Towards a Just Displacement and Rehabilitation Policy

This article, based on the author's personal involvement at different stages in official and non-official capacities in displacement and rehabilitation issues, traces the evolution of thinking in India in this area. It narrates the story of the changing drafts of a policy document under consideration; notes that emerging enlightenment was reversed by the pursuit of "growth" and "development" accompanied by an impatience with other concerns; regrets the loss of a sense of justice and compassion; and outlines an approach to a more humane and equitable policy on displacement and rehabilitation.

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I

Some time during the 1980s, thinking began in the government of India on the formulation of a policy to govern all future cases of displacement of people relating to developmental projects of all kinds, such as dams, industrial or mining projects, highways, and so on. The subject was discussed many times at inter-ministerial meetings at the level of secretaries, and at meetings of groups of ministers. However, two decades of intermittent debates over repeated redrafts failed to produce an outcome. Eventually, in October 2006, a draft National Rehabilitation Policy 2006 was posted in the public domain for comments. Taking note of the comments received, and in the light of further inter-ministerial consultations, an attempt is now being made by the ministry of rural development to draft a national act on the subject. This article narrates that story in broad terms, seeks to bring out the changing nature of thinking on the subject and the issues involved, and outlines an approach to a more humane and equitable policy on displacement and rehabilitation.

This is not a scholarly or research-based paper, but one based on my own personal involvement, in several stages, in different forms, and under different auspices, official and non-official, in the displacement and rehabilitation issues over the years. That involvement falls into six segments: (a) in the 1980s when I was secretary, water resources, and participated in meetings of secretaries convened to consider the first tentative draft of a national rehabilitation policy, (b) from 1993 to 1997 when I was a member of two major committees which reviewed the environmental and rehabilitation aspects of the Sardar Sarovar and Tehri projects, (c) in the years 1998 to 2001 when I was involved in the processes of the World Commission on Dams (WCD) and got caught up in the hostile official reactions to that commission and its report, (d) in 2004-05 when I was a participant in the intensive debate that followed the publication of the National Policy on Resettlement and Rehabilitation of Project-Affected Persons, 2003 (NRRP) by the National Democratic Alliance (NDA) government in February 2004, as also (after the United Progressive Alliance government came to power) in the consultations instituted by the National Advisory Council (NAC), (e) in April-May 2006 when the Narmada Bachao Andolan's opposition to the raising of the Sardar Sarovar dam from 110 to 121 metres and Medha Patkar's fast brought the rehabilitation issue prominently to the nation's attention (the Supreme Court hearings on this are still continuing), and (f) finally, in November-December 2006, when I was a member of a sub-group (on displacement and land acquisition problems with special reference to tribal communities) set up by the ministry of tribal affairs to assist the standing committee on inter-sectoral issues relating to tribal development on displacement, resettlement and rehabilitation of scheduled tribes. The ministry of tribal affairs was in turn to provide perspectives from a tribal point of view to the ministry of rural development in the latter's efforts to draft a National Rehabilitation Act.

II

At the outset, a terminological point needs to be noted. There is a triad of terms: displacement, resettlement and rehabilitation. Displacement may not always be followed by resettlement; and resettlement does not necessarily imply the full rehabilitation of displaced persons. In recent years in India, it has come to be accepted that displacement of people must be followed by resettlement and rehabilitation, but this was not always the case.

Incidentally, in ordinary English usage, "rehabilitation" could be of dilapidated structures, sick industries, dysfunctional systems or institutions, declining traditions and customs, damaged reputations, or persons addicted to alcohol or drugs. In India, however, the word rehabilitation is almost always understood to mean the rehabilitation of displaced people (whether they have been displaced by "developmental" activities or by natural phenomena such as earthquakes or tsunamis).

III

The forced displacement of people for the purposes of various "developmental projects" such as big dams, large industrial or mining projects, highways and flyovers, and so on, has been going on in India for a very long time. I have largely been concerned with displacement in the context of dams. Some dams, barrages and canals were built in British times, but after independence and with the commencement of centralised economic planning there was an explosion of such projects. They were formulated, designed and

executed by engineers, and concerns about environmental impacts or about the displacement of people did not enter into the processes of planning and decision-making. If we think of projects undertaken in the 19th century or in the early decades of the 20th century, it is evident that they were essentially engineering undertakings: there were no environmental impact assessments or rehabilitation policies then, and the precise environmental, social and human impacts of those projects were undocumented and unknown, though retrospectively some studies have been attempted in some cases.

