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## II. Existing Legal and Policy Frameworks for Land Acquisition and Resettlement

### A. Introduction

**T**he Government of India's National Policy on Resettlement and Rehabilitation (NPRR), 2004 recognizes the need to support restoration of livelihoods of APs. The policy lays down minimum norms for rehabilitating APs and broadly outlines an approach and institutional framework to achieve its objectives. A few states and central ministries and departments have their own R&R policies/acts.

Until the NPRR was issued in 2004, the basis for land acquisition and compensation was the Land Acquisition Act, 1894 (amended in 1984), which is the enabling legislation for land acquisition but not for resettlement. For highways, the National Highways Act, 1956, applies. Apart from these two acts, various state governments, such as Karnataka, Orissa, Madhya Pradesh, and Maharashtra, have promulgated their own policies/acts. Some parastatal organizations, such as the National Thermal Power Corporation (NTPC), National Hydel Power Corporation, and Coal India Limited (CIL), have also developed their R&R policies. Like the National Highways Act, other two special acts include the Coal Bearing Areas (Acquisition & Development) Act, 1957, which is applicable to land acquisition in coal bearing areas, and The Mines and Mineral Acts, 1957. The NPRR applies to projects where 500 or more families have been displaced as a group in plains areas and 250 or more families in hilly areas and areas mentioned in Schedule V and Schedule VI of the Constitution. The benefits under the NPRR are applicable to all project affected families, including those below the poverty line. The NPRR states that rehabilitation grants and other monetary benefits indicated in it are the minimum and that state governments and project proponents are free to adopt higher compensation packages.

The positive feature of the NPRR is an acknowledgement that displacement results in "state-induced impoverishment". It also recognizes that "no

development project can be justified if a section of society is pauperized by it." Thus, the policy for the first time has made an attempt to correct the shortcomings of the existing legal regime by proposing that R&R are exercises in pro-poor development in line with the constitutional aspirations of social justice, in contrast to the Land Acquisition Act, which does not address R&R. The NPRR provides a good basis for harmonizing donors' resettlement policy requirements, since it provides scope for flexibility in adopting enhanced entitlements by project proponents.

### B. Land Acquisition Act, 1894

The Land Acquisition Act, 1894 is commonly used for acquisition of land for any public purpose. It is used at the individual state level with state amendments made to suit local requirements. In addition to the Land Acquisition Act is other state legislation for land acquisition. A brief summary of some of this is given in Table 2.

Expropriation of and compensation for land, houses, and other immovable assets are carried out under the Land Acquisition (Amendment) Act, 1984. The Act deals with compulsory acquisition of private land for public purpose. The procedures set out include:

- (i) Preliminary notification (Section 4);
- (ii) Declaration of Notification (Section 6);
- (iii) Notice to persons interested (Section 9);
- (iv) Enquiry and award (Section 11); and
- (v) Possession (Section 16).

Under the Land Acquisition Act, 1894, before amendment, compensation for land and houses was paid at the market value of the assets on the date of preliminary notification. The valuation was based on a detailed examination of land and structures. An

**Table 2: Summary of Individual State Legislation**

Legislation	Description
Madhya Pradesh Land Revenue Code (promulgated in 1959 and amended in 1989)	Under section 247, both tenancy and government land can be acquired. The district collector is empowered to issue notices to tenants, organize public consulting, and order acquisition/transfer and payment of compensation.
West Bengal Land (Requisition and Acquisition) Act (1948)	Acquisition of land for industrial purposes.
Orissa Government Land Settlement Act (promulgated in 1962; Orissa Government Land Settlement Rules were established in 1983)	The state is empowered to acquire any land, contrary to any law in any custom, for a purpose deemed necessary by the state. The state can pay a premium for settlement of such land and can charge rent for land so settled (and charge fees for application of settlement.
Maharashtra Land Revenue Code (promulgated in 1966 and amended in 1985)	Section 48(2) provides for right of access to land, and the right to occupy such other land as may be necessary for purposes subsidiary thereto.

Source: Compiled from Walter Fernandes and Vijay Paranjpye. 1997. Rehabilitation Policy and Law in India: A Right to Livelihood. Econet and Indian Social Institute; and Operations Research Group. 1999. "Study of Good Practices in R&R," unpublished report submitted to the Ministry of Rural Areas and Employment, Government of India and the World Bank.

additional 15% of the determined market value was paid as solatium to account for the compulsory nature of acquisition. Interest in case of delayed compensation was paid at a rate of 5% per year from the date of dispossession. The amount of the award was determined by a land acquisition officer, but could be appealed to a civil court.

The 1984 amendment to the Land Acquisition Act addressed the matter of compensation and delays in payment. As to the level of compensation, the rate of solatium was increased from 15% to 30%. For delays, the amendment requires that:

- (i) A time of 1 year was fixed for completing all formalities between the issuance of Section 4 and Section 6; and
- (ii) The compensation award must be determined within 2 years of the issuing of Section 6 notification. Interest is payable at a rate of 12% per year from the date of preliminary notification to the date of dispossession. These changes apply to cases before the civil courts even for awards made before the enactment of the amendments.

