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Rehabilitation and Resettlement Ordinance 2014:
A Process Perspective

G. Raghuram
Simi Sunny

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INDIAN INSTITUTE OF MANAGEMENT
AHMEDABAD-380 015
INDIA

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Ordinance 2014: A Process Perspective

**G. Raghuram¹
Simi Sunny²**

Abstract

This paper captures the policy processes leading to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Ordinance, 2014. It maps the role and the influence of the three primary stakeholders - Government, industry and landowners - at various stages of the evolution of the land acquisition law in India. Land acquisition has remained a controversial issue in India resulting in conflicts between social, economic and political structures. The RFCTLARR Act 2013 was an attempt by the earlier Government to provide a fair deal to the landowners who had suffered due to the weak framework of the Land Acquisition Act, 1894. The Government also had one year until December 31, 2014 to decide on whether 13 Special Acts which had land acquisition privileges should come under this Act or be exempted. However, the Act soon faced resistance from the industry due to the impact of clauses like social impact assessment, rehabilitation and resettlement, and consent requirements on projects done in public interest. After constant pressure from the industry and consultations from the State Governments, the new Government finally brought in amendments to the 2013 Act. Given the one year deadline and the washout of the winter session of Parliament, it brought in the amendment through an ordinance.

Keywords: Land Acquisition, Ordinance, RFCTLARR Act

¹ Professor, Public Systems Group, Indian Institute of Management Ahmedabad. Email: graghu@iimahd.ernet.in

² Graduate student, Manster of Public Policy, National Law School of India, Bangalore

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Ordinance 2014: A Process Perspective

On December 31, 2014, President Pranab Mukherjee promulgated the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Ordinance, 2014. The ordinance amended the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR). This ordinance has been provided in **Exhibit 1**.

The RFCTLARR was passed by the Parliament on September 5, 2013 and came into force on January 1, 2014. The Act overrode the colonial Land Acquisition Act (LAA), 1894 which had been criticized for giving both the Government of India (GoI) and the State Governments absolute power to acquire private land in the name of 'public purpose' and for promoting an unfair compensation policy. The 2013 Act, for the first time, integrated land acquisition with rehabilitation and resettlement (R&R) and Social Impact Assessment (SIA).

As per Section 105 of the Act, the provisions of the Act did not apply to 13 Central Acts which acquired land under special provisions specific to their domain, considered critical for development. However, the GoI could issue a notification and direct any provision of the Act, relating to compensation and R&R, to be made applicable to these 13 Acts within a year of its enactment. The notification had to be placed before Parliament for a period of 30 days for its approval.

The Act faced stiff opposition from the industry and the State Governments. The industry raised concerns regarding the stalling of projects due to large consent requirements, compulsory SIA, increased project costs due to high compensation, R&R package for displaced families, and retrospective implementation of the Act.³ The State Governments were also of the similar view. Therefore, the NDA Government, which came to power in May 2014, decided to amend RFCTLARR, 2013.

The notification with respect to Section 105 provided a limited time frame for the amendment. The GoI had not been able to place the notification before the Parliament during the monsoon session of the Parliament due to the paucity of time. In the case a notification was not issued before the end of the year, the 13 Acts would have continued acquisition as per their respective Act provisions.

After the washout of the winter session of the Parliament, the GoI decided to take the ordinance route to amend Section 105. On December 31, 2014, the last day for the notification, the ordinance applied all the compensation and R&R provisions of RFCTLARR to the 13 exempted laws. The ordinance also relaxed the requirements of consent and SIA survey for projects in the areas of defense and defense production, rural infrastructure, affordable housing, industrial corridors and social infrastructure projects which included Public Private Partnerships.

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³ "Why India Inc is not happy with the new land Bill", Business Standard, dated September 23, 2013 accessed on February 08, 2015; http://www.business-standard.com/article/companies/why-india-inc-is-not-happy-with-the-new-land-bill-113092100369_1.html

Background

In India, the Land Acquisition Act (LAA) 1894 had served as the basis for all government acquisition of land for public purposes. The first land acquisition law was enacted during the British Raj in 1824, which underwent several modifications and was finally replaced by the LAA, 1894. The GoI in 1947 adopted the LAA 1894. The land acquisition process as per the LAA 1894 is given in **Exhibit 2**. The Constitution of India placed ‘Acquisition and requisitioning of property’ as Entry 42 in the Concurrent List. This meant that both the Centre and States could make laws governing land acquisition. However, in case of a conflict between the central and state law, the central legislation would prevail.

The Act was reviewed by various committees appointed by the GoI. In 1967, a committee was appointed by the GoI to study, consult and recommend principles to amend the 1894 Act. As a result of such reviews, the LAA 1894 was amended 17 times, after independence in 1947, by various elected governments. The major amendments to LAA 1894 are described in **Exhibit 3**. Various State Governments also amended the Act in order to respond to the local demands, like in the case of Land Acquisition (Amendment and Validation) Act of 1967 by the state of Karnataka.⁴

The Standing Committee on Rural Development (SCRD), in its report on the Land Acquisition, Rehabilitation and Resettlement (LARR) Bill 2011, a precursor to RFCTLARR, explained the amendments made over the years.⁵

“Initially, the exercise of the doctrine of Eminent Domain was limited to acquiring land for public purpose such as roads, railways, canals, and social purposes like state run schools and hospitals. The Act, however, added the words ‘or Company’ to ‘public purpose’ to distinguish land acquisition by the State for ‘public purposes’ from land acquisition by the State for ‘a Company’. Moreover, acquisition of land for ‘Companies’ was restricted to Railway Companies, until by an amendment effected in 1933, acquisition was permitted for the ‘erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith’.

The ambit of the LAA 1894 was then significantly expanded by a number of amendments in 1962 which permitted acquisition for a Company ‘which is engaged or is taking steps for engaging itself in any industry or work which is for a public -purpose’. The amendments made in 1984 in the LAA 1894 extinguished any differentiation between acquisition for a State purpose and ‘acquisition for a

⁴ “Land Acquisition Law in India: A historical perspective”, Vikas Nandal, International Journal of Innovative Research and Studies, May 2014, Vol 3 Issue 5, accessed on February 9, 2015; http://www.ijirs.com/vol3_issue-5/33.pdf

⁵ Standing Committee report on the Land Acquisition and Rehabilitation and Resettlement Bill, 2011, Department of Land Resources, Ministry of Rural Development, Government of India, accessed on February 9, 2015; <http://dolr.nic.in/dolr/downloads/pdfs/Land%20Acquisition,%20Rehabilitation%20and%20Resettlement%20Bill%202011%20-%20SC%28RD%29%27s%2031st%20Report.pdf>

private enterprise’ or ‘State enterprise’ by amending section 4⁶ of the original Act to insert the words ‘or for a Company’ after ‘any public purpose’.”

However, the law failed to address some important issues associated with land acquisition, particularly forcible acquisitions, the definition of ‘public purpose’, widespread misuse of the ‘urgency clause’, compensation, lack of transparency in the acquisition process, participation of communities whose land was being acquired and lack of R&R package.

Due to a lack of clear definition of ‘public purpose’, there had been considerable difference of opinion among various judgments of the Supreme Court (SC), which resulted in granting very broad discretionary powers to the state in terms of deciding the contours of ‘public purpose’ under particular circumstances.

In the *State of Bombay v. R. S. Nanji 1956*, the SC observed, “It is impossible to precisely define the expression ‘public purpose’. In each case, all the facts and circumstances will require to be closely examined in order to determine whether a public purpose has been established. Prima facie, the government is the best judge as to whether public purpose is served by issuing a requisition order, but it is not the sole judge. The courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a public purpose.”⁷

In the 1988 case of *Coffee Board v. Commissioner of Commercial Taxes*, the SC again stated, “Eminent domain is an essential attribute of sovereignty of every State and authorities are universal in support of the definition of eminent domain as the power of the sovereign to take property for public use without the owner’s consent upon making just compensation.”⁸

R&R of the Project Affected People

R&R of the people affected by land acquisition remained neglected due to the complete absence of a statutory mandate on R&R in LAA 1894. In 1990s, infrastructure projects like Konkan Railway Corporation (KRC) faced stiff opposition from the livelihood losers leading to long delays. There was demand for the realignment of the railway line in Goa due to reasons like the line passing through thickly populated areas, proximity to heritage structures, pisciculture and agriculture getting affected, etc.⁹

In order to fill the legislative void, the Department of Land Resources (DoLR) under the MoRD formulated the ‘National Policy on Resettlement and Rehabilitation for Project Affected Families, 2003’. The objective was to minimize displacement and to identify non displacing or least displacing alternatives and also plan the R&R of Project Affected Families (PAFs) including special needs of tribals and vulnerable sections. This policy was later replaced by the ‘National Policy on Rehabilitation and Resettlement 2007’.

⁶ Section 4 of the 1894 Act deals with the publication of preliminary notification for acquisition of a particular land and the powers of the officers thereon

⁷ “Judicial interpretation of Public Purpose with respect to land rights”, Sreya B, Social Science Research Network, July 8, 2013, accessed on February 9, 2015; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2290863

⁸ *Ibid*

⁹ “Is it on the right track” India Environmental Portal dated October 30, 1992, accessed on March 12, 2015; <http://www.indiaenvironmentportal.org.in/content/21/is-it-on-the-right-track/>

Several State Governments enacted separate legislations on R&R like Madhya Pradesh Resettlement Act, 1985, Karnataka Resettlement of Project Displaced Persons Act, Karnataka Act No. 24 of 1994, Maharashtra Project Affected Persons Rehabilitation Act and Maharashtra Act No. 21 of 1999. Some states also came out with policies on R&R like Orissa Rehabilitation and Resettlement Policy, 2006, Policy for Resettlement and Rehabilitation of Persons Displaced or Affected by Water Resources Development Projects in Rajasthan, Andhra Pradesh State Resettlement and Rehabilitation Policy, 2005, Jharkhand Rehabilitation and Resettlement Policy, 2008, Bihar Land Acquisition Resettlement and Rehabilitation Policy, 2007 and Madhya Pradesh Resettlement Policy, 2002 among others. However, in the face of growing resistance against land acquisition, a need for central legislation on R&R was felt.

In many large scale projects, due to difficulties in arriving at consensus through the LAA 1894, the compensation and rehabilitation packages were determined through negotiations between the authorities and landowners. A case in point was land acquisition for the Cochin International Airport Limited (CIAL). CIAL authorities, through negotiations with the opinion leaders, arrived at a broad framework for compensation and rehabilitation of the affected people. A high power committee chaired by a state minister negotiated the prices with representatives of land owners.¹⁰ Each family which lost land was given six cents of land at different locations. Additionally, one member from each family which lost both house and land was considered for direct employment or provided indirect employment opportunities in the airport like taxi permit, managing public telephone facility or vending beverages.¹¹

Morris and Pandey, in their submission to the GoI in May 2007, suggested a way forward. They emphasized that the complications in the process of land acquisition were inherent in the law itself. The suggestions included restrictive definition of public purpose based on specific land requirements, independent valuation of land, removal of restrictions on land use, low transaction costs, use of 'transfer development rights' for the process of town planning and corridor development and pareto optimal rehabilitation.¹²

Consequently, two bills 'The Land Acquisition (Amendment) Bill, 2007' and 'The Rehabilitation and Resettlement Bill, 2007' were introduced in Lok Sabha (LS) on December 6, 2007. The key features of these bills are provided in **Exhibits 4 and 5** respectively. The Bills were referred to the SCRD. The Committee submitted its report on October 28, 2008. The two bills were passed in the LS on February 25, 2009 which was the last day of the session.¹³ The Bills were pending final approval under the Rajya Sabha (RS) and therefore lapsed at the dissolution of the 14th LS.