Displacements, however, took place, because land was needed for the construction of dams and reservoirs. There are different estimates of the total number of persons that have been displaced by developmental projects in general and by big dams in particular. The numbers vary from 10 million to 40 million. The latter figure has been dismissed by some as an exaggeration; the former is clearly an under-estimate. While a figure that commands widespread acceptance is not available, it seems unlikely to be much lower than 20 million.

The instrument of displacement was the Land Acquisition Act 1894 under which private land could be acquired by the state for a "public purpose". Compensation had to be paid for the land or property taken over, based on historical cost plus a solatium, but the concept of replacement cost was unknown. The compensation amount was not a negotiated sum, but a figure fixed by the government officials under certain rules. The figure could be contested under the Act, and many cases did go to the courts, leading to some enhancement of the valuation in some cases, but this was nowhere near replacement cost. The Act did provide for the issue of notifications giving the persons whose land or property was proposed to be acquired an opportunity to raise objections, but the objections could be procedural or about valuation; the "public purpose" for which the state proposed to take over private property was not open to contestation. There was a great deal of dissatisfaction with the Act (a) on the part of the people on the grounds of the quantum of compensation, the delays in payments, and so on (including corruption amongst the officials dealing with the matter); and (b) on the part of the government because of the delays in land acquisition because of challenges and litigation and the delays that these caused to the implementation of the projects in question. It must be noted that we are talking only about compensation for land and property acquired, and not about the resettlement or rehabilitation of the displaced people: the concept was unknown in the early years.

Over a period of time, it began to be recognised that something more than compensation for the land and property acquired was needed, and ideas of resettlement and rehabilitation began to emerge. These got elaborated and formulated into policies and packages in the context of certain projects, notably the Narmada (Sardar Sarovar) project. Separately, the drafting of a national rehabilitation policy to be applicable to all future dam projects as well as industrial, mining and other projects, i e, development-related displacements of all kinds, was mooted in the mid-1980s, and was "under consideration" and undergoing repeated revisions for many years. It is that process that is still going on and seems now to be approaching finality.

Regrettably, right from the beginning there was a resistance to good ideas, and drafts were progressively diluted. In the 1990s, one had hoped that N C Saxena's sensible and balanced draft would go through, but it did not. Gradually, the idea of a national rehabilitation policy ceased to be a subject of debate. Eventually, and rather surprisingly, a NRRP 2003 was notified in the last days of the NDA government (in February 2004). An intense debate followed, and many seminars and conferences were held. I took part in a number of them. At the initiative of the NAC, a consultation took place, in which I also participated. The ultimate result was a revised draft policy statement which the NAC sent to the government. It was unrealistic to expect that the NAC draft (prepared by Aruna Roy and N C Saxena) would have an easy passage in the bureaucracy. The bureaucracy set aside that draft and put its own redraft on the ministry's web site, in the form of a comparative table juxtaposing the provisions of the 2003 policy and the revised provisions of the 2006 draft. Extensive public debate followed. Many criticisms and suggestions were offered through direct communications to the ministry as well as in the form of articles in the media, papers in conferences, and so on.

One had no means of knowing what impact all those criticisms and suggestions had on governmental thinking, but some time later it transpired (to the pleasant surprise of many) that the government was thinking of a National Rehabilitation Act rather than merely a policy statement. The ministry of rural development undertook the drafting of a bill, and in that context consulted the ministry of tribal affairs for advice from the point of view of the interests and concerns of tribal communities. There was already a standing committee on inter-sectoral issues relating to tribal development on displacement, resettlement and rehabilitation of scheduled tribes, and the ministry of tribal affairs set up a sub-group to assist the standing committee in the context explained above. I was included in that sub-group. The sub-group presented its ideas to the standing committee, and the standing committee in turn has submitted two interim reports to the prime minister. Presumably, the ministry of rural development is still engaged in the task of drafting a bill embodying a national rehabilitation policy.

