

Legislative Brief

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015 was introduced in Lok Sabha on May 11, 2015.

It was referred to a Joint Parliamentary Committee on May 12, 2015. The Committee is expected to submit its report by the first week of Monsoon Session, 2015.

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Highlights of the Bill

- ◆ This Bill amends the principal Act passed in 2013.
- ◆ The Bill enables the government to exempt five categories of projects from the requirements of: (i) social impact assessment, (ii) restrictions on acquisition of multi-cropped land, and (iii) consent for private projects and public private partnerships (PPPs) projects.
- ◆ The five categories of projects are: (i) defence, (ii) rural infrastructure, (iii) affordable housing, (iv) industrial corridors, and (v) infrastructure including PPPs where government owns the land.
- ◆ The Act would apply retrospectively, if an award had been made five years earlier and compensation had not been paid or possession not taken. The Bill exempts any period when a court has given a stay on the acquisition while computing the five year period.
- ◆ The Act deemed the head of a government department guilty for an offence by the department. The Bill removes this, and adds the requirement of prior sanction to prosecute a government employee.

Key Issues and Analysis

- ◆ The five types of projects being exempt from the provisions of social impact assessment, restrictions in case of multi-cropped land and consent are broad and may cover many public purpose projects.
- ◆ The Act requires consent of 70% of landholders for PPP projects, and 80% for private projects. Acquisition, being different from purchase, implies that land owners were unwilling to part with the land. Requiring consent from them may be impractical. Also, it is not clear why the consent requirement depends on who owns the project.
- ◆ The amendments in the Bill propose to expedite the process of acquisition. However, the changes in the Bill will reduce the time for acquisition from 50 months to 42 months.
- ◆ The removal of the provision that deemed the head of department guilty, and addition of a new requirement of prior sanction to prosecute government employees may raise the bar to hold them accountable.
- ◆ The change in the retrospective provision may be ineffective in cases instituted until 2014 in light of a recent Supreme Court judgment.

PART A: HIGHLIGHTS OF THE BILL

Context

Land acquisition is the process by which land owned by private persons is compulsorily acquired. It is different from the purchase of land, which is a contract between a willing seller and a willing buyer on mutually acceptable terms. Acquisition is where the land owner has no choice over parting with the land, and is forced to relinquish his property. Therefore, the process of acquisition overrides the property rights of the private land owner. This can be justified only if a case can be made for greater public benefit in taking away someone's land ownership rights.

In India, land acquisition is a concurrent subject, and is governed by central and state laws. The main central Act governing land acquisition is the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (2013 Act). It replaced the Land Acquisition Act, 1894 (1894 Act). Many states have also enacted laws to regulate land acquisition.

The 2013 Act differed from the 1894 Act in several ways. It narrowed the definition of 'public purpose' i.e. the types of projects for which land could be acquired. It required the consent of land owners if the project was for a public private partnership (PPP) or a private company. Compensation was set at two to four times of prevailing market rates and minimum norms for rehabilitation and resettlement of affected persons were prescribed. The Act also required a Social Impact Assessment (SIA) to be conducted to determine whether the potential benefits of the project would outweigh the social costs.

In December 2014, an Ordinance was promulgated to amend the 2013 Act. The Ordinance was re promulgated in a modified form in April 2015, and again in May 2015. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015 was introduced in Lok Sabha on May 11, 2015 to replace the April Ordinance and was referred to a Joint Parliamentary Committee for detailed examination.

