GOOD POLICY, BAD POLITICIANS AND THE UGLY LAW

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The Department of Land Resources of the Ministry of Rural Development, Govt of India had published a National Policy on Resettlement and Rehabilitation (NPRR) for Project Affected Families on 17th February 2004 (Gazette of India, Extraordinary Part-I, Section I) just on the eve of the Parliamentary Election in May 2004. This is the first national policy on resettlement and rehabilitation in India. One may wonder why this much waited policy document was not placed in Parliament for debate when the house was in session just a few months back? One may also ask that why there was no effort on the part of the NDA and the UPA Governments to formulate a bill based on this policy in order to make a piece of legislation like Land Acquisition, Resettlement and Rehabilitation Act, which would have made it legally mandatory for the Government to make arrangement for rehabilitation for the millions of people affected by development projects? The Congress and its allies of the UPA are still not showing any interest in placing it in Parliament. These questions are raised simply because of the fact that good policies are not enough and the already existing colonial Land Acquisition Act of 1894 would always prove itself to be more powerful than this nicely worded policy document. Before looking at the actual text of NPRR one should keep it in mind that the Government has formulated this policy in a bureaucratic way rather than going through the democratic and legislative processes available in the country. Policy makers, as they always do, have again produced another beautiful document without being backed by any legislative and statutory power. In fact the Central Government of India, though not in a popular way had reviewed the problems of land acquisition in the past by different high-powered expert committees. Suffice it to say that the firm and clear-cut recommendations of those committees were shelved and development projects continued to displace people as they did during the colonial period. So there is sufficient reason to be skeptical about this recent policy on resettlement and rehabilitation. It is interesting to go back to little more than 35 years to read an interesting chapter in the history of land acquisition in India which bears contemporary relevance.

Report

In 1967, a landmark report was prepared on land acquisition and rehabilitation by the then Ministry of Food, Agriculture, Community Development and Cooperation entitled "Report of the Group of Experts on Land Acquisition". It was published by the Department of Agriculture, Govt of India. The expert group was constituted by 17 members, which included bureaucrats, scientists and lawyers and was chaired by Shri B Sivaraman, then Secretary, Ministry of Food, Agriculture, Community Development and Cooperation. The group was empowered to deal with all questions related to land acquisition with particular reference to the following matters:

i) Procedure for acquisition
ii) Principles for determining compensation and
iii) The delays that take place for the completion of the proceedings.

The high-powered expert group made the following observations and recommendations:

1. That a good deal of delay for the completion of land acquisition takes place owing to administrative inaction.
2. The group endorsed the view that acquisition of good agricultural land for non-agricultural purposes should be avoided as far as possible. The committee recommended that the requisitioning department should consider this aspect in detail and whenever good agricultural land can be saved, alternative acquisition proposal should be submitted.
3. The expert group also noted with concern that sometimes the requiring body asks for more land than what is required in the foreseeable future for the immediate purpose. The committee recommended that the Government should take care in this regard so that the requiring body applies for a minimum area of land, which may be necessary in future.
4. One of the most important recommendations made by the expert group dealt with rehabilitation of displaced persons as a result of acquisition of land. The group observed that any person who is shifted from his land and habitation as a result of acquisition of his land should be deemed to be a displaced person and the state has a moral responsibility for rehabilitation of displaced people. Under section 8.02 of the report it was stated: "In this connection, it was felt that the provision of section 23(1) of the Land Acquisition Act implies the Government responsibility for rehabilitation. Projects where permanent labour is to be employed have been giving preference to dispossessed persons in matter of employment after necessary training ... It may not be possible to lay down, the law with regard to the exact nature of rehabilitative measures. But Government must assume responsibility in principle."

Looking back to this landmark report, which has gone into oblivion long ago, one can legitimately ask: 'Has anything really changed as regards the acquisition of land for development projects in India?' In fact dozens of case studies done by the Anthropologists and Sociologists in rural and urban India and a few Government reports including the report of the Commissioner for Scheduled Tribes and Castes could be cited to show the violation of all the 'Good' recommendations of the 1967 high-powered expert group by the Central and the State Governments across the length and breadth of the country. The ground reality is far from 'Bad'. It is 'Ugly'. So, what is the guarantee that it will not happen to this recent NPRR particularly when it has no legislative support?