IV

The official attitude to these matters can be divided into two periods: (i) the 1980s and early 1990s, and (ii) the establishment of the WCD in 1998 and onwards. In the earlier period, a degree of enlightenment was gradually beginning to emerge; there was a growing awareness of environmental and displacement problems in the context of big projects; new guidelines started appearing; and as mentioned earlier, a debate began on a national rehabilitation policy. However, the appearance of the WCD changed all that. Official attitudes to the WCD were perhaps more hostile in India than anywhere else; and eventually the government of India rejected the report of the WCD (November 2000) in toto. There was a hardening of attitudes, a strident reassertion of the engineering point of view and a downgradation of other concerns, and a volte face on our own principles and guidelines. Two decades of slow emergence of enlightened thinking were washed out in the flood of rhetoric against what was perceived as an international conspiracy to prevent India from developing. It may appear that I am exaggerating. Let me therefore cite a couple of points made in the detailed comments on the WCD report that the ministry posted on a web site. One was a gem: "Excessive emphasis on equity is dangerous". That is an exact quotation. The other was the point that if

we were to consult those who were going to be affected by a project, their response was bound to be negative; that we must look at things from a broader national perspective; and that if we kept consulting everybody no project can ever go forward. The principles of equity and consultation enshrined in our own earlier guidelines were thus thrown overboard in the embattled reaction to the WCD report.

That report had not said that dams were bad and should not be built. It had merely said (a) that decision-making in the past had been bad, and needed to be improved; (b) that while dams had brought some benefits, there had been unacceptable costs in many cases; and (c) that the right thing to do in future would be to adopt a "rights and risks" approach. What that phrase meant was that we should ask "Whose rights are being affected by the project? Who is likely to bear the risks arising from the project?" The recommendation was that they should be fully involved in decision-making right from the earliest stages, and legally empowered to play their rightful role. Those observations and recommendations may seem eminently sensible to many of us, but they were comprehensively rejected by the government of India, or rather by the ministry of water resources with inadequate or no consultation with other ministries. That hardening of attitudes has remained unchanged ever since.

It was reinforced by the changing economic philosophy. Without attempting a detailed and nuanced account of the change, let me say very simply that with some hesitation at first, but with growing stridency over time, India abandoned its long-held quasi-socialism and embraced the capitalist philosophy. This was part of the triumphal resurgence of capitalism all over the world. Economic growth at 8 or 10 per cent, the performance of the stock market, and the rate of inflow of foreign private investment – these became the prime Indian mainstream concerns. Lip-service continued to be paid to environmental and social or human concerns, but with no real conviction. The preoccupation with "development" overshadowed everything else.

We tend to assume that there are deep human and social concerns behind the official efforts to draft a national rehabilitation policy, but based on my experience, I wonder whether that assumption is warranted. It seems to me that there is no real sense of regret or guilt at large-scale displacements; no compassion for the sufferings of the project-affected people; and no real desire to find solutions. On the other hand, there is a desire to get ahead with "developmental" projects and an impatience with anyone who raises inconvenient concerns. This is true not merely of planners and policymakers but even of large sections of the media and the intelligentsia. To many (though not to all), development means dams, highways, flyovers, high-rise buildings, huge apartment blocks, grand shopping malls, and so on: our cities must become as resplendent as Singapore and Beijing. If people have to be pushed around for this, so be it. The argument may go as follows: "Look at China. They decided to build Three Gorges and they went ahead and did it, even if it meant displacing over a million people. They were not plagued by criticisms and popular movements as we are." I am not caricaturing the mainstream position; I have heard that kind of remark. Among large numbers of people there is great admiration for China, and a deep regret that we are not able to push ahead with the same determination, undistracted by debate. In 2002, when the NDA government announced the Inter-Linking of Rivers Project there was jubilation among the bureaucrats and the engineers: here at last was something as grand as, if not grander than, Three Gorges. National pride was restored. Naturally, when criticisms started appearing, the response was one of angry dismissal and accusations of anti-national and anti-development attitudes. I say all this only in order to make the point that we cannot take it for granted that there is a shared concern about displacement and a shared desire to find just and humane solutions.