Key Features

Table 1: Key changes proposed in the 2015 Bill compared with provisions of the 2013 Act

Issue	Land Acquisition Act, 2013	Land Acquisition (Second Amendment) Bill, 2015
Consent	<ul style="list-style-type: none"> ▪ No consent required for government projects. ▪ Consent of 70% land owners required for Public-Private Partnership projects. ▪ Consent of 80% land owners required for private projects. 	<ul style="list-style-type: none"> ▪ Five types of projects exempt from consent requirements: (i) defence, (ii) rural infrastructure, (iii) affordable housing, (iv) industrial corridors set up by the government/government undertakings, up to one km on either side of the road/railway of the corridor, and (v) infrastructure including PPP projects where the government owns the land.
Social Impact Assessment (SIA)	<ul style="list-style-type: none"> ▪ SIA is mandatory for all projects except: (i) in cases of urgency or (ii) for irrigation projects where an Environmental Impact Assessment is required. 	<ul style="list-style-type: none"> ▪ The government may exempt above five types of projects from SIA. ▪ The government is to ensure that the extent of land being acquired is in keeping with the minimum land required.
Irrigated multi-cropped land	<ul style="list-style-type: none"> ▪ Irrigated multi-cropped land cannot be acquired beyond a limit specified by the state government. 	<ul style="list-style-type: none"> ▪ The government may exempt the above five types of projects from this provision. ▪ The government is to ensure that the extent of land being acquired is in keeping with the minimum land required.
Compensation & rehabilitation and resettlement (R&R) provisions of 13 other laws which govern land acquisition	<ul style="list-style-type: none"> ▪ 13 Acts (such as the National Highways Act, 1956 and the Railways Act, 1989) are exempt from the provisions of the Act. ▪ The compensation and R&R provisions of these Acts to be brought in consonance with the Act by January 1, 2015. 	<ul style="list-style-type: none"> ▪ Compensation and R&R provisions of 13 Acts are in consonance with the Act.
Offences by the government	<ul style="list-style-type: none"> ▪ If an offence is committed by a government department, the head of the department will be deemed guilty unless he can show that he had exercised due diligence to prevent the commission of the offence. 	<ul style="list-style-type: none"> ▪ The Bill deletes this provision. ▪ The Bill adds a provision to state that prior sanction of the government will be required before prosecuting a government employee.

Retrospective application	<ul style="list-style-type: none"> ▪ The 2013 Act will apply in case an award has been made five years or more before the commencement of the 2013 Act, but the physical possession of the land has not been taken or compensation has not been paid. 	<ul style="list-style-type: none"> ▪ In calculating the time period for retrospective application, any period during which the proceedings were held up: (i) due to a stay order of a court, or (ii) for a period specified in the award of a Tribunal, or (iii) for any period where possession was taken but the compensation is lying deposited in a court or any designated account, will not be counted.
Return of unutilised land	<ul style="list-style-type: none"> ▪ If land acquired under the Act remains unutilised for five years from the date of taking possession, it must be returned to the original owners or a land bank. 	<ul style="list-style-type: none"> ▪ The period after which unutilised land has to be returned will be the later of: (i) five years, or (ii) any period specified at the time of setting up the project.
Change from private 'company' to private 'entity'	<ul style="list-style-type: none"> ▪ Private company defined as one included in the Companies Act, 1956, or under the Societies Registration Act, 1860. 	<ul style="list-style-type: none"> ▪ The term 'private company' changed to 'private entity' which is defined as an entity other than a government entity, and includes a proprietorship, partnership, company, corporation, non-profit etc.
Rehabilitation & Resettlement award	<ul style="list-style-type: none"> ▪ Includes employment to one member of an affected family. 	<ul style="list-style-type: none"> ▪ Clarifies that this will include employment to 'one member of such affected family of farm labour' must be given.
Land Acquisition, Rehabilitation and Resettlement Authority	<ul style="list-style-type: none"> ▪ In case someone is not satisfied with an award under the Act, they can approach the Land Acquisition, Rehabilitation and Resettlement (LARR) Authority. 	<ul style="list-style-type: none"> ▪ Adds that the LARR Authority must hold its hearing in the district where land acquisition is taking place, after a reference from the Collector and giving notice to all concerned parties.
Survey of wasteland	<ul style="list-style-type: none"> ▪ No provision. 	<ul style="list-style-type: none"> ▪ The government must conduct a survey of its wasteland and maintain a record of the same.

Sources: The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015; PRS.

