

Orissa Resettlement and Rehabilitation Policy 2006 - A Contribution towards an Immanent Critique

ON THE KNOW-WHY AND KNOW-HOW OF THE CRITIQUE:

As is well-known by now, the Government of Orissa in the Revenue Department brought out the ‘**Orissa Resettlement and Rehabilitation Policy 2006**’ in the form of a Resolution’ (No-18040/R- R&REH-1/06 Dated Bhubaneswar the 14th May,2006) which has acquired an official status following its eventual publication in the Extra-ordinary issue of Orissa Gazette. Along with it, a separate document called ‘Key Features’ has also been circulated by the Revenue Department to highlight its supposedly unique and positive features. Besides the local and national newspapers have also carried resumes of the new Policy, mostly apologetic and fed in all probability by the official think-tank. Strange as it may seem, except a few rejoinders, scrappy and tangential appearing here and there in the mainstream media, not a single contribution attempting a comprehensive critique of the new Policy has come to the author’s notice to date. At the other end of the spectrum, it was however found that not to talk of the eulogizing media hype that followed in the wake of the announcement of the new policy, even the Seminars and Workshops held meanwhile and supposed to undertake a critical and in-depth discourse over a too-debatable topic as that of the new R & R Policy were filled over all with profuse commendation for it sometimes bordering on shameless hyperbole, except of course the voice of dissent, feeble though, from a few committed activists who are grounded enough in the dynamics of the real struggle of the displaced people down below. **The most disconcerting, nay, bizarre phenomenon that the author happened to witness in course of his participation in some of such discourses is that everybody who spoke highly of the new R&R Policy never cared to quote it verbatim, or analyze discretely its commissions and omissions or compare it with its counter-parts current at national level and in other States.** No wonder therefore, in such an intellectual melee, as typical of today’s Orissa, some non-partisan commentators, who have apparently no stakes involved with the regime-that-be, went to the extreme of lauding the new policy sky high just in the manner of its official protagonists, as if it might be the best of its kind in the country, nay, in the whole world. The one-sided and superficial paeans of the new policy that were initiated by the official apologists, followed by a thoughtless act of blind echoing on the part of the media did however coalesce in no time into a grand orchestra of congratulations and salutations, which as we see today, still inform the dominant discourse around this policy in any intellectual/academic circle. **Frankly speaking, the all-too-evident banality of such a panegyric discourse around the new policy which is still dominant in and outside the official circles served the first, unfailing provocation to the author for undertaking a critique of it, and that too in an immanent style.**

A transcendent critique, where the author enjoys the full-scale liberty of sourcing the refrain, even the substance of his argumentation from any text alien to the text being critiqued, is damn easy as compared to an **immanent critique**, where the author while discoursing a text is absolutely denied the pleasure of quoting any other text which is alien to the text being critiqued. The hallmark of an immanent critique worth the name is the author’s unflinching and painstaking devotion to the given world of theme and even lexicon of the text he critiques. In case of an immanent critique, the author’s liberty to quote, import and extrapolate is limited in exact proportion to the extent of quotation, importation and extrapolation that the text being critiqued might have dwelled upon. To stray beyond the given thematic and referential boundary of the original text, which is so to say, the Laxman Rekha is to sin against the ethics of immanent

critique itself. The author has honestly endeavoured to abide by such an exacting intellectual protocol while undertaking an immanent critique of Orissa R and R Policy 2006. **If a reader finds the critique loaded at times with a detour to such apparently extraneous texts as LA Act 1894, OPLE Act 1972, National R and R Policy-2003, Orissa GP Act 1965, PESA 1996 and the like, the locale or locus of each can in fact be retraced to the very body of the text critiqued itself, rather than invoked from an imaginary thought-play crowding the mind of the author.** So to say, and plainly speaking, the critique fully respects the same serial of ideas and words presented in the text in question as its point of departure, though the critique's point of arrival may seem far removed from, even diametrically opposite to, that of the text being critiqued.

So much about the architecture of the immanent critique. Pre-emptive though as it might seem at this nascent stage of the critique, it is interesting to inform the readers in nutshell that **the very Orissa R and R Policy-2006, which appeared to its architects and apologists as the country's, nay, the world's best of the kind, is, after passing through the deconstructive scanner of the immanent critique, transfigured into the most diabolical of all, even more diabolical than the colonial Land Acquisition Act 1894.**

In recent period, the author had the opportunity of interacting with groups of activists who are involved in some major campaigns for displaced people, such as at **Lanjigarh in Kalahandi, Kasipur in Rayagada, Kalinga Nagar in Jajpur and Kujanga-Erasama in Jagatsinghpur**, wherefrom a graphic account of the manifold woes of the displacees could be gathered in live details. Besides the author thankfully acknowledges the organizers of **two important Seminars held around the theme of new R&R Policy of Orissa [one at PG Council Hall, Vani Vihar, Bhubaneswar on 14 May 06 under the joint aegis of Dept of Political Science (Journalism) and Agami Orissa and other at Hotel Marrion, Bhubaneswar on 1 June 06 convened by Dr.R.K.Nayak, MP on behalf of NISWASS and FES]** for enabling the author's active participation in their deliberations, but for which the critique would have missed much of its élan vital.

1) THE PREAMBLE AND OBJECTIVES, THE SOURCE OF OPTICAL ILLUSIONS ABOUT THE POLICY'S INTENTIONS:

Just as the contents of a self-introduction by a person presented before his clientele can prove either genuine or deceptive about the real motives of the person concerned, so is the case with the Preamble and Objectives of a Law or a Policy of the State, that constitute its self-introduction. Whether the policy-makers actually mean what they liberally proclaim in the statement of objectives and preamble can be ascertained only when we can critically juxtapose them to the rest of the provisions mentioned in the body of the policy itself.

The Policy starts with a grandiloquent statement that reads, **"In order to ensure sustained development through a participatory and transparent process, Government have framed a comprehensive resettlement and rehabilitation policy"**. Then it projects 4 specific objectives to be attained, such as (a) avoiding and minimizing displacement by way of exercising other available options; (b) recognizing voices of displaced communities and the needs of indigenous and vulnerable sections; (c) ensuring environmental sustainability through participatory and transparent process; and (d) developing appropriate institutional mechanism for implementation, monitoring, conflict resolution and grievance redressal. **No doubt these objectives are quite**

laudable in themselves. But the moot question arises, whether these objectives are attainable by the provisions made in the Policy?

Then the Policy states its Preamble which sounds not only grandiloquent but magnanimous too. In the words of the Preamble, **“Unlike many other policies, there is a strong focus on the modalities of implementation of this Policy that makes it a vibrant instrument to promote sustainable development in the state”**. This definitive claim about the novelty and uniqueness of the Policy is preceded by a well-crafted exposition on its background, which for the sake of better comprehension can be split into following constituent propositions:

- (a) The State Government has ever remained committed to the ends of improving the quality of people’s life, social justice and participatory process of development;
- (b) The State Government has ever remained responsive to the challenge of development-induced displacement through project-specific R and R policies;
- (c) The State Government is always actuated by a genuine spirit of learning and retrospection;
- (d) The present Policy has been built upon the experience of past policies, lessons of best practices in other States and State Industrial Policy Resolution of 2001;
- (e) The present Policy has been formulated following consultation with various direct and indirect stake-holders, civil society groups, academicians and specialists in the field; and
- (f) The present Policy provides a flexible framework for administering the R and R services.

While the genuineness or otherwise about the different claims so made can be tested out in course of analyzing the various provisions found in the Policy, **one very pertinent question is apt to strike everyone at the moment, i.e. which stake-holders were consulted, what was their opinion about the kind of policy they wanted, and what was their response following the announcement of the new policy?** As is well-known, no community who were displaced in the past or who are currently under the threat of displacement have in any manner welcomed the new Policy. Rather the variegated movement of the displacees of past and present, with its varying degrees of anger and fury, still marches on and ahead as before to vindicate the modicum of their inalienable right to life and livelihood in the face of an insensitive State apparatus in league with profit-hungry plutocrats. Duped umpteen times by the pompous sounding promises and policies in the past, the hapless lot of displacees has been instinctively led to a painful but ineluctable feeling, whereby they equate the announcement of a new policy to the contrivance of a new plot to ensnare them into silence and submission. Only when they shall experience a new deal from the concerned revenue officials at bottom level, they may start believing in the advent of a new policy from atop and its wholesome potential to end the raw deal that has been so far meted out to them. **Thus the bona fides of a new policy doesn’t lie so much in the well-crafted phraseology that smears its text as in the welcome signals of a perceptible change in the coded behaviour of the officialdom.**

2) GOODBYE TO THE DISPLACED OF THE PAST:

Needless to say, there are thousands of families all across the State, who were displaced due to various types of projects in the starting starting from Hirakud Dam in 1948 on assurances, tall and big, by the various governments for their eventual resettlement and rehabilitation. But since no tangible, positive gain could come out despite their loud protest and bitter agitation made against the callousness of the successive governments spanning decades, the displaced families are now cocksure that those wordy and empty assurances were only a cunning ploy of the establishment to keep them somehow silent at that that point of time over their manifold woes of

displacement. The disgruntled feeling of these past displacees still lingers on and gets manifest here and there, now and then through resounding outcries, bordering even at times on violence.

