction of NPRR 2003 by stopping at principles such as minimising displacement without specifying their implementation mechanisms. Chapter 4 of NRP 2006 that speaks of the social impact can reduce the trauma but cannot minimise displacement. This lacuna is doubly surprising because the NAC draft includes among its criteria "public interest" in the place of the "public purpose" and demands the "prior informed consent" (PIC) of the affected persons. Instead of accepting these steps, NRP 2006 stops at the need to minimise displacement but adds eminent domain as the basic principle. These two principles contradict each other (Singh 2006: 5307) and go against the democratic process.

The draft certainly has some suggestions meant to prevent acquisition of more land than required or abuse of some existing provisions. It states that decisions on section 17 of the LAQ on emergency acquisitions can be taken only "after recording the full justification for taking recourse to this provision" (6.23). It also stipulates that land acquired for a project "cannot be transferred to any other purpose without the consent of the oustees." If it is not utilised within ten years, it is to be offered back to the displaced families at a nominal price (6.24). These clauses can prevent acquisition of excess land but not minimise displacement.

Objectives and Definitions

There are only minor differences between the objectives and definitions of NPRR 2003 and NRP 2006. The former spoke of the need to minimise displacement. The statement of NRP 2006 that it should be minimised "as far as possible" (2.1a) looks like deterioration because it provides an escape route while NPRR 2003 only spoke of the need to minimise displacement. A step is taken towards preventing acquisition of more land than required (see above) but modes of minimising displacement are not given. The remaining objectives such as ensuring adequate rehabilitation especially of the weaker sections, striving for a better standard of living and establishing harmonious relations between the displaced persons and the requiring body, remain unchanged from 2003. An improvement is the objective of integrating "the rehabilitation concerns into the development planning and implementation process" (2.1e).

Its definitions too are not much different from those of NPRR 2003. It has some minor change and they are by and large improvements. Instead of project-affected families (PAF) CRP 2006 speaks of "displaced persons" (3.1i). A definition limited to the family can hide gender inequalities exactly as speaking of an ethnic group as a whole can hide class inequalities within it (Fernandes and Barbora 2002: 85-86). Another improvement is the inclusion among the landholders of *khatedars* "whose name is included in the record of right of the parcel of land under reference" (3.1m). By defining a project as that "displacing people irrespective of the number of persons affected" (3.1r) CRP 2006 abandons the NPRR 2003 magic number of 500 PAFs in the plains and 250 in the hills, scheduled areas and desert blocks.

While giving improved definitions, the draft also introduces some contradictions. It speaks of the head of the family as "he/she" while NPRR 2003 spoke only of "he". However, by continuing to include the unmarried sisters or daughters in the family (3.1j) it shows poor gender sensitivity. An unmarried adult son is considered an independent family but an unmarried adult woman belongs to her father's or brother's family with no identity of her own. Alternatives should have been found to it such as registering land in the joint name of the husband and wife. Secondly, it does not restrict the number of affected families to 500 or 250 in the definition of a project but it introduces a contradiction by stating that an "affected zone" (3.1b) is to be understood as an area notified under para 6.1 where it is defined as an area or villages where "there is likely to be displacement of 400 or more families *en masse* in plain areas and or 200 or more families *en masse"* in the hill, scheduled areas or desert development blocks. Thus, one does not know what happens to the projects where the number of displaced families is lower than 400 in the plains and 200 elsewhere. Besides, it defines the displaced as those whose livelihood is "substantially" affected but it does not define this term. This broad definition can go against the DPs by leaving it to the discretion of the administrator.

Social Impact Assessment

Chapter 4 on SIA is an original contribution of NRP 2006. The public hearing that was hitherto limited to the environmental impact assessment (EIA) is extended to the SIA. The requiring agency is to appoint a committee to prepare a SIA of projects that displace physically 400 or more families in the plains and 200 in the scheduled, hill and desert areas. The report of the hearing is to be examined by a multi-disciplinary expert group. The R&R administrator will take note of the SIA conditions laid down in the hearing. The importance given to EIA and the public hearing around it for over a decade had left one with the impression that the flora and fauna mattered more than human beings. By speaking of the need for SIA this chapter recognises that the effects of land loss go beyond the economic to the social sphere and that the impact on the DP/PAPs should be studied. By specifying that SIA applies when a project displaces 400 or 200 families it explains the meaning of a "large number of persons" displaced by a project. Thus it improves on past policies.

However, this chapter has two major shortcomings. Firstly, SIA is limited to projects that "displace physically" 400 or more families in the plains and 200 in the hill or scheduled areas and DDP blocks. The PAPs lose all or most of their sustenance but not the homestead but they are excluded from the SIA. It is an extremely limited view of project affected persons and can even be considered deterioration. NPRR 2003 speaks only of PAFs without specifying whether they are DPs or PAPs. CRP limits it to those who are displaced physically. Many PAPs are worse off than the DPs who are resettled because they lose all or most of their sustenance but it is not replaced because they are not relocated physically.

One of its examples is landlessness that is the first step towards impoverishment. In Assam 70 percent of persons affected by development projects 1947-2000 were PAPs and 30 percent were DPs. Landlessness among all its DP/PAPs studied increased from 15.56 percent before the project to 24.38 percent after it (Fernandes and Bharali 2006: 188). In Andhra Pradesh 60 percent of its 32 lakh affected persons 1951-1995 were DPs and 40 percent were PAPs. Landlessness increased among its DP/PAPs studied from 10.9 percent to 36.5 percent (Fernandes et al 2001: 112-113). Thus, landlessness is higher among the DPs but the area cultivated shows

the opposite trend. In Assam it declined from 3.04 acres before the project to 1.45 acres per family or by 52.44 percent while in AP the average decline was 45.24 percent from 4.2 to 2.3 acres. Landlessness is higher in AP because its high proportion of DPs who lost all their land to the project. It was not replaced. AP resettled only 28 percent of them. However, the average area cultivated after the project is higher than in Assam because of its land-based resettlement of 28 percent of its DPs while in Assam only about 10 projects resettled their DPs. Also support mechanisms such as the number of ponds, wells, poultry, cattle and draft animals that supplement agricultural income declined in Assam more than in AP (Bharali 2007). Landlessness is lower in Assam but many of them cultivate only land around their house.

Downward occupational mobility is another sign of deterioration of their economic status. In AP 45 percent of the DP/PAPs who were cultivators became landless agricultural labourers or daily wage earners after loss of land (Fernandes et al 2001: 112-113) while in Assam their proportion is 53.15 percent. The proportion of cultivators declined from 72.58 percent to 40.24 percent in Assam (Fernandes and Bharali 2006: 188) while in AP their proportion declined from 77.13 percent to 54.2 percent. These are among the signs indicating that impoverishment is higher among the PAPs than resettled DPs. So there is no reason to exclude them from the SIA. They too experience the negative social impact of the project.

Secondly, CRP 2006 excludes "linear acquisitions relating to Railway lines, highways, transmission lines, laying pipelines and other such projects" (7.15) from the SIA. Both NPRR 2003 and NRP 2006 limit the ex gratia to them to Rs 10,000 with no other benefit accruing to them. It is done on the false assumption that linear projects do not displace people. They did it in the past and continue to do it today. But in the past they displaced relatively few persons. Today it had increased enormously because of the Golden Quadrilateral, expressways and other mega transport projects. For example, in the past broadening of the East Coast Highway displaced over 1,000 persons in the Nellore and Guntur districts of AP (Fernandes et al. 2001: 74). The Konkan Railway displaced 100 families in Goa and a few hundred "encroachers" near Margao (Fernandes and Naik 2001: 49). After liberalisation one knows of some thousands of persons displaced by the Mumbai-Pune Expressway but not resettled till the Bombay High Court ordered the project to do so. The Vadodara-Ahmedabad Expressway displaced 2,500 landowning families (12,500 persons) and more of the landless (Lobo and Kumar 2007: 106).

Compensation and Resettlement

Compensation and resettlement are the weakest sections of CRP 2006. The latter is not much different from NPRR 2003. After stating that the policy applies to all people-displacing projects irrespective of their number, it adds that a resettlement administrator is to be appointed where "there is likely to be displacement of large number of persons … 400 or more families in the plains" and 200 in the hill or scheduled areas or desert development blocks (5.1). It does not say who will ensure the rehabilitation of smaller numbers other than to state that measures have to be taken "for the resettlement and rehabilitation of the affected families" (5.3). Also the statement in the next chapter that the affected zone is that from which 400 or more families and 200 in the remaining areas are displaced (6.1) seems to continue this contradiction. Stating that the benefits should reach all the displaced and not specifying who will ensure their rehabilitation in practice becomes a mode of saying that the policy will apply only to bigger projects. For measures to be effective the implementation mechanisms have to be specified and responsibility has to be fixed.

Otherwise none will accept that liability. So CRO 2006 cannot stop at saying that they should be rehabilitated. Ways have to be found for doing it.

It retains the clause of NPRR 2003 that if sufficient Government land is not available, more may be acquired but specifies that it is to be acquired under the LAQ. However, it deletes the requirement of NPRR 2003 that "such acquisition of land should not lead to another list of affected families." It is difficult to say whether it is an improvement or deterioration because one does not know the exact interpretation of this clause in NPRR 2003. Does it mean that those displaced for rehabilitation are not to be counted among the PAFs or is it that it is to be acquired without displacing any family? If it is the former then NRP 2006 is an improvement if it is the latter it is deterioration. Till now persons displaced for any component other than the project proper are not counted among its DPs even when the project has a rehabilitation package. The vague nature of this statement can continue that situation and a large number of persons may be displaced and not rehabilitated. Thus the policy can cause more displacement.

Some administrative implementation systems are specified. The resettlement administrator is to prepare a rehabilitation plan after consultation and is to give it "wide publicity in the affected zone" (6.6). It is to be "discussed in Gram Sabhas in rural areas and in public hearings in urban and rural areas where Gram Sabhas don't exist" (6.14). There is insistence that the requiring body should get permission under this policy and that the cost of the R&R package is to be borne by it (6.19). Thus, participation of the affected families is secured in the implementation of the package and the body that is the cause of their displacement is made to pay for it.

Besides, the compensation amount is to be handed over to the displaced persons and resettlement is to be done before their ouster. This is an important addition because most studies show that the oustees have to wait for many years before they receive compensation. Resettlement comes many years after their displacement. Hardly any project makes proper arrangements to meet their economic needs during the transition. Most of them have to live in tents or huts or with their relatives. No ration shop is provided in the transit camps. Most oustees are forced to take loans during this transition and to pull children out of school in order to turn them into child labourers and also because schools are not available in the transit camps and very few adults get proper jobs (Fernandes et al. 2006: 193-195). The provision that they should be paid compensation and resettled before their displacement is a step in preventing this situation. It is inadequate in itself but makes a beginning in this direction. Besides, for the first time a policy draft refers to displacement as ouster (6.22). Whether this expression is an accident or is intentional is difficult to know but it expresses the reality of the people being ousted forcefully from their habitat.

These positive points can be called progress over past documents. However, as stated above, participation is limited to rehabilitation. That too is to be worked out by the administrator in consultation with the people. It would have been much more realistic to get the people to prepare it with the support of the administrator. More importantly, the requiring agency is made only partially accountable in the sense that it should get permission under this policy and is to bear its cost. But it does not make proper rehabilitation a precondition for sanctioning the project. The priority of the requiring agency is the technical and economic efficiency of the project. It is bound to neglect rehabilitation unless its implementation is made a precondition for sanctioning the project and it is stopped midstream if it is not effective. CRP 2006 stops short of it.

