

Legislative Brief

The Rehabilitation and Resettlement Bill, 2007

The Bill was introduced in the Lok Sabha on 6th December, 2007 and was referred to the Standing Committee on Rural Development (Chairperson: Shri Kalyan Singh).

The Standing Committee is scheduled to submit its report within three months.

For issues related to land acquisition, please see our companion Legislative Brief on the Land Acquisition (Amendment) Bill, 2007.

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Highlights of the Bill

- ◆ The Rehabilitation and Resettlement Bill, 2007 provides for benefits and compensation to people displaced by land acquisition purchases or any other involuntary displacement. The Bill creates project-specific, state and national authorities to formulate, implement, and monitor the rehabilitation and resettlement process.
- ◆ For large scale displacement, the government shall conduct a social impact assessment. It shall appoint an Administrator for Rehabilitation and Resettlement who is responsible for formulating, executing, and monitoring the rehabilitation and resettlement plan.
- ◆ The Bill outlines minimum benefits for displaced families and the criteria for eligibility. Benefits may include land, house, monetary compensation, skills training and preference for jobs.
- ◆ The Bill establishes the post of Ombudsman to address any grievances from the rehabilitation and resettlement process. Civil courts are barred from entertaining any suits related to this matter.

Key Issues and Analysis

- ◆ Though the purpose of the Bill is to 'provide for the rehabilitation and resettlement' of affected persons, the Bill itself does not require that these persons be resettled.
- ◆ While the Statement of Objects and Reasons mentions minimising displacement, protecting livelihoods, and improving living standards, the language in the Bill does not make these clauses mandatory.
- ◆ The affected families eligible for benefits are identified as of the date of declaration of the affected area. This declaration is made when 400 or more families are affected en masse. It is not clear whether benefits apply in cases where fewer families are displaced.
- ◆ The National Rehabilitation Policy, 2007 requires residency for 3 years in the affected area for displacement benefits. The Bill requires 5 years.
- ◆ The Bill bars civil courts from entertaining any suits on issues under the authority of the Administrator, Commissioner, or Ombudsman. These authorities are effectively given the power of a judicial authority without judicial qualifications. There is also no mechanism for appeals.
- ◆ The Bill does not specify a clear timeframe for rehabilitation.

PART A: HIGHLIGHTS OF THE BILL¹

Context

In India, land is acquired by the government for public purpose under the Land Acquisition Act, 1894. However, until 2003, the country did not have a national level policy to address rehabilitation and resettlement of people displaced by land acquisition projects. The National Rehabilitation and Resettlement Policy was framed in 2003 and revised in 2007.

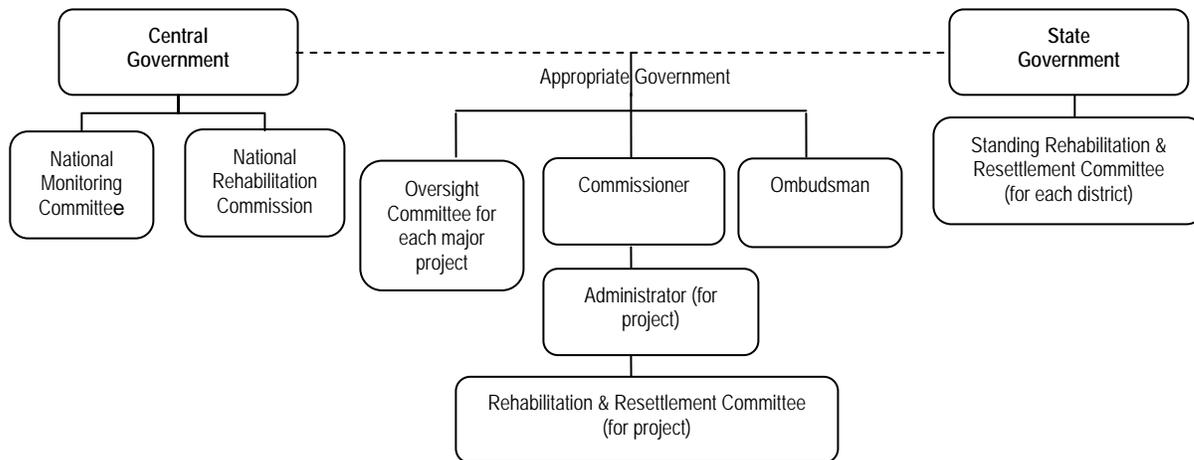
The Rehabilitation and Resettlement Bill, 2007 provides benefits and compensation for people displaced by land acquisition purchases or any other involuntary displacement. It outlines the guidelines for creating a rehabilitation and resettlement plan and criteria for eligibility of compensation and benefits to affected persons. The Bill establishes several committees at the state and central level to oversee and monitor the rehabilitation and resettlement process. This Bill was introduced in conjunction with the Land Acquisition (Amendment) Bill, 2007. For issues related to the Land Acquisition (Amendment) Bill, 2007 see our companion Legislative Brief.