Land for coal mining is acquired under the provisions of a separate Coal Bearing Areas (Acquisition and Development) Act, 1957. The Act states that, "in

### Box 1: The Doctrine of Expropriation

The process through which the right of eminent domain (compulsory purchase) is exercised has various steps:

**Notification:** The legally required and other means of informing property owners

**Condemnation:** The legal act of taking the property

**Valuation:** Determining the amount to be paid that is acceptable to the state

**Negotiation:** Determining the amount to be paid that is acceptable to the state and the individual

**Arbitration:** The system for settling valuation disputes when negotiation fails

**Compensation:** The amount the property owner is reimbursed.

Source: Compiled from Om Prakash Aggarawala. 1999. Compulsory Land Acquisition in India.

the economic interest of India, greater control over coal mining industry and its development by providing for acquisition by the State of land containing or likely to contain coal deposits or of rights in or over such land for the extinguishments or modification of such rights by accruing virtue of any agreement, lease, license or otherwise or for matters connected therewith". Under Section 4 of this Act, the state can undertake the exercise of prospecting for coal on any land. If the land

is found to have coal deposits then notification is issued under Section 7 of the Act (corresponding to Section 4 of the Land Acquisition Act). The possession of land is taken under Section 12 of this Act and compensation is granted under Section 17.

The application of the Land Acquisition Act and the Coal Bearing Act has an important bearing on the R&R policies at the state level. It may be pointed out that the primary cause of litigation in land acquisition is related to entitlements of APs. A key reason behind contentions relating to entitlements is the baseline survey. Timely execution of the baseline survey and the subsequent process of acquisition activities can ameliorate the situation. However, the application of the Coal Bearing Act corresponding to the preparation of proposals for mining is inherently time consuming.

The baseline survey (including entitlements of APs) is conducted after issuance of Section 4 of the Coal Bearing Act, i.e., while prospecting for coal. On the basis of the baseline survey, the draft proposal for mining is prepared and sent to appropriate authorities in CIL for approval. The notification for acquisition is thereafter issued under Section 7 of the Coal Bearing Act. In most cases the process of approval of the proposal takes a long time (between issuance of Section 4 and Section 7), when discontent brews among the AP community. It may be noted that when the Land Acquisition Act is the basis of land acquisition and therefore a part of the R&R policy (as is the case of Orissa State R&R policy of 1998) a deadline for the baseline survey is adjudged, i.e., within 2 months of the issuance of Section 4(1) of the Land Acquisition Act. However, the CIL R&R policy (1994) which was formulated on the basis of the Coal Bearing Act, proposes a baseline survey before notification. Thus, while the Coal Bearing Act is apparently more appropriate for acquisition for the purpose of coal mining from the miner's viewpoint, it has procedural implications resulting in difficulties for R&R.

The other significant legislation pertaining to coal mining vis-à-vis land acquisition is the Mines and Minerals (Regulation and Development) Act, 1957 and amended in 1986. This Act provides for regulation of prospecting, granting of lease, and mining operations under the control of the central Government. Apart from this, the Mineral Concession Rule, 1960 is relevant in the context of grant and renewal of prospecting licenses, as also for lease in respect of lands belonging to private individuals. The central Government has also adopted other special laws that govern specific types

of land acquisition, including the National Highways Act, the Indian Railways Act, the Indian Electricity Act, and the Coal Bearing Act.<sup>1</sup> The basic principles of the Land Acquisition Act are incorporated into these special laws, with a few exceptions.

### 1. Limitations of the Land Acquisition Act

The Land Acquisition Act as amended does not contain any provision specifically dealing with resettlement (including that related to income restoration aspects).

- (i) It does not allow for compensation (except for houses) for landless laborers, artisans, and those sharing the use of land but without legal rights to it;
- (ii) The method of valuation of land considers only the market price of land at the date of notification under Section 4(1) but ignores any increase in the value of land at a subsequent date. Compensating for actual market value of land, which will entitle the owner to buy similar replacement land in adjacent areas, is not practicable under the framework of the Land Acquisition Act;
- (iii) The Act computes the value of land through the sales statistics method, leading to undervaluation of land. Buyers deliberately undervalue their land in sales transactions to reduce registration fees. This leads to a large number of court cases resulting in further delays and harassment both to landowners and the LAO/project authority (PA);
- (iv) The Act does not specify any compensation for deprivation of CPRs, especially loss of customary rights to land and forests, which forms an integral part of tribal livelihoods; and
- (v) The acquisition process takes too long and is incompatible with infrastructure project construction schedules (Table 3).

<sup>1</sup> Other central laws that include compulsory acquisition provisions for specific types of takings include: Ancient Monuments and Archeological Sites and Remains Act, 1958; Atomic Energy Act, 1962; Cantonments Act, 1924; Damodar Valley Corporation Act, 1948; Defence of India Act, 1962; Defence and Internal Security of India Act, 1971; Indian Tramways Act, 1886; Land Acquisition (Mines) Act, 1885; Metro Railways (Construction of Works) Act, 1978; Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962; Requisitioning and Acquisition of Immovable Property Act, 1952; Resettlement of Displaced Persons (Land Acquisition) Act, 1956; and Works of Defence Act, 1903.