LACUNAE

The NPRR contains eight chapters of which Chapter V is most important since it delineates in detail the schemes/plans for resettlement and rehabilitation under 20 clauses and several sub-clauses. The chapter begins with the "Declaration of Affected Zone" wherein it is stated: "The appropriate Government...if it is of the opinion that acquisition of land for a project is likely to displace 500 families or more en masse in plains and 250 families or more in hilly areas, DDP blocks, areas mentioned in Schedule V and Schedule VI of the Constitution of India declared by notification in the Official Gazette, area of villages or localities as an affected zone of the project and thereupon the contents of the Policy shall apply to the project involved." Two issues immediately arise: (1) who will help to form the opinion of the Government that 500 or 250 families are going to be displaced? And secondly, (2) why this magic number 500 in the plains and 250 in the hilly areas? There is no clarification in the whole text of the policy on these two vital issues. After the Declaration, the Administrator for Resettlement and Rehabilitation (ARR) shall undertake a survey to identify the

beneficiaries for the R&R package described in chapter VI. In this connection, one should move back to chapter II that contains the "Objectives of the Policy". The first objective of the policy is as follows: "To minimize displacement and to identify non-displacing or least-displacing alternatives." If this is really the objective then the survey on the would-be affected families should have to be conducted before taking the decision for land acquisition in order to assess the vulnerability of the population. There should also be an index to measure the losses (environmental, economic and social), which would be incurred by acquisition. If the vulnerability crosses certain limits then the decision to acquire such land may have to be withdrawn by the Government. Without this kind of commitment it is useless to talk about identification of "non-displacing alternatives." Under the existing procedure of land acquisition a preliminary inquiry report (PIR) has to be prepared by the Land Acquisition Department after conducting a field survey and this report is placed before the District Collector. The notification for land acquisition under section 4 of the Land Acquisition Act is made after the approval of the PIR. There is hardly any instance of revocation of land acquisition after the submission of PIR in the country. One only has to wonder what may actually happen to the survey report, which will be submitted to the State Government that has already decided to acquire the land? The search for non-displacing alternatives will remain a mirage as it happened after the good recommendations of the 1967 expert group of the Ministry of Food and Agriculture.

Now chapter V. Again for every project, which the appropriate Government may think, would displace 500 or 250 families, there will be an Administrator (not below the rank of District Collector) for Resettlement and Rehabilitation who would undertake a survey for "identification of the persons and their families likely to be affected by the project." (NPRR, 5.3, 5.4 and 5.5). The survey has to be completed within 90 days from the date of declaration of the "Affected zone" and it has to invite objections and suggestions from all persons likely to be affected within another 30 days. After this the ARR will submit the final details of the survey along with his/her recommendations to the State Government. Now within 45 days from the date of receipt of the recommendations of the ARR the State Government shall publish the final details of survey in the Official Gazette. Here certain omissions in the Policy seem to be conspicuous. Nowhere in the document it is mentioned who will conduct this survey on such delicate and sensitive issue which require a good deal of training and skill and more importantly, who will bear the cost? After all, it should not be the requiring body who will always have a vested interest in lowering down the project cost. If in order to avoid complexities and also owing to fund constraints, the survey is conducted by the already overburdened Land Acquisition Department like any other government department, who by this time may have prepared the PIR for the same project, no good result could be expected from this survey which is the key element of this Policy.

SLAVERY

In order to dig more deeply into the pragmatic aspects regarding the implementation of the Policy let us place the Land Acquisition Act (LAA) and NPRR in a hypothetical situation since LAA and NPRR will have to operate simultaneously in case of projects displacing 500 or more families in the plains and 250 or more families in the hilly areas. Suppose there is a land acquisition notification in a particular area u/s 4 of the LA Act. According to the Act the affected persons will then have to file their objections

to the District Collector within 30 days from the date of the notification. In all likelihood the NPRR for the area shall come into effect after this period and even if it comes into force before the expiry of the LA date, the NPRR survey will be completed much later. Suppose again, that a project affected person in his objection wants a higher rate of compensation than is settled by the Collector (this happens often) and the Collector overrules it (this is also a banal phenomena) then what kind of relief the newly formed Office of the ARR would be able to provide to the Project Affected Family (PAF)? Since the NPRR has no statutory or legal power it will not be able to enhance the rate of compensation for the PAF. Repetition of this kind of phenomena will only cause disillusionment among the PAF's. Consider another situation. Assume that a private company wanted a piece of agricultural land for an industry and both the LAA and the NPRR are in operation simultaneously. Consider again that the Rehabilitation Plan according to NPRR has been made and come into force and some of the PAF's (Project Affected Family) have also been paid compensation money as per LA Act. Now, if suddenly the RB decides to withdraw from this industrial venture then what would happen to the RR activities which would then be halfway through? In these cases, the LA Act normally behaves like a paralyzed patient being unable to return the land to the persons to whom compensation has already been given by moving its once strong arms. There is nothing in the NPRR by which it can deal with these kind of situations that frequently takes place in the world of everyday life in land acquisition.