Key Features

- The Bill identifies the central government as the appropriate government for rehabilitation and resettlement (R&R) if the land is acquired for a central project; in other cases, the responsibility lies with the state government.
- The Bill differentiates between the process for large-scale displacement (i.e., more than 400 families en masse in the plains or 200 families en masse in the hills or tribal areas), and when fewer families are displaced. For large-scale displacement, the government shall conduct a social impact assessment study, notify the affected area, and create a rehabilitation and resettlement plan. The Bill also lists various entitlements (see Table 1). In other cases, basic infrastructure facilities have to be provided at the resettlement area. It is not clear whether these families are entitled to the benefits listed in Table 1.

Authorities for Rehabilitation and Resettlement

Chart 1: Government Structure for Rehabilitation and Resettlement



- For large-scale displacement, an Administrator for Rehabilitation and Resettlement (at least District Collector rank) shall create, implement, and monitor the R&R plan. For other projects, the state government may appoint an Administrator (at least deputy collector rank). The Administrator shall create the R&R plan under the supervision of the Commissioner for Rehabilitation and Resettlement (Commissioner or Secretary rank). The Administrator shall chair the project Rehabilitation and Resettlement Committee, which shall review the implementation of the plan and conduct social audits. This Committee includes government officials, members from the local community, and the local Panchayat Chairperson, MLA and MP. For multi-state projects, the central government shall appoint the officers in consultation with the relevant state governments.
- Each district shall have a Rehabilitation and Resettlement Committee to monitor projects not covered by the project-level Rehabilitation and Resettlement Committees. Every major project shall have an Oversight Committee for Rehabilitation and Resettlement at the ministry level.
- The ombudsman shall address any grievances from the R&R process. The Bill bars the civil court from entertaining any suits or issuing injunctions on issues under the authority of the Administrator, Commissioner, or Ombudsman.

- The National Rehabilitation Commission shall have oversight over R&R of affected families and the National Monitoring Committee shall review and monitor implementation of R&R schemes and plans.

Rehabilitation Process and Benefits

- All large-scale displacement projects require a social impact assessment study to measure the impact on public and community properties, assets, and infrastructure. This study shall be reviewed by an independent expert group. The study is not required in case of emergency land acquisition for the purpose of defence or national security.
- In cases of large-scale displacement, the appropriate government shall notify the affected area and publish the declaration in three local newspapers (at least two in the local vernacular). The Administrator must then conduct a survey and census within 90 days. He shall prepare a draft plan for R&R in consultation with the local gram sabha or corresponding bodies. This plan shall include information about the affected land, the displaced persons, their property or assets, benefits and resettlement packages, the timeline for shifting and resettling, etc. All rehabilitation costs are to be borne by the requiring body (which needs the land for its project).
- The affected families may be settled in groups, if possible. All resettlement areas should be part of a panchayat or municipality. For large-scale displacement, comprehensive infrastructural facilities and amenities shall be provided; in other cases, basic infrastructural facilities and amenities shall be provided. The requiring body shall contribute to the socio-economic development near the project site, and shall earmark a part of its net profit for this purpose.
- Benefits are to be provided for each affected family. Families may opt for a lump sum instead of the benefits. The monetary benefits shall be adjusted for inflation based on the Consumer Price Index.