**Table 3: Land Acquisition Process as per the 1894 Land Acquisition Act**

Legal Provision	Actions
Section 4	National Highways Authority of India prepares draft, Ministry of Law verifies it, then it is printed and proofread. Published in official gazette and two local newspapers; notice is posted in the locality concerned. No further land sales, transfers, or subdivisions after notice are allowed. A land acquisition officer (LAO) is appointed to survey the land. Notices under Section 4(1) are issued to individual owners and interested parties (1 month).
Declaration of Public Purpose	Government certifies that land is required for a public purpose. Declaration is published. Collector/Deputy Commissioner receives order from Revenue Department, state government. Land appraisal begins (2 weeks to 1 month).
Section 5(a), Enquiry	Enquire objections to land acquisition. Landowners and interested parties appear before LAO. Revenue commissioner calls for comments of acquiring agency if objections are raised (1–3 months).
Section 6	State government issues notices. LAO serves individual notice on all interested parties of government’s intention to take possession of land. Time and place set for claims to LAO. Public notice given. Collector or LAO investigates claims (12 months).
Section 9	LAO conducts on-site inquiry regarding area of land acquisition and compensation payable. LAO determines compensation (12 months).
Sections 11 and 12	Declaration of final award by collector/commissioner/state government after inquiry of total valuation. Notice of awards given to interested parties for payment of compensation. Government can take possession of land and hand over to implementing agency (14 months).

Sources: Provisions extracted by the author from the Land Acquisition Act, 1894.

### C. Land Acquisition under the National Highways Act, 1956

As already noted, land acquisition and compensation for project-affected persons is governed by the Land Acquisition Act (1894), which has been amended from time to time. However, for the purpose of maintenance, sustenance, and management of national highways, a special act, the National Highways 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 the functions of the competent authority for such areas as may be specified in the notifications. For land acquisition, the Act defines the various

steps as follows: (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 compensation. The Act requires that the processes must be completed within a year from 3A to 3D. This requirement addresses a key weakness in the Land Acquisition Act under which the process can take up to 3 years. Although the National Highways Act significantly reduces the time frame for acquisition, the rules and principles of compensation have been derived from the Land Acquisition Act, 1894. The National Highways Act covers only legal titleholders

and provides for (i) compensation based on market value of the land; (ii) additional compensation for trees, crops, houses, or other immovable property; and (iii) damage due to severing of land, residence, and/or place of business.

The main limitations of the National Highways Act are as follows:

- (i) It does not include non-titleholders for entitlements;
- (ii) It provides compensation for acquired properties and structures only;
- (iii) It does not specify compensation for loss of income due to the acquisition of commercial establishments and agricultural land; and
- (iv) It does not provide economic rehabilitation grants to vulnerable categories.

The National Highways Act differs significantly from the Land Acquisition Act. The main differences are summarized in Table 4.

## D. National Policy on Resettlement and Rehabilitation, 2003

The NPRR represents a significant milestone in the development of a systematic approach to 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 Act. While the policy has a number of useful features based on established good practice, some key gaps remain between the NPRR and ADB and World Bank approaches and standards for involuntary resettlement.

The key point of divergence between the Indian Government and the two funding agencies' approach to resettlement issues is a government focus on compensation versus donor concerns for sustainable restoration of incomes of APs (or in the case of the very poor, improvement of incomes). The Indian Government is using a legal framework driven by a concern to com-

**Table 4: Main Differences between Land Acquisition Act and National Highways Act**

Land Acquisition Act, 1894	National Highways Act, 1956
Applicable to all cases of land acquisition	Only applicable to acquisition of land for national highways
Used by central and state governments, municipalities, and private companies	For exclusive use of the central Government
Deals only with land acquisition	Use extends to highway construction and maintenance
Acquisition proceedings are more elaborate and take longer—up to 3 years	Process is faster—about 18 months
Acquiring agency can enter the land only after the award is made indicating the amount of compensation (declaration of Section 6)	Once a notice declaring intention to acquire is published, acquiring agency can enter the land (after declaration of section 3B)—this is much earlier than the Land Acquisition Act.
Hearing of objections under Section 5a for 30 days	Hearing of objections under section 3C for 21 days
Individual notices before award	No individual notices until section 3G, i.e., after award
Compensation is worked out based on market value + 30% solatium + 12% interest (also compensates for damage, and shifting allowance is included in the compensation amount)	Compensation is worked out based on market value + compensation for damage + shifting allowance. No solatium and interest.
In cases of emergency, land can be acquired in just 15 days even before compensation award is made	No such provision in National Highways Act
Land acquisition carried out by the district collector/subordinate staff	Central Government can appoint anyone as the competent authority to discharge this function
An aggrieved party can go to civil court to stop proceedings for acquisition as well as compensation	A person can appeal only to an arbitrator, usually the district collector
Land can be acquired through consent	Consent award is not allowed
Usual time for acquisition is 36 months	Usual time for acquisition is 18 months

Source: Prepared by the author.

pensate for lost assets while the two funding agencies, as development institutions, approach resettlement as a development matter 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 people. 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 and regulations and donor policies.

### 1. Key Strengths of 2003 National Policy on Resettlement and Rehabilitation (NPRR)<sup>2</sup>

The NPRR contains a number of provisions that will help improve planning, implementation, and monitoring of involuntary resettlement in development projects. Key strengths of the policy include:

- (i) Sound provisions related to consultations with APs and disclosure of relevant information to them at various stages of resettlement planning;
- (ii) Recognition, in the preamble to the policy, that APs without legal rights also need to be assisted, although detailed provisions on how this would be put into practice are absent;
- (iii) Treatment of adult sons and daughters as separate families (and therefore, eligible for economic rehabilitation), which is a significantly higher standard than donor resettlement policy requirements;
- (iv) Provisions allowing for purchase of privately owned land through open-market transactions for the resettlement of project-affected people;
- (v) Provisions clarifying that the cost of resettlement needs to be included in the project cost;
- (vi) Recognition of the need to prepare resettlement plans that are disclosed to the APs in draft form, and reviewed and approved by competent authorities; and

- (vii) An attempt to define and set up an institutional framework, at the central and the state level, for planning, implementing, and monitoring resettlement.