It was therefore expected that the new Orissa R&R Policy shall contain also some salutary provisions for settling the pending claims of the past displacees. But as a matter of fact, the new policy provides no space for them, and rather seeks to close the chapter of the past displacement for good, when it says right at its inception, **“The Policy shall come into effect from the date of its publication in the Orissa Gazettee” [Section 1(I)]**. To buttress its intention that the proposed Policy shall have no retrospective effect, i.e. no applicability to the project-induced displacement made in the past, its next sub-section reads, **“It shall apply to all those projects, for which acquisition of private land under Land Acquisition Act 1894 or under any other laws for the time being in force or proclamation inviting objections in case of Government land is notified” [Section 1(II)]**. And further, the next subsection [6(III)] also like the preceding two uses only the present and future tenses providing no chance for the past tense.

Thus Orissa’s new R and R Policy-2006 leaves the fate of the old displacees to the selfsame state of unconcern and uncertainty as it was passing through ever before, and thereby keeps a well-identified, old terrain of popular discontentment unaddressed, as if, only to help it erupt at times into explosive episodes like the ones witnessed at Kalingnagar or Rourkela in recent past.

3) EXPANDED DEFINITION OF FAMILY- A DECEPTIVE INNOVATION:

The authors of Orissa R and R Policy 2006 in a separate document on its ‘Key Features’ claim that the definition of "Family" has been expanded for the purpose of rehabilitation assistance. We should now examine how and whether it works out to anything of substance.

As a matter of fact, **the Section 2(f)** while defining the ‘Family’ says inter alia that **‘for the purpose of extending rehabilitation benefits under this policy’** as many as 5 categories of persons (‘a major son irrespective of his marital status; an unmarried daughter/sister more than 30 years of age; Physically and mentally challenged person irrespective of age and sex; minor orphan; and a widow or woman divorcee’) who may be living under the same roof and eating from the same kitchen shall each be treated as a separate family besides the root family consisting of the person and his/her spouse and their dependents. On a superficial reading, this multi-category definition of family as such gives rise to the expectation that the new Policy shall entitle each separate category to receive the R and R benefits. But the Section 2(j) which invents and defines a new term called **‘Original Family’** (**“the family, which at the time of Notification under provisions of relevant Act(s) is living together in a single household with a common kitchen”**) is not only superfluous but conceptually designed to negate the R and R benefits allowable to separate families as mentioned above under Section 2(f). For instance, under Section 8 (I a) that deals with assistance in terms of employment for displaced families coming under Type- A Projects (Industries) it is mentioned, **“Displaced families shall be eligible for employment, by the project causing displacement. For the purpose of employment, each original family will nominate one member of such family. However, the families as mentioned at para 2 (f),(i), (ii), (iii), (iv), or (v) will not be considered separately for employment. Any one from among these categories may, subject to eligibility, be nominated by the family as defined in para 2 (f) for the purpose of employment”**.

Thus when the question of providing actual benefits/entitlements to the displaced families arises, it goes solely to the single, so-called ‘original family’ of Section 2(j), not to the separate

categories of family of Section 2(f). A policy document like the present one, which directly affects the life and livelihood of a vast mass of poor, illiterate and backward people making sacrifice for country's development shouldn't indulge in any jugglery of words, but straightaway mention what the displaced/affected people can get or can't get under an R and Policy.

4) THE TRUNCATED DEFINITION OF 'DISPLACED FAMILY': TO WHAT END?

The Orissa R & R Policy 2006 has provided for a highly skewed definition 'Displaced Family' restricting it to a single category of those families who have lost their 'homestead' (not home as such) only, and thereby deprived the vast segment of families who might have lost their agricultural land and occupation etc. due to acquisition of land, of any R and R benefits allowable to 'a displaced family' under this Policy.

As per the definition under the Section 2 (d) of the Policy, “ **‘Displaced Family’ means a family ordinarily residing in the project area prior to the date of publication of notification under the provisions of the relevant Act and on account of acquisition of his/her homestead land is displaced from such area or required to be displaced**”. What does it practically imply? For instance, let us take the case of a family who retains his homestead but loses 5 acres of irrigated land due to land acquisition for Type-A Projects (Industries) as dealt with under Section 8(I) of the Policy. How much shall he get in return? Only one-time cash assistance of Rs.1 lakh, and that too, in lieu of employment assistance, and nothing else [Vide Section 8-Ia (3-iv)]. However, it is just a common sense that a displaced person should be adequately and appropriately compensated in proportion to the extent and quality of land, homestead or agricultural, or otherwise occupationally useful he loses due to the acquisition of his land for any type of project.

While the authors of the State Policy make a great fuss about its **‘significant improvement over other policies of similar nature’** (vide ‘Key Features’), it is worthwhile to quote by way of comparison and contrast the **‘National Policy for R and R for Project affected Families-2003’**, that provided the space for both **‘Displaced Family’** and **‘Affected Family’** and defined them separately as hereunder:

“**Section 3.1 (i)** ‘Displaced family’ means any tenure holder, tenant, Government lessee or owner of other property, who on account of acquisition of his land including plot in the abadi or other property in the affected zone for the purpose of the project, has been displaced from such land or other property;

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“(q) ‘project affected family’ means a family/person whose place of residence or other properties or source of livelihood are substantially affected by the process of acquisition of land for the project and who has been residing continuously for a period of not less than three years preceding the date of declaration of the affected zone or practicing any trade, occupation or vocation continuously for a period of not less than three years in the affected zone, preceding the date of declaration of the affected zone.”

While it is out of context here to say whether the National Policy-2003 is on the whole preferable over the Orissa Policy on R and R-2006 or not, the wide ambit of the displaced/affected family as provided under the former is definitely preferable over the highly truncated definition of the same provided under the latter. As evident from the two definitions of displaced/affected family

given under the National Policy, a definition of displaced/affected ought to cover the following categories of families/persons for the purpose of R and R benefits:

- i. any family/person who loses his homestead (residence) located in Abadi or Anabadi land (other property);
- ii. any family/person who loses his land (other properties) having Abadi or Anabadi status, other than the homestead;
- iii. any family/person whose occupation (source of livelihood) is lost due to land acquisition; and
- iv. any family/person who is otherwise affected (in terms of trade, occupation or vocation).

But the Orissa Policy-2006 with its highly exclusivist definition of 'displaced family', recognizes only the loss of 'homestead land' as displacement, and thereby shrewdly forecloses the possibility of other categories of displaced/family as mentioned under National Policy getting any R and R benefits admissible to the displaced families as a matter of their legal right.

5) DEFINITION OF 'CUT-OFF DATE', SKEWED AGAINST THE INTEREST OF DISPLACEDS:

Giving an ostensible plea of removing 'vagueness', the authors of Orissa Policy-2006 have defined under Section 2 (c) as follows, **“‘Cut-off Date’ for the purpose of compensation shall be the date on which the notification declaring the intention to acquire land under the relevant Act or under the provisions of this Policy is published”**. It is a common sense that the price of any particular stretch of land appreciates many times its previous level, once a project has started working in that place or in its vicinity, and goes on escalating ad infinitum as the time passes by. As against this home truth, let us examine, how and whether the given definition of 'Cut-off date' serves the interests of the displaced persons/families. As a matter of fact, as per the Section 9(1) of Land Acquisition Act 1894, a notice is served by the concerned authority to all the persons having interest in the concerned land, which is to be acquired. This date is precedent to the actual acquisition of the land in question, to be followed by a long process of construction of the project infrastructure and then the commissioning of the project proper. It goes without saying that at a moment when there is no project in an area, the price of the land in that area would be minimal, but once the project comes up even after a short gap of a few months along with the attendant infrastructural facilities like road, electricity, market and telephone facilities etc, the price of the said land would escalate like anything. If the Govt or concerned project authorities would ever have to sell away that land to any third party due to non-commissioning or abortive closure of that project or for any other reason, they wouldn't certainly sell it at the price at which it was purchased from the displacees.

Thus defining the 'cut-off date' 'for the purpose of compensation' to be the date of notification for acquiring the land as currently provided under the Orissa Policy-2006 is completely arrayed against the displaced people, and on the other hand extremely favourable to the Government and industrial magnates.

6) NO PROVISION FOR LAND AGAINST LAND:

It is barely reasonable that any family/person losing the land of any variety due to acquisition of his land by the Government - homestead, agricultural or commercial- should first of all be provided with the land of commensurate acreage and quality. Secondly, if and to the extent such

land couldn't be provided to him despite the best of efforts, then he should be paid adequate compensation in monetary terms commensurate with the size and quality of the land lost.