PART B: KEY ISSUES AND ANALYSIS

Five types of projects exempt from certain provisions of the Act

Many categories of projects exempt from provisions of the Act

Act:
Sections 12, 24

Under the 2013 Act, land can be acquired only for projects that have a "public purpose", which has been defined in the Act. Each of these projects will require a social impact assessment (SIA) to determine whether the potential benefits of the project outweigh the social costs. If the land being acquired is multi-cropped agricultural land, then the total area of such land acquired should be below a limit to be set by the state government. Further, any land acquired for public private projects (PPPs) and private companies will require consent of 70% and 80% of the land owners, respectively.

Bill:
Clauses 3, 5

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. Table 2 compares 'public purpose' projects for which land may be acquired under the 2013 Act with the types of projects that may be exempted from the three conditions stated above by the Bill.

Table 2: Public purpose under the Act and projects exempted from certain requirements under the Bill

Projects for which land can be acquired under the 2013 Act	Projects exempt under the 2015 Bill	Projects for which requirements under 2013 Act will apply
<ul style="list-style-type: none"> ▪ Strategic purposes relating to the armed forces, or any work vital to national security, defence of India, or state police 	<ul style="list-style-type: none"> ▪ Projects vital to national security or defence of India including preparation for defence or defence production 	<ul style="list-style-type: none"> ▪ Projects related to state police

▪ Infrastructure projects, relating to agro-processing, water harvesting, industrial corridors, government schemes, etc*	▪ Infrastructure projects including those under PPPs where the ownership of land vests with the government ▪ Industrial corridors set-up by the government and its undertakings (in which case the land acquired shall be up to one kilometre on both sides of the designated railway line or roads) ▪ Rural infrastructure including electrification	▪ Industrial corridors for any land acquired beyond one kilometre of designated railway line or roads
▪ Planned development of village sites or any site in the urban areas	▪ Infrastructure projects including projects under PPPs where the ownership of land continues to vest with the government ▪ Rural infrastructure including electrification	▪ Items that do not fall under infrastructure i.e. private hospitals, private educational institutions and private hotels.
▪ Project for project affected families	▪ Affordable housing and housing for poor people	▪ Any project for project affected families other than affordable housing and housing for poor people
▪ Housing of income groups, as specified by the government	▪ Affordable housing and housing for poor people	▪ Housing which is (i) not affordable housing and (ii) for income groups not specified by the government
▪ Residential purposes to the poor or landless	▪ Affordable housing and housing for poor people	▪ None

Sources: Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015; PRS.

Note: *Involves projects which: (a) are listed in a notification (No. 13/6/2009-INF) by the Department of Economic Affairs, (such as infrastructure related to transport, energy, water and sanitation, communication, social and commercial infrastructure including cold chains, fertiliser, post harvest infrastructure, common infrastructure for industrial parks and SEZs etc.) but excluding private hospitals, educational institutions and hotels (b) involve agro-processing, agricultural inputs, (c) for industrial corridors and National Investment and Management Zones, (d) for water harvesting, (e) for government aided or administered educational schemes, (f) for sports facilities, and (g) any other infrastructure facility notified by the central government.

Lack of clarity in defining five types of exempted projects

The Bill exempts the following categories of projects from certain provisions of the 2013 Act: (i) defence, (ii) rural infrastructure, (iii) affordable housing, (iv) industrial corridors, and (v) infrastructure including PPPs where the government owns the land.

Bill:
Clauses 3, 5

However, terms such as (a) rural infrastructure, (b) affordable housing, (c) poor people, (d) industrial corridors are not defined in the 2013 Act or the Bill and may be open to interpretation.

Also, one of the categories of projects exempted in the Bill is “infrastructure projects *including* projects under PPPs where ownership of land continues to vest with the government.” The meaning of the word “including” is ambiguous. That is, it is unclear whether this exemption is for all infrastructure projects (and the word “includes” is clarificatory), or it is applicable only for PPP projects in which the government continues to own the land (i.e., the word “includes” is exhaustive).

The consent provision

Bill:
Clauses 3, 5

The 2013 Act requires consent of 70% land owners in case of PPP projects and 80% land owners in case of private entities. No consent is required for government projects. The Bill exempts five types of projects from the requirement of obtaining the consent of land owners.