Resettlement Benefits

Most rehabilitation measures of CRP 2006 are reproduced from NPRR 2003. Each displaced family is to get a 150 sq. m. house plot in the rural and 75 sq. m. in the urban areas. CRP adds that each additional "nuclear family of adult husband/wife and minor children" will get 10 sq. m. over and above it (7.2). It retains the clause of NPRR 2003 that only BPL families will be given a house building allowance not less than what the centre gives in a housing programme (not Rs 25,000 as NPRR 2003 stipulated) (7.3). Field experience and studies show that displaced families that are not given a house, spend all their compensation on building one leaving nothing left to begin a new life. To keep above the poverty line, the family requires a permanent job, marketing facilities and other infrastructural support without which in a short time it is impoverished and more often than not, slides into bondage. The policy will legitimise such impoverishment and marginalisation (Fernandes 2004: 1192).

The addition of CRP 2006 is to include also the khatedars *(7.4) and those reduced to marginal farmers because of acquisition (7.5) among those who are to be given land for land if it is available. Land thus given is to be free from all encumbrances (7.6). Each* khatedar *will get Rs 10,000 to develop degraded land or Rs 5,000 to cultivate agricultural land (7.7). Cattle owners get Rs 3,000 to build a cow shed (7.8). The cost of transport is to be borne by the project (7.9). Rural artisans and self-employed persons will get Rs 10,000 to restore their occupation (7.10). Thus, it includes a few hitherto excluded categories.*

The addition of NRP 2006 concerns employment to the affected families. The requiring body "shall provide employment to affected families ….. subject to availability of vacancies and suitability of the affected persons …… to the extent of one person per nuclear family." It "will give preference to groups of affected persons" in outsourced contracts. Willing landless labourers and unemployed affected persons will be given preference in employment for construction (7.11). However, it makes no provision for their training. A large number of the DP/PAPs are illiterate or do not have the skills required for jobs in the new enterprise. Thus, they will not be employed unless they are trained to this work. Without it the statement that they should be given preference for jobs becomes only a symbolic gesture.

NRP 2006 retains the clause of NPRR 2003 that the affected families that are not granted land will be given an amount equivalent of 750 days of minimum agricultural wage (MAW) and adds that if the requiring body is a corporate agency, 20 percent of this amount will be given in the form of shares (7.12.1). Those who enjoyed fishing rights will continue to enjoy them in reservoirs of irrigation projects. Even if they did not enjoy them earlier they will get them unless there are special reasons against it (7.12.2). While adding these clauses, CRP 2006 removes the remaining grants proposed by NPRR 2003 other than the grant of 20 days of MAW a month for one year during transit (7.13). It retains the clauses that also those affected by acquisition under section 17 and those in possession of forestland before October 25, 1980 are entitled to privileges granted to the remaining PAFs (7.14). It also retains the clause that the PAFs of linear projects are to be granted only an ex gratia of Rs 10,000 (7.15) but all other affected persons are to be provided training facilities to improve their capacities (7.16).

Some special provisions are made for the Scheduled tribes, similar to the ones found in NPRR 2003. A tribal development plan is to be prepared in projects that displace 200 or more tribal families. Their land rights are to be settled. Land that has been alienated is to be restored to them. Gram sabhas are to be consulted about land acquisition. Tribals are to be given preference

in land allotment "if available." They are to be given an additional allowance of 500 days of MAW. They are to be resettled in the same scheduled area in order to protect their culture and identity. If they are resettled outside their district, they are to get additional benefits of 25 percent. Land for community and religious gatherings is to be given free of cost. If tribal land has been alienated against existing laws, the benefits will go to the original owner. In case of irrigation projects, they retain in the reservoir the fishing rights they had originally (7.18).

The remaining clauses apply to all the DPs and are almost identical to those of NPRR 2003. Comprehensive infrastructural facilities are to be built in the resettlement area. If they are resettled in an existing settlement, the infrastructure has to be accessible also to the host community. "As far as possible" a population belonging to a given community is to be resettled in a compact area close to each other. Facilities such as drinking water, schools, dispensaries and electricity are to be provided in the resettlement area (7.19).

Also the provisions for grievance redressal (chapter 8) and monitoring (chapter 9) are more or less the same as those of NPRR 2003. The only addition is that the grievance redressal cell is to be funded by the requiring body. "It would be ensured that the cell functions efficiently and independently to ensure proper implementation of the R&R plan" (18.2.1). But it does not say how it is to be ensured. Also the provisions on monitoring remain unchanged.

Will NRP 2006 Lead to Rehabilitation?

Now that the provisions of NRP 2006 are known, one can ask whether they will lead to the rehabilitation of the DPs. This question can be answered by looking at the principles given at the beginning of this critique, supplemented by the criticism of NPRR 2003. To understand the question one has also to make a clear distinction between rehabilitation and resettlement. Though the policy speaks of R&R as though they were one and the same, in reality they are two different processes. Resettlement is one-time relocation with or without other economic support. Rehabilitation is a long process of the DP/PAPs re-establishing their livelihood. The problems linked to displacement begin long before the deprivation of their livelihood and continue much after physical relocation (Dhagamwar 1989: 172).

Thus, resettlement does not lead to rehabilitation unless additional measures are taken in this direction. It is because most DP/PAPs come from economically deprived sections. Being by and large from the neglected regions that are called backward, they have relatively little access to modern inputs. As a result, they are not able to cope with the new society that they are pushed into through forced displacement. It is a case of unequal power relations and a win-win situation is difficult to establish without positive measures (De Wet 2001: 4638-4639). A result of deprivation of sustenance is firstly impoverishment. The DP/PAPs experience its steps such as landlessness, joblessness, lower income, malnutrition. Together they result in malnutrition, ill health and lack of access to services such as education (Cernea 2000: 14-18).

The process of displacement without the consent of the affected persons can result in their marginalisation which goes beyond material impoverishment to the deprivation of the social, cultural and psychological infrastructure that has sustained the communities. The manner in which they are deprived of their sustenance without their consent can create in the communities a low self-image as persons incapable of taking their own decisions. This aspect is important to bear in mind because around 80 percent of the DP/PAPs belong to subaltern communities such as tribals, Dalits and the poorest among the backwards (Fernandes 2007: 203). Other factors such as

low compensation given for their livelihood lost, lack of rehabilitation and the poor quality of services provided confirms them into a self-image of communities that are incapable of developing themselves or of being inferior (Good 1996).

For resettlement to lead to rehabilitation, it has first to prevent impoverishment. That is the main reason for the insistence on minimising displacement and for stating that those who pay the price should be the first beneficiaries of the project. These statements enunciate the principle that their lifestyle should be better after the project than before it because they pay the price of development. It is equally important to avoid marginalisation (Cernea 2007: 1034-1035). A basic condition for it is a democratic process that includes their prior informed consent. Other conditions are included such as recognising the assets lost as their livelihood, not as an economic commodity alone. That is also the reason for the principle on replacement value. It demands replacement both of their material assets lost and of their livelihood as a whole. It includes the cultural systems, social relations and other intangibles that have sustained their societies for centuries. These systems cannot be reproduced in their pristine form but have to be rebuilt in such a way that the DP/PAPs can begin life anew in the new surroundings they are forced into. The basic value guiding these principles is Article 21 of the Constitution.

Some Positive Points

CRP 2006 has some good points. It mentions the need to integrate rehabilitation with the process of development. It wants the SIA report to be prepared by the RB and a public hearing to be held on it. The conditions laid down at it are to be taken into account while preparing the rehabilitation plan. Thus, it recognises that the project affects not merely the environment but the people to be displaced. It suggests some measures to prevent excess land acquisition. The land acquired for one purpose cannot be diverted for any other. If not used for that purpose within ten years, it may be offered back to its original owner at a nominal price.

This condition is important because excess land acquisition has been common in the past and continues to be so today. For example, only a third of the land acquired for the HAL-MIG plant at Sunabeda in the Koraput district of Orissa was used for it. The rest remained unused for three decades till a part of it was sold at a profit (Pandey 1998: 35). Other examples come from BHEL in AP, the Roro irrigation project in Jharkhand and the Burla town in Orissa built on excess land acquired for the Hirakud dam (Fernandes 2007: 205). CRP 2006 also revives the T. N. Singh Formula in a new form by asking the project to give preference to the PAFs by giving them a job per family if it is available and if the persons are qualified for them. It also suggests that the DPs be imparted technical training. It wants 20 percent of the grant to be given to those who do not receive land to be invested in the shares of the company if the RB belongs to the corporate sector. Thus it makes an effort to bring some relief to the DP/PAPs.

Risks of Impoverishment

However, it does not fulfil most conditions required to avoid impoverishment and marginalisation and to ensure a better lifestyle for the DP/PAPs. For example, it speaks of the displaced, not of the PAPs. Those deprived of their sustenance by linear projects are to get only an ex-gratia payment, though their number is growing. It applies to all those who lose their land or sustenance but most provision are for “large numbers”. Projects that displace 400 or more families in the

plains and 200 in the tribal and hill areas and desert development blocks will be declared affected zones but one does not know what will happen to smaller numbers.

Many issues that can prevent impoverishment risks are given in the form of principles with no specific measures for their implementation. For example no measures are specified on modes of minimising displacement other than to say that it will be discussed with the requiring body. The affected persons are to be involved only in the formulation of the rehabilitation plan. It recognises that monetary compensation is inadequate for the DPs to get over the trauma of displacement does not accept the principle of replacement value for the sustenance lost. In other words, they are not recognised as the livelihood of the families from whom they are alienated. The focus of NRP 2006 is on resettlement with a few possible additions such as land "if available" and preference in jobs "if there are vacancies" and if the persons are qualified for the jobs. Nothing is said about their training or about preparing them for the new society.

Will to Legislate or Will to Politics?

Critics allege that in making the NRP 2006, the Government of India seemed to be in the midst of a policy surge as draft tribal and environmental policies were also being circulated simultaneously. The Government wanted to present this as a shining example of its concern for displaced persons (DPs) but "in reality it (was) meant for big business that wants more land than in the past but does not want to spend on the rehabilitation of persons displaced by land acquisition (DPs) and others whom the project deprives them of land or other means of livelihood without moving them away physically from their habitat (PAP)" (Fernandes 2004: 1191-1194). It provides for neither transparency nor any consultative process. Instead it encourages paying people cash instead of land for land. The NPRR 2003 is ridden with loopholes. The newly promulgated policy draft seemed to ignore the whole previous process contained in the previous drafts. It was advertised in newspapers in February 2004 and puts that clock back by several decades (ibid: 1191). It had none of the progressive clauses that had been added during the period of consultation with the civil society during 1998-9. A principle that even the ministries who prepared the drafts had accepted was that the lifestyle of the DPs and Project-Affected Persons (PAPs) should be better off after the project than before it because they pay the price of development. It is based on Article 21 of the Constitution that protects every citizen's right to life (which the apex court has interpreted is as a life with dignity). It says that its objective is to 'provide a better standard of living to PAPs' but it does not elaborate on the mechanism to provide that. "But the benefits suggested in the policy can at best keep the victims poor and at worst push them below the poverty line". The NDA Government in power at that time was accused of attempting to portray its then Prime Minister, Vajpayee, as a messiah of the DPs by hurriedly promulgating that policy just three months before the national elections were due! (Palit 2004) Thus ***political will*** of a different kind altogether was at work then.

