
II. Legal and Policy Frameworks for Land Acquisition and Resettlement in India

A. Introduction

Until 2003, the only legal framework governing resettlement applicable to all sectors at the national level was the Land Acquisition Act, 1894 (amended in 1984), which was an enabling legislation for land acquisition and not for resettlement. In 2004, the National Policy on Resettlement and Rehabilitation for Project Affected Families (2003) was published in the *Gazette of India*, Extraordinary Part I, Section I, dated 17 February 2004. The policy applies to projects where 500 or more families have been displaced en masse in plain areas and 250 families or more in hilly areas and areas mentioned in Schedule V and Schedule VI of the Constitution. The benefits under the policy are applicable to all project-affected families—those living below the poverty line and others. The policy states that rehabilitation grants and other monetary benefits are minimum and that State Governments and project proponents are free to adopt packages higher than this.

The positive feature of the policy is an acknowledgement of the fact that displacement results in “state-induced impoverishment”. It also recognizes that “no developmental project can be justified if a section of society is pauperized by it.” Thus, the policy for the first time made an attempt to correct the shortcomings of the existing legal regime by proposing that resettlement and rehabilitation are exercises in pro-poor development in line with the Constitutional aspirations of social justice, in contrast to the Land Acquisition Act which only focuses on statutory compensation.

The existing legal provisions relevant to land acquisition and resettlement include

- The Land Acquisition Act, 1894
- The National Highways (NH) Act, 1956
- National Policy on Resettlement and Rehabilitation for Project-Affected Families, 2003

- Policies of State governments and parastatal agencies

B. Land Acquisition Act, 1894

For any development project, land is acquired through the omnibus Land Acquisition Act, 1894. Development authorities are dependent on state government revenue departments for acquiring land. The District Collector (DC) appoints the competent authority (Special Land Acquisition Officer) to acquire the land for public purposes.

The Land Acquisition Act, 1894 provides three methods for arriving at the value of land, which are (a) government-approved rates; (b) capitalized value of average annual income from the land; and (c) prevalent market rate based on the average price paid in land transactions in the locality in recent times. These procedures consider land only as a commodity generating income. However, when a family is settled on a piece of land not only does it earn its livelihood from it but it also has a whole social network, and the Land Acquisition Act does not address these wider impacts of land acquisition.

C. The National Highways (NH) Act, 1956

For the purpose of development, maintenance, and management of national highways, a special law, The National Highways Act (NH Act), 1956 has been promulgated. This Act provides for acquiring land through a “competent authority”, which means any person or authority authorized by the Central Government by notification in the official Gazette to perform functions of the competent authority for such areas as may be specified in the notifications. For land acquisition (LA), the Act defines the various procedures as (i) section 3A—intention of Central Government to acquire land, (ii) 3B—power to enter for survey, (iii) 3C—hearing of objections, (iv) 3D—declaration

of acquisition, (v) 3E—power to take possession, (vi) 3F—power to enter into the land where land has vested in the central government, (vii) 3G—determination of compensation, and (viii) 3H—deposit and payment of the amount. The Act requires that the processes must be completed within a year from 3A to 3D. Although the NH Act significantly reduces the timeframe for acquisition, the rules and principles of compensation have been derived from the LA Act of 1894. The Act covers only legal titleholders and provides for compensation based on (i) market value of the land; (ii) additional payments for trees, crops, houses, or other immovable properties; and (iii) payments for damage due to severing of land, residence, or place of business.

D. National Policy on Resettlement and Rehabilitation (NPRR), 2003¹

NPRR represents a significant milestone in the development of a systematic approach toward addressing resettlement. The policy establishes a framework for extending additional assistance to project-affected families, over and above the compensation for affected assets provided under the Land Acquisition (LA) Act. While the policy has a number of useful features based on established good practice, some key gaps remain between the policy and the approaches and standards of funding agencies related to involuntary resettlement.

The key point of divergence between the Government of India's and funding agencies' (ADB and World Bank) approach to resettlement issues is a government focus on compensation versus funding agencies, concern for sustainable restoration of incomes of affected person APs (or in the case of very poor people, the improvement of incomes). The Government of India is using a legal framework driven by a concern to compensate for lost assets while funding agencies, as development institutions, approach resettlement as a development opportunity and strive to reinstate or improve the income base of APs.