A just, humane rehabilitation policy can hardly emerge in the prevailing ethos. We already have the example of the highly controversial draft NEP 2004 that went through ritualistic processes of "consultation", and then was notified in the form that the government had in mind all along, the tacit (perhaps even explicit) objective being to dilute the Environment Protection Act and speed up clearance procedures to facilitate investment proposals. One must hope that the NRP 2006 will not turn out to be a similar exercise.

Unfortunately, the feeling that a degree of high-handedness on the part of the state towards some people, including the infliction of much hardship on them, is the inevitable and acceptable price that must be paid for "development", seems to be widely shared, judging from the current debate on Singur and Nandigram.

V

Assuming that a good policy emerges out of the processes referred to earlier, it must be noted that there is a vast gulf between policies/packages, however good these may be, and what actually happens in practice. Taking the Narmada case, for instance, the "land for land" principle ran into difficulty because land was not readily available. The offer of a choice of three sites to choose from became a fiction. The land offered was poor in quality and not irrigable; and irrigation facilities were non-existent. Promises of cluster settlements, facilities at the resettlement sites, etc, were not fulfilled. Inefficiencies apart, there was bureaucratic indifference and even callousness to the needs and sufferings of the people. The project authorities were essentially interested in pushing construction ahead and tended to regard the conditions relating to environmental and rehabilitation matters as inconvenient external impositions that hindered the implementation of the project. A few cases of "good" resettlement were carefully maintained as showpieces for visitors, but there were large numbers of dissatisfied and aggrieved project-affected persons (PAPs). Many decided to return from the bleak and inhospitable resettlement sites to their original villages. There were protests and demonstrations, and the state responded in the only way it knew, namely, through the use of force. The institutional arrangements such as the rehabilitation sub-group of the NCA and the grievance redressal authorities failed to discharge their responsibilities fully. Even the Supreme Court has tended to waver between the issue of justice to the PAPs and arguments about the economic importance of projects and the imperatives of "development".

If there is one thing in the Narmada (Sardar Sarovar) case that is beyond any reasonable doubt, it is the failure on the rehabilitation front. There could be disagreements on the extent of failure, but not on the fact of failure. There was ample evidence before the Supreme Court to show that there was a backlog in rehabilitation to be cleared up before allowing the dam height to be raised further. At one stage, the learned judges warned the authorities that they would not hesitate to stop the

project if they found that rehabilitation work was inadequate or incomplete. However, they did not actually do so. The report of the oversight group is a badly flawed one but the failures on the rehabilitation front come through even in that report. The inability of the state to offer reasonably acceptable land to the PAPs led to the formulation of a special rehabilitation package or SRP, which was nothing but a reversion to the old discredited practice of cash compensation; and quite improperly, the OSG tried to justify this.

The Narmada rehabilitation case is still before the Supreme Court, and one does not know what the final outcome will be. However, the general ambience in the country is not very encouraging. Many would probably say that the dam is "development" and must not be delayed, whereas rehabilitation work is no doubt necessary, but delays do not matter – except to the PAPs, who are not as important as "development".

VI

What principles would one like to see enshrined in a national displacement and rehabilitation policy statement or legislation? Speaking for myself, I would propose the following.

(1) It is wrong to talk about a rehabilitation policy or even a resettlement and rehabilitation policy, as both formulations take displacement for granted. We need a displacement and rehabilitation policy (D&R, not R&R).

(2) The first thing to be said about displacement is that it is ordinarily unacceptable. Being uprooted (displacement is a bland term for this) is a traumatic experience under the best of circumstances, and should be avoided if possible. A clear recognition of this, and an explicit statement to this effect should be the starting point for any D&R policy or law.

(3) It follows from the above (and from the more general "precautionary principle") that it is for the person or organisation or authority proposing displacement to establish that it is unavoidable (i e, that no non-displacing alternative is available for the objective in question); that the objective itself is well-conceived, necessary and unavoidable; that displacement is minimal (i e, that a less-displacing alternative is not available); and that the hardship involved in the displacement can be minimised and adequately compensated for.