The same political will, as expressed under a different coalition of political parties at the Centre, put forth the Draft National Rehabilitation Policy of 2006. Disguised as expression of true interest vis-à-vis that of its predecessors, this time the Government of India acknowledged - 'A National Policy on Resettlement and Rehabilitation for Project Affected Families was formulated in 2003 and it came into force w. e. f. February, 2004. Experience of implementation of this policy indicates that there were many issues addressed by the policy which require to be reviewed."(ACHR 2006). But this intent at self-introspection also proved hollow and critics cried

that the 2006 Draft too needed to go back to the drawing board. The biggest façade of this draft was its attempt at ***people's participation***. This new draft was put up on the website of the Union Ministry of Rural Development only from 4 to 11 October, 2004 and people were given only seven days to respond to it. When the Government itself had taken two years to revise an older draft how were the people expected to react to it in just seven days? Besides, as comments were solicited only on the website the process excluded the participation of all those affected people who did not have access to the internet! It just shows that, 'this principle of 'free, prior, informed consent' is clearly unacceptable to the Government. It did not figure in the 2003 policy and it is not there in the 2006 draft. Governments may talk about 'consultation' and 'participation' but it goes against the grain for them to give people a role in decision-making' (Iyer 2006).

The 2006 Draft was the culmination of a ***political process*** that exhibited non-consultation and hurried policy-making indulgence of the Indian Government for decades. In post-independent India, with the Five-year plans intensifying the process of both development and displacement, a Rehabilitation Policy was long overdue. It impetus came in 1985 in the form of a suggestion by the Committee, created to form a policy for displaced tribal communities under the then commissioner for SCs and STs, B.D. Sharma, that a uniform policy for all those displaced was needed. This draft was prepared by a committee appointed by the Department of Tribal Welfare when it was found that over 40 per cent of the DPs and PAPs from 1951-80 were tribals. However, even then the intent was not so noble as, 'the irony was that the draft clearly stated that this was done in view of the new economic policy, and the expected rise in the demand for more land and hence displacement!'(Ansher and Mumtaz 2006) The next draft came only after eight years, from the Ministry of Rural Development, this time, but one that sadly did not accept rehabilitation as a right of the displaced. This draft was studied by an alliance of thousands of researchers, activists, DPs and PAPs and put forth as an alternative draft to the secretary, rural development in October 1995. What needs to be noted here is the fact that the right of the DPs to be involved in a process of participation and consultation was not granted to them by the Government but secured by the DPs themselves. The drafts of the policy had not been put forward by the Government for a public debate but instead secured by the NGOs through informal channels (Fernandes in Fernandes and Paranjype eds 1997: 39).

But the Government, instead of pushing this policy, responded with silence till 1998 when the Ministry of Rural Development proposed the draft National Policy for Rehabilitation and Resettlement for displaced persons alongside with a proposed draft Land Acquisition Bill. Unfortunately for the Government, the civil society alliance responded to this draft with a lot of criticism. As the alliance found only 50 per cent of the policy acceptable and that its amendments rejected all the principles enunciated in the draft policy, they again decided to engage in a dialogue and discussion with the ministry. In the meantime also, in January 1999 a meeting convened by the Ministry of Rural Development had ended with the implicit unwritten understanding that a policy would be prepared first and any amendments to the LAQ would be based on the principles that it enunciated (Fernandes 2004: 1191). Then in 2000, after many consultations, an alternative civil society draft was prepared – The Land Acquisition, Rehabilitation and Resettlement Bill. And finally after two decades and several drafts in February 2004 the National Policy on Rehabilitation and Resettlement for Project-Affected Families was announced.

But as mentioned earlier, NPRR 2003 had none of the progressive clauses that the entire process of consultation with the civil society, activists and academics had decided on. The BJP

Government of that time simply tossed the previous draft out and put in its own version. The same single-handedness was displayed once again in 2006. Despite having received much flak for NPRR 2003, the Government remained in a limbo for a whole year. It was only in December 2005 that the NAC (National Advisory Committee) of the then UPA Government accepted the inputs provided by the civil society groups and came up with a radically different draft policy. 'However, the UPA Government dumped this document in a meeting of a group of secretaries on May 2, 2006, and announced that it would come up with its own version prepared by the Rural Development Ministry's Department of Land Records. But while the department went on with this task, the Planning Commission asked its inter-sectoral committee on tribal affairs to commence work on another draft policy. The committee had, in fact, been instructed by its parent body to continue work on its version of a draft rehabilitation policy even as the rural ministry studies the comments it has received on the draft. Thus the UPA Government came up with, 'watered down draft of the national rehabilitation policy after dumping an earlier version prepared by the National Advisory Council (NAC) in December 2005' which incensed civil society groups who saw the draft as, 'another manifestation of the centre's cloak and dagger tactics on the rehabilitation issue' (Sethi 2006).

Comparing the Draft NRP with the NAC Draft: Whither Democracy and Justice?

1) The 2006 Draft was nowhere near the National Advisory Council (NAC) draft. As has been noted, its principal folly lies in the fact that it, 'turns away from **the principle of justice** and avoiding displacement to the principle of "eminent domain" of the state in land acquisition' (ibid Ansher and Mumtaz). Its Preamble reasserts the state's prerogative through the use of the words 'eminent domain' which wasn't there in the 2003 draft. In fact, the 2003 draft Preamble had stated that, "The Government of India recognizes the need to minimise large-scale displacement to the extent possible and, where displacement is inevitable, the need to handle with utmost care and forethought issues relating to Resettlement and Rehabilitation of Project Affected Families". But this idea of 'minimising displacement' and choosing the non-displacing or least-displacing option was sadly missing from the Preamble of the 2006 draft. Also, while in the 2006 draft the words 'non-displacing and least-displacing' are present in paragraphs 2.1 (a) and 5.5 (i), 'there is no ringing assertion that displacement is undesirable and that the first choice should be to avoid it' (ibid, Iyer). In fact, many critics allege that although the Preamble of the 2006 draft began very promisingly, the operative part of the policy failed to live upto those expectations. There is also widely held opinion that while traversing the path of capital intensive technology based planned development, in post-independent India, 'in reality, GNP growth got priority over justice.'[1] What was fundamentally unjust was the non-questioning of the underlying assumption that displacement was 'inevitable' within this development paradigm. The same Five-year plans that accept the need to combine productivity with social justice on paper, have in reality displaced around 3 crore persons in 45 years of planned development (ibid: 35).

2) The Draft of the National Advisory Council (NAC Draft) that had been formulated before the 2006 Draft had clearly outlined the need to amend the Land Acquisition Act of 1894, particularly with the purpose of defining what constitutes 'public purpose'. But the 2006 Draft makes no mention of any need to amend LAQ 1894. Instead it repeatedly talks of acquisition for public purpose or, curiously of, "any other reasons". There is shockingly no mention of either the LAQ

1894 or the need to define 'public purpose', which just shows that this age-old colonial act continues to be the basis of the whole policy.

3) Earlier the problem with various drafts was that they addressed only future DPs and not the right to rehabilitation of those displaced since 1951.

Any event of forced or unavoidable displacement must take the people to be affected by it into confidence and make them participants in the decision-making process. It is this principle of 'prior informed consent' that ensures that the Rehabilitation policy is just. What needs to be noted is that neither the 2003 nor the 2006 draft had any mention of 'prior informed consent'. Instead the 2006 policy had a 'top-down' approach that totally excluded people's participation. This issue is a critical one, which was emphasized in the NAC draft of 2005 but it remains unresolved in the 2006 draft.

In fact, the affected people are allowed no opinion in the process of determination of a project site even if it is on their lands or even if there might be other alternative sites. 'Under Clause 6.1, in cases where displacement is 400 or more families *en masse* in plain areas, or 200 or more families en masse in tribal or hilly areas, Desert Development Programme (DDP) blocks are areas mentioned in Schedule V and Schedule VI of the Constitution of India, the Appropriate Government shall declare by notification in the Official Gazette, area of villages or localities as "an affected zone of the project"' (ibid ACHR 2006). They have no right to be consulted when their lands are being finalized as the project site.

In reality the draft policy was only circulated amongst the various ministries and departments of the Government and reactions' from the civil society were sought only as a formality. Such postures belie the democratic spirit of the Indian Constitution. Transparency and accountability are other features totally lacking in not just this draft but the entire policy-making process of the Government. 'What the Government has actually done makes a mockery of the consultation process, and shows an indifference to, if not contempt for, civil society'(ibid, Iyer). Besides, the basic principle of the draft rehabilitation policies, that even all the ministries had agreed on was that the lifestyle of the DPs and PAPs should be better after the project than before it because it's the latter who pay the price of development. This principle, outlining the framework for ensuring true justice within rehabilitation policy, was based on Article 21 of the Indian Constitution that's states that "No person shall be deprived of his life or personal liberty except according to procedure established by law" and that has also been interpreted by the Indian Judiciary as right to life with dignity. 'But the benefits suggested in the policy can at best keep the victims poor and worst keep them below the poverty line' (Fernandes 2004:1191)

4) The 2006 Draft also contains no legislative framework within which either the state Governments or the 'requiring body' can be made accountable in the entire acquisition and R&R process. On the other hand the 2005 NAC Draft had laid down a rehabilitation package, which stated that all rights and entitlements of the PAFs should be legally re-enforceable by having a contract between the requiring body and the PAF based of the Gazette notification.

5) In the recently passed Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act of 2006, the cut-off date for ownership of land rights is 13 December 2005. But the 2006 draft instead of sticking to this time frame continues to use 1980 as the cut off date for forestland and makes no mention of the fact that the date may be reviewed. It states, under Clause

6.4 (iv), that only those, '*affected families who are/were having possession of forest lands prior to the 25th October, 1980, that is prior to the commencement of the Forest (Conservation) Act, 1980',*will be entitled to the benefits of the 2006 Rehabilitation Policy draft.

6) Another critique of the 2006 draft is that it considers rehabilitation benefits applicable only in case of more than 400 PAFs. This is unfair, as the NAC draft had stated that any displacement should be considered for rehabilitation. Why should the rehabilitation package not be applicable to PAFs falling less in total numbers of 400??

7) Though the 2006 draft contains enlightened ideas within it like that of Social Impact Assessment (SIA), "the real difficulty with this draft is that even when it is good, it is essentially top down". Section 4 of the policy gives details of this SIA process wherein the draft calls for the preparation of SIA report and Environment Impact Assessment (EIA) report by the requiring body for all projects (except linear projects) which involves physical displacement of 400 or more families *en masse* in plain areas, or 200 or more families *en masse* in tribal or hilly areas, DDP blocks and areas mentioned in Schedule V and Schedule VI of the Constitution of India. But unfortunately, there is neither any provision for including the PAFs or their representatives while conducting the SIA and EIA nor any accountability or transparency in the process of examining the reports.

Besides, as Asher and Mumtaz (2006) point out, this is a critical part of the policy but has been dealt with very poorly-

- The SIA has to be done by the 'requiring body' and not the Government. Clause 4.2 states, '*The Requiring body shall prepare the above SIA report, considering various alternatives, and using agencies accredited in the manner prescribed by the Government'*.
- Further the SIA is an assessment of the social impacts of the project but no details have been provided as to what should be the components covered in the SIA
- The SIA has been mentioned in one section in the entire policy but in the entire process that has been outlined for acquisition and formulation of the R&R plan there is no mention of the SIA again any where else in the policy and the role that it would play
- It seems to be a mere formality that the requiring body would have to complete. Nowhere does the policy state that if the SIA were not done then the rest of the proceedings would not go on.