Rise of Protests

The demand for a better legislation was further strengthened after various instances of violent opposition to land acquisition in different parts of the country. In 2007, violent protests broke

¹⁰ "Governance issues in Airport Development: Learnings from Cochin International Airport Ltd" by G. Raghuram and Biju Varkkey in the India Infrastructure Report 2002

¹¹ *Ibid*

¹² IIM-A Working Paper "Towards reform of land acquisition framework in India" Sebastian Morris and Ajay Pandey, accessed on March 12, 2015

¹³ "The Land Acquisition (Amendment) Bill 2007", PRS Legislative brief; <http://www.prsindia.org/billtrack/the-land-acquisition-amendment-bill-2007-109/>

out in 100 villages near Nandigram in the East Midnapore district of West Bengal when the Communist Party of India Marxist (CPI (M)) Government attempted to acquire 10,000 acres of land for a Special Economic Zone (SEZ) to be developed by the Indonesian real estate giant, the Salim Group. On March 14, 2007, 2500 policemen were sent to capture the land. According to the police records, 14 farmers were killed in the firing while over 100 were declared 'missing'.¹⁴

West Bengal saw similar protests by farmers in Singur in 2008. The protests started in 2002 when Tata Motors acquired over 900 acres of land for its Nano car project. The situation worsened over the next six years. The State Government fenced off the land on December 6, 2006. As a result, Trinamool Congress leader Mamata Banerjee called for a statewide bandh and later went on a 25 day hunger strike. Villagers continued to attack on the fences to disrupt the functioning of the project. In 2008, Tata group decided to shift the manufacturing base to Sanand in Gujarat.

In the meanwhile, reelected UPA Government's attempt to reintroduce the 'The Land Acquisition (Amendment) Bill, 2007' and 'The Rehabilitation and Resettlement Bill, 2007', which had lapsed in the earlier session, failed after stiff resistance from its then ally and Railway Minister Mamata Banerjee. She was of the view that State should not have any role in the process of land acquisition.¹⁵

In 2011, widespread protests against land acquisition took place in Uttar Pradesh and Orissa. On May 6, 2011, farmer agitations began against the proposed acquisition for the Yamuna Expressway project in Bhatta Parsaul village in the Greater Noida district of Uttar Pradesh. It resulted in sporadic incidents of violence, killing two farmers and two policemen.¹⁶ On May 11, 2011, Rahul Gandhi, Member of Parliament from the Indian National Congress, held a dharna against the Bahujan Samajwadi Party Government in Uttar Pradesh. The protests started widespread debate on the viability of the colonial Act.

On June 10, 2011, about 2000 villagers in Orissa began protests against the South Korean company POSCO as it laid down its plan of acquiring 4000 acres of land for a steel plant.¹⁷ Protestors, including women and children, formed a human chain around the site. Local opposition had long delayed the project which was considered India's biggest foreign investment project in Orissa. POSCO had signed the agreement for the mill in 2005 and was scheduled to begin production by the end of 2011. However, the protests forced the Orissa Government to halt land acquisition for the proposed \$12 billion steel plant.

Towards a New Legislation

In the light of these incidents, the UPA Government decided to introduce a new land acquisition law. The National Advisory Council (NAC), the advisory body of the UPA

¹⁴ "Nandigram story till now", Live Mint, March 19, 2009, accessed on February 02, 2015;

<http://www.livemint.com/Politics/1CAfbH2Und58UkVckctVP/The-Nandigram-story-till-now.html>

¹⁵ "Pranab Mukherjee invites Mamata Banerjee for talk Land Acquisition Bill" Economic Times dated October 14, 2010, accessed on March 6, 2015; http://articles.economictimes.indiatimes.com/2010-10-14/news/27577883_1_land-acquisition-resettlement-and-rehabilitation-bill-education-and-space-research

¹⁶ "Digvijay demands three-point relief for Bhatta farmers", The Times of India, May 11, 2011, accessed on February 02, 2015; <http://timesofindia.indiatimes.com/India/Digvijay-demands-three-point-relief-for-Bhatta-farmers/articleshow/8247794.cms?referral=PM>

¹⁷ "Villagers protest a POSCO's \$12 bn Orissa project" Reuters India dated June 11, 2011, accessed on February 20, 2015; <http://in.reuters.com/article/2011/06/11/idINIndia-57642720110611>

Government made recommendations for the LARR Bill, 2011 by combining land acquisition with R&R. A summary of the recommendations is provided in **Exhibit 6**. According to NAC, land acquisition and R&R had to be seen as two sides of the same coin and R&R, in each instance, must follow acquisition of land. It further said that not combining the two aspects – R&R and land acquisition – within one law, risked the neglect of R&R.¹⁸

On September 7, 2011, ‘The Land Acquisition, Rehabilitation and Resettlement Bill, 2011’ which was inspired by the NAC recommendations, was introduced in the LS. The Bill was referred to the SCRD which submitted its report in the LS on May 17, 2012 (**Exhibit 7**).

The SC also emphasized on the need to enact a new land acquisition law. In November 2011, a joint bench of Justice RM Lodha and Justice Khehar in their judgement wrote, “It has been felt that the LAA 1894 does not adequately protect the interest of owners/persons interested in the land. For years, the acquired land remains unused. To say the least, the Act has become outdated and needs to be replaced at the earliest with fair, reasonable and rational enactment in tune with the constitutional provisions, particularly, Article 300A.¹⁹ We expect the lawmaking process for a comprehensive enactment with regard to acquisition of land being completed without any unnecessary delay.”²⁰

In an all party discussion held on April 18, 2013, various political parties raised their disagreements with various clauses in the LARR Bill. The Bharatiya Janta Party (BJP) urged the UPA Government to make the Act more pro farmer. It suggested 12 amendments to the Bill, which included giving the land owners and tillers an option to lease the land instead of acquisition, sharing the benefits of development on acquired land with the farmers and other dependents, and discouraging displacement of an individual more than once. The 12 amendments proposed are listed in **Exhibit 8**. The TMC emphasized that land should be acquired only with a 100 percent consent even for government projects. CPI (M) felt that the compensation and R&R measures were inadequate.

The RFCTLARR Act

The UPA Government accepted most of the amendments proposed by the principal opposition party BJP and clinched a ‘broad political consensus’ on the contentious LARR Bill.²¹ In the LS, the Left parties, AIADMK and BJD members staged a walkout. TMC voted against the Bill while BJP along with SP and BSP supported the legislation. The Bill was finally passed by Indian Parliament on September 5, 2013, with further amendments, under the name of ‘The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.’ The Act received the assent of the President on

¹⁸ Draft National land acquisition and rehabilitation and resettlement bill 2011, Ministry of Rural Development, Gol

¹⁹ Article 300A of the Constitution: No person shall be deprived of his property by authority of law.

²⁰ “Outdated land acquisition act should go”, in The Hindu, dated November 08, 2011, accessed on February 02, 2015; <http://www.thehindu.com/news/national/outdated-land-acquisition-act-should-go-says-court/article2607298.ece>

²¹ “Government clinches broad broad consensus on Land Acquisition Bill, to be tabled in Parliament” Econommic Times dated April 18, 2013, accessed on February 18, 2015; http://articles.economictimes.indiatimes.com/2013-04-18/news/38647331_1_land-acquisition-bill-resettlement-bill-industry-regarding-acquisition

September 26, 2013. As a result of the notification issued by the GoI on December 19, 2013, the Act came into force on January 1, 2014.²²

The primary objective of the Act was to provide fair compensation, thorough R&R of those affected, adequate safeguards for their well being and complete transparency in the process of land acquisition.²³ The most important features of the Act were

- The consent of 80 per cent of landowners concerned was needed for acquiring land for private projects and of 70 per cent landowners for public private projects
- The term ‘public purpose’ which was left vague in the LAA 1894 was restricted to land for strategic purposes, infrastructural projects, PAFs, planned development or improvement of village or urban sites or residential purpose for weaker section and persons residing in areas affected by natural calamities or displaced
- Compensation was increased to four times the market value in rural areas and twice the market value in urban areas
- R&R package for the affected families with additional benefits to the SC/ST families

The key features of the RFCTLARR Act have been further elaborated in **Exhibit 9**. The process of land acquisition as per the RFCTLARR Act is given in **Exhibit 10**.

The Exemption List

Section 105 of RFCTLARR exempted 13 Central Acts from the purview of the Act. These Central Acts acquired land for particular sectors in accordance with their specific Act. The provisions of the RFCTLARR Act like compensation, SIA and R&R did not apply to the land acquisition carried out under these 13 Acts.

The LARR Bill 2011 had 16 Acts under the exemption list. The 16 Acts included²⁴:

1. The Ancient Monuments and Archaeological Sites and Remains Act, 1958
2. The Atomic Energy Act, 1962
3. The Damodar Valley Corporation Act, 1948
4. The Indian Tramways Act, 1886
5. The Land Acquisition (Mines) Act, 1885
6. The Metro Railways (Construction of Works) Act, 1978
7. The National Highways Act, 1956
8. The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962
9. The Requisitioning and Acquisition of Immovable Property Act, 1952
10. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948
11. The Coal Bearing Areas Acquisition and Development Act, 1957
12. The Electricity Act, 2003

²² Gazette of India notification, Ministry of Rural Development,

http://rural.nic.in/sites/downloads/NewReleases/Noti_Commencement_LR19dec13.pdf

²³ “All you wanted to know about new land acquisition bill”, Live Mint, dated August 30, 2013, accessed on February 06, 2015; <http://www.livemint.com/Politics/FXZ9CrJApxRowyzLd8mb2O/All-you-wanted-to-know-about-new-land-acquisition-Bill.html>

²⁴ Standing Committee Report on the Land Acquisition and Rehabilitation and Resettlement Bill, 2011, Department of Land Resources, Ministry of Rural Development, accessed on February 9, 2015;

<http://dolr.nic.in/dolr/downloads/pdfs/Land%20Acquisition,%20Rehabilitation%20and%20Resettlement%20Bill%202011%20-%20SC%28RD%29%27s%2031st%20Report.pdf>

13. The Railways Act, 1989
14. The Special Economic Zones Act, 2005
15. The Cantonments Act, 2006
16. The Works of Defence Act, 1903

Justifying the exemption for these Acts in front of the SCRD, the DoLR said, “There is a slight difference in enmass acquisition and row acquisition. The row acquisition is like roads, railways, power supply and all where a very little land is being acquired. The reservation of these concerned Ministries is that if we are to apply R&R to them, then they will have to provide that infrastructure which we have mentioned in Schedule III²⁵ which is extensive. For rehabilitation, they will have to set up a school, community centres and other facilities like post offices, roads, etc. Now, for a small chunk of land they say that if we have to be governed by R & R facilities as per the Bill, then it will not serve the purpose. That is why, these Acts were actually considered and we thought that row acquisition should not actually form part. Nevertheless, the GoI has kept the powers with itself that in case it is required that under Section 98²⁶, we can make these R & R facilities applicable to these Acts.”²⁷

In its deposition to the SCRD, the Ministry of Defense with respect to its two acts the Cantonment Act 2006 and the Works of Defense Act, 1903 said that it had not sought exemption from the provisions of the Bill and it would undertake all compensatory provisions.²⁸ The exemption of SEZ Act, 2005 faced stiff opposition in the SCRD. The Government of Madhya Pradesh appearing before the Committee argued that SEZ Act was one of the major reasons for the controversies on the question of land acquisition since it required large tracts of land and resulted in massive displacement. Even the SCRD in its recommendation said, “Inclusion of SEZ Act, 2005 in the Fourth Schedule is a case which does not go well with the argument of DoLR at all as under this Act en mass acquisition in thousand acres is done. Up to March 2012, 587 approvals have been accorded for formation of SEZs.”²⁹

The SCRD was of the unanimous view that the exemption should not be permitted to the 16 Acts as most of the land acquisition took place in the mining, power and other infrastructure sectors, and exemption of these Acts would be against the vision of the Act (**Exhibit 5**). However, in the redrafting, the MoRD sought to retain the 13 Acts after eliminating the two defense Acts and the SEZ Act.

Reactions from Various Quarters

The RFCTLARR Act was welcomed by various civil society organizations who had been demanding the replacement of the colonial Act though they felt that the new Act had several loopholes. Various social movements had been demanding for a new pro people comprehensive legislation, especially after increased instances of violent protests due to forced displacement. However, the civil society was not satisfied with the provisions of the Act since many of their demands were not incorporated in the legislation.