The Orissa Policy of 2006 has made a flagrant violation of this well-established norm by remaining absolutely silent over the basic principle of 'land against land'. Firstly, except in case of the Type-C Projects (Irrigation Projects/National Parks/Sanctuaries) which mentions some sort of restricted provision called 'Assistance for Agricultural Land' [vide Section 8-III(c)], other 4 Types of Project (Industries, Mining, Linera/Urban and Any other) don't offer, literally speaking, even any such scheme of assistance against the agricultural land lost, let alone acting according to the universally acknowledged principle of offering 'proportionate provision of land or alternatively of adequate cash compensation against the land of any sort lost' to the displaced/affected families. Let us take for instance the case of a family/person who has lost, say 5 acres of agricultural land due to a project falling under any of the above-mentioned 4 Project Types. Is he entitled to 5 acres of agricultural land of similar quality or in lieu of it, a cash compensation proportionate to the land lost? As per the Orissa Policy-2006, the answer would be an emphatic no. An optical illusion might have been created by a superficial reading of the Sections 8(Ia-3) or 8(IIa-3) that the displacees of the Industrial and Mining Projects who have lost land including agricultural land shall receive, following the given order of preferences, the scales of Rs.5 lakh, Rs.3 lakh, Rs.2 lakh and Rs.1 lakh respectively. But as a matter of fact, and as the sub-title of the concerned provision 'Employment' conclusively suggests, it is not a compensation against the land lost, but strictly speaking, a 'one-time cash assistance in lieu of employment' to be provided by the project authorities against their failure to provide the employment to one member of each displaced 'original family'. As is well-known, the obligation of the project authority/Government to provide 'employment or cash compensation in lieu of employment' is now universally accepted as a separate, independent component of R and R package in any civilized country, in addition to the cardinal component of 'land against land'. The two separate and independent components, namely i) Employment or cash assistance in lieu of employment, and ii) proportionate Land against land or Cash compensation in lieu of land, each unique in itself, can't be substituted, far less confused between each other. Let's now return to our hypothetical displacee who lost 5 acres of agricultural land due to any industrial or mining project; and the moot question that looms large before him and also before all of us- how much land is he going to get, or how much money in lieu of the said land? The answer is No and No only, since the Orissa Policy-2006 hasn't provided for any such dispensation.

Now coming to the exceptional Type-C (irrigation, national parks and sanctuaries) Projects, under which there seems to be in place a provision called 'Assistance for Agricultural Land' (vide Section 8 III c of Orissa Policy-2006). It says, **"Each Displaced Family belonging to ST category shall be provided two-and-a-half acres of irrigated agricultural land, or five acres of non-irrigated agricultural land. Each Displaced Family belonging to all other categories shall be provided two acres of irrigated agricultural land, or four acres of non-irrigated agricultural land. In case of non-availability of land, cash equivalent will be provided @ of Rs. 1,00,000/- per acre of irrigated land and Rs.50,000/- per acre of non-irrigated land, including the cost of reclamation or at the rate decided by the Government from time to time"**. From this it is now absolutely clear that the Policy has given a clean goodbye to the well-acknowledged principle of 'quid pro quo', or the parity in consideration, which is even implicit in the colonial Land Acquisition Act of 1894 (vide Section 23). For instance, even a person of ST category loses 5 acres of irrigated land, he would be entitled to only two and half acres; and similarly if a non-ST person loses 5 acres of irrigated land, he would be entitled to only 2 acres of irrigated land, since that is the ceiling fixed once and for all

by the Policy. And in case of non-availability of the land, either of them shall be provided a cash compensation @ Rs.1,00,000/- per acre of irrigated land and @Rs.50,000/- per acre of non-irrigated land. Thus irrespective of how much agricultural land an ST or non-ST person loses due to displacement, he shall have to remain contented with maximum of Rs.2,50,000/- and Rs.2,00,000/- respectively.

Thus the so-called provision of ‘Assistance for Agricultural Land’ under Type-C projects is a cunning ploy of the Orissa Policy-2006 to avoid the compliance to the universally acknowledged principle of ‘land against the land’ or the time-honoured norm of LA Act 1894 for ‘proportionate cash compensation against the land lost’.

7) CONFUSING AND CONTRADICTORY DEFINITIONS OF COMPENSATION:

Like any other conventional legal instrument centring round land acquisition, the Section 2(b) of the Orissa Policy of 2006 defines ‘Compensation’ as possessing ‘the same meaning as assigned to it under the Land Acquisition Act 1894’. As is well known, the Section 23 of the Act of 1894 mentions various components of compensation based upon the market value of the land acquired along with an ex gratia of 15 percent of the said value. Irrespective of whether one agrees or not with such an outdated meaning of compensation, it has got a merit of its own i.e. it is calculable and even negotiable, through the mediation of the concerned civil court, between the claimants for compensation and the land-acquiring authority. But the Orissa Policy has confused the whole matter of compensation by way of bringing into picture an altogether different kind of definitional reference to ‘compensation’ at a later stage. Under Section 6 the Policy says, **“Procedure prescribed by Government shall be followed in acquiring land and other property and for payment of compensation / award”**. And further, the word ‘Government’ is defined as **‘Government of Orissa in the Revenue Department’**. Now the question arises, has the Revenue Department prescribed any procedure, separate and different from the corresponding procedure as found in the LA Act 1894? If not, what is then the use of giving a separate status to the ‘procedure prescribed by the Government’ in this respect? One possible interpretation of the above statement of Section 6, which forcefully emerges from the arbitrary manner of the State Government in handling the compensation issues in the past is that the Government might have a hidden intention of bypassing and short-circuiting the elaborate and trilateral procedure (land owner, government and court) of settling the compensation for the land acquired, and of prescribing, in stead, of a unilateral, rough-shod and overriding procedure for the same in the interest of its own bureaucracy and/or that of the land acquiring company.

The above suspicion about the Government’s ill motive is being reinforced by the persistent silence of the Policy under Section 8 about the Government’s duty to provide equal measure and quality of land lost, or alternatively to provide monetary compensation commensurate to the size and quality of the land lost in respect of various types of project.

Another retrograde feature that the new Policy has sought to legitimize is found under Section 13, which says that the Rehabilitation Grant shall be indexed to **Wholesale Price Index (WPI), not to Consumer Price Index (CPI)**. Needless to say, there exists invariably a substantial difference between WPI and CPI, the latter being higher than the former. The Government or the Company as the case may be, shall have to pay much less by way of compensation or rehabilitation to a displaced family than otherwise. Thus the reference to WPI in the Policy is

just indicative of the peculiar mindset of the Government who wants to save itself and the land requiring Company as much as possible against the claims of the displaced people.

8) NO FAIRNESS IN SO-CALLED 'ONE-TIME CASH ASSISTANCE IN LIEU OF EMPLOYMENT':

Under Section 8 (I) which deals with Type-A (Industrial Projects), the 'order of preference for payment of one-time cash assistance in lieu of employment' is mentioned. Apparently it may seem that a lot of ripe wisdom for fairness must have gone into the making of such an order of preference. But let us see whether and how fair is this order to the real displacees in the field?

The said order says, the first category, that is a displaced family losing all land agricultural and homestead shall get Rs.5 lakh, followed by Rs.3 lakh for a displaced family losing $\frac{2}{3}$ rd of agricultural land along with homestead and Rs.2 lakh for a displaced family losing $\frac{1}{3}$ rd of agricultural land along with homestead. And the last two categories, that is, a displaced family losing only homestead but no agricultural land, and a displaced family losing only agricultural land but not homestead, shall each get Rs.1 lakh. Now let us first take up the case of two last categories. Suppose Mr.X loses no agricultural land but his homestead measuring $\frac{1}{4}$ th of an acre, and Mr.Y loses no agricultural land but his homestead measuring $\frac{1}{8}$ th of an acre. Each of them shall be given Rs.1 lakh only. Thus in the estimate of the policy-makers $\frac{1}{4}$ th of an acre of homestead is equal to $\frac{1}{8}$ th of an acre of homestead. Similarly, let's assume Mr.A loses no homestead but 5 acres of agricultural land, and Mr.B loses no homestead but 10 acres of irrigated land. As per the Policy each of them shall get only Rs.1 lakh. Thus in the estimate of Policy makers 5 acres of agricultural land is equal to 10 acres of agricultural land. Coming to the category (i), suppose there are 3 families Mr.A, Mr.B, and Mr.C, who own varying acreages of homestead (say $\frac{1}{3}$ rd, $\frac{1}{4}$ th and $\frac{1}{5}$ th of an acre respectively) and varying acreages of agricultural land (say, 3 acres, 4 acres and 5 acres) and lose all of their homestead and agricultural land. As per the Policy prescription each of them shall get an equal amount of Rs.5 lakh as one-time cash assistance. It means that for the architects of the new Policy, $\frac{1}{3}$ acre = $\frac{1}{4}$ acre = $\frac{1}{5}$ acre so far homestead land is concerned, while 3 acres = 4 acres = 5 acres so far agricultural land is concerned. Similarly one can notice such absurd arithmetic in case of two remaining categories. Is this kind of brutal equality any way fair? And mind you, neither for Type-A nor for Type-B projects is there any provision for compensation against the land lost due to acquisition of land. The displaced families losing whole or part of their homestead and/or agricultural land shall have to remain contented with the pre-ordained lump sums of Rs.5 lakh, Rs.3 lakh, Rs.2 lakh and Rs.1 lakh respectively, just to fit in to the Policy's so-called order of preferences. Here the Policy provides no space for the consideration of the specific size and quality of the land homestead or agricultural (irrigated or not) lost by a displaced family while paying the so-called one-time cash assistance in lieu of employment. Similar shall be the fate of the displaced families under the Type-B (Mining) Projects where the 5 different categories of displaced families have been made out for the purpose of 'one-time cash assistance in lieu of employment'.

The moot question arises, after acquiring such homestead and agricultural land from the displaced families, will the Government sell the said patches of land to the requiring Company at the same throwaway rate? If they so sell, then the Government serves as an agent in disguise for the Company; and alternately if they collect a higher price from the Company, then the Government acts as a land speculator in disguise riding on the back of the people.