8) The 2006 draft has not laid down any time-frame within which the R&R plan has to be implemented, even though it has very clear time-frames for the survey and publishing of the R&R plan.

9) What is very surprising also, is that the 2006 draft puts the entire process in the hands of an 'Administrator'. The draft provides that whenever there is large-scale displacement, the state Government shall appoint the Administrator for R&R, who is an officer not below the rank of the District Collector, to oversee the R&R plan and who can delegate his/her powers and duties to any officer not below the rank of Tehsildar or equivalent. To expect that people at this lower level of the bureaucratic hierarchy will understand the magnitude of the task being expected of them is unrealistic. This simply dilutes any expectation of responsibility and accountability. The entire

plan is single-handedly put into the hands of the administrator who has no expert group whatsoever to assist him which is foolhardy.

Secondly, this Administrator performs all his/her powers and functions "subject to any general or specific order of the Appropriate Government". The Administrator and the Government Commissioner are empowered to "take all measures for the R&R of the affected families" but are "subject to the superintendence, directions and control of the Appropriate Government". Thus those in charge cannot function independently, and have to be subject to state control.

10) Clause 6.21 states that, 'In case of projects involving land acquisition of behalf of a Requiring Body, a fast-track exercise for updating land records, clarification regarding tenure, survey and standardization of land and property values shall be undertaken concurrently with the land acquisition proceedings.' This provision simply renders the entire procedure of carrying out the survey and R&R Plan irrelevant and can assume dangerous potential.

11) In the 2006 draft, the bodies for review, monitoring and grievance redressal that have been proposed at the state and central levels all, unfortunately, have been given very wide-ranging, sketchy and broad powers and functions. These bodies have been proposed at three levels; An R&R Committee at the State level under the chairpersonship of the Administrator of the projects that will review and monitor R&R; A Grievance Redressal Cell to be constituted by the state Government under the Chairmanship of the Commissioner; and the creation of a National Monitoring Cell, to be constituted by the Ministry of Rural Development and headed by the Joint Secretary, department of Land Resources. But none of the above has been accorded any legal or parliamentary status. It simply renders their creation useless. They are simply to look after rehabilitation related grievances. In fact, the Grievance Redressal cell is even to be funded by the Requiring body, which makes its function susceptible to pressures.

12) The 2005 NAC had made a very important suggestion of setting up a National Rehabilitation Commission that would oversee and monitor the entire R&R process. But this idea found no echo in the 2006 draft and was instead unceremoniously dropped.

13) Clause 6.14 of the 2006 draft states that, 'The draft R&R scheme/plan shall also be discussed in Gram Sabhas in rural areas and in public hearings in urban and rural areas where Gram Sabhas don't exist.' But what is neither clarifies nor spelt out clearly is what would be role of these Gram Sabhas and Panchayats in this entire process.

14) As Asher and Mumtaz (2006) again make a very notable observation, the 2006 draft policy says that the cost of the R&R should be part of the cost of the project but it does not say that no project work should start before total R&R is complete! Complete R&R should be insisted on always before the project takes off.

15) In the sections on the cash amount payable to the oustees for land development and other purposes, similar amounts are mentioned in both the 2003 and the 2006 policies. This is unfair as where fixed amounts have been specified to be given rise in the Consumer Price Index (CPI) is not taken into regard.

16) In this 2006 draft, sadly the employment opportunities being made available to the DPs is also made subject to various conditions and not guaranteed totally. Clause 7.11 states that,

- ' In the case of projects requiring land acquisition on behalf of a Requiring Body, a) the RB shall provide employment to affected people who lose their employment due to the project, subject to the availability of vacancies and suitability of the affected person for the employment;
- b) the obligation at Para 7.11(a) will apply only to the extent of one person per nuclear family of adult husband/wife and their minor children;
- c) The RB will give preference to groups and cooperatives of affected persons in outsourced contracts;
- d) The RB will give preference to willing landless labourers and unemployed affected persons while engaging labour in the project during the construction phase.'
  Clause 7.12.1 states –
- Affected families who have not been provided agricultural land or employment shall be entitled to a rehabilitation grant equivalent to 750 days minimum agricultural wages
  But there is no rehabilitation benefit, for PAFs displaced by linear acquisitions. Clause 7.15 states, 'In the case of linear acquisitions, in projects relating to Railway lines, highways, transmission lines, laying pipelines and other such projects wherein only a narrow stretch of land is being acquired, each khatedar will be offered an ex-gratia amount of Rs. 10,000; no other R&R benefits shall be made available to them'.

17) Although the 2006 draft outlines a whole section to handle the displaced SCs and STs, the provisions contained within it are inadequate. Chapter 3 of the same draft defines an 'affected family' as one that 'must have been residing continuously for a period of not less than three years preceding the date of declaration of the affected zone'.

- Such a strict definition would exclude tribals from its purview as those tribals who practise shifting cultivation that makes them move from place to place every year to grow crops, would not fall within the above stated definition of an 'affected family'. These tribals thus get deprived of any R&R benefits under this draft in case they are displaced.
- The 2006 draft also lacks any provisions that would provide benefits to SCs and STs displaced by projects that involve linear acquisitions.
- Clause 7.18.3 states that, 'Each affected family of ST followed by SC categories shall be given preference in allotment of land-for-land, if available'. This condition, 'if available' rules out any obligation of land for land resettlement and allows the Government to get away by saying that no land was available.
- There is the glaring absence of a provision for collection of disaggregated data about the number of ST and SC families among the affected population in the survey to be conducted by the Administrator.
- The 2006 draft makes a provision that in case of acquisition in the 5th schedule Areas including acquisition under the emergency clause of Land Acquisition Act, the concerned Gram Sabhas should be consulted. But it fails to provide such similar safeguards in case of land acquisition in the 6th Scheduled Areas.

18) The most vital lacunae perhaps of the 2006 draft is that it makes no mention that rehabilitation should be made a legally enforceable right, a point that the 2005 NAC draft had made.

19) The 2006 draft also makes no mention of compensation for the loss of all livelihood opportunities – a point that the NAC draft had made.

20) The NAC draft had laid down that the resettlement site and plan had to be approved by the affected people. But the 2006 draft stated that merely consultations with the affected people should be held. This was a major watering down of a strong previous provision.

21) The NAC draft had made it mandatory to have 26 basic facilities in the rehabilitated areas but the 2006 draft left this provision open to the project component.

22) The NAC draft also made provisions for a detailed 73-point rehabilitation agenda which the 2006 draft did not bother consulting or including.

23) The NAC draft had suggested that the new law should be implemented with a retrospective of the last 10 years and also asked for the cost of the rehabilitation to be incorporated into developmental projects before assessing their economic feasibility. But the 2006 draft did not include these clauses.

24) Ironically in Chapter 4, under the heading 'Proposed Provision of NRP 2006', the 2006 draft's Clause 4.6 states that, 'The Ministry of Defence in respect of projects involving emergency acquisition of minimum area of land in connection with national security and Requiring Bodies implementing projects involving linear acquisitions governed by para 7.15 of this policy will, however, be exempt from the provisions of this chapter'. Thus, in the name of national security, this draft grants sweeping powers to the Ministry of Defence to not only acquire land but also exempt itself from any SIA or EIA. So, 'if a nuclear plant is set up for national interest or defence purposes, no one can oppose it.' (ibid ACHR 2007)

25) The 2006 draft pretends to limit the Emergency Clause use of LAQ1894 by stating in its Clause 6.23 that, 'Emergency provisions under section 17 of the Land Acquisition Act, 1894 should be used rarely. A decision regarding invoking section 17 should be taken after the full justification for taking recourse to this provision'. Because, in reality, ever since the LAQ was created in 1894 invocation of its section 17 has been the rule and its been very rare that its not been used.

26) Even though one of the stated objectives of the draft policy has been to 'minimise displacement', Clause 6.11.(b) of the 2006 draft states, 'If sufficient Government land is not available there, then land may be purchased or acquired under the Land Acquisition Act 1894 for the purposes of resettlement and rehabilitation scheme/plan'. Thus, empowered by this clause the state can evict more people and cause further displacement of non-project-affected people to resettle PAFs in a particular area. Besides, while the 2006 draft allows the state to use its emergency provisions under the LAQ 1894 to evict such people, it does not make provisions for

the rehabilitation of these people displaced from the resettlement zones – instead a vicious cycle of displacement is created.

27) The 2006 draft does not ensure a land for land compensation and allows the state to get away by the use of phrases like 'if Government land is available' and 'may be allotted'. Clause 7.4 states that, 'Each AF owning agricultural land in the affected zone and whose entire land has been acquired may be allotted in the name of the khatedar(s) in the AF, on replacement cost basis, agricultural land or cultivable wasteland to the extent of actual land loss by the khatedar(s) in the AF subject to a maximum of one hectare of irrigated land or two hectares of un-irrigated land/cultivable wasteland, if Government land is available. This benefit will also be available to AFs who have, as a consequence of acquisition, been reduced to the status of marginal farmers'.

28) Clause 7.7 states that, 'In case of allotment of wasteland/degraded land in lieu of acquired land, each khatedar shall get a one-time financial assistance of Rs.10,000- per hectare for land development. In case of allotment of agricultural land, a one-tie financial assistance of Rs. 5,000- per AF for agricultural production will be given'. This meagre compensation money is only ridiculous. It is well-established fact that one-time financial assistance can never help a PAF to regain livelihood.

Judiciary as the Last Resort?

Thus, the process of displacement leads to deprivation of not only socio-economic rights such as the right to housing but also a number of civil and political rights, from the right to be informed about the displacement procedures and freedom of expression. The ***Indian Constitution*** protects a number of these rights and all Internally Displaced Persons (IDPs) as citizens of the state, are entitled to all legal rights granted to then by the Indian Constitution. Article 19 (e) of the Indian Constitution guarantees to its citizens the freedom "to reside and settle in any part of the territory of India" and Article 21 as stated before. But when the state itself acquires land forcibly Article 19 and Article 21 turn into 'paper rights' (Vaswani in Thukral eds 1995:155-68). When CPR dependent communities are deprived of their livelihoods by the state on the assumption that the natural resources are state property "the right that the state appropriates to itself goes counter to the citizen's fundamental rights". Besides studies have also shown that the few hard won rights that Project-affected Displaced Persons have are also substantially denied to them in practice by state administrations and Governmental agencies (Mander 2005).

One may refer to the role the ***Supreme Court judgments*** have played in reiterating Displaced Persons' right to protection. Where the executive has floundered the Judiciary has stepped in as a check - the judiciary has tried to uphold many rights of the development displaces. In Francis Coralie vs. Union Territory of Delhi $(1981)^2$, the Supreme Court had ruled that 'life and liberty' would not imply mere animal-like existence but something more than just sheer physical survival. It said that the right to life included the right to live with human dignity and all that goes along with it. In addition to adequate nutrition, and clothing and shelter over the head, the ruling included facilities for reading, writing and expressing oneself in diverse forms. On personal liberty, the court said that the expression is of the widest amplitude and it includes the right to socialise with family and friends. But displacement causes complete disruption of the traditional socialisation process (Kothari 1996). The Supreme Court, in a subsequent case, Olga

Tellis vs. Bombay Municipal Corporation (1985)[3], filed on behalf of pavement dwellers of Mumbai, went further and held that the right to livelihood and work were both also a part of the right to life. However, in reality, most of the DIDs are resettled in alien environments away from their traditional farmlands when all the working skills they perhaps had was farming. The Judgment of the Samata vs State of Andhra Pradesh (1997) had laid down that if one wants to mine in a tribal area, the lease has to be held by a tribal or a cooperative has to be formed.