Table 1: Rehabilitation Benefits for Affected Families

Criteria for Eligibility of Benefits	Benefits
Any affected family whose house has been acquired or lost	Land for a house (without payment) of up to 250 square metres of land in rural areas or up to 150 square metres of land or a house of up to 100 metres carpeted area in urban areas
Affected family owning agricultural land whose land has been acquired or lost or has been reduced to marginal farmer	If available in the resettlement area, agricultural land or cultivable wasteland equivalent to the land lost up to one hectare of irrigated land or two hectares of un-irrigated or cultivable wasteland; shall be in the name of each person included on the record of rights
BPL affected family without land and has continuously lived in an area for 5 years before declaration	A house with at least 50 square metre carpet area in rural areas or 25 square metre in urban areas; or the family can opt for a one-time financial assistance for house construction
Family with land lost for an irrigation or hydel project	Preference for land-for-land in the command area of the project; if land is not available or family opts not to take the land, they shall receive monetary compensation; fishing rights in the reservoirs
Allotment of agricultural land instead of acquired land	One-time compensation of at least Rs 10,000 to each person on the records of rights
Allotment of wasteland instead of acquired land	One-time compensation of at least Rs 15,000 per hectare to each person on the records of rights
Displaced affected family with a cattle shed	Minimum of Rs 15,000 for construction of a cattle shed
Affected artisan, small trader, or self-employed person	Minimum of Rs 25,000 for construction of a shop or shed
All affected families	One-time compensation for moving and transportation costs of at least Rs 10,000
All vulnerable affected persons	Minimum of Rs 500 per month for lifetime pension
For land development projects instead of land-for-land or employment	Developed land or build-up space within the development project in proportion to the land acquired, subject to some limits
Linear acquisitions for railway lines, highways, transmissions lines, laying of pipelines, and other projects requiring a narrow parcel of land	Minimum of Rs 20,000 in addition to other benefits under the scheme through which land is acquired to each person on the records of rights. Benefits listed in this Bill shall also be given if the person becomes landless or is reduced to a small or marginal farmer
Family affected by land acquisition on behalf of a requiring body	Monthly subsistence allowance of 25 days minimum agricultural wages* per month for one year; allotted houses or land shall be free of encumbrances and may be in joint names of wife and husband
Land acquisition on behalf of a requiring body: Affected family not provided agricultural land or employment	Rehabilitation grant of 750 days minimum agricultural wages; If requiring body is a company, it is required to give the option of taking 20-50% of this rehabilitation grant as shares or debentures

*Note: The monetary value may vary from state to state as each state sets its own minimum agricultural wage.

- When land is acquired on behalf of a requiring body, rehabilitation benefits include: (a) preference for employment and construction labour if available; (b) preference for contracts, shops, or other economic opportunities; (c) skills training; (d) training facilities for entrepreneurial development; and (e) scholarships and other opportunities.
- Preference for land-for-land allotment shall be first given to Scheduled Tribes (ST) and then to Scheduled Castes (SC). In case of acquisition for a requiring body, ST families will be given an additional 500 days minimum agricultural wages, and for out of district resettlement, 25% increase in the monetary benefits. ST, SC, and other forest dwellers shall have fishing rights in the reservoir area of irrigation or hydel projects. In case of displacement of 200 or more tribal families by a requiring body, a Tribal Development Plan shall be prepared for settling land rights, developing alternate fuel, fodder and non-timber forest produce resources etc.

PART B: KEY ISSUES AND ANALYSIS

Non-Binding Language

Statement of Objects & Reasons

The Statement of Objects and Reasons mentions minimising displacement, protecting livelihoods, and improving the living standards of displaced persons as integral to R&R, but the Bill in many instances uses non-binding language. Table 2 lists some examples of such language.

Table 2: Examples of Non-Binding Language

Issue	Benefits	Clause
Resettlement Area	The Government <i>may</i> , by notification, declare any area...as a resettlement area...	25
Resettlement in Groups	The affected families <i>may, wherever possible</i> , be settled in a group or groups	26(1)
Land-for-Land	Shall be allotted... <i>if Government land is available...</i>	36(1)
Employment	Shall give <i>preference...</i> in providing employment in the project... <i>subject to the availability and suitability...</i>	41(i)

Resettlement not Mandatory

Clauses 25 & 40

In outlining benefits, the concept of resettlement is not addressed for many categories of persons. For example, the only mandatory benefit for rural artisans, small traders and self-employed persons is a one-time financial assistance of a minimum of Rs 25,000 for construction of a working shed or shop. While the government may identify specific areas for resettling displaced persons, the Bill does not make this provision mandatory.

SEZ Standing Committee Recommendations

In June, 2007 the Standing Committee on Commerce submitted its report on “The Functioning of Special Economic Zones.”² Some of its recommendations relate to rehabilitation and resettlement of displaced persons.