²⁵ Infrastructure provisions under RFCTLARR

²⁶ Section 105 was earlier Section 98 in the LARR 2011

²⁷ Standing Committee on Rural Development’s report on LARR Bill 2011;

<http://dolr.nic.in/dolr/downloads/pdfs/Land%20Acquisition,%20Rehabilitation%20and%20Resettlement%20Bill%202011%20-%20SC%28RD%29%27s%2031st%20Report.pdf>

²⁸ *Ibid*

²⁹ *Ibid*

After the passage of the Bill in the LS, former bureaucrat and social activist EAS Sarma in an interview raised the concerns of the civil society, “There are three positive features in this Bill. First, R&R is part of the Bill and they should be taken up hand in hand with the acquisition. Second, the compensation rates are far more attractive. Third, prior consent of the affected families (80 per cent) is mandatory. But the Bill still has a few shortcomings. First, the meaning of ‘public purpose’ which had been progressively enlarged in the existing Act to include land for private companies remains as it is. Second, those who are the tillers of the land are often tenants of absentee landlords who usually pocket the compensation. The latest Bill fails to address this. The same is the case with landless cultivators in occupation of government lands, who may not get any compensation. Third, many private companies are circumventing the mandatory ‘prior consent’ clause by deploying brokers to purchase lands in advance.”³⁰

On November 20, 2013, Medha Patkar, noted social activist and advisor of the National Alliance of People’s Movement (NAPM) said, “We are at a new point today, there are mixed feelings regarding the new law. On the one hand, it is a good thing that an old law by British is being replaced by a new one due to numerous urban and rural movements, on the other hand there is a lot to be done.”³¹

NAPM, an apex body of several mass organizations across the country, demanded for several changes in the law to make it more pro farmers and land owners. The most important changes demanded were restrictive definition of public purpose, no forcible acquisition for private and PPP projects, no forcible acquisition of agricultural land, inclusion of the 13 exempted central acts, consent and direct involvement of majority of the Gram Sabhas in each and every project, including public projects for public purpose and promotion of alternate livelihood options as part of R&R.

On the other hand, the Industry also raised several apprehensions regarding the RFCTLARR 2013. Industry bodies like Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce and Industry (FICCI) and the Associated Chambers of Commerce and Industry of India (ASSOCHAM) felt that the legislation was more in favour of the landowners.

On August 29, 2013, the President of CII, S Gopalakrishnan said, “CII has always emphasized on the need to streamline the land acquisition process to promote job creation in Industry. With economic growth slowing down, it is imperative to boost manufacturing that will add to jobs and incomes. The Industry has serious concerns on some of the provisions of the Land Acquisition Bill passed by the LS in the Parliament. Cost of Land Acquisition is likely to increase by 3 to 3.5 times, making industrial projects unviable and raising (rising) costs in the overall Indian economy.”³²

³⁰ “Land Acquisition Bill has some flaws, say civil society members”, The Hindu, dated September 7, 2013, accessed on February 14, 2015; <http://www.thehindu.com/todays-paper/tp-national/tp-andhrapradesh/land-acquisition-bill-has-some-flaws-say-civil-society-members/article5103262.ece>

³¹ “Land Acquisition Act has ‘loopholes’: Medha Patkar”, The Economic Times, dated November 30, 2013, accessed on February 13, 2015; http://articles.economictimes.indiatimes.com/2013-11-20/news/44285191_1_land-acquisition-act-medha-patkar-resettlement-act

³² “Industry has serious concerns on some of the provisions of the Land Acquisition Bill”, CII, August 29, 2013; <http://www.cii.in/PressreleasesDetail.aspx?enc=EF/S6H11d8MEm/utgL5MK17ssb4Jmfak6V4RAP0+zG+uBPmrvAQYyctb1/ibxvf8toai8/MnBcZ+ojP+YW4UkQ==>

RV Kanoria, chairman of the FICCI task force on land reforms and policy, also raised similar concerns on August 30, 2013, “Several provisions will have adverse consequences on the industrial development of the country, which is already in bad shape. It is completely a retrograde step. This certainly doesn’t augur well for manufacturing. Cost of land will go up significantly. Process of acquiring land will also get stretched.”

The major issues raised by the industry were:

- Mandatory R&R would have huge cost implications which may result in three fold increase in the cost
- Requirement to seek consent of 80 per cent of affected families would considerably increase the time taken to acquire land. Industry felt that the actual time taken would be much higher than the 50 months laid out in the Act, as there are likely to be delays at each stage due to absence of timelines and implementation difficulties
- Lack of clarity in definition of urban and rural areas
- SIA would make the acquisition process extremely complex, lengthy and difficult
- Provision to return the acquired land, which was unutilised for five years, would hamper large infrastructure projects since they took longer periods to kick start
- Retrospective clause would add to the uncertainty because it disrupted the land acquisition process which was underway in various infrastructure and industrial projects
- Manufacturing sector was heavily dependent on the governments for acquisition and should be included in the definition of public purpose
- The definition of ‘affected families,’ who were eligible for R&R, was too broad because it included ‘livelihood losers’ working in the affected area for three years prior to acquisition of land and whose primary source of livelihood was affected.

Real estate developers also criticized the new law for increased financial burden. Lalit Kumar Jain, chairman of Confederation of Real Estate Developers Association of India on August 31, 2013 said, “The process of acquiring land for projects will become tedious, especially in the case of large land parcels. While we agree that the Bill will increase transparency in land deals, the higher compensation to land owners could make several real estate projects unviable.”

Interestingly in October, 2013, amid concerns of the industry over RFCTLARR, studies conducted by two private financial institutions, ICICI Bank’s Treasury Research Group and Kotak Institutional Equities, gave thumbs up for the measure, observing that some of the worries of business houses might be ‘exaggerated and overblown.’³³ Both the reports acknowledged that the Act would make the land acquisition process time bound and provide greater clarity.³⁴

³³ “Pat for land acquisition act”, The Hindu dated October 19, 2013, accessed on February 14, 2015; <http://www.thehindu.com/todays-paper/tp-features/tp-propertyplus/pat-for-land-acquisition-act/article5249415.ece>

³⁴ “Land Acquisition will become time-bound: Reports” The Economic Times dated October 10, 2013, accessed on February 14, 2015; http://articles.economictimes.indiatimes.com/2013-10-10/news/42903171_1_land-acquisition-law-icici-bank-retrospective-applicability

Implications of the Act on Various Projects

The enactment of RFCTLARR had significant impact on the future of the projects. According to the Centre for Monitoring Indian Economy (CMIE), projects entailing a staggering Rs.6.26 trillion of investment were shelved, abandoned, or stalled in 2013-14, the highest ever in India's history. A total number of projects abandoned, shelved or stalled was as high as 524 in 2013-14. According to the CMIE report, the major reasons given were difficulties related to land acquisition, delay in getting environment clearances and promoter's lack of interest. Promoter's lack of interest in the project could be due to non favourable market conditions, delay in getting clearances, high cost of land, lack of financial resources or inadequate resources.

As per the definitions, a stalled project could be revived, a shelved project was where implementation hadn't started and an abandoned project was one that was withdrawn after implementation had started.

The stalled projects, both in terms of value and volume, had been rising since early 2009. Average quarterly stalling of projects which hovered around Rs. 143 billion from 2000-2008, rose steeply after 2007-08 when slowing down effect in the economy had just set in. It rose to Rs. 586 billion in 2008-09. Rs. 573 billion in 2009-10 and slipped to Rs. 402 billion in 2010-11. Quite a few projects which were mere investment intentions during the investment boom period between 2004-05 and 2008-09, soon started getting shelved. Post 2009-10, the quantum of projects stalled was much higher. The quarterly average rose sharply to 1.2 trillion in 2011-12, Rs. 1.1 trillion in 2012-13 to peak at Rs. 1.6 trillion in 2013-14.

The Delhi Mumbai Industrial Corridor (DMIC) was one of the biggest projects stalled due to problems in land acquisition. DMIC was a mega infrastructure project of USD 90 billion with the financial & technical aids from Japan, covering an overall length of 1483 KMs between the political capital and the business capital of India, i.e. Delhi and Mumbai. The project planned major expansion of infrastructure and industry – including smart cities, industrial clusters along with rail, road, port, and air connectivity – in the states along the route of the Corridor. Many smart cities were to be developed alongside, such as the Dholera SIR in Gujarat, which was envisaged to be six times the size of Shanghai and two times the size of Delhi.

The DMIC project had been facing delays for past four years due to bottlenecks in land acquisition. In early 2013, farmer organizations like the Farmers' Anti corridor Struggle Action Committee, an outfit of peasants from 78 villages of Raigad district, demanded the halt to the land acquisitions for the DMIC project till the Act came into force so that acquisition could be done in a more equitable manner. Due to constant protests, the Maharashtra Government was forced to reduce the land required for the Dighi port node of the Delhi Mumbai Industrial Corridor (DMIC) to a fraction of its originally intended size, from 25,000 hectares to a mere 3,600 hectares.

The Act further delayed the project as prices shot up. Amitabh Kant, the Director of DMIC on June 22, 2014 said, "While acquiring land in Aurangabad, land prices went up to 5.5 times the market rates simply because landowners were not willing to sell at a lower price. Everything is becoming unviable."

The Pithampur Dhar Mhow investment node of DMIC was also stuck due to land acquisition woes. When the land acquisition for the proposed industrial corridor began in 2010, the Madhya Pradesh Government was depending on LAA 1894 to acquire the land. However, the

whole process moved at a snail's pace because the new legislation required SIA and a comprehensive R&R package. It also escalated the project cost as the GoI was required to pay a higher compensation to the land owners.³⁵ Many other parts of the Corridor like Manesar in Haryana faced similar land acquisition problems.

Change of Government at the Centre

On May 26, 2014, Narendra Modi took over as the Prime Minister (PM) after BJP gained a majority in the general election 2014. The election manifesto of BJP had laid emphasis on industrial growth and improved infrastructure. In order to promote industrial growth, BJP said, "We will ensure that a conducive, enabling environment is created for doing business, ensure logistics infrastructure, transparent and time bound environmental clearances and set up world class investment and industrial regions as global hubs of manufacturing."

The manifesto said, "Work on the Freight Corridors and attendant Industrial Corridors will be expedited. This will result in the faster movement of people and goods. PPP would be encouraged to tap into private sector resources as well as expertise."

It also added, "We will initiate building 100 new cities; enabled with the latest in technology and infrastructure adhering to concepts like sustainability, walk to work, etc., and focused on specialised domains. The approach to urban development will be based on integrated habitat development building on concepts like Twin cities and Satellite towns."

On the issue of land acquisition, the BJP manifesto acknowledged that land acquisition was a contentious issue due to the opacity of the land acquisition process. It promised to adopt a 'National Land Use Policy,' which would look at the scientific acquisition of non cultivable land and its development.

Other party manifestos also dealt with the issue of land acquisition. The Congress manifesto ensured fast and fair implementation of the Act such that farmers, landowners and livelihood losers get adequate compensation for their acquired land. Aam Aadmi Party manifesto also promised to work towards fairer rehabilitation "by ensuring that all acquisition done post September 2011 comes under the ambit of the new Act, ensuring a narrow and well defined ambit of the term 'public purpose' for which land can be acquired, ensuring acquisition happens only with the consent of the Gram Sabha and making it mandatory to provide employment to one person per family that is losing land or livelihood, so that those who pay the price of development, can become the beneficiaries in the process."

Push for Review of RFCTLARR

The industry saw the change in government as a positive development. The industry bodies expected the Modi Government to take quick action to remove hurdles like land acquisition to improve the 'ease of doing business'. Industry chambers like CII and FICCI urged for a comprehensive review of the RFCTLARR Act 2013.

On May 20, 2014, CII President Ajay Shriram said, "A huge thrust has to be on implementation since that yields results most visibly. Then there are irritants like the Land

³⁵ "Industrial corridor stuck due to land acquisition woes" Hindustan Times, dated September 8, 2014, accessed February 10, 2015; <http://www.hindustantimes.com/indore/industrial-corridor-project-stuck-due-to-land-acquisition-woes/article1-1261512.aspx>

Acquisition Act and the new Companies Act, which need comprehensive overhaul to make them practical in the context of realities today.”³⁶

The stand was reiterated by FICCI on May 26, 2014 in a press release which said, “Availability of land is a prerequisite for industrial development. However, the new Land Acquisition Act makes it virtually impossible to acquire land and industry would like to see a comprehensive review of the Land Acquisition Act.”