One way of rectifying this fundamental divergence is to supplement compensation for lost assets with existing government development programs or projects to improve income and living standards for all categories (owners, squatters, tenants, etc.) of project-affected persons. Another method is to identify gaps

between the two approaches on a case-by-case basis and fill the gaps in the context of a given project to assure compliance with both Indian laws/regulations and funding agencies' policies.

E. Policies of Selected State Governments and Parastatal Agencies

Some state governments (Orissa, Madhya Pradesh, Maharashtra, Karnataka) and parastatal organizations (the National Thermal Power Corporation [NTPC], the National Hydel Power Corporation [NHPC], Coal India) have their own resettlement and rehabilitation policies. Gujarat initially followed Maharashtra's land-for-land scheme for compensation and later passed several Government Orders (GOs). The best-known package emerging from GOs was that for Narmada. But Gujarat does not have a state policy on rehabilitation. Andhra Pradesh, Tamil Nadu, and Rajasthan have passed several GOs, most of them in connection with World Bank-assisted projects, but have no policies of their own. Similarly, National Highways Authority of India (NHAI/PWD) also has policies on a project-by-project basis for highway projects funded by bilateral and multilateral agencies.

1. Limitations of State Policies

Maharashtra (The Maharashtra Project Affected Persons Rehabilitation Act, 1986)

- (i) The preparation of rehabilitation is left entirely to the discretion of the DC. He is not accountable to APs.
- (ii) No definite time limit is fixed for the completion of resettlement and rehabilitation.

Madhya Pradesh (Madhya Pradesh Pariyojana Ke karan Visthapit Vyakti [Punasthapan] Abhiniyan, 1985)

- (i) The term 'displaced person' (DP) has been defined as any tenure holder, tenant, government lessee, or owner of other property who, on account of the acquisition of his land or other property, has been displaced from such property. There is no clarification of the status of major sons or daughters. Hence, there is the risk of omission and deprivation of many APs.

¹ The 2003 NPRR was superseded by the National Policy on Rehabilitation and Resettlement approved by the Union Cabinet in 2007.

- (ii) The provision to make forestland available for cultivation violates the provisions of the Forest Conservation Act, 1980 later amended in 1988. It prohibits the diversion of forestlands for nonforest use.
- (iii) Section 17(2) of the Act provides for the compulsory acquisition of land for the purpose of resettlement, but subsequently in section 17(4), states that excess land in the benefited zone in the command area of irrigation projects should be acquired as far as practicable.
- (iv) Section 18 provides that compensation for the land acquired will be paid according to the provisions of the Land Acquisition Act, 1894 and will be adjusted toward the market value of the land allotted to AP. This is against the interests of tribal APs, who generally reside in remote areas and whose land has little market value.

Karnataka (Karnataka Resettlement of Project Displacement Peoples Act, 1987)

- (i) The state government has the sole discretion to decide on the application (through a Gazette notification) of the provisions of the enactment for resettling DPs. No objective criteria exist to decide on the issue.
- (ii) It aims only at resettlement, not rehabilitation. The Act provides for payment of compensation, resettling DPs at a new site, finding a house plot, agricultural land, etc. However, the civic amenities to be provided are not clearly defined, other than the reservation of land for threshing and for cremation or burial.
- (iii) According to the Act, there is no provision for ensuring the involvement of APs at any stage. The informed consent of APs for their displacement and resettlement is not an issue of concern in the Act.
- (iv) The resettlement and rehabilitation activities are to be planned and implemented by the administration with practically no role for any other agency, including local bodies.

Orissa (The Orissa Resettlement and Rehabilitation of Project Affected Persons Policy, 1994)

- (i) The policy is limited to water resource projects and not to all types of development-induced

displacements. However, there is a note that “Government by notification may also include any other work/project of public utility for adoption of this policy.”

- (ii) In line with the provisions of the Land Acquisition Act, market value—and not replacement value—is the basis for compensation.
- (iii) All the liabilities (mortgage, debt, or other encumbrances) on the land held by APs at the time of acquisition are deemed to be transferred to the land allotted to them at the rehabilitation site, thereby increasing the chances of impoverishment.