### 2. Key Policy Differences in Comparison with ADB's Policy on Involuntary Resettlement

#### a. Gaps between ADB's policy and the NPRR

Overall, there are a number of encouraging features in the national policy. However, a number of key differences or gaps between the two policies remain. Key gaps between ADB's resettlement policy and the NPRR are summarized below.

**The national policy does not apply to all development projects.** The national policy defines a "cut-off" threshold tied to the number of families that need to be displaced for the policy to be triggered (500 families in plains and 250 in hilly regions). The policy framework that would apply to projects that affect less than this threshold is not clear, nor is the basis for establishing this threshold. ADB's policy, on the other hand, applies to projects involving the taking of land, 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 standard of living of APs will be improved or restored in projects or subprojects that affect fewer than 500 (or 250) families.

**Only long-term residents are eligible under the policy.** The policy requires that the APs should have been resident 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 standard of living after resettlement. This provision may be particularly problematic to implement in urban areas where land and housing is bought and sold frequently.

**The policy does not apply to parks and protected areas.** While it is fully appropriate, from the Government's viewpoint, that the national policy is triggered only in situations involving land acquisition using the principle of "eminent domain" of the state, it does not apply to restrictions of access to parks

<sup>2</sup> The National Policy on Resettlement and Rehabilitation for Project-Affected Families, 2003, was superseded by the National Policy on Rehabilitation and Resettlement issued by the Union Cabinet in 2007.

and protected areas, thus it is important to recognize this difference, especially since ADB's resettlement policy also addresses restrictions of access. In projects involving such restrictions, ADB discusses and agreed upon project-specific mitigation arrangements consistent with its policy on involuntary resettlement.

**Cash compensation versus land-based and other mechanisms for economic rehabilitation.** While it is recognized in the preamble to the national policy that cash compensation alone may not be sufficient for economic rehabilitation, most of the specific mitigation measures proposed are based on cash compensation. Though the policy refers to the need to provide land-based resettlement and allows for purchase of privately owned land to resettle APs, the area of agricultural land proposed to be provided to each affected family is quite low (maximum 1 hectare [ha] of irrigated land and 2 ha of rainfed land). Such thresholds for allotment of agricultural land, combined with provision of insufficient amounts of cash assistance, are unlikely to enable restoration of the standard of living of those who lose significantly larger areas of land.

**Inadequate livelihood restoration packages for certain categories of APs.** Though the livelihood packages seem to be adequate for certain categories of APs, such as agricultural and nonagricultural labor, and there is a reasonable provision for transition assistance after resettlement, the extent of assistance proposed to be provided to mitigate loss of livelihood for those losing a significant amount of land seems to be inadequate and is not likely to result in the restoration of their livelihoods.

**No specific provisions for those without legal rights to affected land.** While the preamble of the policy refers to the need to assist those without legal rights, there are no specific provisions on whether and how such assistance would be provided. This would be a major issue in many development projects, especially those in urban areas that may involve people without legal rights to the land they are occupying. Restoration of standards of living would be difficult for those without legal rights to the land that they occupy.

**Inadequate provisions related to linear resettlement.** The provisions related to linear resettlement, of paying rupees (Rs) 10,000 to each affected landowner without regard to the area lost, or the severity of impact on the respective landowner, are inadequate. This lumpsum payment approach is unlikely to help achieve the stated objective of the national policy—to improve the standard of living of the APs.

**Inadequate provisions related to tribal people (indigenous peoples).** While the policy contains special provisions for tribal populations, most of the provisions pertain to payment of higher cash compensation to tribal than 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 to tribal APs among the displaced population, but does not mandate any special efforts to provide replacement agricultural land to tribal people. ADB's policy related to resettlement of tribal people, on the other hand, requires special efforts to promote land-based resettlement. Thus, in situations involving significant loss of land belonging to tribal people, there would be significant gaps between the national policy and the requirements of ADB's policies on involuntary resettlement and indigenous peoples.

#### b. Issues to benefit from further classification

In addition to the above aspects of the national policy, the following issues can benefit from further clarification, either through a revision in the policy document, or in the implementation guidelines accompanying the policy document.

**Timing of preparation and approval of resettlement plans.** While the policy provides for preparation of resettlement plans 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 the APs are adversely affected.

**The policy implicitly addresses rural and not urban resettlement.** The policy is targeted mainly at land acquisition and resettlement in rural areas. It does not address some significant issues that are pertinent in urban resettlement, for example, the need to: (i) relocate affected commercial properties to appropriate locations; (ii) compensate for losses of income during transition; (iii) provide alternative housing options to the APs; and (iv) compensate APs, if necessary, for increase in travel distance after relocation.

**Provision of physical infrastructure at resettlement sites.** Though the policy 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

[m<sup>2</sup>] in urban areas and 124 m<sup>2</sup> in rural areas) and would not enable APs with larger original holdings to improve their standard of living. Relocating farmers may find it particularly difficult to relocate their houses, cattle sheds, and household gardens in plots of the size for which they are eligible under the policy. Allotment of plots of suggested size may be acceptable for households with adult sons and daughters so that they can pool their plots for bigger houses and cattle sheds, etc. However, for households without eligible adult children, the allotted plots must be at least of the same area as affected holdings.