State as Ultimate Guarantor of Human Rights?

There have also been valid speculations on whether the formulation of Rehabilitation Policy in India is susceptible to ***external pressures***, on whether the intent is true conviction or mere attempt to appease funders. Since most of the major development projects over the world involving mass displacement or eviction of people receive funding from the World Bank or the International Bank for Reconstruction and Development' (IRBD) and the Government of India is beholden to the Bank for credit, there are accusations that the drafts of India's Rehabilitation Policy were sent to the World Bank for approval. Fernandes points out not only to the reference of the World Bank withdrawing support from the Narmada project in the 2nd MRD draft but also brings notice to the interesting fact that the first draft of the policy was actually gotten ready after the Bank withdrawal from India. 'Ironically, even the R&R policy draft of the Government of India clearly admits that in view of the strict conditionalities imposed by the World Bank and other funding agencies, it would be necessary to have a common National Policy for Rehabilitation' (Fernandes and Paranjpye 1997)

In fact the first NTPC policy had cited 'funders refusing to give loans in the absence of a rehabilitation policy' as one of the reasons behind its formulation (ibid: 35). Fernandes also states most sarcastically, that 'In the rest of India (too), recent improvement in resettlement is due mainly to pressure from the World Bank, which is actually behind much of the land acquisition but demands rehabilitation in order to satisfy human rights activists in the west.'(Fernandes 2007: 203) It has also been alleged that it was only when the Bank threatened to withhold the next instalment of the loan for the Upper Krishna Project that the Karnataka Rehabilitation Act, passed by its legislature in 1987, received presidential assent in 1994 (Guntipilly and Ramesh 1997).

One Comprehensive Policy or Many Policies?

Until now work on Rehabilitation policies and acts has only been piecemeal. The 2006 National Rehabilitation Policy is the only umbrella-like policy, which intends to cover all displaced by development projects in India, as ***other policies*** until now have been either project or state oriented. The states of Orissa and Rajasthan had policies for rehabilitating persons displaced by water resource projects. NTPC and Coal India promulgated their policies in 1993 and in 1994 respectively. However, the recent 2006 Orissa Draft R &R Policy is an improvement on the national one although it still has its own limitations and does not go too far in guaranteeing the rights of the displaced. Besides, the states of Maharashtra and Karnataka have their own laws on the rehabilitation of water resource displaced persons, though in Madhya Pradesh no rules have been framed to actualize the Displaced Persons' Act passed nearly two decades ago despite oustees' demands. Thus invariably for most projects in India, the actual legal framework under which affected people are displaced remains the colonial Land Acquisition Act of 1894.

Besides, although the recent *Orissa R&R Policy 2006* promised better compensation for families to be displaced by various projects through three different packages for those displaced by industrial and mining projects, irrigation and forest projects, and linear projects such as highways, it does not go far enough in ensuring adequate representation of affected women in rehabilitation and other representative committees. The draft, while it has created separate categories for the displaced, with commensurate compensation, still does not specify norms stringent enough to assess land claims put forward by investing companies. Thus the need today to address the real policy issues that concern displaced people is acute. The question of the hour is that if laws do not sufficiently protect the displaced is the Government not to be blamed?

States like India make pledges at the international level to recognise, protect and enforce, at all times, of various fundamental human rights. These include the obligations that may arise with any developmental project too. But even though the state's international credibility is at stake if these human rights are violated, at the international level, human rights are rights of individuals and groups that can be claimed only from states. They are standards that are agreed on by states of their own free will and since the UN is not a world Government superior to states they cannot be enforced. India is party to many international human rights treaties which recognise an array of rights, ranging from the right to life, the freedom of movement and the freedom to choose one's residence to the right to an adequate standard of living, which includes adequate food, clothing and housing.

Land Acquisition Act 1894: A Colonial Legacy

Thus the actions of the state are continuously under scrutiny. Why were only sections of the 2003 policy advertised and not the full draft? Why was the 2006 draft put up on the Ministry's website for such a short while? The biggest shortcoming amidst this deafening silence is the age-old colonial Land Acquisition Act of 1894 (LAQ 1894*)*. More than a policy what is needed is a law and the first step towards it can only be taken by addressing the weaknesses of the LAQ 1894.

The legal framework within which the land-acquisition process operates in India is this act. Promulgated by the colonial British rulers - centuries ago as a means for their economic exploitation and control, this Act uses the concept of 'public domain' or 'eminent domain' to justify the governing powers' appropriation of private land for an ostensibly larger 'public purpose' or 'common good'. In jurisprudence, the right of the state to assert its 'dominion' over any portion of the soil of the state on the ground of public exigencies and for public good has been termed as 'eminent domain'. As Sukumar Das points out, this principle was used unfettered, without any consideration for the affected people, by the medieval rulers in India. For example, when Sher Shah Suri paid no compensation to anyone for the lands that he acquired while building the Grand Trunk Road that connected the northwest frontier with the southeast (Das 2006).

Alongside, the British Government had also enacted the Indian Forest Act of 1878, which gave the State absolute proprietary control over forestland and also the power to commute customary rights. Together, these two Acts became the base into which the State's right to appropriate property dug its heels. The process that began in the colonial times with the indiscriminate acquisition of land by the British rulers two hundred years ago to build railways, set up factories and plantations, expand trade routes etc continues even today as the present Government acquires agricultural land for setting up Special Economic Zones (SEZs).

This act was enacted by a different power-holder for a different purpose. Today the conditions and reality within which it operates are different. It was promulgated by the British colonial power that functioned through a totalitarian state in India, to enable them to acquire land as and when they wished. But what should not be forgotten is that at those times, the aim to acquire land was for extremely limited purposes like schools, factories, roads etc, compensation was regarded as a satisfactory answer, and there was enough land for the displaced people to go and resettle anywhere. But today's reality is different – modern independent India is a welfare state which needs more land for its developmental goals; the burgeoning population of the country has left very little land free for resettlement purposes; being a democratic republic, its Government is duty-bound to consult its citizens before it deprives them of their lands and livelihoods. Thus, "the LA Act of 1894 has to be understood and judged in the light of the times it served. It is obvious that it quite clearly does not serve the new milieu" (Dhagamwar in Paranjype and Fernandes eds 1997: 111)

Critical features of the LAQ 1894

- The 'public purpose' is not even loosely or vaguely defined.
- Basically, the only thing that the LAQ1894 allows to the displaced person is the right to be compensated for his land taken away from him. But the rate of compensation that is used woefully inadequate, usually based on a notional market value and not the real current market value. Besides after a long process of getting this compensation (which creates trauma and uncertainty for DPs) more often than not it is seen that it is usually offered in cash which always slips through the DPs hands like sand, and gets consumed very fast.
- This Act recognises and compensates only assets not livelihoods, it recognises individuals not communities. Thus very often in the process of displacement community values and characteristics get no importance and fade away. The compensation is calculated on the market price of the land and replacement costs are not taken into account, for example, calculation is made on the house as it stands, on the price of the tree as wood but the value of the produce of the trees, fruits, fodder etc is not calculated.
- It encourages the Government's tendency of acquiring too much land as it makes the entire process of acquiring land very easy! And it relies very heavily on land records, which usually are faulty and never in favour of the poor displaced.
- There is usually lack of monitoring and no provisions to ensure transparency – which leads to a lot of corruption
- The Act contains an emergency provision wherein the Government can take away land within a much shorter notice of just 15 days for reasons of emergency or urgency. Under Section 17.2 of the LAQ 1894, an emergency is said to exist when owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire land to make alternative communication arrangements. Thus the Collector is required to only give a 48-hour notice to vacate a building. 'There is neither the right nor the time to object when the Government exercises these powers. In all these cases the acquisition is permanent'(ibid: 22)
- The Act contains a right to object to acquisition but it is a very limited right. It has to be exercised within one month of receiving the notice under Section 4 and the grounds under

which the objection can be raised are very difficult for victims do not know exactly how much land is being acquired and for what purpose.

- The Act contains no mandatory provisions to ensure that post–acquisition proper R&R takes place!
- The Indian Parliament had amended the Act.

Recommendations for Improvement

- The term 'public purpose' which is the basic principle of LAQ 1894 needs to be defined correctly and it must include the welfare of the people. It has sadly legitimised a norm wherein it is expected that for the 'larger/greater good' a few i.e. the DPs have to suffer. This has to be stopped and Rehabilitation Policy 'should be based on the principle of reversing the prevailing process wherein the urban and rural elite have relentlessly appropriated the resources of the tribals and others like fisherfolk, grazers, nomads, Dalits and artisans"(ibid: 22). This concept of 'eminent domain' needs to be questioned relentlessly. Under its guise excessive land appropriation cannot be allowed to carry on. The use of 'eminent domain' and 'public purpose' only end up denying DPs their entitlements and their right to life with dignity as has been enshrined in Article 21 of the Indian Constitution.
- No land should be allowed to be acquired under this old Act.
- This Act should be amended to ensure that there is no displacement unless a complete R&R package is implemented and Saxena, in fact, has suggested that a minimum of 10 per cent of the project cost should be spent on R&R excluding compensation.
- The R&R plan should be published so that people are aware and can take an informed decision on it.
- As Dhagamwar suggests, 'Land acquired for hospitals, schools, sports facilities should be open to the original inhabitants. This can break down barriers and be a way of minimising social costs to eh original owners. If I lose my land but acquire access to a hospital, surely I feel less of a loser.'
- Replacement value should be calculated while giving compensation for the acquired land e.g., taking into account the social costing of trees and other natural produce should be the norm.
- If and when land is acquired under the Emergency Clause, if possible it should be returned after the emergency s over and if not expecting compensation for it which is double that of what is given in normal cases should not be considered unreasonable.
- The grounds under which the right to object are given should be made more meaningful so that a proper debate can be held.
- The name of the Act should be changed to 'Land Acquisition and Rehabilitation Act'.

What needs to be noted is that a second proviso was inserted in the Constitution of India by the Constitution (XVII) Amendment) Act, in 1964, which restricted the power of the state to acquiring any estate or any land comprised therein held by a person under his personal cultivation and within the ceiling limit applicable to him without payment of compensation at a rate which shall not be less than the market value of such land or property. Article 31A is in Part III of the Constitution, and 'hence it protects the fundamental rights of the citizens to get compensation at a rate not below the market value, and it implies that the payment of such compensation precedes the physical acquisition.' Besides, after independence, the Indian Parliament amended the LAQ 1894 in the years 1967 (Act XII of 1967) and 1984 (Act 68 of 1984) basically to make the

legislation more effective in quickening the process of acquisition and providing more reasonable award of compensation. 'Even then the prevailing feeling is that the Act requires more fundamental changes to ensure quicker acquisition with a human face' (ibid Das 2006: 139-140).