Neither in the National R and R Policy-2003 nor in any other State Policy nor anywhere else in the world, can one notice such a travesty of natural justice and fair play as the Orissa Policy of 2006 seeks to legitimize under the masquerade of graded dispensation. Strange may as it seem, this single satanic master-stroke in the new Orissa Policy has outwitted even the British-made, but still prevalent, the overarching colonial law called Land Acquisition Act 1894. The latter under its Section 23 at least speaks of the market value of the extent and quality of the acquired land to be paid by way of compensation to the land owner, while the Orissa Policy has altogether circumvented the time-honoured principle of parity between the size and quality of acquired land on one hand, and the amount of compensation payable against the land so acquired, on the other.

To leave no iota of doubt in anybody's mind about its jettisoning of this long-established principle of parity, the Orissa Policy-2006 under its Section 6 (Land Acquisition and Payment of Compensation/Award) says inter alia, "**Procedure prescribed by Government shall be followed in acquiring land and other property and for payment of compensation / award.**" It simply means that what the Government of Orissa in Revenue Department [that is how the term 'Government' is defined under Section 2(g) in the Orissa Policy] shall decide as regards the procedure for acquisition of land etc. and payment of compensation shall only prevail, and not what the L A Act of 1894 or any other old Act might have provide for.

9) LEGITIMIZING THE ROLE OF GOVERNMENT AS A MIDDLEMAN AND A SPECULATOR

The Orissa Policy-2007 reinforces the role of the State Government as a middleman and a speculator in the increasingly lucrative estate business in the current era of globalization. There are umpteen instances that stalk through the length and breadth of this Policy, which provides a safe leverage to the Government to mint money for its depleted exchequer out of the land acquired from the displaced people, and alternatively to the those sly officers to enrich their personal coffers by way of their clandestine deals with the corporate houses for offering them 'cheap' land from the displaced families. For instance, as per Section 8 (Ia-3), a family/person who might have lost say, 5 acres of irrigated land due to its acquisition by the Government for an industrial project, he would be awarded neither land nor any monetary compensation in lieu of land, but only a one-time cash assistance of Rs.1 lakh in lieu of employment. The moot point however arises, 'Shall the Government sell the 5 acres of land so acquired to the land-requiring Company at the lump sum price of only Rs.1 lakh?' If yes, then this Government is the Government for the Company, not for the people. Alternatively, if the said land is sold at a price many times Rs.1 lakh, the fat surplus goes to the Government at the expense of the displaced people, and behind their back. The same kind of speculative deal is true in case of Type-B Projects (mining) too. To take another instance, as per Section 8 III (c), the Government shall provide monetary assistance for agricultural land @ Rs.1 lakh per one acre of irrigated land upto a maximum of two and half acres to an ST person and upto a maximum of 2 acres to a non-ST person in lieu of whatever acreage of agricultural or homestead land they might have acquired from them for a Type-C Project (irrigation, national parks and sanctuaries). Is only Rs.1 lakh the price of an acre of irrigated land in part of the State? Is not it a case of complete betrayal of the poor, tribal, Dalit and other marginalized sections of people living in the hinterland of the State?

In order to continue to play the role of a speculative middleman between the displaced people on one hand and super-profiteering industrial houses on the other, the State Government in its Policy of 2006 keeps the ultimate control over land acquisition business in its own hands. Its Section 6 inter alia says, "**The Project proponent may opt for direct purchase of land on the**

basis of negotiated price after issue of notification requiring acquisition of land under relevant Act(s). If acquisition of land through direct purchase fails, other provisions of the relevant Act may be invoked". Further, the opening sentence of the said Section leaves no doubt in anybody's mind over the intention of the State Government to keep the entire control over the land acquisition process in its hands: "**Procedure prescribed by Government shall be followed in acquiring land and other property and for payment of compensation/award.**" Another crucial question arises from the following provision of Section 6 itself: "**Land not utilized by the Project within the prescribed time limit and for the required purposes shall be resumed**". What does the word 'resume' mean? Shall the unused land be straightaway returned to the people from whom the land was acquired? Or shall the Company return the unused land to the Government who had handed it over to them after acquiring from the people. The Policy has intentionally used the ambiguous word 'resume' to enable the Government to re-grab the unused land for their speculative business without having to return it back to the people from whom the said was acquired.

10) ENCROACHERS, GET LOST ! NO HOME FOR HOMELESS, NO LAND FOR LANDLESS:

From a superficial reading of **Section 9 of the Orissa Policy-2006** it may appear that a landless family or a homeless family, who gets displaced by any type of project, and who prior to the date of displacement might be in possession of some Anabadi land by way of encroachment shall get a maximum of one standard acre for occupational purpose and 1/10th of an acre in a rural area and 1/25th of an acre in an urban area for residential purposes. But a minute and critical reading of the said Section shall reveal beyond a shade of doubt that not a single landless or homeless encroacher family shall be entitled to anything in terms of kind or cash following the displacement.

Firstly, the worst of the crippling conditions that renders the encroacher-family of any kind (landless or homeless) unfit to avail the benefit of any sort is the qualifying conjunction, '**if the encroachment is unobjectionable**'. In fact it is the **Orissa Prevention of Land Encroachment Act 1972 which in its notorious Section 7 holds that an encroachment, made literally on any sort of land is objectionable**. It means that the ambit of 'objectionable' is so wide that the concerned Revenue authorities may declare any kind of encroachment as objectionable, and therefore not admissible for compensation. Secondly, if the real fact of encroachment at ground level is not correspondingly found in the revenue records of the concerned Tahasil, it shall be well-nigh impossible for an encroacher family to prove the said fact and thereby claim any compensation against it. Thirdly, as per the Section 9 of the Policy, if the encroachment has been continuing for at least 10 years prior to the date of notification issued under the Land Acquisition Act or under a similar Act, that too corroborated by the corresponding revenue records, then only the case of an encroacher family for right to compensation may be considered.

Besides, the use of the word '**homesteadless**' in the Policy in place of the ordinarily understood term '**homeless**' has a negatively slanted design to deprive the actually homeless persons of any R and R benefit. **As per Section 3 of OPLE Act 1972, a person in order to be considered a 'homesteadless person' should not only be homeless, but also be having an annual income, not exceeding a particular amount** which is to be specified by the Government from time to time. Thus it is the Tahsildar of the concerned area to which the homeless person belongs, who is the final arbiter on the homesteadless status of a person/family by virtue of his power to issue the 'income certificate'. Thus those homeless persons/families

who may be dreaming of getting some sort of homestead land or in lieu of it some amount of monetary compensation suo motu due to displacement are simply living in a fools' paradise. Similarly, **as per the said Section 3 of OPLE Act 1972, an actually landless person in order to be considered 'landless' has to fulfill the additional condition of his annual income being not more than an amount which may be specified by the Government from time to time.** Here again, the role of concerned Tahsildar comes in to finally certify the income level of the landless person and thereby his eligibility or otherwise to be considered as a 'landless person' for the purpose of getting some land or in its lieu corresponding monetary compensation.

Now let us see, if a homeless or a landless person, after overcoming all these legal hurdles can prove his status as such, how much benefit in kind or cash he shall be entitled to? The said Section 9 inter alia says that **"an encroacher family.... will get ex gratia, equal to compensation for the similar category of homestead land, against the encroached homestead land up to a maximum of 1/10th of an acre in rural areas or 1/25th of an acre in urban areas. ... While determining the extent of land for such compensation the homestead land held by him/her is to be taken into account. The ex-gratia will be in addition to the actual cost of structures thereon. If the encroachment is found to be objectionable, (s)he will be entitled to the cost of structure only."** Thus a homesteadless person is not going to get either homestead land or monetary compensation commensurate to the land encroached by him for homestead purposes. His total entitlement is subject to a maximum of 1/10th of an acre in a rural area and 1/25th of an acre in an urban area. Again, he may get less than that or nothing at all if and to the extent it is found that he holds some extent of land anywhere. As per this provision, the encroacher family is not entitled to both compensation plus ex gratia (15% of the compensation amount) as admissible under Section 23 of L.A. Act 1894, but only an ex gratia equal to the amount of compensation against the land as determined under Section 23(1) of L.A. Then it has been mentioned that if the encroachment is objectionable, he shall not get even that ex gratia too. He shall get only the actual cost of structure standing on the 'objectionable' patch of the encroached land. It is worth mentioning here that the 'actual cost of structure' should not be confused with the house building assistance of Rs.1.5 lakh admissible, say, to any project under Type A or B or C. It is easily understandable that the actual cost of a house structure (minus the cost of the land on which the structure stands) would be an insignificant fraction of the above-mentioned amount of house-building assistance, since a poor and homesteadless encroacher family who can't possibly afford a pucca structure is generally found to be putting up with some sort of makeshift earthen, thatched cottages, the actual cost of which is utterly negligible, and that too, when it would be calculated by the Revenue Officials. Thus at the end, a homesteadless-encroacher family might not get anything worth mentioning as against his displacement due to any type of project.