Table 3: Comparison of SEZ Standing Committee Recommendations & Rehabilitation and Resettlement Bill, 2007

Issue	SEZ Standing Committee Recommendations	Rehabilitation and Resettlement Bill
Resettlement allowance/ employment	Government should provide adequate resettlement allowance, employment, training, bank loans, etc	Preference in training and employment provided only when acquiring body is a company; resettlement allowance given based on eligibility criteria
Employment opportunities	One family member should be offered employment in the SEZ; developer should arrange skills training/up gradation; agricultural workers, rural artisans, and others supporting farming should be given training and employment in processing and non-processing areas	Preference to affected person for contracts and economic opportunities; training wherever necessary; preference to landless labourers for construction projects; and training for entrepreneurship and self-employment skills
Shares in company	Offer equity shares in the developers company	Acquiring companies can offer land owners 20-50% of compensation award in shares and debentures
Community-based R&R	Communities should be rehabilitated as a whole	Families shall be settled in a group, wherever possible

Sources: ‘Functioning of Special Economic Zones’, Department Related Parliamentary Standing Committee on Commerce, June 2007; The Rehabilitation and Resettlement Bill, 2007.

Threshold for Displacement Benefits

Clauses 4(1) & 9(1)

Benefits outlined in the Bill only apply if displacement affects a minimum of 400 families in the plains en masse or 200 families in the hills or tribal areas en masse. It is unclear whether these numbers were determined based on data of past displacement or through other means. The Bill then uses this threshold to differentiate between the requirements for a social impact assessment study, notification, and the rehabilitation and resettlement plan. It is ambiguous whether this clause will allow requiring bodies to break up linear projects (such as a long highway or railway line) in order to avoid fulfilling these requirements.

Benefits for Small-Scale Displacement Unclear

Clauses 20 & 34

For large-scale displacement, the Bill requires a declaration in local newspapers, and identifies the affected families on the date of this declaration. These affected families are eligible for various R&R benefits. When fewer than 400 families are displaced, such a declaration is not required. It is not clear whether these families are eligible for R&R benefits.

Table 4: Benefits for large-scale Displacement Compared to Small-scale Displacement

Requirement	Large-scale displacement	Small-scale displacement
Administrator for R&R	Mandatory, District-Commissioner level	Not mandatory, Deputy-Collector or Sub-divisional Officer
Social Impact Assessment	Mandatory	Not required
Infrastructural facilities and amenities	Comprehensive infrastructural facilities and amenities in resettlement area- mandatory	Basic infrastructural facilities and amenities for all affected families – mandatory

Source: The Rehabilitation and Resettlement Bill, 2007.

Compensation and Benefits

Land-for-Land Policy

Clause 36(1) Regardless of the amount of land acquired, an individual whose land has been acquired, lost, or reduced is entitled to receive a maximum of one hectare of irrigated land or two hectares of un-irrigated land.

Residency Requirements

Clauses 21(vi) & 35(2) Landless individuals are eligible for compensation provided that they have lived in a place for at least 5 years. The National Rehabilitation Policy, 2007 sets the time limit at 3 years. There is also no clear policy for double displacement if the acquired land is resettlement area and people have been there for less than five years as a result of displacement.

Civil Courts Not to Have Jurisdiction

Clauses 14 & 54 The Bill mandates the appropriate government to appoint the Ombudsman to address any rehabilitation grievances. Civil courts are barred from having jurisdiction on any matter which the Administrator for R&R, the Commissioner for R&R, or the Ombudsman is empowered. The Ombudsman is empowered to dispose of any petitions related to R&R. The Bill does not specify any criteria for the appointment of an Ombudsman, and whether he is required to possess judicial qualifications or experience. As civil courts are barred from judging these issues, all appeals and petitions will lie directly with the High Courts. The potential large number of such cases could lead to significant increase in the workload of High Courts, and to delays.

Types of Displacement

Urban Displacement

Clause 35 This Bill appears to be written primarily for displacement from rural areas. In case of loss of land or house, the Bill requires compensation as agricultural land or house (which may be in rural or urban areas). The Bill does not require the replacement of an urban house with another urban house/plot.

Any Other Reason

Clauses 2 & 3 The Bill mandates compensation for displacement due to land acquisition displacement and for 'any other reason.' The Bill specifies the entire expenditure will be taken by the requiring body. In cases of displacement due to natural disasters, riots, etc it is unclear how the compensation will be financed.

Gender Issues

Daughters versus Sons

Clause 3(j) The definition of family includes 'unmarried daughters' and 'minor sons.' If a family has a son and a daughter, both above the age of 18, the (unmarried) son would qualify for benefits as a separate family, whereas the daughter would not.

Land or House Title

Clause 37(3) The Bill states land or house allotted *may* be in the joint names of wife and husband. Similar provisions in Section 4(4) of the Schedule Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 *requires* such joint registration.