(4) The theory that development entails costs and that some must make "sacrifices" in order that others might benefit, is a disingenuous and sanctimonious one that needs to be abandoned; pain and hardship imposed by some on others cannot be described as a sacrifice by the latter.

(5) Where displacement seems unavoidable, it ought not to be forced displacement, but should be voluntary. The principle of "free, informed prior consent" put forward by the World Commission on Dams should be enshrined in the policy statement or law.

(6) If consent is to be "informed", the necessary information must be provided. The people likely to be affected must be taken into confidence and provided with the fullest information about the contemplated project from the earliest stages, so that they can satisfy themselves about the desirability of the project, the non-availability of alternatives, and the rationale of the proposed displacement.

(7) There is widespread agreement that the Land Acquisition Act 1894 (LAA) needs to be radically overhauled, but that may be a difficult and long-drawn process. A quicker and easier course would be to decide that the LAA route will be used for getting the needed land only for governmental purposes such as building a school or hospital or a government office; that "public purpose" will be redefined to cover only such cases, and will not include private sector or public sector (or even governmental) projects or programmes or activities, whether industrial or commercial or other (e g, irrigation); and that in all such cases, land will be purchased through negotiation.

(8) Such a decision needs to be accompanied by special measures to protect rural (or urban) communities, particularly poor and disadvantaged groups ("weaker sections of society"), from being exploited by rich and/or politically and economically powerful project-managers and industrialists in unequal negotiations.

(9) Where the LAA 1894 is used for acquiring land, the acquisition needs to be made (a) contestable (not merely in regard to compensation, but also in relation to the public purpose which is the justification for displacement), (b) procedurally more humane and equitable, and (c) juster in terms of compensation, with due regard to the amount needed for buying land or property (house, shop) in the resettlement area.

(10) In tribal areas, the requirement of consultation with the gram sabha under the Panchayats (Extension to Scheduled Areas) Act 1996 or PESA must be scrupulously observed.

(11) Project-affected people (PAPs) should be granted through legislation the first claim on the benefits of the project for which they were displaced, and preferably resettled in the command area of the project. The political difficulties involved in this need to be overcome.

(12) Rehabilitation should leave the PAPs better off than before, or at least as well off. There is general acceptance of that proposition, but no unanimity about the elements of the policy and package. Based on the rehabilitation policies and packages of some recent projects, it should be possible to work out a normative package for future projects.

(13) We need a National Displacement and Rehabilitation Act, not merely a policy. If statutory clearances are needed for felling trees and for interference with the environment, there should also be a statutory clearance for displacing people and a statutory backing for the resettlement and rehabilitation package to be offered to them. It is encouraging that the government is thinking of legislation. Let us keep our fingers crossed on the government's commitment to that idea, and on what will go into the legislation.

(14) Finally, for giving the necessary clearances under such an Act, and for monitoring the actual implementation, there should be a national displacement and rehabilitation commission.

I claim no novelty for these principles; ideas like these have been under discussion for some time. I have only encapsulated them in a short statement. Some of these ideas had figured in the meetings of the sub-group set up by the ministry of tribal affairs. We shall have to wait and see which of them get embodied in the actual legislation. The above relates to people displaced by a project. Besides displacement, a project may have impacts of other kinds on the lives and livelihoods of a wide range of people. The above broad principles will apply to them too, mutatis mutandis. (A parenthesis: There may be some commonalities between displacements because of natural disasters such as tsunamis or earthquakes and displacements because of developmental activities, insofar as resettlement and rehabilitation problems are concerned. However, there is a crucial

difference which cannot be forgotten: in one case displacement is caused by nature, whereas in the other it is the result of deliberate human decision. It follows that in the latter case it is or must be presumed to be avoidable, unless proved otherwise.)

VII

Superficially, it might appear that some of these are accepted principles, but the acceptance is generally no more than lip service. Even governments now talk about "consultation", "people's participation", and "stakeholder involvement". A 1994 amendment to the Environment Protection Act has made public hearings on major projects mandatory. However, what is the reality?

