



SHAPING TOMORROW'S LEADERS. TODAY.

## LAND ACQUISITION

**Land acquisition** in India refers to the process by which the union or a state government in India **acquires private land** for the purpose of **industrialisation, development of infrastructural facilities or urbanisation** of the private land, and provides **compensation** to the affected land owners and their rehabilitation and resettlement

Currently land acquisition is governed by the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013** which came into force on January 1, 2014. Prior to this, the **Land Acquisition Act, 1894** governed land acquisition.

### LAND ACQUISITION ACT, 1894

The first land acquisition legislation in India was enacted by the British government in 1824. Called the **Bengal Resolution I of 1824**, the law applied “to the whole of Bengal province subject to the presidency of Fort William.” The law enabled the government to “obtain, at a **fair valuation, land or other immovable property required for roads, canals or other public purposes.**” In 1850, the British extended the regulation to Calcutta (now Kolkata), through another legislation, the Act I of 1850, with “the object of confirming the title to lands in Calcutta for public purposes”.

The Act XLII of 1850 “declared that **Railways were public works** and thus enabled the provisions of Resolution I of 1824 to be used for acquiring lands for the construction of railways.” Likewise, similar Acts in **Bombay (now Mumbai) in 1839, the Building Act XXVII and Act XX of 1852 in Madras (now Chennai)** were passed to facilitate land acquisition in these presidencies (within the “islands of Bombay and Colaba” and the Presidency of Fort St. George).

However, it was in **1857 that the British enacted legislation that applied to the rest of the provinces or presidencies and the whole of British India.** Act VI of 1857 “repealed all previous enactments relating to acquisition and its object as stated in its preamble, was to make better provision for the acquisition of land needed for public purposes within the territories in the possession and under the governance of The East India Company and for the determination of the amount for the compensation to be paid for the same.” This act, owing to “unsatisfactory settlement”, “incompetence” and “corruption” was further amended in 1861 (Act II) and 1863 (Act XXII) and subsequently led to the enactment of Act X of 1870.



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It was eventually **replaced by the Land Acquisition Act, 1894** (Act I of 1894). The 1894 law did not apply to princely states like Hyderabad, Mysore and Travencore, who enacted their own land acquisition legislation.

After India gained independence in **1947**, it adopted the Land Acquisition Act of 1894 by the **“Indian Independence (Adaptation of Central Acts and Ordinances) Order” in 1948.**<sup>1</sup>

It was in 1998 that the Ministry of Rural Development initiated the actual process of amending the act. The Congress-led United Progressive Alliance (UPA) in its first term (2004-09) sought to **amend the act in 2007 and introduced a bill in the Parliament.**

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#### THE LAND ACQUISITION (AMENDMENT) BILL, 2007:

Many have criticized the Land Acquisition Act, 1894, as a draconian piece of legislation which has been used to forcibly acquire land without paying adequate compensation. The Congress-led United Progressive Alliance (UPA) in its first term (2004-09) sought to amend the Act in 2007 introduced a bill in the Parliament. It was **referred to the standing committee on rural development**, and subsequently, **cleared** by the group of ministers in December 2008, just ahead of its eventual passage. The 2007 amendment bill was **passed in Lok Sabha as the “Land Acquisition (Amendment) Act, 2009” in February 2009**. The Land Acquisition (Amendment) Bill, 2007 was passed by the Lok Sabha on 25th February 2009 (the last day of the session) but the bill **lapsed with the dissolution of the 14<sup>th</sup> Lok Sabha**. The government did not have the required majority in the Rajya Sabha to pass the bill.

The Amendment attempts to **expand the rights of those whose land is being acquired** while **restricting the types of projects** for which governments can acquire land. It also provides for a separate authority to settle disputes over land acquisition. A **companion piece of legislation (the Rehabilitation and Resettlement Bill, 2007)** attempts to specify the **benefits that displaced people will receive.**

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#### HIGHLIGHTS OF THE BILL

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<sup>1</sup> <http://www.livemint.com/Politics/T2tN2OWzJly9SuFgsGsmHN/The-evolution-of-the-Land-Acquisition-Act-from-1824-to-2015.html>



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- The Land Acquisition (Amendment) Bill, 2007 amends The Land Acquisition Act, 1894.
- For acquisition resulting in large-scale displacement, **a social impact assessment** study must be conducted. Tribals, forest dwellers, and those with tenancy rights are also eligible for compensation. (**Social Impact Assessment Study**: If land acquisition results in the displacement of 400 families in the plains or 200 families in the hills or tribal areas, the government must conduct a social impact assessment. The study will include the effects of displacement, a Tribal Development Plan, and provisions for infrastructure development in resettlement areas.)
- Acquisition costs will include **payment for loss or damages to land, and costs related to resettlement of displaced residents**.
- While determining compensation, the **intended use of land** and value of such land in the current market is to be considered.
- The Bill establishes the **Land Acquisition Compensation Disputes Settlement Authority at the state and central levels** to adjudicate disputes resulting from land acquisition proceedings.