National Committees

Clauses 16 & 19 The Bill creates a National Rehabilitation Commission and National Monitoring Committee to oversee the rehabilitation process, but the specific functions of these bodies have not been detailed.

Definitions

Clause 18 Every 'major project' shall have an Oversight Committee. The Bill does not define 'major project.'

Clause 46 Project authorities are required to pay pension to vulnerable affected persons. The term 'project authorities' is not defined in the Bill and it is unclear whether this refers to the appropriate government or the acquiring body.

Comparison of NAC Draft Policy and Rehabilitation and Resettlement Bill, 2007

In March 2006, the National Advisory Council communicated to the central government a draft national policy on development and rehabilitation. Most of the benefits listed in the R&R Bill are lower than those recommended in the NAC's draft policy.

Table 5: Comparison of NAC's Draft National Development, Displacement, and Rehabilitation Policy 2006 and the Rehabilitation and Resettlement Bill, 2007

Issue	NAC Draft Policy Recommendations	Rehabilitation and Resettlement Bill
Consent	Displacement should occur only after prior informed consent of Gram Sabhas; if no consent, project may continue only if dissenting Gram Sabhas less than 50% of total affected persons	Scheduled areas under 5th Schedule or Councils in the 6th Schedule Areas shall be consulted in all cases of land acquisition before notification; Owners of notified land may file objection with Collector within 30 days of notification
Definition of family	Every major adult member, along with spouse and minor children below the age of 18 years is considered a single family	A person, spouse, minor sons, unmarried daughters, minor brothers, unmarried sisters, father, mother, other relatives residing with or dependent
Social assessment	Each large development project of 100 acres of land or more must have holistic social appraisal before development project	A social impact assessment study if more than 400 families in plains or 200 in hills/tribal areas are displaced. No specific timeline to conduct study
Multiple displacement	All benefits should be doubled if displacement occurs again within 20 years	No mention
Rehabilitation site	Rehabilitation site should be chosen in consultation with affected persons; should be large enough for the natural population growth for 100yrs and improve standard of living	Administrator shall draw a list of lands for rehabilitation and plan details shall be displayed publicly; no specific provision about rehabilitation site accommodating population growth
Training and employment	Mandatory employment in non-irrigation projects; location as close to factory/new town as possible; project authorities should train and develop skills of affected persons; all unskilled and semi-skilled employment in the project must go to affected persons; must organise training before acquisition project begins	Requiring body shall give preference to affected person for contracts and economic opportunities; training wherever necessary; preference to landless labourers for construction projects; and training for entrepreneurship and self-employment skills
Employment guarantee	Government must develop a special employment guarantee program for at least 5 years for affected persons	No mention
Rehabilitation process	Should be gender sensitive; house allotments <i>shall</i> be given jointly to husband and wife; consultations with both genders	Women representatives on rehabilitation and resettlement committee; house allotments <i>may</i> be given jointly
Panchayat status	Resettlement sites must be given special panchayat status, grouped together if possible, at least for the first 5 yrs	Appropriate government shall ensure all resettlement areas form part of a panchayat or municipality
Homestead allocation	Homestead land to all displaced family; 50-100 sq metres in urban areas and 100-250 sq metres in rural areas, depending on quantum of land acquired	Families with houses on acquired land shall receive land for a house without payment; up to 250 square metres of land in a rural area, up to 150 square metres of land or a house of up to 100 metres carpeted area in urban areas
Compensation for tribals	Compensation of 450 days minimum agricultural wages (at rates fixed by respective states); settlement in compact block and close to natural habitats; mandatory allotment of land	Compensation of 750 days of minimum agricultural wages and an additional 500 days of minimum agricultural wages; preferably settlement in a compact block, land-for land if available
Livelihood	Families without land or job to get 750 days of minimum agricultural wages (rural) and minimum unskilled industrial wages (urban)	Land acquisition on behalf on a requiring body where land or employment have not been provided, 750 days of minimum of agricultural wages

Sources: Draft National Development, Displacement and Rehabilitation Policy 2006, National Advisory Council; The Rehabilitation and Resettlement Bill, 2007.

Notes

1. This Brief has been written on the basis of the Rehabilitation and Resettlement Bill, 2007, which was introduced in the Lok Sabha on December 6, 2007 and referred to the Standing Committee on Rural Development (Chairperson: Shri Kalyan Singh). The Standing Committee is scheduled to submit its report in three months.
- 2 "Functioning of Special Economic Zones", Department Related Parliamentary Standing Committee on Commerce, June 20, 2007.

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