The principles of consultation and participation are only grudgingly accepted by the government, and in very limited senses. The tendency is to plan and formulate policies, projects and programmes in a wholly non-participatory manner within the closed circles of the bureaucracy and the technocracy, put them briefly before the general public as a matter of form, and ask for comments. Full documentation is rarely made available; the material, sometimes in truncated form, is often put on web sites to which those who are likely to be affected have hardly any access; or printed material (generally incomplete) is circulated at public hearings with little time given for reading; and no attempt is made to explain the contents and implications to the general public. This hardly qualifies as "consultation", and no real debate takes place or is conceivable at the so-called public hearings, which are merely rituals of compliance with prescribed procedure. We now have a good Right to Information Act, which is potentially an instrument that significantly empowers the people, but its operationalisation is proceeding slowly and with some difficulties and setbacks. In any case, even where reasonable information about a project is provided, it does not constitute "participation" by the people in planning or decision-making; the bureaucracy and technocracy are simply not comfortable with the idea of giving the people a role in these things which are implicitly regarded as "internal" activities of the government.

Consider the other vogue word "stakeholder". It is the stakeholder who is to be consulted, and who is to participate. However, who are the shareholders? The answer is simple: everybody who has the remotest connection of any kind with the project in question. Not only those who are likely to be adversely affected by the project, or those who expect to enjoy the benefits that it will bring, but a wide range of others come within the ambit of the term. Thus, politicians, bureaucrats, engineers, donor agencies, consultants and contractors are all "stakeholders". The interests and concerns of these diverse categories may not in all cases be benign and legitimate, and some may have a more vital "stake" than others, but the term stakeholder makes no distinctions: it legitimises and levels all kinds of stakeholding. Everyone is a stakeholder, and the primacy of those whose lands and habitats are taken away and who suffer a traumatic uprooting is not recognised by the term. Even taking only two categories, namely, project-affected people and prospective beneficiaries, the vital difference between the two tends to get blurred by the bland assimilating term stakeholders. There is a cruel irony in describing the involuntary and helpless victims of a project as stakeholders, and this is compounded when they are put on the same footing as those who stand to benefit from the project. Let us not forget that while in the case of the former existing rights (i e, natural and often centuries-old rights of access and livelihoods) are taken away, in the case of the latter the project, by diverting river waters through canals, confers new rights not earlier enjoyed. The former are stake-losers, whereas the latter are stake-gainers.

While it is fashionable to refer to PAPs as "partners in development", that sanctimonious formulation bears little resemblance to reality. Efforts to involve them in decision-making and to give them their rightful share in the benefits of the projects that impose hardships on them have either not been seriously pursued or been unsuccessful. The immiserisaton of the PAPs is often euphemistically described as social costs of development. More bluntly, it can be described as human sacrifice at the altar of "development".

VIII

Keeping in mind the principles tentatively formulated above, if we look at the draft National Rehabilitation Policy 2006 which has been under debate, we will find that it is unsatisfactory in many ways.

First, the opening sentence of the new policy is ominous. It begins with a strident colonial-style reassertion of the state's prerogatives, legal powers, eminent domain, and so on. This is a retreat from enlightenment.

Secondly, while words such as "non-displacing" and "least displacing" are used, there is no ringing assertion that displacement is undesirable and that the first choice should be to avoid it. There is no such assertion because there is no such conviction in the government.

Thirdly, it is obvious that the principle of "free, prior, informed consent" referred to earlier is unacceptable to the government. Governments may talk about "consultation" and "participation" but it goes against the grain for them to give people a role in decision-making.

Fourthly, the policy draft is silent on the needed overhaul of the Land Acquisition Act. In fact, that Act is implicitly present behind the policy.

Fifthly, the rehabilitation "package" envisaged in the policy falls short of the packages already adopted in certain projects.

There are indeed some enlightened elements in the 2006 draft: for instance, the idea of a social impact assessment. However, the real difficulty with this draft is that even when it is good it is essentially top-down. All responsibility and all powers are with the bureaucracy. The entire policy is non-participatory, though lip-service is paid to the idea of participation.

If this draft is finally notified and becomes the National Rehabilitation Policy 2006 and forms the basis of an Act, it will take its place alongside of the National Environment Policy 2006 as one more retrogressive step driven by the prevailing economic philosophy. The draft NRP 2006 must be put aside, and a fresh start made from first principles. This article is presented as a modest contribution towards that end. EPW

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