#### KEY ISSUES AND ANALYSIS

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- The **Bill bars the jurisdiction of civil courts on all matters related to land acquisition**. It is unclear whether there is a mechanism by which a person may challenge the qualification of a project as 'public purpose.'
- The **Settlement Authority is a judicial body but could be entirely staffed by members without judicial qualifications** or experience.
- When acquired land is resold, **the original acquirer is to distribute 80% of the capital gains to the original owners or their heirs. This implies that every acquirer must track the original owners and their heirs in perpetuity**. Also, the resale price of land may be difficult to compute when it is part of a larger deal in which a company is taken over.
- **Companies have to offer part of compensation as shares or debentures**. Unlike shares, debentures do not provide the land owner with a share of the profits of the project.



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- The Bill makes **special provisions for compensation if land is acquired under 'urgency'**. The term 'urgency' is not defined.<sup>2</sup>

There is unanimity of opinion across the social and political spectrum that The Land Acquisition Act 1894 suffers from **various shortcomings**. Some of these include:

- **Forced acquisitions:** Under the 1894 legislation once the acquiring authority has formed the intention to acquire a particular plot of land, it can carry out the acquisition regardless of how the person whose land is sought to be acquired is affected.
- **No safeguards:** There is no real appeal mechanism to stop the process of the acquisition. A hearing (under section 5A) is prescribed but this is not a discussion or negotiation. The views expressed are not required to be taken on board by the officer conducting the hearing.
- **Silent on resettlement and rehabilitation of those displaced:** There are absolutely no provisions in the 1894 law relating to the resettlement and rehabilitation of those displaced by the acquisition.
- **Urgency clause:** This is the most criticised section of the Law. The clause never truly defines what constitutes an urgent need and leaves it to the discretion of the acquiring authority. As a result almost all acquisitions under the Act invoke the urgency clause. This results in the complete dispossession of the land without even the token satisfaction of the processes listed under the Act.
- **Low rates of compensation:** The rates paid for the land acquired are the prevailing circle rates in the area which are notorious for being outdated and hence not even remotely indicative of the actual rates prevailing in the area.
- **Litigation:** Even where acquisition has been carried out the same has been challenged in litigations on the grounds mentioned above. This results in the stalling of legitimate infrastructure projects.
- **Recent observations by the Supreme Court:** Justice Ganpat Singhvi of the Supreme Court has observed, in the wake of repeated violations that have come to light over the last few months, that the law has "become a fraud". He observed that the law seems to have been drafted with "scant regard for the welfare of the common man".
- Another **bench of the Supreme Court** has echoed this sentiment in its observation that "[T]he provisions contained in the Act, of late, have been felt by all concerned, **do not**

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<sup>2</sup>[http://www.prsindia.org/uploads/media/Land%20Acquisition/bill167\\_20080311167\\_Legislative\\_Brief\\_Land\\_Acquisition\\_Bill.pdf](http://www.prsindia.org/uploads/media/Land%20Acquisition/bill167_20080311167_Legislative_Brief_Land_Acquisition_Bill.pdf)



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**adequately protect the interest of the land owners/persons interested in the land.** The Act does not provide for rehabilitation of persons displaced from their land although by such compulsory acquisition, their livelihood gets affected ...To say the least, the Act has become outdated and needs to be replaced at the earliest by fair, reasonable and rational enactment in tune with the constitutional provisions, particularly, Article 300A of the Constitution. We expect the law making process for a comprehensive enactment with regard to acquisition of land being completed without any unnecessary delay.”<sup>3</sup>

After the UPA came back to power with a bigger mandate, it sought to reintroduce the bill in 2011 as the “**Land Acquisition Rehabilitation and Resettlement Bill, 2011**” or LARR, 2011.

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#### THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT BILL, 2013:

After the UPA came back to power with a bigger mandate, it sought to reintroduce the bill in 2011 as the “Land Acquisition Rehabilitation and Resettlement Bill, 2011” or LARR, 2011. **The bill was passed in August 2013 as “The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013”** and came into effect on 1 January 2014.

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#### HIGHLIGHTS OF THE BILL

- The Bill provides for **land acquisition as well as rehabilitation and resettlement**. It replaces the Land Acquisition Act, 1894.
- The process for land acquisition involves a **Social Impact Assessment survey**, preliminary notification stating the intent for acquisition, a declaration of acquisition, and compensation to be given by a certain time. All acquisitions require rehabilitation and resettlement to be provided to the people affected by the acquisition.
- **Compensation for the owners of the acquired land shall be four times the market value** in case of **rural areas** and **twice in case of urban areas**.
- In case of acquisition of land for use by **private companies or public private partnerships**, **consent of 80 per cent of the displaced people will be required**.