**Linkage of resettlement implementation with construction activities.** The policy 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 for that land are completed, the APs may suffer significant hardship and it may not be possible to achieve the objectives of the national policy.

**Clarification of institutional arrangements for resettlement implementation.** It may not always be feasible to appoint an officer of the rank of district collector to be in charge of resettlement for each project under the policy. Even in cases where the district collector is appointed for all projects in the district involving resettlement, it would be very difficult for the collector to devote adequate attention to resettlement issues. The incentives framework to complete resettlement in a timely and effective manner 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.

**Scope for donor assistance to establish resettlement capacity at various levels.** The national policy document assumes strong capacity to plan, implement, and monitor resettlement at different levels (district, state, and Ministry of Rural Development level). However, it is not clear how and where the institutional details will be worked out.

In conclusion, while the NPRR is a positive development, especially if the provisions of the policy are viewed only as “minimum benchmarks” to be enhanced and embellished based on the project context, there are significant gaps that need to be

addressed if the proposed policy framework is to be “materially consistent” with donor standards on involuntary resettlement. Also, the policy only deals with issues related to economic rehabilitation and does not address the provisions in the Land Acquisition Act, which continues to be the basis for calculating and paying compensation for affected assets.

## E. Multilateral Funding Agencies

### 1. Asian Development Bank

ADB’s policy on involuntary resettlement was adopted in November 1995. Key objectives and principles of the policy, related to income restoration or having a bearing on it, are as follows:

- (i) People unavoidably displaced should be compensated and assisted, 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 far as possible, be conceived and executed as a part of a development project or program, and resettlement plans should be prepared as appropriate time-bound actions and budgets. Resettlers should be provided with sufficient resources and opportunities to reestablish their homes and livelihoods as soon as possible;
- (iii) People affected should be informed fully and consulted on resettlement and compensation options;
- (iv) 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.
- (v) Lack of title is not a bar to compensation; and
- (vi) Vulnerable groups assisted to improve their status.

### 2. World Bank

The World Bank’s Operational Directive OD 4.30 (June 1990) has been replaced by Operational Policy and Bank Procedure 4.12 (December 2001) together. This policy and procedure applies to all projects for which a project concept review takes place on or after 1 January

2002. The objectives of the World Bank's policy on involuntary resettlement are as follows:

- (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 the persons displaced by the project to share in project benefits;
- (iii) Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs; and
- (iv) Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to predisplacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.

The World Bank issued guidelines (World Bank, 1996) for implementation of the R&R component in World Bank projects. Some of the points specifically related to income restoration are as follows:

- (i) The standard of living of APs be restored to preproject levels, or be improved;
- (ii) In areas where APs were living below the poverty line prior to project implementation, postproject living standards be brought up to the poverty line;
- (iii) Preparation of income restoration programs under R&R should proceed exactly as they would for any other economic development program;
- (iv) It may be important to design income restoration programs with reference both to the poverty profile of the affected villages and to that of prospective host communities; and
- (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 are 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 AP 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.

## F. State Policies

### 1. Maharashtra

Maharashtra took the lead among Indian states in passing a law on resettlement rehabilitation in 1976. After the state high court questioned some of its clauses, a commission was appointed to review the law. The act was amended in 1986 but received the president's assent only in 1989.

Well before enactment, the state government accepted the need to rehabilitate DPs and declared the following policy intentions:

- (i) DPs will preferably be allotted land for cultivation;
- (ii) A residential plot will be provided;
- (iii) Gaothans (settlements) are to be established;
- (iv) In newly established gaothans, civic facilities will be provided; and
- (v) All the expenditure incurred for these rehabilitation measures should be met from the project budget.

Provisions in the 1989 Act are as follows:

- (i) The Act is primarily applicable to irrigation projects in the state but not to interstate projects. The act can apply to projects in other sectors, if government clarifies its intention by issuing a notification;
- (ii) The State government or the implementing agency on behalf of state government has to notify the affected and benefited areas of the project;

- (iii) Landowners, agricultural laborers, and other individuals who have resided or worked continuously in the affected areas for 5 years before the notification are to be considered APs;
- (iv) After taking into consideration the state government's policy, in consonance with the provisions of the Act and also the prevailing circumstances, the collector has to formulate a proposed scheme for the rehabilitation of APs;
- (v) APs are eligible for the following benefits:
  - Alternative land to the extent of acquired land;
  - A residential plot;
  - Services (employment) on a priority basis (employment has to be given by the project authorities to only one member of each displaced family on a priority basis in the third and fourth categories of services in the project; while doing so, the project authorities are required to give due consideration to the legally reserved posts); and
  - Civic amenities in resettlement areas.

The shortcomings in the Act are:

- (i) Preparation of rehabilitation schemes is left entirely to the discretion of the collector. He is not accountable to the APs; and
- (ii) No definite time limit is fixed for the completion of rehabilitation.

## 2. Madhya Pradesh

Madhya Pradesh passed a law in 1985 known as the *Madhya Pradesh Pariyojna Ke Karan Visthapit Vyakti (Punarsthan) Adhiniyam*, 1985. It was enacted to "provide for the resettlement of certain persons displaced from lands which are acquired for irrigation projects, power projects or public utility projects and for matters connected therewith or incidental thereto."

