

Adivasis and the New Land Acquisition Act

CHITRANGADA CHOUDHURY

Vol. 48, Issue No. 41, 12 Oct, 2013

Chitragada Choudhury (chitragada@csts.in) is a multimedia journalist and researcher, and currently with the Publics and Policies program at the Centre for the Study of Developing Societies, New Delhi.

Much work remains to be done if the new Land Acquisition, Rehabilitation and Resettlement Act has to mark a meaningful shift for India's adivasi communities.

Among the worst excesses committed in India's six decade-old democracy, the forcible displacement of rural Indians in the name of nation-building ranks high up. And within this, the brunt of the oppression, emanating from the state's claim of eminent domain, has been borne by India's adivasis. In 2011, the Twelfth Five-Year Plan blandly noted that of the estimated 60 million people displaced in development projects since independence, as many as 40% were adivasis; their share in the general population has hovered around 8%. That Indian society lacks quantitative or qualitative insight into violence against such communities for developmental and industrial projects is a measure of how policymakers and citizens have routinely devalued the adivasi point of view and experience.



Photo, courtesy Chitragada Choudhury

Panna Jodi lost her son when the police opened fire at villagers protesting against forcible land acquisition in the bauxite-rich Rayagada district in December 2000.

The adoption of [the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013](#) (LARR Act), which received the presidential assent on 26 September, marks a long overdue move to end the colonial Land Acquisition Act of 1894, the primary instrument through which the state forcibly evicted its citizens. The new law is potentially a step towards greater justice for adivasi communities.

The LARR Act states that as far as possible, land will not be acquired in the scheduled areas. Though in a damaging omission, which should be corrected, the Act makes no reference to adivasis who live in areas that are still not covered by the Fifth Schedule, which is an estimated 50-70% of the adivasi population, according to the National Advisory Council. If acquisition is done, the Act goes on to say, it will only be done, “as a demonstrable last resort”. Much will hinge on how rules currently being drafted for the Act define this ambiguous “last resort” principle. Given official estimates that 90% of India’s coal reserves are located in adivasi areas, as are 50% of other key minerals and prospective dam sites, it is easy to envisage governments and elites continuing to deploy the “national interest” argument to jettison adivasi interests for such projects.

Informed Consent

The far more meaningful provision for adivasi communities is that acquisition in scheduled areas will now be subject to the free, prior and informed consent principle. This is what the relevant (and rather clumsily worded) clause states:

“In case of acquisition or alienation of any land in the Scheduled Areas, the prior consent of the concerned Gram Sabha or Panchayats or autonomous District Council, at the appropriate level in Scheduled Areas under the Fifth Schedule to the Constitution, as the case may be, shall be obtained, **in all cases of land acquisition***, including acquisition in case of urgency, before issue of a notification under this Act, or any other Central Act or a State Act for the time being in force..”

**(emphasis added)*

This by far is the most unequivocal recognition in law of a people’s constitutional right to participate in decision-making over projects that affect it, and more importantly, to be able to say no to such projects. The clause is an essential acknowledgement of the numerous, and increasingly intense, protests unfolding across adivasi blocks of central India, despite state and police efforts to intimidate and stamp down such citizen movements against forced displacement. However, given numerous instances of officials and corporations

usurping gram sabha powers, the Act should have recognised violation of the consent clause as an offence, to be penalised by fines or imprisonment, just as it has laid down such penalties for violation of compensation and resettlement clauses.

Independent Social Impact Assessment of Proposed Projects

Given the socially and environmentally damaging legacy of mines, industries and dams in adivasi areas, the other important corrective the LARR mandates is an independent social assessment of proposed projects. Over almost two decades, project proponent-commissioned Environmental Impact Assessment reports have amply demonstrated that such documents provide an impoverished –even dishonest– account of how large projects impact local populations. Prepared by company-hired consultants, EIA reports see no need to engage with to-be-displaced communities to capture their concerns and ties to ecology. They might put forward arcane emission charts, but they never tell villagers the number of Mahua trees that will be destroyed, and how this will directly reduce annual family incomes in the affected area. As scholar and activist Ganesh Devy argues, language is a profound repository of ecological knowledge. The practice of conducting all decision-making processes around clearing projects in non-adivasi languages has provided a mechanism to systematically understate impacts on local populations and their habitats.