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<sup>3</sup> <http://www.livemint.com/Politics/FXZ9CrJApXRowyzLd8mb2O/All-you-wanted-to-know-about-new-land-acquisition-Bill.html>



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Purchase of large pieces of land by private companies will require provision of rehabilitation and resettlement.

- The provisions of this Bill **shall not apply to acquisitions under 16 existing legislations including the Special Economic Zones Act, 2005, the Atomic Energy Act, 1962, the Railways Act, 1989, etc.**

## KEY ISSUES AND ANALYSIS

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- It is not clear whether **Parliament has jurisdiction** to impose rehabilitation and resettlement requirements on private purchase of agricultural land.
- The requirement of a Social Impact Assessment for every **acquisition without a minimum threshold may delay the implementation** of certain government programmes.
- Projects involving land acquisition and undertaken by private companies or public private partnerships require the **consent of 80 per cent of the people affected. However, no such consent is required in case of PSUs.**
- **The market value is based on recent reported transactions.** This value is doubled in rural areas to arrive at the compensation amount. This method may not lead to an accurate adjustment for the possible underreporting of prices in land transactions.
- The government can **temporarily acquire land for a maximum period of three years.** There is **no provision for rehabilitation** and resettlement in such cases.<sup>4</sup>

## OPINIONS

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“I am of the opinion that the 2013 Act is a badly drafted legislation. It has lot of ambiguities and obvious errors. The effect of certain provisions of this Act is contrary to the language used therein. A series of legitimate difficulties would arise once the Act is seriously implemented. The provisions of the Act would also prevent the development of the rural areas through rural infrastructure and further prevent job opportunities created in those areas by industrialisation.” Finance Minister Arun Jaitley.<sup>5</sup>

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<sup>4</sup> <http://www.prsindia.org/uploads/media/Land%20and%20R%20and%20R/LARR%20-%20Final%20Brief.pdf>

<sup>5</sup> <http://www.dailyo.in/politics/land-acquisition-bill-arun-jaitley-facebook-ordinance-narendra-modi-mann-ki-baat-rahul-gandhi/story/1/6002.html>



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“In his radio address Mann ki Baat, Prime Minister Narendra Modi told farmers that the amendments to the 2013 land law favoured the farming community as it guaranteed compensation upto four times the nominal rate to rural farmers... aab Singh from Sevli village, retorted: “Suppose I do not want to give my land at all and want to continue farming. What then? Why should I accept any amount of money, however high, if I fundamentally disagree with the logic of acquiring farm land?” Vidya Venkat, The Hindu. <sup>6</sup>

“The old Land Acquisition Act of 1894 was an oppressive and exploitative colonial legislation. It took free India 66 years to repeal that Act and pass a law that was vastly superior in terms of fairness and justice to the many stakeholders. That the law was passed nearly unanimously, with the support of the principal opposition party (BJP), was a tribute to the collective wisdom of Parliament...” P. Chidambaram<sup>7</sup>

In May 2014, as the **Bharatiya Janata Party-led National Democratic Alliance (NDA)** swept to power, riding high on its development-driven agenda, it sought to bring about immediate **reforms in land acquisition procedures**. Without land acquisition, it argued, the government will find it difficult to execute its ambitious pet projects, including the **“Make in India” programme, which seeks to revive and boost domestic manufacturing**. Land acquisition is also **central to the government’s thrust in infrastructure development**. To facilitate its economic agenda, it promulgated the land acquisition amendment ordinance in December 2014 with a view to introducing legislation in the Budget session of parliament.

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<sup>6</sup> <http://www.thehindu.com/opinion/op-ed/farmers-reaction-to-modi-govts-land-acquisition-bill/article7198468.ece>

<sup>7</sup> <http://indianexpress.com/article/opinion/columns/across-the-aisle-land-acquisition-nine-steps-to-nirvana/#sthash.d7oq1ZrP.dpuf>



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THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (AMENDMENT) ORDINANCE, 2014:

Under the proposed 2015 bill, there will be five categories which will be exempt from certain provisions of the previous act, including consent for acquisition. These categories are also exempted from the SIA provisions, as provided for in the 2013 act. **The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014** was promulgated on December 31, 2014. The Ordinance amends the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act 2013)**.