The most striking aspect of the rehabilitation package of the NPRR is the absence of any kind of compensation and/or relief to the sharecroppers who are invariably the actual cultivators enjoying no record of right on the land they cultivate. When land is acquired the owner of the absentee landlord gets the compensation under the provisions of the LA Act but the sharecropper does not get any compensation. The NPRR ironically leaves this vital matter to the LA Act in the case of sharecroppers, although it has quite admirably made provision for providing compensation to the agricultural labourers. West Bengal is the only State in India where the recorded sharecroppers (bargadars) receive compensation calculated on the basis of the price of the amount of crop grown in the land. But in West Bengal also the unrecorded sharecroppers do not get any compensation and the recorded ones invariably receive much less monetary benefit than the owner of the land owing to the fact that the value of the land is always higher than the crop grown on it. By omitting the whole issue of compensating the sharecropper, let alone rehabilitation, the NPRR has neglected one of the most vulnerable segment of the project affected families in rural India.

Another important omission in the Policy is the issue of the payment of compensation for the acquisition of common pool resources (CPR), e.g. communal grazing lands, playgrounds, common threshing ground, water-bodies and the like. Here also NPRR followed the spirit of the colonial Land Acquisition Act.

For one thing the most admirable aspect of NPRR is its attention to the agricultural labourers who would suffer from unemployment caused by development projects. Accordingly, in chapter V, under 5.4 it is stated, "Every survey shall contain the following village-wise information of, the project affected families" which among others included: "Agricultural labourers and non-agricultural labourers." In chapter VI, under 6.14 one finds : Each PAF belonging to the category of 'agricultural labourer' or

'non-agricultural labourer' shall be provided a one time financial assistance equivalent to 625 days of the minimum agricultural wages." So far so good. But who will be regarded as "agricultural labourers"? In order to know this it is better to open the page of definitions under Chapter III of the NPRR. Here under 3.1(d) it is mentioned: "agricultural labourer" means "a person normally resident in the affected zone for a period of not less than three years immediately before the declaration of the affected zone who does not hold any land in the affected zone but who earns his livelihood principally by manual labour on agricultural land therein immediately before such declaration and who has been deprived of his livelihood." Evidently, the definition uses two criteria for determining the status of the agricultural labourer eligible for getting R&R benefits, viz. (i) 'residence in the affected zone for not less than three years' and (ii) 'non-ownership of land in the affected zone.' The first criterion would exclude the huge army of migrant agricultural labourers who are not normally the residents of the area where they give their manual labour for two to three months of a year. If land is acquired in the area where they are simply migrants they would be deprived of their livelihood but will not be eligible for the R&R benefits declared in the Policy.

There is one final observation, which applies, not only to this Policy but also to the past drafts prepared by the various Ministries of the Central Government as well as the International Development Agencies like the World Bank and the Asian Development Bank. In none of these Policies, including the current one, does one find any concern over the adverse impact of land acquisition on land reforms and the possible remedial measures that should have been adopted by the concerned authorities. Consider the case of a landless labourer who have been given agricultural land by the land reform programme of State Government but again loses land through acquisition for a development project. Consider also the case of a sharecropper whose name has been recorded under the 'Operation Barga' programme in West Bengal suddenly loses his right of cultivation on the land by an acquisition and gets a paltry sum of money after much delay as compensation. What should be the policy of the Government regarding this kind of land reform beneficiaries to be affected by acquisition? The best policy should definitely be not to acquire the land of these persons and in order to spread a safety net for these categories of people, a survey should be conducted by the Government whenever any proposal from the RB is submitted for consideration to the concerned Ministry or Department of the Government. The NPRR has shown no concern over these vital matters related to rehabilitation of land reform beneficiaries affected by land acquisition for development project, which ultimately makes the former a mere slave of the colonial Land Acquisition Law. ✍

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