Das also points out that recent initiatives by certain central Government ministries to legislate independent special land acquisition acts have further complicated the situation e.g., the enactment of separate land acquisition laws by the Ministry of Urban Affairs and Employment to suit their needs; the ordinance promulgated by the Ministry of Surface Transport in 1997 to amend the National Highways Act of 1956 and the National Highways Authority of India Act, 1988, for speedy land acquisition for national highway projects which has emerged as separate land acquisition law under the NHAI. 'Such acts have been enacted/drafted with the explicit intention of acquiring land expeditiously without prior payment of compensation as guaranteed by Article 31A of the Constitution … it may be strongly argued whether one comprehensive central legislation can be conceived to tackle all the different needs of various departments of the central or state Governments regarding acquisition of land' (ibid: 142-143)

A just rehabilitation policy must acknowledge the customary rights of the people over their lands and resources; it must rehabilitate them totally and ensure payment of full compensation. Very recently, People's Union for Civil Liberties (PUCL) and NGO, Janastakshep have condemned the forceful eviction of people under the LAQ 1894 and sought its repeal (The Hindu 2007). Last month, the Union Minster of State for Commerce Jairam Ramesh, at a press conference in the capital, said that Centre will frame a new Land Acquisition Act to replace the 1894 Act and that the Bill would be tabled in the coming monsoon session of the Parliament. The Minister acceded that in the last 50 years the Governments' track record on resettlement and rehabilitation has been poor, particularly in relation to the irrigation and power projects and although several amendments had been made to the Act, a more foolproof system was needed. With regard to SEZ he also stated that the Central Ministry of Commerce had laid down strict guidelines that only 10 per cent of agricultural land could be acquired and farmers should be duly compensated (Ramesh 2007).

According to media reports, the Centre actually plans to amend the Act by removing an entire section inserted in 1984 during the Indira Gandhi regime that had empowered the Government to acquire land for private parties for the purpose of industrial development in the backward regions and also redefine 'public purpose'. 'This will eliminate the Government's right to acquire land for promoting industrial estates and the SEZs. The Government will, however, retain powers to intervene in which some vested elements adopt malafide means to prevent establishment of SEZs or any other project (India Daily 2007). While one of the key amendments will require the private parties and developers to buy out land from the owners through negotiations without any kind of Government help, the Government will step in if 90 per cent or more land for the purpose is acquired but there is resistance against purchase of the remaining land necessary for any project. Also recently, the parliamentary standing committee on commerce has said that the LAQ 1894 should be replaced by a modern legislation which is relevant to the needs of the time and unless public purpose for which the land is being acquired involves an over-riding national interest like defense or national security, the acquisition should take place with the consent of the affected parties. The committee also noted that monetary compensation should only be a part of the compensation package and should be calculated on the basis of prevailing market rates. (The Economic times 2007)

Besides, it is also argued that the Centre has tried to handle the violent uprisings all over the country against SEZs by barring states from acquiring land for SEZs and promising to change the land acquisition policy. The proposed changes include equalling compensations to the market value of the land and ensuring compensation to the affected families. But 'the success of a land acquisition policy depends on how well it is able to strike a balance among the competing interests involved' and answering essential questions like 'when is the state justified in acquiring private property under eminent domain and what should be the compensation paid?'(Singh 2007) Also, land acquisition for private project is justified when 'public purpose' is stated and Section 6.15 of the 2006 R&R Policy, as well as, Section 38 of the Land Acquisition (Amendment) Act, 1984 permit Government acquisition for companies. Since the bar on compulsory acquisitions is applicable only to SEZs 'the state Governments are free to acquire land for private parties as long as the project is not called SEZ! This policy is indefensible' (ibid)

Fernandes had very rightly noted that. 'The fact that around 80 per cent of the displaced belong to the powerless classes may explain the absence of a national rehabilitation policy even 50 years after the formation of the Republic.' (Fernandes)The new ST and Forest Dwellers Act offers some hope by underlining that the acquisition of forest land for national parks, sanctuaries and development projects should be accompanied by resettlement packages that provide secure livelihoods to the affected communities (Neogi 2007). Thus any Rehabilitation Law or Policy has to take the tribals particularly into account. It has to empower the powerless and restrict the process of impoverishment that displacement necessarily ensures. It also has to ensure social justice. Abhirup Sarkar had pointed out that when a land is acquired and used for industry its value becomes higher than what it was when it was engaged in the social sector. 'Social justice requires that the present owner of land should also get a share of this increased valuation. The Land Acquisition Act of 1894 in spite of all its later amendments has failed to guarantee this. In a proper bargaining framework, on the other hand, the present and future owners share the surplus arising out of the new use of land. *This meets the standards of fairness and justice*.'(Sarkar 2007: 1435-1442) Any just policy or law thus has to meet this standard of justice.

We need to question whether it is a policy that we need or a law. To juxtapose the need for law alongside that of policy is a pressing concern. It is the process of land acquisition and the ensuing process of displacement that should be questioned more deeply. Policy makers also need to shift their attention more towards how to make the policy justiciable. One of the major weaknesses of the 2006 draft was the absence of clauses that would truly ensure that the policy is effectively operationalized. Well-intended principles like prior informed consent and minimising displacement remain mere lip service unless truly operationalised on the ground. When compensation is calculated, replacement costs have to be factored in and must not be ignored. Besides, what is most essential is that resettlement and rehabilitation need to be seen as not just a continuum but also separately. Resettlement is only the one-time process of physical relocation whereas rehabilitation is a longer process of ensuring restitution of livelihood. Mere resettlement should not be either treated or accepted as rehabilitation. Special emphasis also needs to be paid to the fact that one does not have to be an owner of land to be affected by the process of displacement. There are many non-land owning groups that comprise the project-affected families (PAFs) and the manner in which the process of displacement affects their livelihoods cannot be ignored. Their compensation details also need to be given equal credence and importance. There are resurgent questions like whether the Right to Property can/should be

recognised as a human right. To what extent can state exercise its right to sovereignty over natural resources on its territory?

As India moves more towards being a market-friendly state than welfare one, there are also counter-opinions and questions like, whether displacement can really be avoided are being asked. When extra cultivable land is really not available for resettlement purposes, would it not make more practical sense to accept a cash compensation package? Also, eminent domain and public purpose could be substituted with a new sense of 'public trust'. Any just policy or law thus has to meet this standard of justice. Any modern legislation for the displaced, to be relevant to the needs of our times, has to invoke the consent of all the parties involved, ensure participation and be transparent. Monetary compensation should only be part of the package that should be calculated on current market rates. Rehabilitation should be seen as a right not as some concession, providing that it should be the legal duty of the Government and the displaced should be made equal stakeholders in the benefits of the development process.

In conclusion one can only echo the words of Mahapatra that, 'Acts and policies are not enough! Proper humane attitude towards the oustee population, adequate provision for rehabilitation as a development programme, transparent and people-friendly institutional mechanism, and active involvement of the affected people as participants in their own development are absolutely essential prerequisites for successful rehabilitation.' (Mahapatra 1999:110)

Section II
The Communal Violence Bill (2005)

The Communal Violence Bill, 2005: A Brief Review

The National Rehabilitation Policy 2006 fails to consider that displacement occurs beyond the realms of the 'development induced displacement'. Two major causes, other than this, is displacement caused due to natural calamities like earthquake and flood and violence. Displacement is caused by instances of group violence like those rooted in religious and caste conflicts. The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 talks of rehabilitating the victims of such group violence. In this section we seek to interpret the underlying provisions of the bill and analyse it. Though the bill and the policy are not at par with each other in terms of their legal or statutory status, we have included it in this study as both the bill and the policy deal with the question of relief and rehabilitation of the displaced persons. More importantly both the drafts, if studied in a comparative manner will enlighten the reader about the rationality of nation building and the instrument(s) though which the state attempts to build on this logic. The Gujarat riots that took place in February and March, 2002 and the incident of lynching of a member of the dalit community in Haryana the same year shook the conscience of the concerned citizenry of the county and forced many to reflect over and question the existing legal provisions which could safeguard property, life and dignity of the civilian population who were exposed to great dangers in case of such violence. After the Modi led BJP Government came to power for the second time in the same year in Gujarat, a sense of panic was evident among various sections of the population within the country.

The UPA Government on its formation had promised, under its Common Minimum Programme (CMP), a comprehensive legislation that would challenge the exiting laws' impunity in punishing the perpetrators of communal violence and preventing its occurrence with appropriate legislative measures. The promise has come to naught with the formulation of The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005. The bill was introduced to the parliament on 5 December, 2005, after which it was sent to the Standing Committee on Home Affairs for reviews and recommendation, which was duly given without changing the fabric of the original draft much. Since the time it had been tabled in the parliament (13 December, 2006), it has created a sense of alarm among many groups and individuals.

The biggest failure of this bill is that it is devoid of any concrete consultative process with non Governmental groups and concerned citizens - except a few hasty seminars organized with 'less than 48 hours of notice' to civil society activists (ANHAD 2007). There was hardly any stocktaking, consensus building and democratic process of discussing the bill. The report was brought out after a national level consultative meeting, which pointed out how India continues to lack an adequate domestic legal framework, which would allow survivors of communal violence to seek and to secure justice. So the idea behind the bill should have been ideally to redress this lacuna in the Indian judicial system in providing justice to the victims and affected persons from acts of violence, resulting from ethnic and communal strife. Since the bill has been tabled for discussion in the parliament, various sections of the society have felt disillusioned by the Government's failure to deliver what it had promised. Critiques have since then emerged on

many dimensions of the bill, which does nothing to curb the violence. Rather its provisions presuppose that the occurrence of such violence is inevitable. The instances of communal violence in India have seen how it is almost always the minority communities that are targeted. There is, therefore a necessity to make a distinction between the majority and the minority communities insofar as victims of communal violence are concerned. The bill, however, does not differentiate between majority and minority communities. This should have been clarified in the Bill. Otherwise it rendered as just another piece of legislation against violence and not a communal violence prevention bill.

The use of the term 'Communal' is another case in point. 'Communalism' refers to the 'political assertiveness of groups which have their membership is comprised of persons who share in a common culture and identity conflict are politically distinctive in that they may reflect a desire for separation and may threaten to alter the political boundaries of the wider society' (Melson and Wolpe 1970: 1112-1130). The Oxford Dictionary defines the word as 'shared or done by all members of a community'. The Cambridge Dictionary defines the term similarly but goes on to give second definition, which defines communal as '(of conflict) between different communities, especially those having different religions or ethnic origins based on differences or disagreements within a larger social group.'

Communalism, as understood in India, has a negative connotation and is largely used to denote religious conflicts. Communal violence presupposes the existence of communal identities that have been constructed since the colonial times. An individual had multiple identities to claim as her own. The religious and caste identities are held usually as two important locations of identity formation. The allegiance to these identities over time has assumed great social and political importance. The state, which demands habitual obedience from the citizens, has found this 'obedience' slowly dissipating. Since the era of globalisation, the state's domain and control over its subjects have been reduced tremendously. The state desires to be in command of everything that belongs to the land, from resources to the bodies and sexualities of its subjects.