The features of the Act are:

- (i) It recognizes that cash compensation alone is not sufficient and that more elaborate steps have to be taken to rehabilitate APs;
- (ii) It provides for the rehabilitation officer to

identify land suitable both for housing and for cultivation;

- (iii) Land for housing is to be selected to ensure that basic amenities like water and roads are provided;
- (iv) It provides that, if necessary, government forest land can be cleared and made available for cultivation;
- (v) It provides for the preparation of a draft resettlement plan covering all aspects from identification of alternative land to the schedule of resettlement. The plan has to be finalized only after the APs have been heard; and
- (vi) The collector is entrusted with the task of constructing alternative resettlement sites and the government has to ensure that sufficient funds are made available for the purpose.

The shortcomings and inconsistencies in the Act are:

- (i) The term "displaced person" 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 as to the status of adult sons or daughters—hence the risk of omission or deprivation of many APs;
- (ii) The provision of making forest land available (after deforestation) for cultivation violates the provision of the Forest Conservation Act, 1980 later amended in 1988. It prohibits the diversion of forest lands 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), this is diluted by stating that excess land in the benefited zone in the command area of irrigation projects should be acquired as far as practicable; and
- (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 the oustee. This is against the interests of tribal oustees, who generally reside in remote areas and whose land has little market value.

### 3. Karnataka

The Karnataka Act was passed by the legislature in 1987, but received the president's assent only 7 years later in 1994. The Act is known as Karnataka Resettlement of Project Displaced Persons Act, 1987. Some of the positive features of the Act are:

- (i) Similar to the Maharashtra Act, it imposes obligations on the authorities to find avenues of employment for DPs either at the project site or elsewhere; and
- (ii) It provides for a detailed census of DPs and assessment of the extent of land from which people are likely to be displaced. This clause is a distinct improvement over the Maharashtra Act, as the latter is silent on this score.

Shortcomings of the Act are:

- (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 the issue;
- (ii) It aims only at resettlement, not rehabilitation. The Act provides for payment of compensation, settling 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. The Maharashtra Act provides a detailed list of civic amenities to be made available in the resettlement colony as a part of its rehabilitation package;
- (iii) According to the provisions of the Act, there is no room for ensuring the involvement of APs, at any stage. The informed consent of the APs for their displacement and resettlement is not an issue of concern in the Act; and
- (iv) The R&R activities are to be planned and implemented by the administration with practically no role for any other agency, including local bodies.

### 4. Orissa

Orissa has passed several government orders since 1977. Based on these, a policy was promulgated by the

state government for displaced persons in the irrigation sector in 1994. This is known as the Orissa Resettlement and Rehabilitation of Project-Affected Persons Policy, 1994. The policy has been recently revised. Some of the positive features of the policy are:

- (i) It provides for people's participation, with the involvement of APs, in mapping and designing the villages, resettlement sites, identification of the infrastructure required, development of common resources, etc.;
- (ii) The sponsored resettlement colonies will be provided with civic amenities like schools, wells, village ponds, community centers, dispensaries, connecting roads, electrification, etc.; and
- (iii) A booklet containing the salient features of the R&R package, with a clear mention of the benefits and amenities, is to be prepared and distributed to the APs prior to the issue of identity cards.

The limitations of the policy are:

- (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 the replacement value is the basis for compensation; and
- (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.

Gujarat initially followed Maharashtra's land for land scheme and later passed several government orders. The best-known package was that of the Narmada. But Gujarat does not have a state policy on rehabilitation as such. Andhra Pradesh, Tamil Nadu, and Rajasthan have passed several government orders, most of them in connection with externally aided projects.

## G. Policies of Parastatal Organizations

### 1. National Thermal Power Corporation (NTPC)

NTPC promulgated its rehabilitation policy in 1993. As far as income restoration is concerned, its policy has the following welcome elements:

- (i) Its mentions provision of jobs to APs within NTPC or with agencies working for NTPC; and
- (ii) It provides for vocational training; NTPC has identified over 20 trades.

Yet these policies can yield positive results only if there are equal efforts for practical implementation. If NTPC can involve itself over longer periods, say 10 years, the development of human resources will become an important instrument for removing the antagonistic attitude of APs, as they would be treated as project stakeholders (Fernandes and Paranjpye, 1997).

A review of the NTPC policy reveals that there are some shortcomings in the policy that need to be addressed:

- (i) The project authorities should be involved in R&R only for a very short time, and they should phase out their activities as early as possible leaving the DPs to manage their own affairs; and
- (ii) The policy fails to mention the need for minimizing the number of people to be displaced.

### 2. Coal India Limited (CIL)

CIL promulgated its rehabilitation policy in 1994, which contains five rehabilitation packages:

- (i) Under package A, the subsidiaries of CIL will provide employment, if possible, to APs in accordance with its policies;
- (ii) Package B is land for land;
- (iii) Package C is agricultural self-employment. DPs who opt for this will be given assistance in developing dairy, poultry, shops, and petty contractor shops, either individually or through group the formation of self-help groups;
- (iv) Under package D, “rehabilitation assistance”, if other alternatives are not available, APs

with less than 2 acres of land will be given assistance adequate to maintain their earlier standard of living and income; and

- (v) Under package E, along with the cost of the housing plot and the structure on it, 100 m<sup>2</sup> of land per family, assistance in designing the new house and in the cost of transporting household goods from the old house will be given.