RV Kanoria also stated, “The recently enacted Land Acquisition Act, 2014, formulated with an objective of balancing the aspirations of land owners and land buyers, has introduced unnecessary complexity, which is not only likely to hurt the development goals but also completely fail in mitigating the problems of farmers and land owners. It appears that what started out as a well intentioned exercise lost its way in the process. Ever since the commencement of this Act, no fresh land acquisition has taken place. The dream of building modern cities, world class infrastructure and a vibrant industry will have to be put in abeyance unless there is a comprehensive review of the Land Acquisition Act.”³⁷

The industry also felt that the goals set out in the election manifesto of the BJP could not be met under the current law. Navin Raheja, Chairman and Managing Director of Raheja Developers said, “Given the escalating cost of land, Modi's mission of building 100 smart cities, a project he committed himself to in his election campaign, looks like a distant dream. Indeed, without real estate companies promoting the newer cities, the project might be a non starter.”³⁸

On May 31, 2014, the Department of Industrial Policy and Promotion (DIPP) under the Ministry of Commerce and Industry pitched for the simplification of the land acquisition laws in order to facilitate investment and manufacturing in the economy by doing away with the cumbersome rules and procedures in the legislation. An official from the department said, “Land Act in the present form has stalled industrial activity and suitable amendments are urgently needed to spur manufacturing in the economy. There is no land acquisition taking place. We have taken up the matter with the minister.”³⁹

In June, the NDA Government decided to formally review the implementation related issues of the land acquisition law in consultation with the State Governments. Nitin Gadkari, Union Minister of Rural Development said that several State Governments had voiced ‘reservations’ over the adverse impact of the Act against promoting industry and infrastructure in their states.⁴⁰

³⁶ “Narendra-Modi led NDA govt: Industry chambers ready with their economic agenda” Economic Times dated May 20, 2014, accessed on February 15, 2015; http://articles.economictimes.indiatimes.com/2014-05-20/news/49974753_1_land-acquisition-act-land-banks-goods-and-services-tax

³⁷ “Draft a new Land Acquisition Law” Financial Express dated July 28, 2014;

<http://archive.financialexpress.com/news/column-draft-a-new-land-acquisition-act/1274428?rheader>

³⁸ “No promised land” Business Today dated June 22, 2014, accessed on February 14, 2015;

<http://businesstoday.intoday.in/story/narendra-modi-government-land-acquisition/1/206795.html>

³⁹ “DIPP for simplification of Land Acquisition Act” Economic Times dated May 31, 2014, accessed on February 14, 2015; http://articles.economictimes.indiatimes.com/2014-05-31/news/50229287_1_land-acquisition-act-urban-land-acquiring-land

⁴⁰ “Gadkari calls meet with states to review land Act” Indian Express dated June 25, 2014, accessed on February 14, 2015; <http://indianexpress.com/article/india/politics/gadkari-calls-meet-with-states-to-review-land-act/>

On June 27, 2014, Nitin Gadkari held a meeting with the state revenue ministers to discuss the RFCTLAAR Act. The states that sent representatives included Assam, Chhattisgarh, Delhi, Goa, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Meghalaya, Maharashtra, Telangana and Tamil Nadu. The consensus that emerged at the conference of the Revenue Ministers of the state governments was that, “consent clause should be removed from PPP projects, the definition of affected family needed to be reexamined, autonomy for State Governments, SIA only for large projects, retrospective clause for compensation should be modified, penalty provisions against civil servants were too stringent, return of unutilised land to original owners to be deleted.”⁴¹

The amendments found support in Samajwadi Party Government of Uttar Pradesh, AIADMK's in Tamil Nadu, Trinamool Congress' in West Bengal and BJD's in Odisha. While West Bengal categorically sought to have its own land acquisition policy, Tamil Nadu wanted the ‘power to define public purpose’ and felt that the present act was an ‘infringement upon the state's autonomy’. Uttar Pradesh too sought similar powers for the State Governments.⁴² Even BJP ruled states like Madhya Pradesh, Chattisgarh and Goa felt that the Act was passed in a hurry and was motivated by political gains given that national elections were due in 2014. Interestingly, Congress led states like Kerala and Haryana also had concerns regarding the consent requirements of the Act.

Consequently, the MoRD sent a note to the PM’s Office suggesting a number of amendments in the Act. The suggestions included dilution of provisions like mandatory consent of at least 70% locals for acquiring land for public–private partnership (PPP) projects and 80% for acquiring land for private projects and SIA.

The note said, “The consent clause should be reexamined as ownership of land vests with the GoI and the State Governments in PPP projects. The consent clause should be removed from PPP projects. Alternatively, consent requirement may be brought down to 50%. Mandatory SIA study should be done away with. SIA should be confined to large projects/PPP Projects as it may delay acquisition process.”

Other suggested amendments in the note included acquisition of multi cropped irrigated land, reexamination of the definition of ‘affected families’ and ‘livelihood losers’ and modification of retrospective clause.

On July 23, 2014, Nitin Gadkari during a discussion on the demand for grants of the Union Road Transport and Highway Ministry sought all parties’ support to review the RFCTLARR Act. He said, “As many as 189 National Highway projects have been stalled for various reasons, mostly bottlenecks in land acquisition, and it is these hiccups that the NDA Government wants to solve. GoI is ready to review certain provisions of the Land Acquisition Act, but other parties should cooperate. Land acquisition is a State issue and the Centre cannot take *suo motu* cognisance of these problems. We can increase the compensation package, but we need to work on the delays. As on date, we have 110 rail overbridges pending and each day’s delay is causing a loss of rupees 15 crore.”

⁴¹ “Government calls for all-party meet to relook on the Land Acquisition Act” Economic Times dated July 15, 2014, accessed on February 15, 2014; <http://economictimes.indiatimes.com/news/politics-and-nation/government-calls-all-party-meet-to-relook-on-land-acquisition-act/articleshow/38395323.cms>

⁴² *Ibid*

Reactions to the Amendment

On August 1, 2014, Jairam Ramesh, Congress leader and former Minister of Rural Development who spearheaded the movement towards RFCTLARR, opposed the move saying, “The 2013 law was passed with the complete support of the BJP and, indeed, of all political parties, each of which made important contributions to the final version. Both amendments recommended by the BJP in the LS, relating to lease and share in future sale of acquired land, were included without changes...Drafting a law requires a balancing of competing interests — a task of immense proportions in a country with many diverse groups. The new land acquisition law must be given a fair chance because, for the first time, the concerns and interests of farmers, livelihood losers and scheduled caste and scheduled tribe communities have been given the highest priority as part of land acquisition. That should not now be abandoned.”⁴³

The decision of the NDA Government to amend the provisions of the 2013 Act was also strongly criticized by various civil society organizations. Medha Patkar in an interview on August 26, 2014 said, “The consent and SIA provision of Right to Fair Compensation and Transparency was introduced to do away with the anomalies in the colonial Act, since farmers and those dependent on the land were never consulted or made a participant in the process of development planning. Huge tracts of fertile land were acquired at throw away prices and given to private and public corporations in the name public purposes. It will be a retrograde step if we were to go back to the colonial process of forced land acquisition with no regard for impact of land acquisition on the people, environment and democratic institutions that need to be consulted and their consent taken in the process of SIA.”⁴⁴

Towards Consensus Building

On September 14, 2014, Nitin Gadkari while addressing a press conference to outline his ministry’ initiatives in the first 100 days of the NDA Government said that the GoI wanted to evolve a political consensus before bringing any changes to RFCTLARR. He said that there were contradictory views emerging within the parties which wanted changes to the legislation and these needed to be resolved to achieve a general consensus. He clarified that there would be no compromise on clauses related to compensation and R&R.

On 21 October, 2014, MoRD held a consultative meeting with the Secretaries and officers of concerned ministries administering the Act mentioned in the Fourth Schedule of RFCTLARR.

However, the NDA Government soon changed its stance on ‘consensus building’. On November 9, 2014, Arun Jaitely while addressing the India Global Forum conference organized by the International Institute for Strategic Studies said, “There are some illogical provisions like land cannot be used or acquired under this law for private educational institutions, private hospitals and hotels. By this, a new capital of Andhra Pradesh, or the 100 smart cities proposed cannot have private universities and schools, private hospitals or

⁴³ “Give 2013 Act a fair chance” Indian Express dated August 1, 2014, accessed on February 16, 2015; <http://indianexpress.com/article/opinion/columns/give-2013-law-a-fair-chance/99/>

⁴⁴ “Medha Patkar opposed to amendments to new land act” The Hindu dated August 27, 2014, accessed on February 16, 2015; <http://www.thehindu.com/todays-paper/tp-national/tp-otherstates/medha-patkar-opposed-to-amendments-to-new-land-act/article6354819.ece>

hotels. There are some factors in it, which certainly require a relook. Some changes may be necessary. We will first try to reach a consensus and if that is not possible we will go ahead and take the decision.”⁴⁵

In the meantime, Chaudhary Birender Singh took charge as the Rural Development Minister on November 11, 2014. On November 21, 2014, Arun Jaitely said that the GoI was reaching out to the opposition parties to bring changes to the RFCTLARR since streamlining the procedure for land acquisition was one of the biggest challenges facing the GoI.⁴⁶

However, in an all party meeting held on November 23, 2014 to discuss the agenda for the winter session of the Parliament, the ruling party failed to build consensus on the amendment to the Land Act. Congress and regional parties like TMC opposed the GoI's move to amend the land acquisition.⁴⁷ Despite stiff opposition, the GoI decided to place the RFCTLARR Amendment Bill 2014 in front of the Parliament in the forthcoming winter session.

The Ordinance Route

The winter session of the Parliament, which started on November 24, 2014, was marred by disruptions. Proceedings of RS were washed out as opposition parties stalled the House by pressing the demand for a statement by the PM on alleged forced religious conversions in Agra. Several crucial bills, including RFCTLARR Amendment Bill, Goods and Services Tax Bill and Insurance Bill, could not be discussed in the Parliament due to stiff opposition by some parties.

The political composition of both the Houses of Parliament was evident in the functioning of each of the Houses. The LS was more productive with 126 hours of functioning during the stipulated 20 sittings. The productivity percentage of the Lower House was as high as 105 percent. In contrast, productivity of RS was only 68 percent. This could be viewed in juxtaposition with the numerical strength of NDA in each of the Houses. In the LS it had an overwhelming majority of 334 out of the 543 seats, but in the RS it had just 62 out of the 250.

On December 23, 2014, the Cabinet Committee on Political Affairs recommended to the President to prorogue both the Houses of the Parliament to enable promulgation of two official ordinances namely Coal Amendment Ordinance and Insurance Amendment Ordinance. Proroguing of the session was crucial because, as per the rules laid down in the Constitution, an ordinance could be passed only when the Parliament was not in session and the previous session had been prorogued. Consequently, both the Houses were prorogued by President Pranab Mukherjee on December 23.

On December 27, 2014, the GoI decided to take the ordinance route to make amendments to RFCTLARR. The GoI sources informed that the necessary directions had been issued to the

⁴⁵ “Government to amend Land Act, even without consensus: Jaitely” New Indian Express dated November 9, 2014, accessed on February 15, 2015; <http://www.newindianexpress.com/nation/Government-to-Amend-Land-Act-Even-Without-Consensus-Jaitely/2014/11/09/article2515390.ece>

⁴⁶ “Arun Jaitely hints at more reforms ahead” LiveMint dated November 21, 2014, accessed on February 16, 2015; <http://www.livemint.com/Politics/fmgASZH1HsdilElwuora0K/Arun-Jaitely-says-govt-may-rationalize-cooking-gas-subsidies.html>

⁴⁷ “Opposition says it won't back out” Livemint dated November 23, 2014, accessed on February 16, 2015; <http://www.livemint.com/Politics/JF5Uz1eHXjbFnxWWPBllK/Opposition-says-wont-back-down-on-key-Bills.html>

MoRD to get the draft ordinance vetted by the Law Ministry.⁴⁸ Article 123 of the Constitution enabled the President of India to promulgate an ordinance if both the Houses of Parliament were not in session and ‘circumstances existed, which rendered it *necessary* for him to take *immediate* action’. Every ordinance had to be laid before Parliament, and ceased to exist six weeks from the end of the next sitting of Parliament. Since the Constitution mandated that Parliament to be called into session at least once every six months, an ordinance has a *de facto* expiration period of approximately seven and a half months.⁴⁹ The constitutional provision with respect to the ordinance is provided in **Exhibit 11**.