The LARR Act 2013 outlines the process to be followed when land is acquired for a public purpose. **Key changes** made by the Ordinance are:

- **Provisions of other laws in consonance with the LARR 2013:** The LARR Act 2013 exempted 13 laws (such as the National Highways Act, 1956 and the Railways Act, 1989) from its purview. However, the LARR Act 2013 required that the compensation, rehabilitation, and resettlement provisions of these 13 laws be brought in consonance with the LARR Act 2013, within a year of its enactment, through a notification. The Ordinance brings the compensation, rehabilitation, and resettlement provisions of these **13 laws in consonance with the LARR Act 2013**.
- **Exemption of five categories of land use from certain provisions:** The Ordinance creates five special categories of land use: (i) defence, (ii) rural infrastructure, (iii) affordable housing, (iv) industrial corridors, and (v) infrastructure projects including Public Private Partnership (PPP) projects where the central government owns the land.
- The LARR Act 2013 requires that the **consent of 80% of land owners** is obtained for private projects and that the consent of 70% of land owners be obtained for PPP projects. **The Ordinance exempts the five categories mentioned above from this provision of the Act.**
- In addition, the **Ordinance permits the government to exempt projects** in these five categories from the following provisions, through a notification:
  - I. The LARR Act 2013 requires that a **Social Impact Assessment** be conducted to identify affected families and calculate the social impact when land is acquired.





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- II. The LARR Act 2013 imposes certain **restrictions on the acquisition of irrigated multi-cropped land and other agricultural land**. For example, irrigated multi-cropped land cannot be acquired beyond a limit specified by the government.
- **Return of unutilised land:** The LARR Act 2013 required that if land acquired under it remained unutilised for five years, it was returned to the original owners or the land bank. The Ordinance states that the period after which unutilised land will need to be returned will be five years, or any period specified at the time of setting up the project, whichever is later.
  - **Time period for retrospective application:** The LARR Act 2013 states that the Land Acquisition Act, 1894 will continue to apply in certain cases, where an award has been made under the 1894 Act. However, if such an award was made five years or more before the enactment of the LARR Act 2013, and the physical possession of land has not been taken or compensation has not been paid, the LARR Act 2013 will apply.
  - The Ordinance states that in calculating this time period, any period during which the proceedings of acquisition were held up: (i) due to a stay order of a court, or (ii) a period specified in the award of a Tribunal for taking possession, or (iii) any period where possession has been taken but the compensation is lying deposited in a court or any account, will not be counted.
  - **Other changes:** The LARR Act 2013 excluded the acquisition of land for private hospitals and private educational institutions from its purview. The Ordinance removes this restriction.
  - While the LARR Act 2013 was applicable for the acquisition of land for private companies, the **Ordinance changes this to acquisition for 'private entities'**. A private entity is **an entity other than a government entity, and could include a proprietorship, partnership, company, corporation, non-profit organisation, or other entity under any other law**.
  - The LARR Act 2013 stated that if an offence is committed by the government, the head of the department would be deemed guilty unless he could show that the offence was committed without his knowledge, or that he had exercised due diligence to prevent the commission of the offence. **The Ordinance replaces this provision and**



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**states that if an offence is committed by a government official, he cannot be prosecuted without the prior sanction of the government.<sup>8</sup>**

#### LARR (AMENDMENT) BILL, 2015: AMENDMENTS PROPOSED ON MARCH 9, 2015:

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015 was introduced in Lok Sabha on February 24, 2015 to replace an Ordinance. The following amendments were circulated by the government on March 9, 2015:

#### CHANGE TO PUBLIC PURPOSE

- The Bill amends the Act to include acquisition of land for private hospitals and private educational institutions within the definition of public purpose.
- The amendments remove this provision of the Bill. This implies that acquisition of land for private hospitals and private educational institutions is no longer included within the definition public purpose.

#### Changes to five categories of exempted projects:

- The Bill allows the government to exempt five categories of projects from: (i) Social Impact Assessment, (ii) limits on acquisition of irrigated multi-cropped land, through a notification, and (iii) consent provisions. These five categories are: (i) defence, (ii) rural infrastructure, (iii) affordable housing, (iv) industrial corridors, and (v) infrastructure and social infrastructure. The amendments make the following changes to this provision:
- Industrial corridors: The amendments clarify that land acquired for industrial corridors will be for industrial corridors set up by the government and government undertakings. Further, land can be acquired up to 1 km on both sides of the designated railway line or road of the industrial corridor.
- Social infrastructure: The amendments remove social infrastructure as an exempted category.

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<sup>8</sup> <http://www.prsindia.org/billtrack/the-right-to-fair-compensation-and-transparency-in-land-acquisition-rehabilitation-and-resettlement-amendment-ordinance-2014-3593/>



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#### CHANGES TO SIA AND LIMITS ON IRRIGATED MULTI-CROPPED LAND:

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- The Bill allows the government to exempt the above five categories of projects from SIA and limits on irrigated land, through a notification. The amendments add that before issuing this notification, the government must ensure that the extent of land being acquired is in keeping with the minimum land required for such a project.

#### SURVEY OF WASTELAND:

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- The amendments add that the government must conduct a survey of its wasteland including arid land, and maintain a record containing details of such land, as may be prescribed by the government.