Each package is meant for a different category of DPs. Landowners will get monetary compensation along with one of the packages (except B, in which the compensation will be used for buying new land). The landowner, whose house alone is acquired, will be given package E. Those whose house and land are acquired will get one of the other packages. Sharecroppers, leaseholders, and daily wage earners will be given either package C or jobs under contractors. Wherever possible the contractors will be persuaded to provide jobs to able-bodied APs on the basis of seniority. Landless tribal people will be given the same provisions of rehabilitation as sharecroppers, etc. They will be settled as a unit. The landless, whose housing plot is acquired, will be given the facilities of package E.

### 3. National Highways Authority of India

National Highways Authority of India prepares and issues project-specific resettlement policy guidelines. The Third National Highway Project (TNHP), funded by the World Bank, was the first project for which policy guidelines were prepared by NHAI. The key principles of the policy are as follows:

- (i) The negative impacts on persons affected by the project should be avoided or minimized;
- (ii) Where negative impacts are unavoidable, project-affected persons should be assisted to improve or regain their standard of living; and
- (iii) People’s participation is required in planning and implementation of resettlement.

The World Bank-funded Grand Trunk Road Improvement Program (GTRIP) and the ADB-funded Western Transport Corridor (WTC) are also governed by these principles.

In practice, the difference lies mainly in the entitlement matrix, which varies across projects. The

DPR consultants prepare the entitlement matrix as a part of the resettlement action plan, according to specific project conditions.

## H. Other Agency Policies

### 1. Ministry of Environment and Forests

In the context of approval and management of hydroelectric power projects, activities related to the involuntary resettlement and tribal development plan are largely under the jurisdiction of the Ministry of Environment and Forests (MOEF) through a host of environment- and forest-related acts and notifications. These are the Environment Protection Act, 1986; Environmental Impact Assessment of Development Projects Notification, 1994; Forest (Conservation) Act, 1980; and Forest (Conservation) Rules, 2003.

For any project, the environmental clearance for the resettlement plan and the tribal development plan (TDP) is through direct dealing between MOEF and the developers with the following exceptions:

- (i) The process of public hearing for the clearance of the projects needs to be done through State Pollution Control Board as per the prescribed procedure mentioned in the Environment Protection Act/guidelines; and
- (ii) In any forest-related activities associated with displacement, R&R needs to be carried out through the State Forest Department, according to the Forest Act/guidelines.

### 2. Environmental Impact Assessment Notification, 1994

The Environmental Impact Assessment Notification, 1994 is the major comprehensive law for any development project in India. Point 2. II. (C) of Schedule I of MOEF notification dated 27 January 1994 (amended on 4 May 1994) on Environmental Impact Assessment of Development Projects mentions that river valley projects, including hydropower, major irrigation, and their combination, including flood control, require environmental clearance from the central Government in accordance with the procedure specified in the aforementioned notification.

The same notification mentions that the project authority shall make an application in the prescribed proforma (Schedule II, application form) accompanied

by an environmental impact assessment/environmental management plan project report in accordance with the guidelines of MOEF. Points no.1. (C) and 10 (a) and (b) of Schedule II state that information regarding alternative sites examined and the reasons for selecting the proposed site, the number of villages, and population to be displaced, as well as the rehabilitation master plan, must be submitted to MOEF. This is one of the important legal bindings applicable to hydropower developers in the context of involuntary resettlement.

For project clearance, in addition to the application form as mentioned in Schedule II, the project proponents are required to furnish a comprehensive rehabilitation plan, if more than 1,000 people are likely to be displaced; otherwise, a summary plan is adequate.

### 3. Forest (Conservation) Act, 1980

Subsection (1) of Section 2.3 of the above Act explains that all hydroelectric projects and irrigation projects with a command area of over 10,000 ha involving a diversion of forest area of more than 20 ha will require clearance from the environmental angle. Therefore, all such proposals will be simultaneously referred to MOEF for environmental clearance along with the proposal for forest clearance. Subsection (1) of Section 2.7 states that if the project involves displacement of people, a detailed rehabilitation plan is to be submitted along with the proposal for diversion of forest land. The scheduled tribe and scheduled caste population should be separately considered, and a plan for rehabilitation should be prepared in consonance with their socioeconomic, cultural, and emotional lifestyle.

### 4. Forest (Conservation) Rules, 2003

Section 6 of the Forest (Conservation) Rules, 2003 (notification dated 10 January 2003) states that for the conversion of forest land for non-forest purposes (agricultural purposes or for the rehabilitation of persons displaced from their residences by reason of any river valley or hydroelectric project) must submit a proposal to MOEF on Form A with the following details:

- (i) Justification for locating the project in a forest area;
- (ii) Purpose-wise breakup of the total land required;
- (iii) Details of displacement of people due to the project, if any;

- (iv) Total number of families involved in displacement;
- (v) Number of scheduled caste and scheduled tribe families involved in displacement; and
- (vi) Detailed rehabilitation plan.