On December 29, 2014, the Union Cabinet chaired by the PM approved the amendments and recommended the President to promulgate the RFCTLARR Ordinance 2014. The RFCTLARR Ordinance was the eighth ordinance passed in seven months of the NDA Government and the ninth for the calendar year.

The ordinance brought in the following amendments:

- Compensation and R&R specified in the Act was extended to the acquisition under thirteen Acts mentioned in the Fourth Schedule.
- Projects in the areas of i) defense and defense production ii) rural infrastructure iii) affordable housing iv) industrial corridors v) social infrastructure projects including PPPs in which ownership lies with the government, were exempted from conducting SIA and taking the consent of affected families.
- Definition of public purpose was widened to include private hospitals and private educational institutions
- The term ‘private company’ was changed to ‘private entity’ to encompass other forms of companies like proprietorship, partnership, corporation, non profit organization, and other non governmental entities
- ‘Companies Act 1956’, which was the reference for the definition of ‘Company’ was replaced by ‘Companies Act 2013’
- The period after which unutilised land had to be returned was extended to any period specified at the time of setting up the project. RFCTLARR 2013 required land, which remained unutilised for five years, to be returned to the original owners or the land bank.

On December 31, 2014, President Pranab Mukherjee sought further clarification regarding the urgency to promulgate the ordinance since the Amendment Bill was not presented before the Parliament. According to the Constitution, an ordinance could be promulgated by the President only after he was ‘satisfied that circumstances exist which render it necessary for him to take immediate action.’

Another reason for the clarification was said to be the increased instances of the NDA Government taking the ordinance route to avoid the logjam in the Parliament. The GoI had issued seven ordinances within a fortnight of the end of the winter session which had also

⁴⁸ “Centre to take ordinance route to effect changes in the Land Acquisition Act” IBNLive dated December 27, 2014, accessed on February 16, 2015; <http://ibnlive.in.com/news/centre-to-take-ordinance-route-to-effect-changes-in-land-acquisition-act/520030-37-64.html>

⁴⁹ “Ordinance route” Frontline dated August 9, 2013, accessed on March 12, 2015; <http://www.frontline.in/the-nation/ordinance-route/article4944717.ece>

raised concerns within the Cabinet.⁵⁰ The number of ordinances issues during various LS sessions is given in **Exhibit 12**.

Since the Rural Development Minister Chaudhary Birender Singh was unavailable to brief the President, three senior Union Ministers including Finance Minister Arun Jaitley, Law Minister D V Sadananda Gowda and Highways Minister Nitin Gadkari met the President. Nitin Gadkari who had earlier held the rural development portfolio explained that an ordinance was necessary to bring the 13 Central Acts at par with the compensation and rehabilitation provisions of RFCTLARR.⁵¹ After the discussion, the President gave his assent to the RFCTLARR Ordinance 2014.

⁵⁰ "Ordinance Raj: President questions urgency behind Modi-government issuing seven ordinances", Indian Express dated January 08, 2015, accessed on March 03, 2015; <http://indianexpress.com/article/india/india-others/ordinance-raj-three-cabinet-ministers-had-raised-objections/>

⁵¹ "Rural Development Minister gave the government a scare by remaining incommunicado", DNA dated January 02, 2014, accessed on March 03, 2015; <http://www.dnaindia.com/india/report-how-rural-development-minister-gave-government-a-scare-by-remaining-incommunicado-2049070>

Exhibit 1: Ordinance Issued on December 31, 2014⁵²

The Gazette of India

EXTRAORDINARY

PART II – Section 1

PUBLISHED BY AUTHORITY

NEW DELHI, WEDNESDAY, DECEMBER 31, 2014/PAUSA 10, 1936 (SAKA)

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 31st December; 2014/Pause 10, 1936 (Saka)

THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN

LAND ACQUISITION, REHABILITATION AND RESETTLEMENT

(AMENDMENT) ORDINANCE, 2014

No. 9 of 2014

Promulgated by the President in the Sixty-fifth Year of the Republic of India.

An Ordinance to amend the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014. –

(2) It shall come into force at once.

2. In the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the principal Act), for the words “private company” wherever they occur, the words “private entity” shall be substituted.

3. In the principal Act, in section 2, -

⁵² Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and resettlement (Amendment) Ordinance, 2014, dated December 31, 2015, accessed on July 8, 2015, <http://www.prindia.org/uploads/media/Ordinances/RTFCTLARR%20Ordinance%202014.pdf>

(i) in sub-section (1), in clause (b), in sub-clause (i), the words “private hospitals, private educational institutions and” shall be omitted;

(ii) in sub-section (2), after the second proviso, the following proviso shall be inserted, namely: —

“Provided also that the acquisition of land, for the projects listed in section 10A and the purposes specified therein, shall be exempted from the provisions of the first proviso to this sub-section.”.

4. In the principal Act, in section 3,-

(i) in clause (j), in sub-clause (i), for the words and figures “the Companies Act, 1956”, the words and figures “the Companies Act, 2013” shall be substituted;

(ii) after clause (y), the following clause shall be inserted, namely:-

‘(yy)“private entity” means any entity other than a Government entity or undertaking and includes a proprietorship, partnership, company, corporation, non-profit organisation or other entity under any law for the time being in force.’.

5. In the principal Act, after Chapter III, the following Chapter shall be inserted, namely:—

“CHAPTER IIIA
PROVISIONS OF CHAPTER II AND CHAPTER III NOT TO APPLY
TO CERTAIN PROJECTS

10A. The appropriate Government may, in the public interest, by notification, exempt any of the following projects from the application of the provisions of Chapter II and Chapter III of this Act, namely: -

(a) such projects vital to national security or defense of India and every part thereof, including preparation for defense; or defense production;

(b) rural infrastructure including electrification;

(c) affordable housing and housing for the poor people;

(d) industrial corridors ; and

(e) infrastructure and social infrastructure projects including projects under public private partnership where the ownership of land continues to vest with the Government.”.

6. In the principal Act, in section 24, in sub-section (2), after the proviso, the following proviso shall be inserted, namely: -

“Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any account maintained for this purpose shall be excluded.”.

7. In the principal Act, in section 46, in sub-section (6), in the *Explanation*, in clause (b), the words “any person other than” shall be omitted.

8. In the principal Act, for section 87, the following section shall be substituted, namely: -

“87. Where an offence under this Act has been committed by any person who is or was employed in the Central Government or the State Government, as the case may be, at the time of commission of such alleged offence, no court shall take cognizance of such offence except with the previous sanction of the appropriate Government, in the manner provided in section 197 of the Code of Criminal Procedure.”.

9. In the principal Act, in section 101, for the words, “a period of five years” the words, “a period specified for setting up of any project or for five years, whichever is later,” shall be substituted.

10. In the principal Act, in section 105,-

(i) for sub-section (3), the following sub-section shall be substituted, namely: -

“(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1st January, 2015.”;

(ii) sub-section (4) shall be omitted.

11. In the principal Act, in section 113, in sub-section (1), -

(i) for the words “the provisions of this Part”, the words “the provisions of this Act” shall be substituted;

(ii) in the proviso, for the words “a period of two years”, the words “a period of five years” shall be substituted.

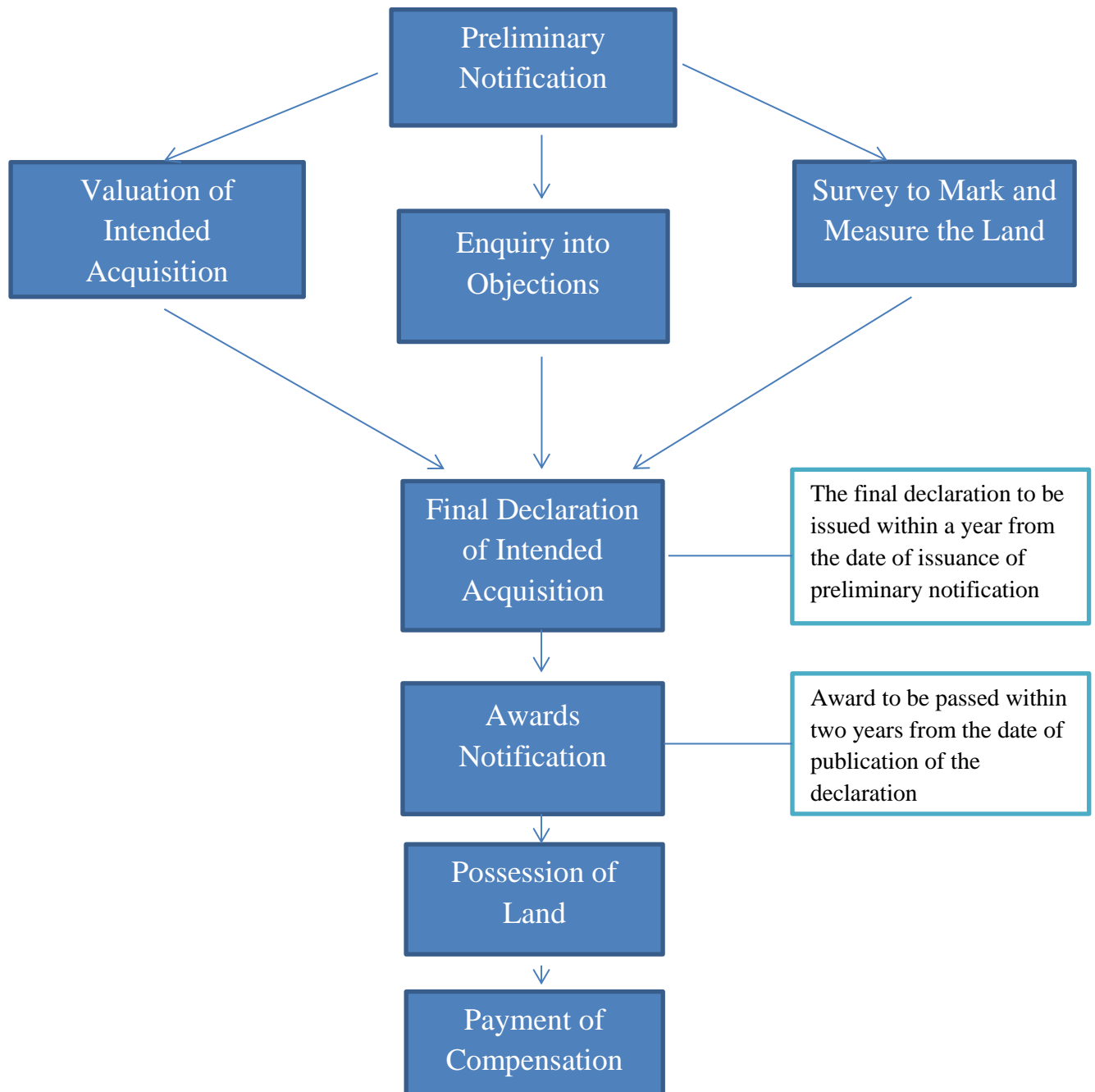
PRANAB MUKHERJEE,

President.

DR. SANJAY SINGH,

Secy. to the Government of India.

Exhibit 2: Land Acquisition Process under the LAA 1894⁵³



⁵³ Text of the Land Acquisition Act 1894, Department of Land Resources, Ministry of Rural Development, GoI

Exhibit 3: Major Amendments made to LAA 1894

1. Land Acquisition Amendment Act 1919⁵⁴

The definition of “Company” which was ‘a Company registered under the Indian Companies Act, 1882, or under the English Companies Act, 1862 to 1890, or incorporated by an Act of Parliament or of the Governor General in Council, or by Royal Charter or Letters Patent’ was extended to ‘include a society registered under the Societies Registration Act, 1860 and a registered society within the meaning of the Cooperative Societies Act, 1912’.