Now let us see, whether a landless encroacher family shall get anything? The said Section 9 says, **"An encroacher family, who is landless as defined in the Orissa Prevention of Land Encroachment Act, 1972, and is in possession of the encroached land at least for a period of ten years continuously prior to the date of notification under relevant law(s) declaring intention of land acquisition will get ex-gratia equal to compensation admissible under the Land Acquisition Act, 1894 for a similar category of land to the extent of land under his/her physical possession up to a maximum of one standard acre, if the encroachment is unobjectionable. While determining the extent of land for such compensation the rayati land held by him/her is to be taken into account."** Thus a landless encroacher family can't avail any benefit suo motu on the strength of his real status as a landless person. His entitlement is subject to the following vexatious conditions:

- i) He should be defined as 'landless' in the eyes of the OPLE Act 1972,
- ii) He should have encroached the land for a period of ten years,
- iii) His encroachment must be 'unobjectionable' as per OPLE Act 1972
- iv) He is not entitled to land as such in lieu of the encroached land, but monetary compensation against it,
- v) He is entitled to a compensation for land encroached by him subject to a maximum of 1 standard acre [as defined under Section 2 (30) of OLR Act 1960],
- vi) The computation of the extent of land for the purpose of compensation shall be made taking into account the extent of rayati land held by him,
- vii) Above all, the concerned revenue records should have reflected his status as an encroacher and the extent and category of land encroached by him.

Thus the benefits to the landless and homesteadless persons/families displaced under any type of project as described under Section 9 of the Policy -2006 are more illusory than real.

11) FIRST VACATE THE LAND, THEN ASK FOR RESETTLEMENT:

The Section 7(ii) says, **“No physical displacement shall be made before the completion of resettlement work as approved by the RPDAC. The certificate of completion of resettlement work will be issued by the Collector”**. Thus it appears that no body henceforth can be asked to vacate his land homestead or agricultural before he is resettled in the alternative place. But to know the real intention of the policy, one should juxtapose the above provision to another provision made under the same Section a little afterwards i.e. at **sub-section (v) which says, “Provisions relating to rehabilitation will be given effect from the date of actual vacation of the land”**. It simply means that only after a displaced person vacates his land, he shall be entitled to the provisions relating to rehabilitation, which, as one can see, are mentioned under Section 8 (Rehabilitation Assistance) of the Policy. Thus the latter provision nullifies what is assured in the former one.

Again, if one marks the wording of the former provision, all it says is that no physical displacement shall be made before the completion of **'resettlement work'** approved by the RPDAC and finally certified by the Collector. But what is the status of RPDAC (Rehabilitation-cum-Periphery Development Advisory Committee) in the scheme of the new Policy? As mentioned under sub-section (vi) of Section 7, **“Project Authority shall abide by the provisions laid down in this Policy and the decisions taken by RPDAC from time to time provided they are within the ambits of the approved Policy of the Government”**. And now let's be clear about what is meant by the 'Policy of the Government'. **The Section 2(g) defines the word 'Government' as 'Government of Orissa in Revenue Department'**. Thus the Section 7(ii) and Section 2(g) read together simply means that the State Revenue Government is not bound by what the RPDAC thinks about the R and R package decided by the Project authority, but the reverse is the case i.e. the RPDAC has to yield to what the State Revenue Department think about the said package. That is why, it is not the Certificate of the RPDAC about the completion of a project that would matter, but that of the Collector who is the nodal officer of the Government for the purpose of both land acquisition and R and R package.

It is pertinent to ask here, whose opinion should finally count in determining whether an R and R package has been adequately and properly completed or not? Certainly, they are the people, who have been displaced; since it is they who have sacrificed their land for some project to come up,

and secondly it is they for whom an R and R package has been formulated and who are its end-users. But the Policy of 2006 in stead of seeking the opinion of the displaced people about the quantum or quality of the R and R package or about its completion or non-completion, it fully relies upon the District Collector, who is, as the mandate of his portfolio goes, is an official of the Revenue Department and absolutely accountable to the concerned Ministers and bureaucrats at the top, not to the people down below.

Thus the old, obnoxious practice of the Government in displacing the people without prior completion of the award of compensation or R and R package to them shall continue as before, and that is what the new Policy with its glaring equivocations going to legitimize.

12) SO-CALLED ‘CONVERTIBLE PREFERENCE SHARE’- A PLOY TO ROB THE DISPLACEDS:

The Section 8 (Rehabilitation Assistance) mentions inter alia that the displaced people under Type-A (Industries) and Type-B (Mining) Projects shall have the option to invest a maximum of 50% of their cash assistance by way of purchasing the shares and bonds of the very Company from whom they got the rehabilitation money. A document called ‘**The Key Features**’ brought out by the authors of the Policy-2006 to highlight its so-called new and unique features describes this provision as ‘**The Benefit sharing- preferential share allotment for partnering the growth**’. The relevant extract [vide Section 8 (I-c) or 8 (II-c)] says, “**At the option of the displaced family and, subject to the provisions of relevant law(s) in force for the time being, the project authority may issue Convertible Preference Share(s) or Secured Bond(s) up to a maximum of 50% out of one-time cash assistance as mentioned in sub-para (a) above**”. The sub-para (a) as referred here means the one-time cash assistance that shall be provided to the displaced families in lieu of employment. As has been shown earlier, a displaced family belonging to either Industrial or Mining Project is not entitled to any conventional type of compensation as a matter of right against the loss of his homestead and/or agricultural land as, but a non-descript employment or a lump-sum one-time cash assistance in lieu of employment by the land acquiring Company. And that displacee is now being tempted to invest 50% of this money after ‘Convertible Preference Share’ of the Company.

The first question arises, who are the people, usually subject to displacement? Needless to say, they are mostly tribals, Dalits and other marginalized sections, who are either illiterate or semiliterate, having least knowledge even about the system and provisions of banking, let alone high risk involved in a share market transaction. As is true in case of any share investment, the share-holder may one fine morning lose everything, if the returns of the Company go down. Thus, the provision of Convertible Preference Share may enable a land-acquiring Company to collect back 50% of cash that it might have paid towards employment assistance to the displacees. Further such a provision of gathering easy money from the displaced families would greatly obviate the compulsion of the concerned Company to run after the financial institutions in search of loan, which is barely necessary on its part at the initial stage of commissioning of its project. But when the said Company for some reasons or the other goes on incurring losses or is compelled to close down its undertaking, the share-holding displacees might lose everything which they had invested by way of ‘Convertible Preference Share’.

It is one thing on the part of the Company to provide each displaced family suo moto with a share in its capital as a token of recognition of the incalculable loss suffered by the displacee, caused due to the acquisition of his land for the Company’s project, but it is altogether a

different, nay a dangerous proposition on the part of the Company to ask the displaced family to pay back 50% of the cash assistance for its instant benefit and that too against an uncertain and unpredictable return for the displacee himself.

13) NO COMPENSATION FOR THE DISPLACEDS OF THE URBAN/ LINEAR PROJECTS:

The Section 8 (IV) which deals with the provisions for the displacees of the Urban/Linear Projects says that each ‘**displaced family**’ shall get (a) 1/10th of an acre in a rural area or 1/25th of an acre in an urban area or cash equivalent of Rs.50,000/- only; and (b) a house-building assistance of Rs.1,50,000/- . As the Section 2(d) limits the definition of a displaced family to the one who loses his homestead only, a person losing any amount of agricultural land shall not be considered for any compensation or return in exchange. Thus irrespective of how much agricultural land or homestead land one loses, a family who has lost its homestead shall get a grand total of Rs.2 lakh only. There is not only absence of any consideration for the extent of the land lost, but also no consideration for the crops or structures standing on the land so acquired.

The Policy of course speaks of a third component, that is employment for the displacees under Linear projects. It should be remembered that this third component is not admissible to urban projects, but only to linear projects. This provision being the most ambiguous one in the whole Act, it is worth quoting verbatim: **“If house/ homestead land of any landholder is acquired for linear project or if there is total displacement due to acquisition for such project, the project authority shall provide employment to one of the members of such displaced family in the project. Wherever RPDAC decides that provision of such employment is not possible, one time cash assistance as decided by the Government will be paid by the project authority.”** It means that only when a person loses his homestead or if he loses all of his agricultural land besides homestead due to a linear project, then only he may be entitled to a job. It further means that a person who loses, say, 90% of his agricultural land due to a linear project, he shall not be entitled to a job. Again, the provision of job for a total displacee under the linear projects is not an assured entitlement either. There are very formidable ifs and buts to be overcome before he is given any job as such. The RPDAC may say that the job can’t be available for the concerned persons, and depending upon the view of RPDAC, the project authority shall provide some amount of one-time cash assistance in lieu of employment to the displaced family. And now the cruel joke- the amount of such one-time cash assistance is left to the discretion of the Government. Since the amount is not specified, it may so happen that the Revenue Department (which is equivalent of the Government of Orissa as per Section 2) shall decide a ludicrously low amount as one-time cash assistance, over which the displacee can’t raise any objection. If at all he likes to raise any objection, he shall have to approach again the very Revenue Officials for the purpose since the latter constitute the grievance redressal machinery at State level and District level (vide Section 20). It is thus imaginable what shall be the plight of a displacee under a linear project, who might lose all his landed property due to displacement.

In fine, a person losing all his agricultural land due to acquisition of land under an urban or linear project shall not receive anything by way of compensation or assistance as consideration for the land so lost. **Only a family losing his homestead shall be given a total of Rs.2,00,000/- (Rs.50,000/- towards cost of the homestead + Rs.1,50,000/- towards house building assistance) irrespective of the size and cost of his existing homestead and structure standing thereon.** Secondly, the Policy contains a highly ambiguous provision for **giving job or one-time**

cash assistance in lieu of job to a displaced family under a linear project, which can't materialize in reality due to very many ifs and buts circumscribing the provision.