Photo, courtesy Chitragada Choudhury

Current impact assessments take no account of adivasi loss of access to commons such as this Mahua grove, which is being cut down for an expanding coal mine in Hazaribagh.

The social impact assessment reports will, hopefully, pay close attention to another deeply

neglected site of impact, namely gender. A critical way in which a project's benefits are exaggerated and its costs played down has been by entirely marginalising women's views in pre-project decision-making, project-led displacement and post-project rehabilitation processes. The latter's lives are upended, even as they are not seen as eligible for monetary or job compensation, since land titles are almost always in the man's name. In a conversation in June 2013, one activist in Hazaribagh, herself facing displacement, reflected on the unseen but damaging effects on women in villages in the area that had lost farms to a coal mine two decades ago: "When families are dependent on farming, even if the land is in the man's name, both husband and wife labour on it. So the woman has control and takes decisions. Once mining takes their land away and leaves them with no livelihood resources other than a job for the man, a difference creeps in. The man now thinks, my wife is living off my earnings". Collecting water every day for the family (among the most gendered tasks in rural India) is an even bigger struggle for women and girls, as groundwater gets sapped by mining and industry.

Amending Retrograde Laws

With the adoption of the LARR Act, pre-existing laws still used to forcibly displace adivasi communities look even more inhumane and retrograde. The 55 year-old Coal-Bearing Areas Acquisition Act in particular is an anachronism, which continues to facilitate numerous human rights and forest rights abuses on the ground. For example, this monsoon, in Korba district of north Chhattisgarh, South-Eastern Coalfields Limited (SECL), a subsidiary of Coal India Limited, one of the world's largest coal producers, was forcibly evicting people of the vulnerable Korwa tribe, whose lands it had acquired on paper in the 1990s. In the adjoining district of Sarguja, SECL has been suing adivasi farmers for 37 lakh rupees in damages, citing protests by villagers that had led to the mine being shut for a day. In a district court, the SECL lawyer has argued in an affidavit that provisions of the 1996 Panchayats (Extension to Scheduled Areas) Act - specifically, its clause that says adivasi villagers must be consulted before their land is acquired - do not apply to the mining public sector undertaking (PSU). These instances indicate the importance of explicitly amending pre-existing laws to make them unambiguously compliant with LARR provisions, so that a uniform regime, which includes free, prior and informed consent and land-for-land rehabilitation principles applies across adivasi areas.

Awareness and Advocacy Campaign Required

Finally, if the LARR Act has to be meaningfully implemented, it should be accompanied by a massive awareness campaign, primarily directed at three audiences. The first audience should be officialdom, particularly administrative and police personnel working within the district, who have to look beyond the deeply entrenched notion of eminent domain, give up the imperious power and rent-seeking opportunities that come with it, and instead imbibe and feel responsible for the participatory spirit of the new law. Having the average revenue and forest official, policeman and collector respect the gram sabha as a legitimate site of

decision-making is a mammoth task, and we should not underestimate the importance of pushing for this shift in official attitudes if the law has to mean something on the ground.

The second audience that needs to be sensitised is business, including state-owned and private mining corporations, steel and power corporations that are looking to operate in or source raw material from adivasi areas. Many of the people working in these entities are openly contemptuous of the new Act and view it as a hurdle to economic activity and profits, instead of a mechanism to have a more equal, expansive and educative conversation about a proposed project's benefits and damages, and as a tool for pre-empting conflict and abuses.



Photo, courtesy Chitragada Choudhury

Villagers in Bastar hold a people's public hearing in November 2009, to protest against forced land acquisition.

Finally, the campaign should actively engage adivasi communities, who must not just be told about the safeguards in the new law but also the seriousness of its intent. The latter is especially important, given how little faith villagers today have in public hearings, knowing from bitter experience that such events have been reduced to just another box to be ticked by officials in the clearance process. One way of crafting a campaign for this audience could be for the Ministry of Tribal Affairs to closely ally with networks like the Bhasha Research Institute, the central Indian citizen media initiative Swara, adivasi student movements, lawyers, community leaders and activists on the ground to produce and propagate succinct rights primers in various adivasi languages. Such written or oral accounts should clearly outline for communities on the ground what their new participation and anti-displacement rights are, how they can exercise them, and finally the mechanisms available to them to

Economic & Political WEEKLY

ISSN (Online) - 2349-8846

raise violations, of which there are bound to be many as a landmark law takes life on the ground.