2. Land Acquisition Amendment Act 1921⁵⁵

The award declared for the claimant by the Collector was given the status of a decree and the statement of the grounds of every such award a judgment.

3. Land Acquisition Amendment Act 1923⁵⁶

Any person interested in any land which had been included in the preliminary notification could, within thirty days, after the issue of notification, object to the acquisition of the land or of any land in the locality to the Collector in writing. The Collector was required to submit the report containing his recommendations to the Local Government.

The valuation of the land was to be done as on the date of the publication of preliminary notification.

4. Land Acquisition Amendment Act 1933⁵⁷

Acquisition of land for Companies was extended to include ‘industrial concern, ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and not being a Company, desiring to acquire land for the erection of dwelling houses for workmen employed by the concern or for the provision of amenities directly connected therewith.’

5. Land Acquisition Amendment Act 1962⁵⁸

Acquisition of land for Companies was extended to include ‘acquisition needed for the construction of some building or work for a Company which was engaged or was taking to steps for engaging itself in any industry or work which was for public purpose.’

6. Land Acquisition Amendment and Validation Act 1967

⁵⁴ Text of Central Acts, Ministry of Law and Justice, Gol, accessed on March 05, 2015; <http://lawmin.nic.in/legislative/textofcentralacts/1919>

⁵⁵ Text of Central Acts, Ministry of Law and Justice, Gol, accessed on March 05, 2015; <http://lawmin.nic.in/legislative/textofcentralacts/1921>

⁵⁶ Text of Central Acts, Ministry of Law and Justice, Gol, accessed on March 05, 2015; <http://lawmin.nic.in/legislative/textofcentralacts/1923>

⁵⁷ Text of Central Acts, Ministry of Law and Justice, Gol, accessed on March 05, 2015; <http://lawmin.nic.in/legislative/textofcentralacts/1933>

⁵⁸ Text of Central Acts in, Ministry of Law and Justice, Gol, accessed on March 05, 2015; <http://lawmin.nic.in/legislative/textofcentralacts/1962>

The Act validated the acquisition initiated under the Land Acquisition Ordinance 1967.

In cases where the final declaration of intended acquisition was made after three years of expiry of the preliminary notification, the compensation award was to include a six percent interest on the market value of the land.

7. Land Acquisition Amendment 1984⁵⁹

‘Local authority’ included a town planning authority set up under any law.

Company meant i) a company defined under Companies Act 1956 ii) societies registered under the Societies Restriction Act, 1860 iii) A cooperative society within the meaning of any law relating to cooperative societies

‘Public purposes’ included a) the provision of village sites, or extension, planned development or improvement of existing village sites b) the provision of land for town or rural planning c) the provision of land for planned development from public funds d) the provision of land for corporation owned or controlled by the State e) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme of the government f) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored the government or Society or Cooperative g) the provision of land for any other schemes of development sponsored by government h) the provision of any premises or building for locating public office.

The words ‘or for a Company’ were added after ‘any public purpose’ to extend the scope of the purpose of acquisition.

The time for hearing of objections was extended from ‘thirty day from the issue of notification’ to thirty days from the publication of notification.’

Final declaration of intended acquisition would not be made after the expiry of one year from the date of publication of the notification.

The award by the Collector would be made an award within the period of two years from the date of publication of declaration and if no award is made within that period, the entire proceedings for the acquisition of land would lapse.

In addition to the market value of the land, in every award an amount calculated at the rate of twelve per cent per annum on the market value for the period commencing on and from the date of the publication of the notification.

⁵⁹ Text of Central Acts in Ministry of Law and Justice, GoI, accessed on March 05, 2015; <http://lawmin.nic.in/legislative/textofcentralacts/>

Exhibit 4: Key Features of the Land Acquisition (Amendment) Bill, 2007⁶⁰

Public Purpose

- The principal Act permits land acquisition if the land is to be used for a ‘public purpose’ project. ‘Acquisition’ refers to forcibly obtaining land without consent of the land owner. ‘Public purpose’ includes land needed for village sites, town or rural planning, land for residential purposes for poor or displaced due to natural calamities, land for planned development (including education, housing, health and slum clearance), or land needed by a state corporation. The Bill changes ‘public purpose’ to allow land acquisition only for (i) strategic naval, military, or air force purposes, (ii) public infrastructure projects, or (iii) for any purpose useful to the general public where 70% of the land has already been purchased from willing sellers through the free market.
- The Bill defines ‘infrastructure’ as any project relating to electricity, construction of roads, highways, bridges, airports, rail, mining activities, water supply, sanitation and sewerage, and any other notified public facility.
- Currently, private land may be acquired on behalf of a company for a ‘public purpose’ project. The Bill prohibits land acquisition for companies unless they have already purchased 70% of the land needed.

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.

Process for Land Acquisition

- ‘Appropriate government’ is determined by the location of the acquired land and the intended project. The principal Act gives jurisdiction over land acquired for public purposes to the GoI and for any other projects to the State Government. This Bill includes multi state land acquisition projects as GoI jurisdiction.
- To identify land needed for a public project, the government must issue a notification. The notification must be published in the Official Gazette and in two daily newspapers circulating in that locality. After a notification is published, the government is authorised to conduct work on the land to determine its suitability for an intended project. Any objections must be registered with the Collector’s office.
- If the land is suitable, the government must issue a declaration stating the land will be used for public purpose. The declaration must be issued within one year of notification; otherwise a fresh notification cannot be made for an additional year. If this time expires again, notification cannot be issued for five years. No individual shall make transactions or encumbrances on notified land until the final declaration is made or compensation is paid.
- The Bill states acquisition costs will include suffering or loss, payment for damages to the land during acquisition, cost of land needed for displaced residents, cost of

⁶⁰ PRS Legislative Brief on the Land Acquisition (Amendment) Bill, 2007;

http://www.prsindia.org/uploads/media/Land%20Acquisition/bill167_20080311167_Legislative_Brief_Land_Acquisition_Bill.pdf

infrastructure development at resettlement sites, and administrative costs of acquisition and resettlement. These costs must be borne by the entity acquiring the land.

- The Collector must make details of the land acquisition process, including compensation amounts, publicly available.

Assessing Market Value of the Land

- In the principal Act, the Collector only needs to determine the current price value of the land for compensation amounts. The Bill requires the Collector to take the highest value of: (i) the minimum land value for the area as specified in the Indian Stamp Act, 1899; (ii) the average sale price of at least 50% of the higher priced sales of similar land in the village or vicinity; or (iii) the average sale price of at least 50% of the higher priced land purchased for the project. The value of trees, plants, or standing crops damaged must also be included.
- In the event that a price is not available or the land is in an area where land sales have been previously restricted, the State Government shall set the floor price per unit of land. This price will be determined by average prices of at least 50% of the higher priced land in the vicinity.
- While determining compensation, the Collector must also factor in the intended use of the land and the value of such land in the current market.

Compensation

- In the principal Act, the term ‘person interested’ includes those who are claiming land compensation and those interested in an easement (limited right of use of the land) on the land. The Bill proposes to expand the definition to include tribal and other traditional forest dwellers who have lost any traditional rights as well as individuals with tenancy rights under state law.
- In addition, if any damages are incurred on land excluded from acquisition proceedings, the appropriate owner must be compensated within six months.
- Payment for acquired land must be made within one year from the date of the declaration. The Collector can extend this time limit by six months with a penalty of 5% per month. If payment has not been made within one year nor has the Collector granted an extension, the land acquisition proceedings shall lapse.
- After the compensation amount is determined, the Collector must ensure that payment occurs within 60 days. Possession of land shall not be taken unless full compensation is paid or tendered to the land owner.
- Land owners whose property has been acquired under urgency shall be compensated an additional 75% of the market value of the land.
- If the acquisition is for a company, shares or debentures of 20 to 50% of the compensation amount must be offered through these options. The interested person may either accept this offer or opt for a full cash settlement.

Restrictions on Acquired Land

- Land acquired can be transferred only for a public purpose and with prior approval from the appropriate government.

- Acquired land that is unused for 5 years from the date of possession shall be returned to the appropriate government.
- Whenever acquired land is transferred to another individual, 80% of the difference between the consideration received and the original acquisition cost shall be shared among the original land owners and their heirs.

Land Acquisition Compensation Disputes Settlement Authorities

- Currently, all land acquisition cases are referred to civil courts for a decision. The Bill establishes the Land Acquisition Compensation Disputes Settlement Authority at both the state and national levels to adjudicate all land acquisition disputes within six months. The Bill gives these Authorities the same powers as a civil court and deems all proceedings of the Authorities as judicial proceedings. The government may form more Authorities or benches.
- In the event of a dispute, the land owner must file a written complaint with the Collector. The Collector shall refer any dispute cases to the Authority within 15 days from the receipt of the complaint. If the Collector fails to act, the land owner may petition the Authority directly to request the Collector to file the reference within 30 days.
- If the Authority decides in favour of the land owner, they shall award compensation for (i) market value of the land, (ii) property damages, (iii) damages to the land owner, (iv) damages to the land owner's salary, movable, or immovable property, (v) expenses incurred by the owner for change of residence or business, and (vi) any damages resulting in a loss of profits from the time of declaration to possession of the land. In the Act, the Authority awards a sum of 12% of market value from the publication of notification to the date of possession or compensation paid. Furthermore, the land owner receives an additional sum of 30% of the market value. The Bill increases this sum to 60% of market value.

Exhibit 5: Key Features of the Rehabilitation and Resettlement Bill, 2007⁶¹

The Bill identifies the GoI 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.

Authorities for R&R

- 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 GoI 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

⁶¹ PRS Legislative Brief on Rehabilitation and Resettlement Bill, 2007;

http://www.prsindia.org/uploads/media/Rehabilitation%20and%20Resettlement/bill168_20080311168_Legislative_Brief_Rehabilitation_and_Resettlement_Bill.pdf

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.
- 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.

Exhibit 6: The Summary of the NAC's Recommendations for LARR 2011⁶²

The proposal of the NAC Working Group on LARR 2011 was presented in the thirteenth meeting of the National Advisory Council which was chaired by Sonia Gandhi on May 25, 2011. Members who attended the meeting were Narendra Jadhav, Pramod Tandon, Jean Dreze, NC Saxena, Madhav Gadgil, Aruna Roy, Anu Aga, AK Shiva Kumar, Deep Joshi, Farah Naqvi, Harsh Mander and Mirai Chatterjee.

The NAC recommended that the proposed legislation had the following key elements:

- a. A single comprehensive law which would discourage forced displacement, and minimize adverse impacts on people, habitats, environment, food security and biodiversity. The proposal noted “the law should ensure that all possible options of more barren, less fertile and waste lands have been explored before acquiring agriculture land. It should also comprehensively define PAFs, and provide for a just, timely compensation, resettlement and rehabilitation package through a humane, participatory, informed, consultative and transparent process, allowing for effective and fair implementation.”
- b. On the condition that other less displacing alternatives were not available, the law would provide for acquisition only for public purposes. This would be defined as acquisition necessary for strategic and infrastructural purposes, and for social services like education and health care.
- c. The NAC was deeply concerned above all that all persons who lost their lands, livelihoods and shelter because of acquisition for any public purpose should be brought under the protection of this law, and their rights to suitable compensation, resettlement and rehabilitation benefits were fully protected in all cases
- d. The processes would be transparent and participatory, requiring full information and consultation with affected communities.
- e. Compensation was greatly under valued, because registered sale deeds were under valued. Therefore NAC proposed that compensation for those who lose land would be six times the registered sale deed value, including solatium. The assignees of government land would also be entitled to the same compensation. The option would also be offered to those who lose land to receive all or part of their compensation in the form of annuities.
- f. A very significant proposal for the poor was that not only those who lose land, but also those who lose livelihoods should be compensated. These included agricultural workers, artisans, fisherfolk and forest gatherers. They would be entitled to a grant amounting to ten days of minimum wages per month for 33 years.
- g. The land would be held jointly by women and men of the family, and other assets as well as cash would be paid into joint accounts held by women and men.
- h. If land was acquired for a public purpose and not used within five years, private property that was acquired would be returned to its original owners.
- i. Urgency clause would not be used, unless it for national security and defense purposes.