The bill has 13 chapters, which deal with a varied range of issues stressing on the plank of National Security and how the state will endeavour to protect it. To maintain this national and internal security, the state apparatus seeks to expand its authority and influence over its subjects. It reminds one of the draconian Armed forces Special Powers Act (AFSPA), 1958. Since the era of globalisation, the state's domain and control over its subjects have been reduced tremendously. The state desires to be in command of everything that belongs to the land and this ironically symbolizes the return of the state even in this age of globalization. The Communal Violence bill is an important instance when the Government tries to reinstate the obedience of its subjects by expanding its domain further. The preamble also proposes to take preventive measures that will threaten the "secular fabric, unity, integrity and internal security of the nation…" The underlying thrust here is on ensuring the internal security of the nation. This kind of neutral phrasing is open to interpretations and our experiences of the past draconian laws like Terrorist and Disruptive Activities Act (TADA) and the Prevention of Terrorist Activities Act (POTA) have shown often this kind of neutral positioning can affect minority community as the minority communities are seen as threat to the internal security of the nation by the majority community (ANHAD 2005). The underlying aim of the bill is to ensure the internal security of the country. As we have seen in the recent years that in the name of "internal security" common people in Kashmir, Assam and other border areas have been subject to torture, rape, persecution and killings etc. The purpose of the bill becomes increasingly ambiguous and vague with almost parallel use of two corrective

measures that this bill resorts to take i.e. ensuring internal security of the country and threatening the "secular fabric". In course of discussion, it is significant to look at the mechanisms suggested and machineries created to look into whether or not this bill could have prevented Gujarat massacre of 2002, Nellie in 1983, anti Sikh riots primarily in Delhi in 1984, Bhagalpur in 1989, riots that shook the country post Babri Masjid demolitions in 1992 and post Mumbai blasts riots in 1993.

The core sections of the Bill from Chapter II to Chapter VI, relating to the prevention of communal violence, the investigation of communal crimes and the establishment of special courts will only come into effect if the State Government issues a notification. All opposition Governments could ignore this statute completely. Moreover, a state Government may issue a notification bringing the statute into force in the state and yet render it sterile by not issuing notifications declaring certain areas to be communally disturbed areas. The Act can be invoked only in very extreme circumstances where there is criminal violence resulting in death or destruction of property and there is danger to the unity or internal security of India. There are many serious communal crimes which may not result in death such as rape. Similarly, social and economic boycotts, forced segregation and discrimination will not fall within the ambit of the statute because they do not result in death or the destruction of property. Even in such extreme circumstances the Act only prescribes that the Government 'may' act by issuing a notification. On the face of it, the duty to act is not mandatory.

The Preamble to The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 makes it clear that the enactment is being done with a view to empower the Government to take actions. The focus is not on how civil society is empowered to initiate and control prosecutions when communal crimes occur. Given that it is the Government that is the principal wrongdoer, the thrust of the legislation is gone astray. Colin Gonsalves, a human rights advocate has argued that the Preamble to The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 makes it clear that the enactment is being done with a view to empower the Government to take actions. 'The focus is not on how civil society is empowered to initiate and control prosecutions when communal crimes occur. Given that it is the Government that is the principal wrongdoer, the thrust of the legislation is misplaced'[4]. The Bill also claims to prevent communal violence in Chapter III. One way is to delineate certain areas as "communally disturbed areas" which will further lead to discrimination rather than ensuring communal harmony or secular fabric as the bill claims to do so. In the communally disturbed areas the "competent authority" (appointed by the state / central Governments) will enjoy powers as draconian as directing "the conduct of any assembly or procession". This kind of regulatory mechanisms of prevention curbs the individual and collective right to freedom of expression and in a way reinstates that the state has the ultimate control to exercise its control over public spaces. According to Gonsalves (2007) this is a cosmetic section because the police have the powers to do all these things under the Criminal Procedure Code and various other criminal statutes in force today. Also, despite these national, state and district level 'Communal Disturbance Relief and Rehabilitation Councils' — "nowhere in the statute does the right of the victim to relief, compensation and rehabilitation emerge as a right according to an acceptable international standard. When the State does not protect the lives and properties of the minorities during communal carnages, should the victim not have a right to compensation and alternative livelihoods at the cost of the state?" This bill is far from the promise considering the draconian provisions it has laid out. In this context it is significant to note that India has signed and ratified

the Convention on the Prevention and Punishment of the Crime of Genocide, 1948. Article 4 of the Convention makes it obligatory for India to enact legislation to ensure that persons, whether they are constitutionally responsible rulers, public officials or private individuals, guilty of genocide are punished. Moreover, the Union Government has a fundamental duty under Article 51 (c) of the Constitution to foster respect for international humanitarian law and treaty obligations, and under Article 253 Parliament has the power to make any law to implement international conventions (Narrain 2005).The basic problem of the bill as one of the study shows is its foundational objectives; the preamble. It reinstates and reinforces the "state control" through empowering the "State Governments and the Central Government to take measures to provide for prevention and control of communal violence". It is disturbing to see how a bill post Gujarat genocide could even think of empowering state machineries to take control of communal violence. The bill on its outset further aims "to take measures to provide for the prevention and control of communal violence which *threatens* the secular fabric, unity, integrity and *internal security* of the nation…"

One of the primary mechanisms that the bill suggests in Chapter I is the appointment of "competent authority" by the "state Government or Central Government" (Refer to Chapter I 2(d) pp 19) who will enjoy under their jurisdiction certain powers like directing the conduct of "any assembly or procession in any place or street and specify by general or special notice the routes"; in other words the designated authority will adopt "preventive measures" that curb the fundamental right of freedom of expression of speech, will control public movement in public space". Apart from the Competent Authority the Bill strengthens the power of District Magistrate who in writing can issue instructions to "prohibit any act" that might lead to possible communal violence. Through such measures the state in a way reinstates the state control over public domain. In case of riots in Mumbai post Babri Masjid demolition in 1992 while the police shot at and arrested Muslim demonstrators; Shiv Sena on the other hand were allowed to conduct "large public celebrations of the demolition, even to construct a makeshift hutatma (martyrs) column in the Marathi speaking area of Dadar listing the names of Hindus killed in the December 1992 riots" (Hansen 2005: 121). Shiv Sena conducted Mahaartis and these were political demonstrations because Hinduism has no such tradition of "public mass prayer" (ibid). While the bill creates a provision whereby the competent authority enjoys the privilege to adopt preventive measures it is to be noted that in case of Mumbai riots on December 11 1992 a Friday, Shiv Sena Leader Pramod Nawalkar armed with Police protection led the first mahaaarti. This day coincided with the Muslim Friday Prayer throughout the city (ibid).

The bill does not define what constitutes the essence of the "communal" except in Chapter II when the bill attempts to define communal violence. What is to be noted here is that the Government enjoys discretionary powers to "declare certain areas as communally disturbed areas". According to the Bill, "whenever one or more offences are being committed in any area by any person or group of persons" that "involves the use of criminal force or violence against any group, caste or community resulting in death or destruction of property". Not only the bill essentialises the "communal" in generic sense of certain social indicators that determine the Indian collective but also fails looks into the specificities of the hierarchies that exist within these social indicators. The very use of the phrase "any group, caste or community" is open to interpretation in the hand of the state. In this context it is important to see whether or not the state in the past and even in the recent times has adopted an impartial and objective stand. The bill fails to address the complexities of "communal violence" and instead limits the scope, meaning and

implications of communal violence by reducing it to mere designation of certain areas as "communally disturbed areas". The bill does not specify what are the parameters under which certain areas will be delineated; instead it carries a provision that only "when any area has been notified as communally disturbed area" will the state take measures "to deal with the situation in such an area"(Chapter II, 2:21). This kind of re- territorialisation will create further boundaries.

Though Chapter III is titled "Prevention of Acts leading to communal violence", one wonders whether appointment of "competent authority" under Narendra Modi Government in Gujarat or even appointment of any such authority in 1984 could have prevented atrocities against the Muslims and Sikhs respectively. Appointment of individuals to control and prevent communal violence is problematic because the individual appointed by the state authority cannot be assumed to be objective. The subjectivity of the individual is likely to influence his judgements. One pertinent question that comes to be mind is: why should an individual be vested with such authority, which might tend to take an autocratic turn in such vulnerable times? The bill ensures that the competent authority will be punished if he/she acts in a malafide manner. But the entire section is negated by the requirement that no cognisance shall be taken unless the state Government sanctions the prosecution. It is well known that hundreds of cases throughout the country are languishing because the state Governments have refused to grant sanction for the prosecution of public servants.

Chapter VII deals with relief and rehabilitation in a ceremonial manner. It calls for institutional arrangements like setting up "State Communal Disturbance Relief and Rehabilitation Council". The Bill goes into the details of the appointment and nomination of various members in this council which shall have the responsibility of "planning relief and rehabilitation measures…" This council will also be responsible in advising the central Government after an assessment regarding loss of homes and belongings, loss of life and injuries and even "impact of sexual assault or abuse on women". The last provision is disturbing and depicts the gendered position of the framers of this bill. Though the state council is vested with the powers to advise the central Government on promotion of communal harmony and prevention of communal violence it fails to encourage a consultative process as far as controlling the situation is concerned through strengthening the state power in its preamble. According to Colin Gonsalves, despite these national, state and district level 'Communal Disturbance Relief and Rehabilitation Councils' — "nowhere in the statute does the right of the victim to relief, compensation and rehabilitation emerge as a right according to an acceptable international standard. When the State does not protect the lives and properties of the minorities during communal carnages, should the victim not have a right to compensation and alternative livelihoods at the cost of the state?" Certain pertinent questions are raised in one of the joint critiques by ANHAD, HRLN and Jan Vikas as to whether "the framers of the Bill, or the members of the union cabinet who approved its submission to Parliament, genuinely believe that Narendra Modi in 2002, or indeed the administrations of Delhi, Nellie, Bhagalpur or Mumbai when these also burnt in the past in raging communal fires, did not act because they did not have enough powers to do so? Was the failure of disempowered, or of criminally malafide public authority in each of these cases? Even a junior local policeperson or civil administrator has all the powers under the law as it exists, that is needed to quell any communal conflagration. Indeed, no riot can continue beyond even a few hours without the active, wanton, and in my opinion manifestly criminal complicity of state authorities. If this is the case, what purpose is served by a law that sets out as its objective to further 'empower' these same state and central Governments?"

Overall, the bill is obsessed with ensuring the "internal security of the nation" (Chapter IV 19(1)) rather than ensuring the security of the citizens even when it comes to penalizing those who have been found guilty of committing communal violence. The problem that underlies this bill is the assumption that state and its available machineries are objective in delivering justice thus failing to address the issues of communal violence in general and riots in particular. Though it promises to bring the guilty officers yet at the same breadth, it goes on to empower the district magistrate.