F. Policies of Funding Agencies: Asian Development Bank and World Bank

1. Asian Development Bank (ADB)

ADB’s Policy on Involuntary Resettlement was adopted in November 1995. The main objectives and principles of the policy, related to income restoration or having a bearing on it, are as follows:

- (i) Involuntary resettlement should be avoided wherever feasible, and/or minimized. People unavoidably displaced should be compensated and assisted as per the resettlement plan/framework prepared for the project, so that their economic and social future would be generally as favorable as it would have been in the absence of the project.
- (ii) Any involuntary resettlement should, as much as possible, be conceived and executed as a part of a development project or program, and RPs should be prepared as appropriate time-bound actions and budgets.
- (iii) Resettlers should be provided sufficient resources and opportunities to reestablish their homes and livelihoods as soon as possible.
- (iv) People affected should be informed fully and consulted on resettlement and compensation options.

Existing social and cultural institutions of resettlers and their hosts should be supported and used to the greatest extent possible, and resettlers should be integrated economically and socially into host communities. (For a complete description of ADB’s involuntary resettlement policy, see www.adb.org/resettlement)

2. World Bank

The World Bank's Operational Directive OD 4.30 (June 1990) and OD 4.20, which remained the Bank's policy statement on R&R for several years, has now been replaced by Operational Policy (OP) and Bank Procedure (BP) 4.12 (December 2001) and OP 4.10, respectively. The OP and BP apply to all projects that have resettlement impacts. The key objectives of the World Bank's policy on involuntary resettlement are

- (i) Involuntary resettlement should be avoided, where feasible, or minimized, exploring all viable alternative project designs.
- (ii) Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable persons displaced by the project to share in project benefits.
- (iii) DPs should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.
- (iv) DPs should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them as per the resettlement framework prepared for the project, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.

The World Bank issued the guidelines in the *Handbook on R&R for Task Managers* (1996) and the *Involuntary Resettlement Sourcebook* (2004) for implementation of R&R in World Bank projects. The following points refer specifically to income restoration:

- (i) The standard of living of project APs to be restored to pre-project levels, or be improved.
- (ii) In areas where APs were living below the poverty line prior to project implementation, post-project living standards to be brought above the poverty line.
- (iii) Preparation of income restoration programs income restoration programs (IRPs) should proceed exactly as it would for any other economic development program.

- (iv) It is important to design IRPs with reference both to the poverty profile of the affected villages and to that of prospective host communities.
- (v) To be effective, income restoration planning should begin no later than 2 years before APs are to be relocated.

It also proposed that the following information related to income restoration would be part of a resettlement action plan:

- (i) Existing AP skills and host area activities/demand patterns;
- (ii) Feasibility analysis of menu of income restoration options, including assessment of time/cost of access to previous urban employment;
- (iii) Training needs of APs;
- (iv) Strategy or activities broken down by APs category and range of options;
- (v) Timetable and budget for activities;
- (vi) Institutional responsibilities for design and implementation; and
- (vii) Provisions for handing over programs from the project to local authorities.

G. Gaps in National Legislation and Policies

Though there are a number of legislative provisions and policies in India, most of them have limitations compared to the policies of multilateral agencies.

Both the Land Acquisition Act, 1894 and the National Highways Act, 1956 do not recognize non-titleholders. Though the LA Act adds a solatium (additional payment for injurious affectation) to the compensation paid, the NH Act has no such provision. Both Acts do not recognize loss of income due to the acquisition of immovable property, such as commercial establishments and agricultural land. The acquisition process under the NH Act is faster than that under the LA Act, but it applies only to national highways for the exclusive use of the central government.

Even though the National Policy on Resettlement and Rehabilitation (2003) focuses on compensation, it does not address sustainable restoration of incomes for APs. It uses a legal framework driven by a concern to compensate for lost assets rather than approaching resettlement as a development opportunity, to reinstate or improve the sustainable income base for APs. The key differences or gaps between the World Bank's/

ADB's resettlement policies and national resettlement policies are summarized below:

- (i) The 2003 NPRR applies to projects if the number of families displaced are 500 in plain areas and 250 in hilly terrain, whereas ADB's and the World Bank's policies apply to projects with involuntary resettlement impacts, regardless of the number of persons displaced, although planning requirements vary with the scale and scope of impacts. If the provisions of the national policy are followed, there would be no assurance that the living standards of APs will be improved or restored in projects/subprojects that affect less than 500 families (or 250 in hilly regions).
- (ii) The 2003 NPRR requires that APs should have been residents in the project area for at least 3 years prior to the date of notification of the project in the project area. However, under this provision, bona fide residents of the project area, who have purchased property less than 3 years before the date of notification, would be barred from receiving any additional assistance over and above compensation. Such people, therefore, will not be able to restore their standards of living after resettlement. This provision may be particularly problematic to implement in urban areas where land and housing is bought and sold frequently.
- (iii) The 2003 NPRR is triggered only in situations involving land acquisition using the principle of "eminent domain" of the state, and it does not apply to restrictions of access to parks and protected areas. It is important to recognize this difference, especially since ADB's and the World Bank's resettlement policies also address restrictions of access to legally designated parks and protected areas. Thus, in projects involving such restrictions, ADB and the World Bank will need to discuss and agree upon project specific mitigation arrangements consistent with their policies.
- (iv) Most of the specific mitigation measures proposed in NPRR are based on cash compensation, which may not be sufficient for economic rehabilitation. In certain cases where agricultural land has been proposed, the area of agricultural land allocated for each affected family is quite low (maximum of 1 hectare [ha]

of irrigated land and 2 ha of rainfed lands). Such thresholds for allotment of agricultural land, combined with provision of insufficient amount of cash assistance, are unlikely to enable restoration of the standards of living of those who lose larger areas of land.

- (v) While the preamble of the 2003 NPRR refers to the need to assist those without legal rights, there are no specific provisions on whether and how such assistance would be provided.
- (vi) The provisions in the 2003 NPRR for linear resettlement for paying Indian rupees (Rs)10,000 (US\$222) to each affected landowner without regard to the area lost, or the severity of impact of land acquisition on the respective landowner, are not adequate. The proposed lump-sum payment approach is not likely to help achieve the stated objective of the national policy—to improve the living standards of APs.
- (vii) While the 2003 NPRR contains special provisions for tribal populations, most of the provisions pertain to payment of higher cash compensation to tribal APs than would be payable to non-tribal APs. Even on the issue of allotment of replacement agricultural land, which is a key prerequisite for the successful resettlement of tribal people, the policy only requires preference for tribal APs among the displaced population, but does not mandate any special efforts to provide replacement agricultural land to tribal APs.
- (viii) Although the 2003 NPRR provides for preparation of RPs and their approval by appropriate authorities, the timing of preparation of the plans, or of their approval, has not been specified. It is important that the plans are prepared, reviewed, and approved before land acquisition is initiated and before any of APs are adversely affected.
- (ix) The 2003 NPRR is targeted mainly at land acquisition and resettlement in the rural areas. It does not address important issues in urban resettlement, for example, the need to (a) relocate affected commercial properties to appropriate locations, (b) compensate for losses of income during transition, (c) provide alternative housing options to APs, and (d) compensate APs, if necessary, for increase in travel distance after relocation.

- (x) Though the 2003 NPRR makes reference to the need to provide physical infrastructure in accordance with state regulations, it does not clearly state that the physical infrastructure will be improved or at least maintained after resettlement. Also, the house plot size to be provided is extremely small (62 square meters [m²] for urban areas and 124 m² in rural areas) and would not enable affected person with larger original holdings to improve their standards of living.
- (xi) The 2003 NPRR does not provide for any linkage between the pace of land acquisition and resettlement and the pace of construction activities under the project. Unless the two are clearly linked in a way that construction on a particular piece of land is not initiated unless agreed resettlement measures with respect to the respective piece of land are completed, APs can be put through significant hardship and it may not be possible to achieve the objectives of the national policy.
- (xii) It may not always be feasible to appoint an officer of the rank of DC to be in charge of resettlement for each project as required in the 2003 policy. Even in cases where the DC is appointed for all projects in the district involving resettlement, it would be very difficult for the DC to devote adequate attention to resettlement issues. The incentive framework to complete a timely and effective resettlement needs to be further reviewed by the Government. In the absence of a clear agreement between the project agency and the district/state administration, there would be no pressure on the district administration to complete the resettlement process in a timely manner.
- (xiii) The 2003 NPRR document assumes strong capacity to plan, implement, and monitor resettlement at the different levels (district, State, and Ministry of Rural Development). However, it is not clear how and where the institutional details will be worked out.