⁶² Press Release by the NAC on May 25, 2011;

http://www.prsindia.org/uploads/media/Land%20Acquisition/NAC%20press%20release_Land%20Acq%20and%20others.pdf

- j. An independent SIA would be conducted for all larger projects. The SIA would assess the social and environmental impacts from the project, and the R&R plan drawn up.
- k. Resettlement and Rehabilitation package was a legal right to the PAFs and was to be notified along with Section 6 notification, declaring acquisition of lands.
- l. At least one person from affected family would be given first preference in available employment in commercial projects, in conformity with their skills.
- m. A National Commission for Land Acquisition, Resettlement and Rehabilitation (NCLRR) would be set up, with powers to supervise, and exercise oversight over land acquisition, resettlement and rehabilitation. Penal fines were to be imposed by NCLRR based on responsibility fixed by state government by issuing job charts.

Exhibit 7: Summary of the SCRD Report on the LARR Bill 2011

Issues	Land Acquisition, Rehabilitation And Resettlement Bill, 2011⁶³	Recommendation by the SCRD⁶⁴
Affected Families	Clause 3 (b) & (c): ‘Affected family’ to include (i) landowners; (ii) agricultural labourers, tenants who have been working in the affected area for three years prior to the acquisition; (iii) tribals and forest dwellers; (iv) families whose livelihood for the previous three years is dependent on the forests or water bodies; and (v) families who have been given land by the state or central government.	Inclusion of the following within the definition of affected family: <ul style="list-style-type: none"> a. ‘Tribals’ should be substituted by ‘Scheduled tribes’ b. ‘Traditional rights’ should be substituted by ‘forest rights’ c. ‘Affected people’ should be substituted with ‘affected family’ d. ‘Three years’ in the definition should become ‘three years or more’.
Family	Clause 3 (m): Family includes a person, his or her spouse, minor children, minor brothers and sisters dependent on him.	Widows, divorcees and abandoned women should be considered a separate family. Further, every person in a joint landholding shall be considered a separate family
Land Bank	No definition of the term land bank.	The term land bank should be clearly defined.
Social Impact Assessment (SIA)	<p>Clauses 4 to Clause (6):</p> <p>4(1) Whenever the appropriate Government intends to acquire land for a public purpose, it shall carry out a Social Impact Assessment study in consultation with the Gram Sabha at habitation level or equivalent body in urban areas, in the affected area in such manner and within such time as may be prescribed.</p> <p>(2) The Social Impact Assessment study referred to in sub section (1) shall, amongst other matters, include all the following, namely:—</p> <p>(a) assessment of nature of public</p>	<p>Inclusion of ‘Zones of Influence’ within the Social Impact Assessment study, when acquisition is proposed in Fifth Schedule areas, to determine whether any change in livelihoods, social practices and environmental conditions may arise through the setting up of industry, mines, roads etc. in a manner that may prove to be detrimental to the people living in the area contiguous to the site of the proposed acquisition.</p> <p>The Clauses dealing with SIA do not spell out the proposed composition of the SIA Teams/Body/Group which would undertake SIA. The Social Impact Assessment teams should</p>

⁶³ LARR Bill 2011, Department of Land Resources, Ministry of Rural Development, Gol

⁶⁴ Standing Committee on Rural Development’s Report on the LARR Bill 2011

	<p>interest involved;</p> <p>(b) estimation of affected families and the number of families among them likely to be displaced;</p> <p>(c) study of socio economic impact upon the families residing in the adjoining area of the land acquired;</p> <p>(d) extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition;</p> <p>(e) whether the extent of land proposed for acquisition is the absolute bare minimum extent needed for the project;</p> <p>(f) whether land acquisition at an alternate place has been considered and found not feasible;</p> <p>(g) study of social impact from the project, and the nature and cost of addressing them and their impact on the overall costs of the project and benefits vis à vis the social and environmental costs.</p>	<p>include the Presidents or the nominees of Panchayats at all levels involved in the acquisition. These representatives must act in accordance with written mandates given to them by respective Gram Sabhas concerned.</p> <p>In the matter of land acquisition in urgency provisions, after Clause 9, the following proviso may be added: 'Provided that no such land shall be acquired by invoking such provision unless the appropriate Government has issued notice and called for objections upon such notice and such objections have been heard and disposed off.'</p>
Public Purpose	<p>'Public purpose' includes provision of land for, (a) strategic defence purposes and national security, (b) roads, railways, highways, and ports, built by government and public sector enterprises (c) project affected people, (d) planned development or improvement of villages, and (e) residential purposes for the poor and landless. Public purpose includes other government projects which benefit the public as well as provision of public goods and services by private companies or PPPs; these require the consent of 80 per cent of project affected people.</p>	<p>'Public purpose' in the draft Bill should be limited to linear infrastructure and irrigation, including multipurpose dams, and social sector infrastructure, such as schools, hospitals and drinking water/sanitation projects constructed at State expense.</p> <p>Therefore, public purpose should be limited to state sponsored projects as defined in Clause 3(za) (i) to (vi) (A).</p> <p>The provisions relating to acquisition of land for private companies and PPPs should be deleted (Clause 3(za) (vi) (B) and (vii)].</p>
Acquisition for Private Companies and PPPs	<p>Land may be acquired for use by the government for its own use, control; or for the purpose of use by private companies; or for public private partnerships (PPPs) and also private companies for the use of public purpose.</p>	<p>The Committee recommended that land should not be acquired for use by PPPs and private companies.</p>
Infrastructure	<p>'Infrastructure projects' to include</p>	<p>Clause 3 (o) (v) gives wide discretion</p>

Projects	projects related to the generation of electricity, telecommunication services, roads and highways, water supply, and any other project that may be notified by the government.	to the government to define infrastructure projects and it should be deleted. Infrastructure projects should be included in the definition of public purpose.
Notification and Acquisition	Chapter IV of the Bill provides for the Notification and Acquisition. Clauses in this Chapter inter alia include Publication of preliminary notification, Preliminary survey of land, Payment for damage, Lapse of Social Impact Assessment Report, Hearing of objections, Publication of declaration, Notice to persons interested, Rescission of Preliminary Notification, etc.	The words 'have been consulted' should be replaced by the words 'have given consent' so that the approvals of the Gram Sabha or equivalent urban body become mandatory.
Determination of Market Value and Compensation.	<p>Clauses 26-29 and the First Schedule deal with the minimum compensation package in terms of monetary benefits to be given to the landowner.</p> <ol style="list-style-type: none"> a. Clause 26 of the Bill provides for the criteria in assessing and determining the market value of land by Collector. b. Clause 27 seeks to provide determination of amount of compensation by the Collector after having determined the market value of the land. c. Clause 28 provides for determination of value of things attached to the land. d. Clause 29 seeks to provide award of solatium by the collector after having determined the total compensation to be paid to arrive at the final award. e. The First Schedule to the Bill spells out the components that shall constitute minimum compensation package. 	<p>After Clause 29(1), the following Sub Clause may be added: '(2) The appropriate Government shall constitute multi member land pricing commission or authority to finalise cost of land acquisition/compensation State wise/area wise as determined under Clause 29(1) read with Schedule I to Bill'.</p> <p>The land compensation calculated under Clause 26 read with First Schedule of the Bill should be treated for compensation purposes and may not be taken as base for circle rate for subsequent acquisitions.</p>
Rehabilitation and	The Second Schedule of the Bill provides for the element of	The appropriate government should constitute a multi-member land

Resettlement Package.	<p>Rehabilitation & Resettlement entitlement for all the affected families both land owners and the families whose livelihood is primarily dependent on land acquired in addition to the compensation package to be given to those whose land is acquired as per the First Schedule to the Bill.</p> <p>On the issue of multi displacement, the DoLR has agreed for double compensation in such cases.</p>	<p>pricing commission or authority to finalise the cost of land acquisition state wise/area wise.</p> <p>The Government should re-examine all the monetary components so as to bring it at par with the amounts being given at present in some of the States.</p> <p>There should also be specific provision to link all the amounts to Consumer Price Index so that these are upgraded automatically. This periodical increase would not be subject to legislative approval.</p> <p>Also, 12 per cent interest per annum should be paid in addition to the compensation from the date of the notification till the date of the award.</p> <p>Provision should be made in the Bill stating that a family once displaced will not be displaced again except in exceptional cases.</p>
Un utilized Land.	If an acquired land is left unutilized for a period of 10 years from the date it was acquired, it shall be returned to the Land Bank or the appropriate government.	This period should be reduced to five years and if left unutilized, the land should be returned to the land owners.
Land Acquired in Urgency.	In case of land acquisition in urgency, an additional 75 per cent compensation shall be provided. The Bill provides that if a land is proposed to be acquired under the urgency provisions, an SIA may not be conducted.	<p>In cases of urgency it should be clarified that the extra compensation would be 75 per cent of the total compensation package / solatium calculated.</p> <p>The Committee also recommended that a notice should be issued in case an SIA is not conducted in an acquisition under the urgency provisions.</p>
Irrigated Land	While the LARR Bill provides for multi-cropped irrigated land to be acquired only as a last resort, food security cannot only be limited to rice and wheat in the face of the imperative need for more nutritional coarse grains, pulses and oilseeds.	In Chapter III, all provisions regarding ‘irrigated multi cropped land’ be replaced by ‘any land under agriculture cultivation’ so as to ensure safeguard for food security in a full measure.

Other Provisions	<p>As per Clause 98 of the Bill, the proposed Act is not to apply to the land acquisition processed under various Acts in the Fourth Schedule. These acts are listed below:</p> <ol style="list-style-type: none"> a. The Ancient Monuments and Archaeological Sites and Remains Act, 1958. b. The Atomic Energy Act, 1962. c. The Cantonments Act, 2006. d. The Damodar Valley Corporation Act, 1948. e. The Indian Tramways Act, 1886. f. The Land Acquisition (Mines) Act, 1885. g. The Metro Railways (Construction of Works) Act, 1978. h. The National Highways Act, 1956. i. The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962. j. The Requisitioning and Acquisition of Immovable Property Act, 1952. k. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948. l. The Special Economic Zones Act, 2005. m. The Coal Bearing Areas Acquisition and Development Act, 1957. n. The Electricity Act, 2003. o. The Railways Act, 1989. p. The Works of Defence Act, 1903. 	<p>There is no need to exempt any of these Central Acts from the purview of LARR Bill and the Fourth Schedule and Clause 98 be deleted.</p> <p>To bring these 16 Central Acts at par with LARR Bill, these Acts will require amendments, particularly for the purpose of land compensation, provisions of R&R entitlements and provisions of infrastructural facilities to the land owners/affected families.</p>
	<p>Applicability of the LARR bill on the Schedule V and VI Areas.</p>	<p>There should be no alienation of land or any land acquisition in Scheduled Areas. Where public purpose projects are unavoidable, special provision should be made for increased compensation and resettlement and rehabilitation provisions that enforce stricter conditions such as relocation in a</p>

		<p>similar ecological location, with communities being mandatorily relocated together so as to preserve the economic opportunities, language, culture and community life of the tribal communities.</p> <p>Further it should be ensured that the consent or approval by majority of Gram Sabhas and Autonomous District Councils is taken and not limited merely to consultation with them.</p> <p>The provisions of the PESA must be strictly observed and indicated in all related provisions in the LARR Bill.</p>
	<p>The Bill provides that the Gram Sabha shall be consulted at time of preparing the SIA and at the time of issuing the preliminary notification for acquisition.</p>	<p>The Bill should be amended to provide for more participation by local self government institutions, and hence their roles must be clearly defined. Their role should not be limited to merely consultation, but their consent should be obtained in all the matters pertaining to acquisition and R&R.</p> <p>The elected local authorities should be entrusted with the decision making process regarding issues such as acquisition of land, review of R&R schemes, determination of compensation, and any dispute regarding the compensation awarded.</p> <p>Further, a Schedule V should be added to the Bill detailing the devolution of powers with respect to the Panchayats in rural areas and Municipalities in urban areas.</p>