#### CHANGES TO REHABILITATION AND RESETTLEMENT:

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- Under the Act, the rehabilitation and resettlement award for each affected family includes employment for at least one member of the family.
- The amendments change this provision to ensure compulsory employment to at least one member of such an 'affected family of a farm labourer'.

#### CHANGES TO LAND ACQUISITION, REHABILITATION AND RESETTLEMENT AUTHORITY:

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- The Act provides for the establishment of a Land Acquisition, Rehabilitation and Resettlement (LARR) Authority which may be approached in case a person is not satisfied with an award under the Act.
- The amendments state that the LARR Authority must hold its hearing in the district where the land acquisition is taking place, after receiving a reference from the Collector and giving notice of this reference to all concerned parties.<sup>9</sup>
- The **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill 2015**, also known as **Land Bill 2015** was passed by the Lok Sabha on March 10, 2015.

#### HIGHLIGHTS OF THE LAND BILL 2015:

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<sup>9</sup><http://www.prsindia.org/uploads/media/Land%20and%20R%20and%20R/Note%20on%20Amendments%20of%20LARR%20Bill.%202015.pdf>



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- The government made **nine amendments to the bill**, all of them were adopted.
- **Lok Janshakti Party extended support** to the Bill.
- A **proposal of compulsory employment to at least one member of an affected family of a 'farm labourer'** was accepted by the government.
- Whereas **amendments to consent clause and Social Impact Assessment (SIA) were rejected**.
- During the session, **Congress, Samajhwadi Party, RJD, Trinamool Congress and BJD had walked out of the House**
- While NDA ally **Shiv Sena abstained** as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill 2015
- Union Minister of Rural Development, Panchayati Raj, Sanitation & Drinking Water, **Chaudhary Birender Singh moves the land acquisition and rehabilitation amendment bill**
- **Deependra Hooda seeks two percent reservation on government jobs for farmers who lost the job, which was rejected**
- Mr Singh moves **suspension of rules, which was adopted by the Government**
- Due to drifts in the ideas of the parties and the government, the bill was passed through voice vote.<sup>10</sup>

#### LAND ACQUISITION BILL AGAIN MOVED IN LOK SABHA

“Parliamentary Affairs Minister Venkaiah Naidu indicated that a middle ground was being attempted in consultation with other parties. He did not spell it out, but the government is considering referring the Bill to a joint committee of both Houses to avoid the Rajya Sabha referring it to a Select Committee. If it is sent to a standing committee in the Lok Sabha, then the Rajya Sabha can still insist on a Select Committee reference. But if it is put to a joint committee, then the Rajya Sabha – where the government is in a minority – cannot refer it to a Select Committee...

<sup>10</sup> <http://indiatoday.intoday.in/education/story/land-bill-2015-passed-by-lok-sabha-with-nine-amendments/1/423245.html>



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While the Congress, Trinamool Congress, BJD and the CPI(M) were one in describing the new Bill as anti-farmer and pro-corporate, some of them also raised procedural issues...

B. Mahtab (BJD) wanted to know how the Minister could bring in the second Bill when the status of the first Bill passed by the Lok Sabha in March was unknown.”

“M.B. Rajesh (CPI-M) said the government created an extraordinary situation by proroguing the Rajya Sabha to repromulgate the ordinance that is now being replaced by the new Bill. N. K. Premachandran (Revolutionary Socialist Party) questioned the legality of the Bill on the premise that it was identical to the one passed by the Lok Sabha in March.

Seeking permission to introduce the Bill, Union Rural Development Minister Birender Singh's claim that both the Bills were with him triggered a row as members sought to remind him that technically a draft legislation introduced in Parliament remains its property till cleared by both Houses. After both sides had their say, Speaker Sumitra Mahajan put the matter to vote and the Bill was introduced.”<sup>11</sup>

#### JOINT PARLIAMENTARY COMMITTEE

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The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015, pending in the Lok Sabha has been referred to a Joint Parliamentary Committee of both the Houses under the Chairmanship of Shri S.S.Ahluwalia, M.P. for examination and presenting a Report to the Parliament.

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<sup>11</sup> [http://www.thehindu.com/news/national/land-acquisition-bill-again-moved-in-lok-sabha/article7193179.ece?utm\\_source=InternalRef&utm\\_medium=relatedNews&utm\\_campaign=RelatedNews](http://www.thehindu.com/news/national/land-acquisition-bill-again-moved-in-lok-sabha/article7193179.ece?utm_source=InternalRef&utm_medium=relatedNews&utm_campaign=RelatedNews)



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## WHY DOES THE GOVERNMENT NEED TO ACQUIRE LAND FOR PRIVATE COMPANIES AS WELL AS PUBLIC-PRIVATE PARTNERSHIP PROJECTS?