14) PROVISIONS FOR INDIGENOUS AND PRIMITIVE TRIBES- A HOAX ONLY:

The Section 12 contains 4 sub-paras that assure 4 kinds of 'Special benefits to displaced indigenous families and primitive tribal groups', such as **“(a) While developing the resettlement plans, the socio-cultural norms of indigenous and primitive tribal groups will be respected, (b) Each displaced family of indigenous category shall be given preferential allotment of land, (c) As far as practicable, indigenous communities should be resettled in a compact area close to their natural habitat, and (d) Indigenous displaced families resettled outside the district shall be given 25 percent higher R&R benefits in monetary terms.”**

As for the first category, when the Policy nowhere defines what constitutes the concept called **'socio-cultural norms of indigenous and primitive tribal groups'** itself, how can one believe that the same shall be respected by the implementers of the Policy?

As for the second category i.e. **'preferential allotment of land'**, the first thing that one should consider whether the indigenous and primitive-tribal families, most of them being encroachers as such on forest land, shall and can pass the test of **'unobjectionable encroachment'** as mentioned under Section 9 to be eligible to get any land for homestead or agricultural purposes. If the makers of the new Policy had genuinely felt the need for land-based settlement of such indigenous and primitive groups, then they emulating the National Policy for R and R-2003 would have first made a definite provision for the survey of **'Project Affected Families who are having possession of forest lands prior to 25th October, 1980, that is prior to the commencement of the Forest (Conservation) Act, 1980'**, followed by a categorical provision saying **"The Project Affected Families who were in possession of forest lands prior to 25th October, 1980 shall get all the benefits of R & R as given in above paras under the Policy"**(Vide Sections 5.4(iv) and 6.9 of National Policy respectively).

As regards the third category of benefits (**resettlement in a compact area close to natural habitat**), the smoky proviso **'as far as practicable'** renders the whole assurance into a pompous rhetoric only.

As regards the fourth category (**provision for extra 25% of benefits to the outside-district settlers**), the whole assurance again boils down back to the question, whether the indigenous and primitive tribes shall be considered eligible to get any R and R benefit at all? If yes, there is some meaning in the provision made for extra benefits to the most marginalized section of our society. Otherwise, the assurance of extra benefit shall remain as hollow as the assurance for the primary benefits. As has been shown above, **due to the qualifying proviso 'unobjectionable encroachment' as contained in Section 9 of Orissa Policy-2006 coupled with its lack of a categorical and specific direction like the one contained in the National Policy-2003 for providing R&R benefits to all persons dwelling in forests prior to 1980**, the indigenous and primitive populations of Orissa, most of whom for obvious reasons are the encroachers and exist outside the ken of any official Revenue record, may not at all qualify for the status of 'displaced family' and whatever R&R benefits attendant thereto, let alone getting any extra benefits to the extent of 25% of the original benefits. Precisely because they shall fail to qualify for whatever

meager package of original benefits available to a displaced family, they shall also equally fail to avail the so-called extra benefits to the extent of 25% of the original package.

15) NO DEFINITE CONSIDERATION FOR THE COMMON PROPERTY RESOURCES LOST:

As a matter of fact, a person who is compelled to give up a particular location of his residence, agricultural land or occupation due to project-induced displacement, he too loses several other benefits, which were automatically accruing to him simply because of the situational factors. The instances of such common property resources are, for instance, a forest from where a person may be collecting minor forest produce, a river or a stream from where the local dwellers may draw water or do fishing, an open ground where the children may play or local festivals may be held, a graveyard where the people bury the dead and the like. These are natural resources and no Government have made any investment after their creation or upkeep. But the local people were deriving substantial benefits free of cost from these natural sources. When a person is compelled to change his place of residence and occupation, he ipso facto loses the manifold benefits derived from such sources and resources. Any modern R&R Policy worth the name ought to incorporate into its package the compensation for the loss of such common property resources. **But the new Orissa Policy-2006 doesn't offer anything to the displaced people against the loss of such common property resources.**

While completely ignoring the common property resources, the Policy in its Section 6 talks however of 'Public Property' in such words, **"As regards 'public property' like School Building, Club House, Hospital, Panchayat Ghar, electrical installation, place(s) of worship, value of such property affected shall be deposited with the concerned District Collector. Either Project or District Administration shall take up construction at the place as would be determined in consultation with representatives of displaced persons"**. These are in fact community assets, after which either the Government or the community have invested money and labour in the past, and which if destroyed due to the land acquisition, need to be rebuilt in the resettlement areas for their use by the community of displaced people. But the Policy doesn't specify how and by whom the value of such 'public property' shall be computed. There is also no accountability fixed on any body for construction of such public properties. The Policy rather equivocally proposes either the Project Authority or Government to take up such construction work. And again, the Policy also doesn't specify the timeline within which the re-construction of 'public property' shall be completed.

Thus the new Orissa R&R Policy on one hand completely ignores the need for compensating the loss of common property resources, and on the other leaves the issue of re-construction of 'public property' in a hazy and ambiguous state.

16) NO INDEPENDENT GRIEVANCE REDRESSAL MECHANISM:

Section 20 of the Policy says, **"An effective Grievance Redressal Mechanism will be set up at District and Directorate level to deal with grievance of the project displaced people relating to land acquisition, resettlement and rehabilitation. Besides, all the project authorities shall be asked to set up an effective Grievance Redressal Mechanism relating to their project. Effective participation of the displaced communities will be ensured in the process"**. But the question arises, who heads the District level and Directorate level R and R bodies. As the Section

18(B) makes it clear the District and sub-district level R & R bodies shall work under the overall guidance and supervision of the Collector, who is the principal authority and responsible for land acquisition under LA Act or any other relevant laws. As a matter of fact, most of the grievances among the displaced people shall arise in consequence of the manner of land acquisition followed by the Collector himself. Thus, is not a fiasco that the Collector is made to listen to and dispose of the grievances raised against him. Moreover, in all probability, the head of the State Directorate of Rand R, whose name is yet to be notified, shall be the Secretary of Revenue Dept or some such top official of the Revenue Department. Thus the entire grievance redressal machinery is going to remain under the direct control of the very Revenue Department, which conducts A to Z of the land acquisition process. To cap and reinforce this bureaucratic process, the Section 22 of the Policy says in unequivocal language that “**Any issues or doubts regarding this Policy shall be referred to Government in Revenue Department whose decision shall be final and binding on all concerned**”. Moreover, the said Section entrusts the Revenue Department with the power to amend the Policy and issue guidelines and instructions to operationalise the Policy. Under the circumstances, is there any chance for ‘recognising the voices of the displaced people’ or ‘ensuring a participatory and transparent process’ as glibly dished out in Section 3 (Policy Objectives).

17) NEW WEB OF INSTITUTIONS- TO WHAT END AND AT WHAT COST?

In the name of developing a new institutional mechanism for carrying out the whole range of projected activities from land acquisition to resettlement and rehabilitation, the Policy of 2006 has sought to set up a new set of agencies and instruments, which at the first instance confuse the already confounded scenario. The most glittering of the lot is the **State Level Council on Resettlement and Rehabilitation (SLCRR)** to advise, review and monitor the implementation of R and R Policy, and it shall be headed by the Chief Minister and may comprise Ministers, people’s representatives, leading social activists, academicians and experts of national and international repute and senior officials of the Government (Section 17). So far so good. But does this illustrious Committee wield the final authority over the R and R matters, as it may outwardly appear to? Just contrast this with the last Section of the Policy that reads,

22.	Interpretation and Amendment
(a)	Any issues or doubts regarding this Policy shall be referred to Government in Revenue Department whose decision shall be final and binding on all concerned.
(b)	Government in Revenue Department may from time to time amend the provisions as contained in this Policy as considered necessary.
(c)	Government in Revenue Department shall have the powers to issue guidelines and instructions from time to time to operationalise this Policy.

A pertinent question now arises, between the Chief Minister-headed SLCRR and Revenue Department, who has been given the final authority? The answer is obviously the Revenue Dept, not the SLCRR. The Section 21 which gives the power of assessment of policy implementation to the Government [*strictly speaking, Revenue Department of Government of Orissa, as defined under Section 2(g) of the Policy-* Italics by the author] also reinforces the position of Section 21.

Another decorative agency to be set up is the so-called **Rehabilitation-cum-Periphery Development Advisory Committee (RPDAC)**, whose mandate is “ to encourage participation

of displaced people and their elected representatives in implementation and monitoring of R&R package, to oversee and monitor periphery development”. And further ‘the Govt. may constitute a Rehabilitation-cum-Periphery Development Advisory Committee (RPDAC) for each or a group of projects falling in one district.” While the detailed composition of the Committee is yet to be notified by the Government, it ‘may include people's representatives, one or two leading NGOs of the affected area and select Government officers, and any other persons’ including women and ‘indigenous communities’ (Section 16). As is absolutely clear from its mandate, its work shall be more propagandistic than recommendatory, and it shall start working only after the R and R package has been decided and launched. And it shall solely focus its work on gathering support of the public in favour of the R and R package which would be finalized, for all practical purposes by the Revenue Department. And the Policy makes no secret about the ornamental, toothless nature of the RPDAC, when it says under sub-section (vi) of Section 7 (Resettlement and Rehabilitation Plan): **“Project Authority shall abide by the provisions laid down in this Policy and the decisions taken by RPDAC from time to time provided they are within the ambits of the approved Policy of the Government”**. As such the RPDAC has no power to review the package of R and R decided by the Government, if the said package has gone against the interest of the displaced people.