Requiring consent may not be practical

There is a basic issue with the concept of requiring consent from land owners before acquiring land. Acquisition is different from purchase. A transaction between a willing buyer and a willing seller results in a *purchase* on mutually acceptable terms. Land is *acquired* when the land owner is unwilling to part with the land. In such a scenario, it may be impractical to expect him to give consent for the land to be acquired.

However, the requirement for consent when land is acquired may be justified in cases where a majority of land owners are willing to part with the land, but the project is held up by a few land owners. An alternative mechanism was suggested in the Land Acquisition (Amendment) Bill, 2007 which lapsed.¹ It provided that if 70% of the required land was purchased through negotiations, then the remaining part of the land could be acquired. The compensation for acquired land would be benchmarked to the prices of the purchased land. This mechanism enables the compensation for the land acquired to be linked to market prices (determined through negotiations with land owners who sold their parcels of land).

Rationale for exempting certain projects from the requirement of consent

Bill:
Clauses 3, 5

The Bill exempts five types of projects from the consent requirement and retains the requirement for a few projects as shown in Table 2 above. The rationale for this distinction is not clear i.e. why some projects require consent from land owners while others are exempt from this requirement.

Act: Section 105

Also, the requirement for consent is not uniform across various Acts regulating land acquisition. The 2013 Act exempted 13 Acts (which also regulate acquisition of land) from its provisions but required that the compensation and R&R provisions of these Acts be brought in line with the 2013 Act by January 1, 2015. The 13 exempt Acts include the National Highways Act, 1956, Railways Act, 1989, Coal Bearing Areas Acquisition and Development Act, 1957, Atomic Energy Act, 1962 etc. Many of these Acts do not require consent for land acquisition. Therefore, land required for a particular project, if acquired under the 2013 Act requires consent but if acquired under one of the 13 Acts, will not require consent.

Level of consent required varies by ownership of project under the 2013 Act

Act: Section 2(2)

Under the Act it is unclear why the level of consent required varies by ownership of project – i.e. government, private or public-private. From a land owner's point of view it is irrelevant who implements the project for which land is being acquired. He will get the same amount of compensation and other benefits, irrespective of who owns the project. There is no clarity on why the consent requirement should not be uniform across projects.

Threshold for consent

Act: Section 2(2)

The 2013 Act has two different thresholds for consent-70% for PPPs and 80% for private entities. However, the 2013 Act or the 2015 Bill does not provide any rationale for this threshold for consent. There is also no clarity on what would be a reasonable threshold for the consent requirement. During the examination of the 2011 Bill which became the 2013 Act, the Ministry of Power suggested the threshold at 50%, the government of Maharashtra suggested 51% while another witness (not identified in the Committee Report) suggested 100%.²

Minor change in the time taken for acquiring land

An explanatory note on the Bill by the Ministry states that changes in the 2013 Act are required as several states and ministries have reported difficulties in the implementation of the Act.³ The note argues that national security and development projects need to be expedited and procedural difficulties in acquiring land for such projects must be addressed.

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.

Table 3: Changes made to the process of land acquisition specified under the LARR Act, 2013

Sequential steps outlined in 2013 Act*	Time limit specified in LARR Act, 2013	LARR (Second Amendment) Bill, 2015
SIA	6 months	Five types of projects may be exempt from the SIA provision (and consent requirement) through a government notification**
Appraisal of SIA by expert group	2 months (from the constitution of the group)	
Examination of proposal for land acquisition and SIA by the government	No time limit specified	
Preliminary notification to acquire land	12 months (from the appraisal of the SIA by the expert group) but extendable by the government	No change
Declaration to acquire land	12 months (from preliminary notification) but extendable by the government	No change
Land acquisition award (compensation)	12 months (from declaration) but extendable by the government	No change
Possession of land	6 months (from award)***	No change
Total time for possession of land (without extensions)	50 months	42 months

Sources: The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Notes: *This computation assumes that each part of the sequential process will take the maximum time permitted under the 2013 Act. There are some other requirements that run in parallel with the steps outlined in this Table. It must be noted that the 2013 Act allows the time limit to be extended for a couple of processes, and the Bill retains these provisions.