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- **Land Records** in most parts of the country are **fragmented and disorganised**. In most cases they haven't been updated for decades. The new law overcomes that by ensuring the Collector updates the land records and also pays up to four times the value to correct any inaccuracies.
- If land is purchased then there are **no benefits for livelihood losers** who are usually far greater in number than the land owners. This Bill ensures that they are taken care of and not simply displaced.
- The inequality in terms of bargaining power between large-scale corporations and small farmers and other marginalised groups increases the likelihood of **unfair agreements**. Contracts tend to be signed in favour of the party negotiating from a greater position of strength. That is why government is required to bridge the gap and bring balance to this relationship.
- A legitimate **need for acquisition by the state itself (to build public goods such as roads, schools and hospitals) can be undermined and stalled by groups with vested interests**. If there is no sovereign power to compel these groups, a single individual or group of individuals can hold a process hostage merely by refusing to part with land. Further, in times of crisis such as war, famine and floods, coupled with absence of legislation clarifying and guiding the state's exercise of 'eminent domain', situations can emerge jeopardising human lives.<sup>12</sup>

## HOW ARE INTERESTS AND CONCERNS OF FARMERS PROTECTED?

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- **Retrospective effect:** Where awards are made but no compensation has been paid or possession has not been taken, compensation shall be paid at the rate prescribed under the new Act. Where the Award has not been made the entire process shall be considered to have lapsed. Also where acquisition has taken place five years prior to the commencement of the new law but no compensation/ possession has taken place the proceedings shall be deemed to have lapsed.

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<sup>12</sup> <http://www.livemint.com/Politics/FXZ9CrJApxRowyzLd8mb2O/All-you-wanted-to-know-about-new-land-acquisition-Bill.html>



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- **Consent:** Prior-consent shall be required from 70% of land losers and those working on government assigned lands only in the case of public-private partnership projects and 80% in the case of private companies. This consent also includes consent to the amount of compensation that shall be paid.
- **Return of unutilized land:** Land not used can now be returned to the original owners if the state so decides.
- **Share in sale of acquired land increased:** The share that has to be distributed among farmers in the increased land value (when the acquired land is sold off to another party) has been set at 40%.
- **Income-tax Exemption:** All amounts accruing under this act have been exempted from income tax and from stamp duty.
- **Strict restrictions on multi-crop acquisition:** The acquisition of agricultural land and multi-crop land has to be carried out as a last resort. There will be definite restrictions on the extent of acquisition of such land in every state to be determined by the States concerned.
- **Safeguards to ensure fair price:** Given the way in which market value is to be calculated and the imposition of a solatium of 100% over and above the amount, the farmers are guaranteed a fair price for their land.
- **Acquisition only if necessary:** The Collector has to make sure that no other unutilized lands are available before he moves to acquire farm land.
- **Damage to crops to be included in price:** The final award has to include damage to any standing crops which might have been harmed due to the process of acquisition (including the preliminary inspection).
- **Share in developed land:** In case their land is acquired for urbanization purposes 20% of the developed land will be reserved and offered to these farmers in proportion to the area of their land acquired and at a price equal to the cost of acquisition and the cost of development.
- **Fishing rights:** In the case of irrigation or hydel projects, affected families may be allowed fishing rights in the reservoirs.
- **Additional R&R benefits:** Farmers are also entitled to the various rehabilitation and resettlement benefits which are enumerated in response to question 2.
- **Time-bound social impact assessment:** The Bill mandates a social impact assessment of every project which must be completed within a period of six months.



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## WHAT ARE THE REHABILITATION AND RESETTLEMENT PROVISIONS FOR FARMERS, LANDLESS AND LIVELIHOOD LOSERS?

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- **Reduced qualifying criteria:** To qualify for benefits under this Act the time period has been reduced to three years of dependence (on the acquired land) from five.
- **Affected family to include tenants:** The definition of affected family includes agricultural labourers, tenants including any form of tenancy or usufruct right, share-croppers or artisans who may be working in the affected area for three years prior to the acquisition, whose primary source of livelihood stands affected by the acquisition of land.
- **Houses for all affected families:** All affected families are entitled to a house provided they have been residing in an area for five years or more and have been displaced. If they choose not to accept the house they are offered a one-time financial grant in lieu of the same.
- **Choice of annuity or employment:** All affected families are given a choice of annuity or employment;
  - i. If employment is not forthcoming they are entitled to a one-time grant of Rs.5 lakh per family.
  - ii. Alternatively they will be provided with an annuity payment of Rs.2,000 per month per family for 20 years (this will be adjusted for inflation).
- **Subsistence allowance:** All affected families which are displaced from the land acquired shall be given a monthly subsistence allowance equivalent to Rs.3,000 per month for a period of one year from the date of award.
- **Training and skill development:** All affected families are also given training and skill development while being offered employment.
- **Miscellaneous amounts:** All affected families are given multiple monetary benefits such as transport allowance of Rs.50,000 and resettlement allowance of Rs.50,000.
- **One-time financial assistance:** Each affected family of an artisan, small trader or self-employed person shall get one-time financial assistance of such amount as the appropriate government may, by notification, specify subject to a minimum of Rs.25,000.
- **R&R to be completed in all aspects for irrigation projects:** In case of acquisition of land for irrigation or hydel project the rehabilitation and resettlement shall be completed six months prior to submergence of the lands proposed to be so acquired.