Another new body, called **‘Compensatory Advisory Committee’** shall be formed (Section 15), which unlike the ornamental bodies like SLCRR and RPDAC, shall be a real business-like body entrusted to settle the most crucial component of the R and R package i.e. compensation. At the district level, it shall be headed by District Collector, while at State level by the Member Board of Revenue, whose decision in case of any dispute shall be final. As is well-known, both Collector and Member Board of Revenue belong to the same Revenue Dept though the latter stands on top of the former in the departmental hierarchy. Be that as it may, the CM-headed Committee SLCRR shall have to abide by the decision of the Member Board of Revenue too on matters of compensation, since the Member commands the finality as per the Policy.

Besides the Policy prescribes the formation of an R and R wing within the existing Governmental set-up, called **‘LA and R&R Structure’ (Section 18)** to carry out the actual administrative decisions coming from above, especially from the Revenue Department. A Project Director R and R shall operate at State level, and the Collector shall for all practical purposes ensure the execution of the necessary works at district and sub-district level. The proposed Directorate of R&R at State level with its lowest rung entrusted to the Land Acquisition Officer within the Collectorate is so to say the R&R Secretariat within the Revenue Department, which is for all practical purposes the ultimate authority in the matters of land acquisition or compensation.

Thus out of the 4 new bodies as described above, **the first two namely CM-headed SLCRR and civil society oriented RPDAC are simply decorative outfits, while the next two namely CAC and Directorate are well-designed appendages to the Revenue Department** which in the ultimate analysis holds, as the Policy itself avows, the final authority in all matters relating to land acquisition or compensation.

18) NO APPELLATE MECHANISM:

In today’s milieu of participatory governance, any policy or law is adjudged to be as good or as bad, depending upon whether it provides for an appropriate appellate mechanism as one of its in-

built feature or not. From this perspective, the Policy lacking as it does in any semblance of an appellate mechanism is inherently biased, faulty and unviable. The question arises, in absence of an appellate authority existing outside and independent of the mainstream executive hierarchy, whom the displaced people shall approach for undoing of any injustice done to them or of any harm to the public interest at large? The appellate authority is distinct from the grievance redressal machinery in the sense that the former can question even the very rationale of a project causing displacement or even the very methods of computation of compensation and modus operandi of resettlement and rehabilitation due to the displaced people, while the latter, if properly constituted and oriented, may attend at best to specific issues of disparity and malfeasance within the overall framework of a policy or law concerned. In view of the unhappy experience over several decades past in which the executive was found to tackle the land acquisition issues primarily with the help of police and administration on one hand, and the piles of litigations around compensation for land dragged on in civil courts with no end in sight on the other, it is barely reasonable that an independent, autonomous and statutory appellate authority having the powers of a civil court, under the title 'Orissa State Rehabilitation Commission' be constituted more or less in the manner of National or State Information Commission. Such a Commission should be vested with the final appellate authority for disposal of any grievance or appeal in the matter of land acquisition or R and R benefits, for penalizing the errant executives, for clearing the pending awards, and moreover for recommending the reform of an R and R package.

In absence of such an independent appellate authority, a significant objective of the Orissa Policy-2006 (vide Section 3 C) '**To help guiding the process of developing institutional mechanisms for implementation, monitoring, conflict resolution and grievance redressal**' shall remain ever a cheap rhetoric only.

19) NO RIGHT TO KNOW, OR SAY NO TO A PROJECT

If we survey the history of issues of displacement from British time to date, we find the root cause of people's revolt and protest against a project involving displacement is not the displacement as such, but in the very dictatorial and even brutal manner in which the people were forced to leave their home and land in the name of some imaginary 'public interest'. As is well-known, the root of such popular discontent can be traced to the typical concept of 'eminent domain' peculiar to the then British colonial project as codified in the provisions of Land Acquisition Act 1894, which persists to this day with all its overarching significance in the matters of land acquisition for the so-called 'public purposes'. The LA Act in its preamble itself renders the State into an agent of a Private Company- "**An Act to amend the law for the acquisition of land for public purposes and for Companies**"- where there is absolutely no difference between the public purpose as such and interest of Companies. And the modus operandi of land acquisition, as detailed in its Sections 4 to 17 of the LA Act, doesn't allow the public at large, including those members of public whose land is likely to be acquired, to know or raise a basic question as to how the proposed project of the State or Company is going to serve the public purpose in general. True, there is a provision for filing of objections and hearing of objections (Section 5); but the objections can be raised not by any member of the public relating to the objective of the project, but only by the interested persons i.e. whose land is proposed to be acquired and who should limit their objection to the sole aspect of compensation. And it is well within the power of the land acquisition authority to override all the objections so raised and to issue a Declaration under Section 6, which inter alia says, "**The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the**

case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing”. [Section 6(3) of LA Act 1894]. It is incontestable that such an arbitrary and unilateral method of acquiring public land by the State under whatever plea won't work in a democracy and far less at a time when the Right to Information Act 2005 has been enforced. As is well-known, **the Section 4(1c) of RTI Act enjoins upon each public authority to consult the members of public suo motu while they would be taking any decision administrative or quasi-judicial that affects the public interest,** and as per its next sub-section 4(1d) to inform the public about the justification of every such decision taken.

It is also a fact that, under the ineluctable impact of the bitter experience involving even episodes of bloodbath, both Central Government and many State Governments are gradually engaging them in a transparent and dialogical process with the public at large right since the conception of a project to its execution in phases, irrespective of the existing LA Act 1894. So to say, the irresistible march of the events and processes in a democratic polity like ours, does silently but steadily renders the usurpationist approach of LA Act 1894 obsolete and irrelevant. If the R&R Policy of Upper Krishna Project in Karnataka is considered to be a success story today despite its relatively low-scale R&R package, it is, as admitted by all, due to a close, continuing rapport that existed between the land-acquisition authority on one hand, and the project-displaced people on the other. Though the Group of Ministers, the official author of the Orissa R&R Policy 2006 visited Upper Krishna Project to look into the reasons of its success story, it seems they have missed to learn its cardinal message i.e. how to take the people into confidence all through a project right since its origination on a conceptual plane down to its materialization at the ground level. Otherwise, how is it that the Orissa Policy-2006 in its Section 6 says that **‘the procedure prescribed by Government [strictly speaking, Revenue Department of Government of Orissa, as defined under Section 2(g) of the Policy- Italics by the author] shall be followed in acquiring land and other property and for payment of compensation/award..’** And what has so far been the procedure followed by the Government in such respects if not the one marked by diktat and coercion from above? And again, why the so-called new Policy of 2006 has conspicuously desisted from defining the new procedure, if at all it has any?

Thus in absence of a clear definition of the procedure for acquisition of land and for the payment of compensation, the new Policy shall by default adhere to the selfsame procedure of the olden era, when the Government used to keep the people in dark about the groundwork of a project i.e. when the Government and Company negotiate between each other before signing a Memorandum, and then to notify the concerned people all of a sudden about the land to be acquired, followed in quick succession by the actual act of displacing the people by hook or crook. This very procedure that has been pursued right since Hirakud Project of 1948 down to Kalinga Nagar of 2006. And precisely for this reason, **it won't be surprising either, if the so-called new Policy of 2006 turns into a further breeding ground of proliferating clashes and conflicts, maybe more heart-rending than the Kalinga Nagar episode of 2nd January 2006.**

20) NEW POLICY- CONTRADICTORY TO EXISTING LAWS

There already exist a host of laws at both national and State levels, which, if properly understood, give primacy to the role of PRIs, the epitome of grassroots democracy, in respect of sanctioning a project of any kind or implementing any rehabilitation measure for the affected inhabitants. The Orissa R and R Policy-2006 has either blissfully skipped them or paid a lip-service to some of them in its strident zeal to see that the bureaucracy-company combine gets further empowered and reinforced at the expense of the rights and entitlements of the people in

general and displaced people in particular. One crucial instance shall suffice to establish this apprehension. **The Section 6 of the Policy-2006** gives authority to the State Government to acquire the land from any village, to be used for any project. And **Section 7(iii) of the Policy just says, ‘Gram Sabha shall be consulted’**, and that too in respect of Resettlement and Rehabilitation Plan, but strictly speaking, not in respect of or prior to acquisition of land. In contrast let’s see what the time-honoured and still prevalent Orissa Gram Panchayat Act 1965 says in regard to all this. **As a matter of fact, the Section 55(1) of Orissa Gram Panchayat Act 1965** says inter alia that ‘a Gram Panchayat may notify that no place within the local area of the Gram Sasan shall be used in course of any trade, business or calling without a license granted by it and except in accordance with the condition specified in such license”, and the said Section at the Point (w) mentions that this licensing power also covers ‘using for any industrial purpose any fuel or machinery’, and further **the Section 55(3) clearly says that ‘The Gram Panchayat may grant such license or refuse to grant it’.**

In regard to the 5th Schedule Areas, where the tribal population predominates, the Orissa Policy-2006 at Section 4(g) of course says, though in a too-reluctant voice, **‘Gram Sabha or Panchayats at the appropriate level shall be consulted in scheduled areas before initiating Land Acquisition Proposal’.** But what does consultation mean, if not a formal notice served to the GP irrespective of the latter’s opinion? Suppose, the whole of a GP in a scheduled area objects to the proposal for an industry and accompanying displacement; will the Government abide by the will of the Gram Panchayat or Gram Sabha, as the case may be? Let’s see what the **Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996** in its Section 4(Exceptions and Modifications to Part IX of the Constitution) says, “Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely, :- x x x x x x x x x x x x x x x x

- “(k) **the recommendations of the Gram Sabha or the Panchayats** at the appropriate level shall be made **mandatory** prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas;
- (l) **the prior recommendation of the Gram Sabha or the Panchayats** at the appropriate level shall be made **mandatory** for grant of concession for the exploitation of minor minerals by auction;”

The above quotation from the PESA Act 1996 never speaks of consultation, but categorically emphasises the recommendation by the Gram Sabha as mandatory, at least in respect of prospecting license, mining lease or exploitation of minor minerals. Does the Orissa Policy of 2006 anywhere go beyond the so-called ‘consultation’ as mentioned under Section 6(g)?