The state discourse on relief and rehabilitation is not a new phenomenon. The state to fulfil the demands of the time has resorted to various policy exercises. In this context it is significant to reflect the implications of the multiplicity of policies vis-a-vis a single R&R policy. While multiple policies in a way focus on the micro issues, a single policy often runs the risk of addressing a macro issue leaving out the micro aspects. It is this inherent contradiction of the policy exercise that we need to reflect on. Both NRP 2006 and Communal Violence Bill 2005 speak of people's participation in resettlement and rehabilitation. In case of Communal Violence Bill the very provision of creating the state fund and district funds for disbursement of relief packages can be seen as future sites of corruption. This kind of multiple policy exercises can often overlap in praxis as had happened during emergency as Emma Tarlo(2000) shows in her work on emergency. During emergency in 1975, two parallel schemes were implemented in Delhi, Resettlement schemes and Family planning scheme. While the former aimed at demolishing all "unauthorized" dwellings and shifting the inhabitants to the outskirts of the city, the latter aimed at controlling the "exploding population" by promoting family planning ("nasbandki ka vakt"). In Delhi, under the "Jhuggi Jhompri Removal Scheme" in the 1960s the evicted slum dwellers were allocated plots on a leasehold basis in exchange for their demolished jhuggis. To be entitled to a piece of land they had to produce a DDA or MCD demolition slip. During emergency when the Family Planning Scheme was implemented the DDA officials were provided incentives to register sterilization cases. Thus, the DDA officials to fulfil the needs of the time extended the criterion of allotting plots against the MCD slip and sterilization certificate. This translated into invisible layers of victimhood where people searched for poorer relatives who were paid off to be sterilized. An informal market of certification against money also ran successfully. This instance shows that policies and bills carry the potential of acquiring new meanings in moments of deepening social and cultural crisis. Iqbal Ansari, while doing a field survey in some towns that had witnessed communal violence, concluded: 'The findings on most other major riots in 1980s and 1990s reveals pattern of partisanship on the part of the police. This functional subservience of the police to the political executive made the NPC (1978-81) recommend it's functioning under the state security Commissions to ensure its independence from the Governmental policy direction and interference. But the entire responsibility for this partisanship does not rest on political direction alone. It is partly in some situations more seriously, caused by the social composition and communally prejudiced attitudes of the district officials and police personnel'.(Ansari in Basudeb Chattopadhay ed 2002:

Lastly, what we need to ask is, even if the bill has noble intentions of preventing and quelling communal violence(s) this bill should really be able to serve sentences to the architects of such violence? Achin Vinaik while, explaining through the six point criteria of how to understand the communal violence of 1984 and 2002 riots and compare the two, points out the uniqueness of both the riots and the extreme intensity of the latter. Yet there appears one similarity. He stresses on how in both these instances, the perpetrators of violence have not been

punished by the due process of law.5 So even if the intention of the bill is genuine, can justice prevail through the implementation of this bill? Will this bill have the power to stop a repeat of the violence witnessed in 2002? To our mind the bill is another draconian measure of the democratic state, which has chosen to violent mechanisms in the past and continues to perpetrate through further institutionalisation like the provisions in the bill.

Concluding Observations

In this study, we have analysed the dynamics of the existing political framework through National Rehabilitation Policy 2006 and also the Communal Violence Bill 2005. While we cannot draw any direct parallel between the two, what is implicit in both of them is the state's control over land and people. Both these bills fail to recognize "Internally displaced persons" as a legal category per se. We have explored the intricacies of NRP 2006 and Communal Violence Bill 2005 in the previous sections. Based on the critiques, in the concluding section we draw upon certain imperatives to understand the two bills. In Section I, NRP 2006 is contextualised from a socio–politico-legal vantage point followed by a brief understanding of the how the communal violence bill in Section II leads to recreation of state hierarchy rather than serving as a corrective measure that the policy demands.

In the case of National Rehabilitation Policy 2006, 'rehabilitation' as guaranteed by the draft is only an adjunct to development – meant basically for assuaging the displaced produced by it. But at no point, is right against displacement viewed as a value in itself – a reason for scrapping or stalling displacement-inducing development projects and development strategies. While non-displacing or least displacing alternatives need to be explored as per the policy draft (this is in tune with the Guiding Principles), there is no guarantee that development project will have to be scrapped if alternatives cannot be found. In short, protection against displacement is never viewed from a rights-based perspective. More importantly, the requiring agency is made only partially accountable in the sense that it should get permission under this policy and is to bear its cost. But it does not make proper rehabilitation a precondition for sanctioning the project. The priority of the requiring agency is the technical and economic efficiency of the project. It is bound to neglect rehabilitation unless its implementation is made a precondition for sanctioning the project and it is stopped midstream if it is not effective.

The policy draft like its earlier versions is biased in favour of cases involving large-scale displacement of population. Social Impact Assessment (SIA) is limited to projects that "displace physically" 400 or more families in the plains and 200 in the hill or scheduled areas and DDP blocks. One does not know what happens to the projects where the number of displaced families is lower than 400 in the plains and 200 elsewhere. Besides, it defines the displaced as those whose livelihood is "substantially" affected but it does not define this term. This broad definition can go against the DPs by leaving it to the discretion of the administrator. The policy is biased in favour of IDPs and not PAPs. The draft excludes "linear acquisitions relating to Railway lines, highways, transmission lines, laying pipelines and other such projects" from the SIA. Probably for the first time, the impact of displacement is sought to be assessed in a comprehensive manner. The loss of livelihood, economic opportunities and social impact are factored in – more than the hitherto made environmental impact assessment. Yet it takes a very limited view of such assessment.

The draft displays poor gender sensitivity when it refers to the head of the family as "he/she" while NPRR 2003 spoke only of "he". However, by continuing to include the unmarried sisters or daughters in the family, it shows poor gender sensitivity. An unmarried adult son is considered an independent family but an unmarried adult woman belongs to her father's or brother's family with no identity of her own. Moreover, the draft has a tendency of taking all women as one uniform and homogeneous category, conveniently leaving aside such other categories as, single women and widows etc. The present draft makes 'persons' as the unit of rehabilitation and not the 'families'. This obviously broadens its scope by including persons outside families within it. But it makes a distinction between DPs and PAPs. While PAPs may have lost their livelihood without being displaced, they are not entitled to certain kinds of rehabilitation as the DPs are. In our classificatory scheme (Das et al 2000:48-57), we made a separate category of Potentially Displaced Persons (PDPs) who are too hapless (like the elderly, the infirm the famished and the impoverished etc.) to move and migrate. Such a hierarchy privileging the IDPs induced by development schemes and projects is unsustainable as we argued strongly in favour of treating PDPs at par with the IDPs. Their condition in some cases is even worse. Besides, those deprived of their sustenance by linear projects are to get only an ex gratia payment, though their number is growing.

Although the draft speaks of 'prior informed consent', it makes little room for discussion. The administration is obliged to give the project and the impending displacement its widest publicity. Does this give enough scope for what Chomsky calls, 'manufacturing' of consent? What is it that is subject to deliberation? This consent only relates to the question of rehabilitation. The question is to be "discussed in Gram Sabhas in rural areas and in public hearings in urban and rural areas where Gram Sabhas do not exist". People's participation is limited to rehabilitation. The people will not have any say in respect of the development paradigm that as the draft says, intrinsically displaces them, but only in respect of rehabilitation. The development design is above any kind of democratic auditing and scrutiny. The focus of NRP 2006 is on resettlement with a few possible additions such as land "if available" and preference in jobs "if there are vacancies" and if the persons are qualified for the jobs. To understand the question, one has also to make a clear distinction between rehabilitation and resettlement. Though the policy speaks of R&R as though they were one and the same, in reality they are two different processes. Resettlement is one-time relocation with or without other economic support. Rehabilitation is a long process of the DP/PAPs re-establishing their livelihood. For resettlement to lead to rehabilitation, it has first to prevent impoverishment. That is the main reason for the insistence on minimising displacement and for stating that those who pay the price should be the first beneficiaries of the project. These statements enunciate the principle that their lifestyle should be better after the project than before it because they pay the price of development. It is equally important to avoid marginalization.

The policy draft takes account of such already vulnerable sections as the tribals and the backward classes who are highly vulnerable to displacement. They come under the protection of the 'Special Provisions' of the draft. CRG studies for example endorse the point: Those who are afflicted with preexisting vulnerabilities become further vulnerable to displacement. CRG studies also point out – particularly with reference to Tsunami hits in the Andaman & Nicobar Islands and Tamil Nadu that the Government schemes of relief and rehabilitation have sharpened and exacerbated their vulnerabilities – instead of making them better off. We need to find out how the policy draft under review seeks to address the question. While recourse may be taken to a

number of policies and acts such as Land Acquisition Act of 1894, Highways Act 1995, SEZ Policy 2000, SEZ Act 2005, Rehabilitation Policies of Coal India and NTPC, of the State Governments particularly that of Orissa, the question that arises in this context is: whether we need such a comprehensive policy as envisaged in the draft considering that the real-life cases are so specific that we cannot probably bring them under the ambit of one comprehensive policy?

The Draft of the National Advisory Council (NAC Draft) that had been formulated before the 2006 Draft had clearly outlined the need for amending the Land Acquisition Act of 1894 together with the adoption of this policy. Amendments to the Act and rehabilitation were viewed as inseparable parts of a composite package. But the 2006 Draft makes no mention of any need to amend Land Acquisition Act 1894. Instead it repeatedly talks of acquisition for public purpose or, curiously for, "any other reasons". It just shows that this age-old colonial act continues to be the basis of the whole policy. The question is: Do policies mean anything when they are repugnant to the Constitution, various acts and laws of the land? Policies – like the Directive Principles, after all are 'pious superfluities' - not legally enforceable in courts as long as they are not backed by laws and their implementation hence depends on the vagaries of political will. When rehabilitation policy is directed to the objective of 'minimizing the trauma' of displacement and that too 'as far as possible', the state refuses to part with its 'eminent domain'.

Many of the provisions under the policy draft bear strong resemblance to the UN Guiding Principles (1998). For one thing, the UN Guiding Principles make it obligatory on the part of the Government and other relevant agencies to inform the potential victims of their imminent displacement and emphasize the necessity of obtaining their consent. This makes its way through the phrase of 'prior informed consent' in present policy draft. For another, the loss inflicted on one through the fact of displacement is also to be measured in a rather comprehensive manner as much as one does not have to qualify oneself as a landowner with a legal title or for that matter a legal personality before one gets recognized as a victim. Nevertheless, there are strong points of distinction as well: One, the draft unlike the Guiding Principles - as we have already noted, makes no reference to conflict induced displacement. The Bill discussed above only inadequately handles the problem. Now that conflict-induced displacement is on the rise, the silence of the policy in this respect is inexplicable. Two, the draft is by and large silent about protection during displacement, except that the victim is entitled to monetary compensation before her actual displacement. Such threats as rape and other sex-related crimes that accompany the transition are not taken into account. The NAC draft however seeks to address the problem by way of recommending a two-year period for such movements and shifts. The policy draft hardly shows any resemblance to this recommendation. In actuality, people are displaced in the name of national security and development in great haste – sometimes in extremely odd and adverse weather conditions. The pictures of displacement in the name of urban development (for widening the metro stretch in Kolkata) in Garia a few years ago bear testimony to untold sufferings and miseries caused to the victims. The LAQ 1894 provides for only 21-day notification period. The idea is to space out displacement in such a manner that the ordeal during displacement may be minimized. In many cases, the government authorities claim to have fixed notifications without actually fixing them, fearing agitations and turmoil. Three, the policy draft simply rules out any possibility of return and reintegration – perhaps because of its exclusive focus on development-induced displacement. People can be shifted but development projects cannot be. Third, the UN Guiding Principles view state sovereignty more as self-imposed responsibility than as its prerogative. The Communal Violence Bill 2005 actually reverses the

well-known international principle. It fails to address what constitutes the "communal" in the communal violence bill as much as it "empowers" the state to demarcate certain designated areas as communally disturbed areas implying that it is the only agency that remains over and above the communal violence and makes it immune to the ordinarily existing processes of law. Ethnographic and historical evidences tend to suggest increasing role of the state and its security forces in triggering off and abetting communal violence. The approach after all is to restore state authority in times of forced mass migration and displacement, that is to say, at times, when its authority starts being questioned from all quarters of civil society and the ideology of national security and development increasingly loses its grip over the masses of victims.

Notes

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[1] See Francis Coralie vs. Union Territory of Delhi 1981, ISCC, 608
2. See Francis Coralie vs. Union Territory of Delhi 1981, ISCC, 608
3. See Olga Tellis vs Bombay Municipal Corporation 1985, 3SCC 345
4 www.tehelka.com

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