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- Possession upon fulfilment of conditions under Act: The Collector shall take possession of land only ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements commencing from the date of the award. However, families will not be displaced from this land till their alternative R&R sites are ready for occupation.
- Time Limit for provision of R&R entitlements: The components of the Rehabilitation and Resettlement Package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of 18 months from the date of the award.

#### HOW ARE INTERESTS AND CONCERNS OF SCHEDULED CASTES AND SCHEDULES TRIBES PROTECTED?

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- Separate chapter: A separate Chapter has been carved out to protect interests of tribals and those belonging to the Scheduled Castes. Where acquisition does take place it shall be done as a demonstrable last resort.
- Approval: As far as possible no acquisition shall take place in the Scheduled Areas. And where such acquisition does take place it has to be done with the approval/ consent of the local institutions of self-governance (including the autonomous councils where they exist).
- Development plan: A Development Plan has to be prepared laying down the details of procedure for settling land rights due but not settled and restoring titles of tribals on alienated land by undertaking a special drive together with land acquisition. The Plan must also contain a programme for development of alternate fuel, fodder and non-timber forest produce resources on non-forest lands within a period of five years sufficient to meet the requirements of tribal communities as well as the Scheduled Castes.
- One-third to be paid up-front: In case of land being acquired from members of the Scheduled Castes or the Scheduled Tribes, at least one-third of the compensation amount due shall be paid to the affected families at the outset as first instalment and the rest shall precede the taking over of the possession of the land.
- Resettlement in the same scheduled area: The Scheduled Tribes affected families shall be resettled preferable in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic and cultural identity.



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- Land for community: The resettlement areas predominantly inhabited by the Scheduled Castes and the Scheduled Tribes shall get land, to such extent as may be decided by the appropriate Government free of cost for community and social gatherings.
- Alienation of tribal lands to be void: Any alienation of tribal lands or lands belonging to members of the Scheduled Castes in disregard of the laws and regulations for the time being in force shall be treated as null and void; and in the case of acquisition of such lands, the rehabilitation and resettlement benefits shall be available to the original tribal land owners or land owners belonging to the Scheduled Castes.
- Fishing rights: The affected Scheduled Tribes, other traditional forest dwellers and the Scheduled Castes families having fishing rights in a river or pond or dam in the affected area shall be given fishing rights in the reservoir area of the irrigation or hydel projects.
- If resettled outside scheduled area then additional benefits: Where the affected families belonging to the Scheduled Castes and the Scheduled Tribes are relocated outside of the district then they shall be paid an additional twenty-five per cent rehabilitation and resettlement benefits to which they are entitled in monetary terms along with a one-time entitlement of fifty thousand rupees.
- Higher land-for-land area for SCs/STs: In every project those losing land and belonging to the Scheduled Castes or Scheduled Tribes will be provided land equivalent to land acquired or two-and-a-half acres, whichever is lower (this is higher than in the case of non-SC/ST affected families)
- Additional amounts: In addition to a subsistence amount of rupees 3000 per month for a year (which all affected families get), the Scheduled Castes and the Scheduled Tribes displaced from Scheduled Areas shall receive an amount equivalent to rupees 50,000.

#### HOW ARE INTERESTS AND CONCERNS OF PANCHAYATI RAJ INSTITUTIONS PROTECTED?

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- SIA in consultation with PRIs: The Social Impact Assessment (SIA) has to be carried out in consultation with the representatives of the Panchayati Raj Institutions (PRIs). In fact, the appropriate Government is required by the law to ensure adequate representation of these institutions during the discharge of the process.
- SIA reports to be shared: Reports prepared under the Social Impact Assessment are to be shared with these individuals in their local language along with a summary.
- Representation in expert group: The expert group has to have two members belonging to the Panchayati Raj Institutions. This is a powerful body that has the power to reject a project.



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- Hearings in all gram sabhas: In case where an affected area involves more than one Gram Panchayat or Municipality, public hearings shall be conducted in every Gram Sabha where more than twenty five per cent of land belonging to that Gram Sabha is being acquired.
- Consultation in compliance with PESA: Consultation with the Gram Sabha in scheduled areas under the Fifth Schedule referred to in the Constitution shall be in accordance with the provisions of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996.
- Representation of panchayat chairpersons on R&R committee at project level: The Rehabilitation and Resettlement Committee at Project Level has to have the chairpersons of the Panchayats located in the affected area or their nominees as representatives.
- Panchayat ghars have to be provided as per the list of Infrastructural amenities given in the Third Schedule.