## I. Adequacy of Laws and Policies

The purpose of any R&R policy is to ensure that the needs of all APs are addressed so that they not only regain their previous standard of living but also improve upon it. The adequacy of R&R policies can be judged through coverage of the issues listed below. It is the presence or absence of these factors, together with their scale, that determines the adequacy of the R&R policy and the feasibility of planning and implementation of a successful R&R program. The factors are as follows:

- (i) Organizational responsibility for funding, planning, and implementation of good reestablishment solutions—all state, parastatal, national policies, and policies of World Bank and ADB have this provision.
- (ii) Provision for a baseline socioeconomic survey of APs, preparation of a resettlement plan, and availability of technical expertise in planning and cost assessment—all policies have this provision.

- (iii) Provision for active participation of APs in setting resettlement objectives, preparation of the resettlement plan by identifying sustainable income-generation activities, and implementation of the same—barring state policies (except Orissa), all policies have this provision.
- (iv) Provision for a sound, adequate, and accessible grievance redress mechanism leading to prompt and fair settlement of disputes—all policies have this provision.
- (v) Provision for recognizing APs with various types of effect/ownership patterns of assets and entitlement of family members for R&R benefits—though support to non-titleholders is mentioned in the preamble to the NPRR, it is absent from the main text. Except Orissa, none of the state policies supports non-titleholders. Among parastatal agencies, barring CIL, all others support non-titleholders.

### 1. Comparison of National Policies with ADB Policy

Table 5 compares the provisions in the NPRR and selected government agencies' policies with ADB's involuntary resettlement policy.

**Table 5: Comparison of National Policies with Key Elements of ADB's Involuntary Resettlement Policy**

Policy Principle	ADB Principle	2003 NPRR	NHAI/ NTPC/CIL	State Governments
1. Resettlement must be avoided wherever possible; and if unavoidable it should be minimized	✓	✓	Specified in NHAI and CIL policy but not in NTPC	✓
2. APs must be compensated to replace their lost assets and to restore/improve their living standards	✓	Replacement value mentioned in preamble, but not clearly mentioned in the body	✓	✓
3. APs should be fully involved and consulted in the planning and implementation of resettlement	✓	✓	✓	Only Orissa refers to participation of APs
4. Compensation for lost assets must be on the basis of replacement cost	✓	Not defined	✓	All states refer to market value and not replacement value

Table 5 continued

Table 5: Comparison of National Policies with Key Elements of ADB's Involuntary Resettlement Policy

Policy Principle	ADB Principle	2003 NPRR	NHAI/ NTPC/CIL	State Governments
5. Transaction and transition costs for APs to cope with immediate loss	✓	✓	✓	✓
6. Wherever feasible, land should be an option for compensating loss of land	✓		✓	Orissa and Madhya Pradesh refer to land for land
7. A resettlement plan should be prepared in every instance where involuntary resettlement occurs	ADB considers three categories of impact: A (Significant) where 200 or more people experience major impacts, which are defined as being physically displaced from housing, or losing 10% or more of their productive assets (income generating). B (Not Significant) where impacts are not deemed significant; and C (where no involuntary resettlement impacts are foreseen)	Only required where over 500 families are affected in plains areas or over 250 families in hilly areas; 500 families represent about 2,500 people in the Indian context and this is over 10 times the ADB requirement of 200 people or more	✓	✓
8. The resettlement plan must be disclosed to APs before finalization	✓	✓	✓	None of the state policies clearly defines this
9. Entitlements under the policy	Each impact must be defined and appropriate entitlements assigned on the basis of the basic principles of replacing lost assets and restoring livelihoods	Chapter VI of the NPRR defines flat entitlements without considering the specific impact on a case-by-case basis. However, for linear projects, only an ex-gratia payment of Rs10,000 per family is to be paid	Follows ADB's guidelines. Compensation based on severity of the impact	Follows ADB's guideline. Compensation based on severity of the impact
10. Recognition of untitled persons such as squatters and encroachers	✓	NPRR states that the landless, forest dwellers, tenants, and artisans are more severely affected but no mention is made of specific entitlements for them	NHAI and NTPC consider that (but not CIL)	Except Orissa, none of the state policies considers non-title-holders

Table 5 continued

Table 5: Comparison of National Policies with Key Elements of ADB's Involuntary Resettlement Policy

Policy Principle	ADB Principle	2003 NPRR	NHAI/ NTPC/CIL	State Governments
11. Surveys and census required	✓	Apart from baseline survey, NPRR requires survey findings to be disclosed to the affected persons with a view to inviting objections and suggestions	✓	✓
12. Social networks and cultural links should be preserved	✓	✓	✓	✓
13. Recognition of vulnerable groups including indigenous people and the poor	✓	NPRR gives preference to STs in land allotment. Additional financial assistance is also defined for them. Their traditional rights to natural resources in the area will be recognized	Specified in NHAI and CIL policy but not in NTPC's	Specified only in Orissa policy
14. Grievance redress procedure	✓	NPRR requires a grievance redress cell to be set up under a commissioner for R&R	✓	✓
15. Common property resources should be replaced	✓	✓	✓	✓
16. All costs relating to R&R must be borne by the requiring agency and included in project costs	✓	✓	✓	✓

ADB = Asian Development Bank, AP = affected person, CIL = Coal India Limited, NHAI = National Highways Authority of India, NPRR = National Policy on Resettlement and Rehabilitation, NTPC = National Thermal Power Corporation, R&R = resettlement and rehabilitation, ST = scheduled tribe.

Source: RETA Review and Assessment of Policy, Legal, and Institutional Framework 2004–2005 prepared by the author.