**The 2013 Act required consent of land owners is to be obtained alongside the SIA.

***Possession of land will be given after compensation has been paid (with a time limit of 3 months from the award) and monetary aspects of rehabilitation have been provided (within a time limit of 6 months from the award).

Accountability of government employees

Act: Section 87
Bill: Clause 6

Under the 2013 Act, if an offence is committed by a government department, the head of the department will be deemed guilty unless he can show that he had exercised due diligence to prevent the commission of the offence. This is analogous to provisions for directors of a company and partners of a firm. The Bill deletes this provision. Therefore, the head of the department will no longer be automatically held accountable for an offence committed by the department.

Lokpal and Lokayuktas Act, 2013:
 Section 23

Further the Bill adds a new provision that states that if a government employee commits an offence under the 2013 Act, prior sanction of the government will be required before prosecuting him. Both these changes made by the Bill raise the threshold to hold government employees accountable for offences committed under the Act.

It may be pertinent to note that this differs from the Lokpal and Lokayuktas Act, 2013 which overrides the requirement for prior sanction before prosecuting a government employee. The Lokpal (not the government) is specified as the authority for granting sanction for prosecution under that Act.⁴

Retrospective applicability of the Act

Act: Section 24(2)

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.

Bill: Clause 6

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.

In a January 2015 Supreme Court judgment, the Court said that the substantive rights of a litigant are determined by the law in force on the date of the suit and not by the law in force on the date when the judgment is delivered.⁵ The Court held that any change made in a law is prospective unless there is an express provision for retrospective operation of the law. The proviso added by the Bill does not state that it will apply retrospectively. Therefore the provisions of the Ordinance (which has the same provisions as the Bill) will not apply to any suit that was instituted prior to the commencement of the first Ordinance, i.e., January 1, 2015.

Applicability of the Act to the state of Nagaland

Act: Section 1

Section 1(2) of the 2013 Act states that the Act extends to the whole of India *except* the state of Jammu and Kashmir. According to Article 371A of the Constitution, an Act of Parliament regarding ownership and transfer of land and its resources will not apply to the State of Nagaland unless the Legislative Assembly of Nagaland decides to do so by a resolution.

Constitution of India:
 Article 371A

This matter was pointed out by the Standing Committee on Rural Development that examined the 2011 Bill (which became the 2013 Act), as well as the Land Acquisition Bill, 2007 (which lapsed). The Department of Land Resources agreed that the State of Nagaland has full powers to decide on the applicability of the Bill.⁶

However the 2013 Act was passed without appropriate amendments in this regard and Section 1 of the 2013 Act does not reflect this Constitutional position. The current Bill also does not propose to make any amendments to bring the 2013 Act in line with the Constitutional position.

1. Clause 5 (v) (f) (iii) of the Land Acquisition (Amendment) Bill 2007.
2. Standing Committee on Rural Development 2011-12, Report No. 31, paragraphs 4.40 and 4.41.
3. Information Note on Ordinance to amend the RFCLARR Act, 2013; Ministry of Rural Development; [http://dolr.nic.in/dolr/downloads/pdfs/RFCLARR%20Act%20\(Amendment\)%20Ordinance,%202014%20-%20Information%20Note.pdf](http://dolr.nic.in/dolr/downloads/pdfs/RFCLARR%20Act%20(Amendment)%20Ordinance,%202014%20-%20Information%20Note.pdf).
4. The Lokpal and Lokayuktas Act, 2013, Clause 23.
5. Karnail Kaur and Ors Vs State of Punjab and Ors, Civil Appeal no. 7424 of 2013.
6. Standing Committee on Rural Development 2011-12, Report No. 35, paragraphs 3.53 and Standing Committee on Rural Development 2008-09, Report No. 39, paragraphs 3.49 to 3.51.

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