#### HOW ARE INVESTORS' CONCERNS ADDRESSED?

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- Consent: In the case of public-private partnership projects consent has been reduced from 80% to 70%. In addition only the consent of land owners is required.
- Definition of market value has been amended to ensure that acquisition price doesn't form the basis for compensation calculation in future acquisitions. Also power has been given to the Collector to not consider transactions which he feels are outliers and not indicative of true value while calculating market value. Earlier there was a danger of a price-spiral as (a multiple of) price of first acquisition in an area would go into calculation of land price for any subsequent acquisitions
- States given large flexibility: A sliding scale will give states flexibility to fix compensation in rural areas (between two and four times market value), depending on their distance from urban areas. Earlier compensation in rural areas was to be four times market value.
- Restrictions/thresholds on amount of irrigated multi-crop land and net sown area per district or state available for acquisition left to the discretion of states. Earlier amount of irrigated multi-cropped irrigated land that could be acquired was capped at 5%, and amount of net sown area that could be acquired was also capped.
- Land size thresholds on when R&R on private purchase of land becomes applicable has now been left to the discretion of States. Earlier R&R on private purchases was to apply to all acquisitions above 100 acres in rural areas and 50 acres in urban areas.
- Payment for R&R costs by acquirer made a 'one-off' acquirer to put all monies in an escrow account, and ongoing commitments like annuities and benefits to be administered by



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agency established under this Act. Earlier the Buyer would have had to pay and be involved with R&R infrastructure building until complete, and R&R annuities to perpetuity. However, families will not be displaced from this land till their alternative R&R sites are ready for occupation.

- Collector can be considered appropriate government: In cases where the land sought to be acquired is below a certain threshold then the Collector can be the acquiring authority.<sup>13</sup>

#### OPINION: NEWS AND VIEWS:

- Land Acquisition Bill explained by Prime Minister Narendra Modi:

<https://www.youtube.com/watch?v=eJMci7qMdBM>

- Land Bill classroom: Experts talk about points of debate and controversy CNN-News18

<https://www.youtube.com/watch?v=Sq1bKhrm4-s>

- Sarokaar - Land Acquisition: Development Vs Rights Rajya Sabha TV

<https://www.youtube.com/watch?v=uIgRUEnG7IU>

- To The Point - Karan Thapar - To The Point: Decoding the land ordinance Headlines Today

<https://www.youtube.com/watch?v=CG1dF0Z7lec>

- Why did govt rush through amending land acquisition act through ordinance? NDTV

<https://www.youtube.com/watch?v=07XN6UQwwV0>

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<sup>13</sup> <http://www.livemint.com/Politics/FXZ9CrJApxRowyzLd8mb2O/All-you-wanted-to-know-about-new-land-acquisition-Bill.html>



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## DISCUSSION POINTS IN MY PARLIAMENT MONSOON SESSION 2016

### CLAUSE 3,5

#### FIVE TYPES OF PROJECTS EXEMPT FROM CERTAIN PROVISIONS OF THE ACT

The Bill enables the government to exempt five categories of projects from the requirements of: (i) SIA, (ii) restrictions on acquisition of multi-cropped land, and (iii) consent for PPPs and private projects. These five categories of projects are: (i) defence, (ii) rural infrastructure, (iii) affordable housing, (iv) industrial corridors, and (v) infrastructure including PPPs where the government owns the land. These five exempted categories may cover many types of projects for which land may be acquired.

#### MINOR CHANGE IN THE TIME TAKEN FOR ACQUIRING LAND

Under the 2013 Act, the minimum time required to complete the acquisition process is 50 months. The changes proposed in the Bill reduce this time to 42 months.

### CLAUSE 6

#### ACCOUNTABILITY OF GOVERNMENT EMPLOYEES

The head of the department will no longer be automatically held accountable for an offence committed by the department. Further the Bill adds a new provision that states that if a government employee commits an offence under the Lokpal and Lokayuktas Act, 2013 Section 23 prior sanction of the government will be required before prosecuting him.

#### RETROSPECTIVE APPLICABILITY OF THE ACT

The 2013 Act provides that the provisions of the Bill would apply to any acquisition initiated under the Land Acquisition Act, 1894 if it met two conditions: (a) an award had been made under Section 11 of the 1894 Act, five years or more prior to the commencement of the 2013 Act, and (b) the physical possession has not been taken or compensation not been paid. The Bill adds a proviso to state that the computation of the five-year period should exclude any period during which a court has granted a stay or possession has been taken but compensation has been deposited in a court or a designated account.