Further the **Section 4 of PESA at sub-section (m)** says, “while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specially with-
x x x x x

- “(iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;”

In view of the above, the Orissa R&R Policy 2006 has not only violated a long-established State law called Orissa Gram Panchayat Act 1965 relevant in the context of the functioning of Gram Panchayats in general, but also the recently promulgated Central law called Panchayat Extension to Scheduled Areas 1996, relevant in the context of the overly tribal areas of the State.

21) NEW POLICY'S DOMINANT REFRAIN: SOULLESS RHETORIC:

The Orissa R and R Policy 2006 has been authored by a group of bureaucrats in Revenue Department, though stamped with the approval by the Group of Ministers formed for the purpose of framing a new policy for the State of Orissa. Coming as it did in the backdrop of the bloody Kalinga Nagar episode and the attendant hue and cry from all corners of the country, the so-called new Policy has excelled in one dubious respect, that is how to camouflage its satanic intentions by a veil of wordy phraseology. It requires a studious reading of the Policy and that too between its lines on the part of a person, before he or she is able to deconstruct the Policy and lay bare the hidden agenda that informs its brief but confounding text.

Broadly speaking, the text of the Policy can be divided into 3 sub-texts,

- i) That which the Policy-makers seek to really achieve in the interest of the bureaucracy-company combine using the gild rhetoric as a tool;**
- ii) That which the Policy-makers assure to provide under legal duress, but never mean it, as evident from the contradictory provisions made or from absence of any backup provisions in the Policy; and**
- iii) That surrounding which the Policy-makers suffer from real confusion and want the people to remain confused about them.**

The instances of the first kind (**the real intentions behind the round-about expressions**) can be noticed in the explicit, straight-forward propositions made by the Policy, such as the one which says under Section 8(I) that **‘For the purpose of employment, each original family will nominate one member of such family. However, the families as mentioned at para 2 (f),(i), (ii), (iii), (iv), or (v) will not be considered separately for employment. Any one from among these categories may, subject to eligibility, be nominated by the family as defined in para 2 (f) for the purpose of employment’**”. In juxtaposition to this proposition one can easily make out the solely populist rhetoric behind the so-called expanded definition of family as mentioned under Section 2(f): **“Each of the following categories will be treated as a separate family for the purpose of extending rehabilitation benefits under this Policy.”** One more instance of the same kind of jugglery can be located in Section 22, where it is said that the Revenue Department shall for all practical purposes be the final arbiter in respect of any matter under this Policy. Just contrast it with the Section 3(Objectives) where the Policy talks of **‘recognising the voices of the displaced’ and ‘ensuring environmental sustainability through participatory and transparent process’**. It is not all understandable, how in absence of a statutory appellate mechanism and an independent grievance redressal machinery, ‘the voices of the displaced’ can be recognised, or ‘a participatory and transparent process’ can be ensured. Another instance is the **Section 9 that apparently provides for ‘Benefit to landless & homestead-less encroachers common to all categories’**. But the proviso added thereto **‘if the encroachment is unobjectionable’** renders practically invalid any claim by an encroacher to compensation. Still another instance is **Section 11 bearing the caption ‘Additional provisions for assistance’**. But there is nothing specifically mentioned about such assistance in

the body of the Section. A further instance can be glimpsed from **Section 8(IV) dealing with urban/linear projects**. There it has been mentioned that the displacees losing homestead under linear projects shall be provided the benefit of employment or one-time cash assistance in lieu of employment. But the RPDAC has been authorized to say that the employment is not available, and thereafter the project authority shall provide the one-time cash assistance, the amount of which shall depend upon the discretion of the Revenue Dept. **Such indeterminateness of the entitlement of the displacees of a linear project speaks of the virtual denial of such entitlement.**

As for an instance of the second kind (**contradictory provisions or absence of corollary provisions**), both **Section 4(g) and Section 7(iii) say, Gram Sabha shall be consulted**, but the Policy nowhere defines what constitutes 'consultation' or how it shall take place. The said populist provisions have been inserted just to pay lip service to the legal mandate of 73rd Constitution Amendment and especially of the PESA 1996. The next glaring instance of such sophistry is the Policy's statement under **Section 4-b that 'The list of displaced families shall be placed before and approved by the respective RPDAC'**. But just a little afterwards, at Section 4-d it is mentioned '**RDC shall realistically assess the requirement of land for acquisition before issue of notification under the relevant law(s) or under the provisions of this Policy'**. Thus the actual intention of the Policy is to place RDC an official of the Revenue Dept. as the final authority on the land to be acquired, not the RPDAC, a body comprising civil society representatives. Still another instance of Policy's escapist rhetoric is the **Section 14 that says, "The Project authorities shall be responsible for periphery development as decided by the RPDAC within the guidelines issued from time to time by the State Government"**. As a matter of fact, the theme of 'Periphery development' has nowhere been defined in the Policy except a too sweeping statement as contained under Section 2 (k) - "Periphery" means the district(s) in which the project is geographically situated". While the whole district is taken as the periphery of a project, it is not clear at all what components constitute the 'periphery development'. **Thus though the Policy entrusts the RPDAC to decide the matters relating to periphery development, it is the Revenue Department of the State which shall finally prevail upon the RPDAC, since the latter shall have to work within the guidelines issued from time to time by the former.** Another populist rhetoric that the Policy adopts in order to escape the Government's bounden obligation to deliver the whole of R&R package well before the physical displacement of the identified families is the windy words under **Section 7(vii) that say, "District Administration and Project Authorities shall be jointly responsible for ensuring that the benefits of R&R reach the target beneficiaries in a time bound manner"**. The question arises, if they fail in their duty, is there any provision of penalty against the concerned authorities? The answer is an emphatic 'no'. In absence of an independent appellate authority and of strong provisions for penalty against the recalcitrant officers and authorities, such manner of fixing responsibility carries no meaning at all. Thus the new Policy is going to perpetuate the selfsame, bizarre phenomenon witnessed in the past, that is, non-delivery of R&R package to the displaced families even after 30, 40 or 50 years of their physical displacement. The instance of another empty rhetoric is found under **Section 11 (Additional Provisions for Assistance): "Notwithstanding anything contained elsewhere in the Policy, the Government or the Project Authority may extend any additional benefits and provisions to the displaced families keeping in view the specific nature of displacement"**. In absence of any specific mention of the kind of additional assistance to be provided, such words of assurance carry no substance. Moreover, the dispensation to fulfill this assurance has been left to the discretion of both Government (land acquiring authority) and Project Authority (land requiring agency or company), who by virtue of their antagonistic position vis-à-vis the displaced population shall

tend to write off as much as possible their obligation to carry out any R and R package in a timely and proper manner.

As for the third kind of instances (Confused and Confusing), the definition of ‘compensation’ has been differently presented in Section 2(b) from what is mentioned about it in Section 6. The Section 2(b) defines compensation as having “**the same meaning as assigned to it under the Land Acquisition Act, 1894**”, whereas the Section 6 (Land Acquisition and Payment of Compensation/ Award) says, “**Procedure prescribed by Government shall be followed in acquiring land and other property and for payment of compensation /award**”. Here the word ‘Government’ means ‘**Government of Orissa in Revenue Department**’ as defined under Section 2(g). As is well-known, the L.A.Act 1894 under its Sections 23 to 28 describes the various considerations and components that ought to determine ‘compensation’, which both the land acquiring authority and concerned courts are to adhere to while deciding the amount of compensation. Thus a suspicion is raised about the Policy’s intention to bypass completely the responsibility of the Government to pay the ‘compensation’ even in the old, limited sense of the LA Act 1894. The suspicion is further reinforced by the fact that **the Policy no where describes any provision of ‘Compensation for the land acquired’ as such, but in its place speaks of ‘Assistance for Agricultural Land’ to the people displaced by Type-C (Irrigation/Sanctuary etc.) Projects [vide Section 8-III-c].** And between the two, the ‘Compensation’ connotes a definite meaning of entitlement for which the displaced person can enter into bargain with the land acquiring authority, whereas the so-called assistance is a one-time dispensation over which the displaced person can raise no dispute. **Another instance of confusing phraseology resorted to by the Policy is the proposition ‘Land not utilized by the Project within the prescribed time limit and for the required purposes shall be resumed’ mentioned under Section 6 (Land Acquisition and Payment of Compensation/ Award).** What does the word ‘resume’ mean? Does it mean that the unutilized land shall return to the original landholder or to the Government who had allotted it to the project authority after acquiring it from the original landholder? It may mean either of the two. As a matter of fact, in order to retain the unutilized land in the hands of the Government in stead of returning it to the original landholder, the Policy makers have intentionally used such a confusing term as ‘resume’.

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