Exhibit 8: Suggested Amendments by the BJP in the All Party Meeting on LARR Bill 2011⁶⁵

1. Proper categorisation of the purpose of land acquisition as the terms are often changed to enable industries to increase profits
2. Size and quality of land must be justified for a project. Quantum of land requirement needs to be assessed independently
3. Laws providing unreasonably high statutory requirements for land need to be amended
4. Land owners and tillers should be given the choice to give land on lease or rent, instead of complete acquisition and ownership transfer. Annuity system of 33/ 99 years. Lessee should pay annuity, apart from the lease rent
5. A portion of benefits accrued due to the development on the acquired land should be shared with the farmers and other dependents on an ongoing basis
6. No one should be displaced more than once
7. Land allotted under Forest Rights Act should be exempted from any acquisition
8. LARR Authority must be presided over by a sitting judge and processing of cases should be fast tracked .
9. Social Impact Assessment should involve the local MP/ MLA as well as NGOs
10. Implementation of Rehabilitation and Resettlement clauses should be done with retrospective effect
11. Farmer whose land has been acquired should be given permission to change land use on any remaining piece of land
12. Laws exempted under fourth schedule should be amended and brought under the rehabilitation and resettlement clauses under the scheme

⁶⁵ "Sushma Swaraj's pro-farmer stand on Land Acquisition Bill finds takers in Congress", India Today dated April 10, 2013, accessed on February 18, 2015; <http://indiatoday.intoday.in/story/land-acquisition-bill-land-bill-sushma-swaraj-bjp-narendra-modi-congress/1/261493.html>

Exhibit 9: Key Features of RFCTLARR Act 2013^{66,67}

1. **Social Impact Assessment:** The Social Impact Assessment would assess the social and environmental impacts from the project, and the nature and cost of addressing them and their impact on the project's overall costs and benefits and also the R&R plan. Except irrigation projects all others would undergo compulsory social impact assessment study.

The SIA report would be evaluated by an independent multi-disciplinary Expert Group, which would include two non-official social scientists, two representatives of Panchayati Raj Institutions, two experts on rehabilitation and a technical expert in the subject relating to the project. The independent committee would undertake a comprehensive assessment of options, involving an examination of the benefits of each of the projects options vis à vis the social and environmental costs, and with a view to minimize displacement. The SIA report would be examined further by a committee to ensure that the proposal for land acquisition meets certain specified conditions.

2. **Redefining Public Purpose:** The Act defined 'public purpose' as:

- i. the provision of land for strategic purposes relating to naval, military, air force, and armed forces of the Union or any work vital to national security or defense of India or State Policy
- ii. for infrastructural projects like infrastructural projects under the Department of Economic Affairs, projects involving agricultural infrastructure, industrial corridors or mining activities, water harvesting and water conservation projects, government aided educational and research institutions, projects for sports, healthcare and tourism etc.
- iii. The provision of land for PAFs;
- iv. The provision of land for project for housing of different income groups
- v. The provision of land for planned development
- vi. The provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities or displaced or affected by the implementation of any government scheme.

3. The Act widened the definition of "affected term" to include both the land losers and livelihood losers. The time period of dependence on the acquired land was three years prior to the acquisition.

4. **Rehabilitation and Resettlement:** The key features of the Rehabilitation and Resettlement package were:

⁶⁶ Excerpts from the RFCTLARR Act, 2013, Department of Land Resources, Ministry of Rural Development; <http://www.dolr.nic.in/dolr/downloads/pdfs/Right%20to%20Fair%20Compensation%20and%20Transparency%20in%20Land%20Acquisition,%20Rehabilitation%20and%20Resettlement%20Act,%202013.pdf>

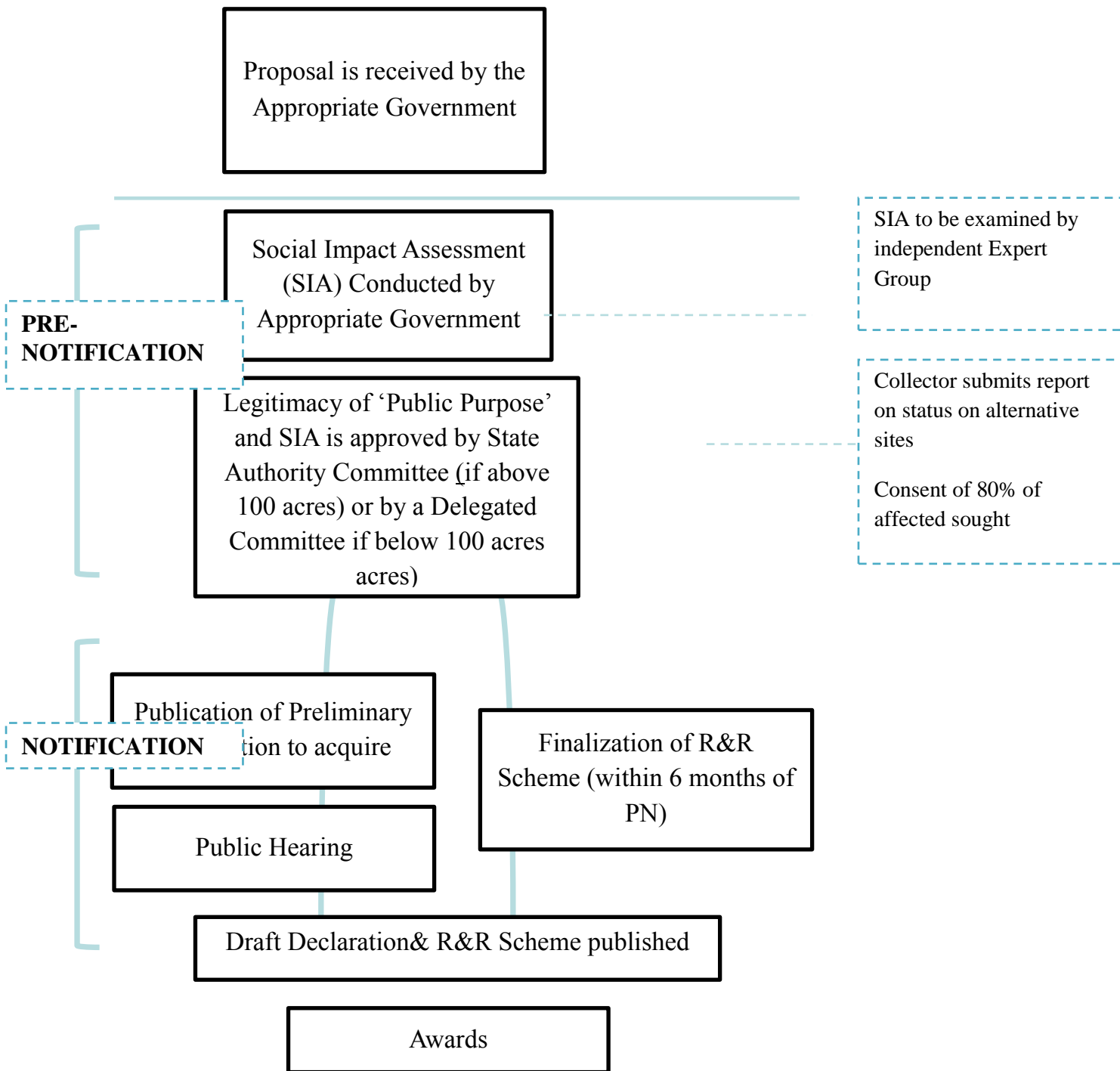
⁶⁷ "All you wanted to know about the new Land Acquisition Bill", LiveMint dated August 30, 2013, accessed on March 03, 2015; <http://www.livemint.com/Politics/FXZ9CrJApXRowyzLd8mb20/All-you-wanted-to-know-about-new-land-acquisition-Bill.html>

- PAFs were entitled to mandatory R&R package in case of every acquisition and in case of private purchase of over 100 acres in rural areas and 50 acres in urban areas.
 - R&R scheme would be discussed in the Gram Sabha for rural areas and equivalent bodies in case of urban areas.
 - Land for a house as per the Indira Awas Yojana in rural areas or a constructed house of at least 50 square metres plinth area in urban areas
 - Where jobs are created through the project, PAFs would be given the option annuity or employment.
 - To support relocation, each PAF will get a subsistence allowance and a transport allowance, which will be higher for the SC/STs.
 - One-time resettlement allowance of Rs 50000 for each affected family
 - One-time grant to artisans, small traders and self-employed person or an affected family which owned non-agricultural or commercial, industrial or institution structure in the affected area.
 - Fishing rights in the reservoirs for the affected family
 - All affected families are also given training and skill development while being offered employment.
 - Each resettlement area will be provided with a number of facilities including roads within the area and an all-weather road link to the nearest pucca road, transport services, proper drainage and sanitation facilities, assured sources of safe drinking water, electric connections and public lighting, schools as per the provisions of the Right to Education Act, primary health centre, basic irrigation facilities, and various other facilities
 - Institutional mechanism for R&R in the form of institutions of Administrator for Rehabilitation and Resettlement, Commissioner for Rehabilitation and Resettlement, Rehabilitation and Resettlement Committee at project level, the Land Acquisition, Rehabilitation & Resettlement Authority at State level and National Monitoring Committee at Central level.
5. Compensation: The Act provided compensation of four times the market price in rural areas and twice the market price in urban areas. This included a solatium of 100 percent of the compensation. Apart from this value of assets attached to the land would also be part of the compensation package.
6. Retrospective Operation: The Act applied retrospectively to cases where no land acquisition award had been made. Also in cases where the land was acquired five years ago but no compensation had been paid or no possession had taken place, the land acquisition process would have to be started afresh in accordance with the provisions of this act.
7. Safeguarding food security:

- Multi-crop irrigated land would not be acquired except as a demonstrably last resort measure, which in no case should lead to acquisition of more than 5 percent of multi-crop irrigated area in a district.
 - States were also required to impose limits on the area of agricultural/multi-crop land that could be acquired in a State. No acquisition of such lands in excess of the limit could take place.
 - When acquiring agricultural land the State had to cultivate an equivalent area of land elsewhere as agricultural land in a State.
8. The Act provided strict timelines within which the land acquisition as well as the R&R process had to be completed. This included a provision of six months for the SIA process and an overall limit of 35 months for the land acquisition process. Full payment of compensation would be made within a period of three months. The components of the Rehabilitation and Resettlement Package in the Second and Third Schedules that relate to infrastructural entitlements would be provided within a period of 18 months from the date of the award. It had also been provided that in case of irrigation or hydro-power projects, R&R would be completed in six months before submergence.
 9. Consent: For land proposed to be acquired in any area for public purpose as part of a public-private partnership project, the prior consent of 70 percent of the affected land owners had to be sought and in case of private company, prior consent of 80 percent of the affected land owners had to be sought.
 10. The possibility of abuse of the "urgency clause" was reduced by limiting its application to the requirement "for the defense of India or national security or for any emergencies arising out of natural calamities."
 11. Return of unutilized land: In case land remains unutilized after acquisition for a period of five years, the Act empowered states to return the land either to the owner or to the State Land Bank.
 12. Share in appreciated land value: When the land was sold to a third party for higher price, 20% of the appreciated land value would be shared with the original land owners.
 13. The Act recognized the role of self governance institutions and Gram Sabhas and provided for consultation with them at the time of preparing the SIA and at the time of issuing the preliminary notification for acquisition
 14. Interests of scheduled caste and scheduled tribes protected: The Act had taken special care to protect the concerns of SCs/STs. In addition to the R&R package, SC/ST families would be entitled to the following additional benefits:
 - Acquisition of land in Scheduled Areas would be done as a demonstrable last resort
 - The prior consent of the concerned Gram Sabha or the Panchayats or the autonomous District Councils at the appropriate level in Scheduled Areas under the Fifth Schedule to the Constitution, as the case may be, would be obtained in all cases of land acquisition in Scheduled Areas.
 - A Development Plan was to be prepared laying down the details of procedure for settling land rights
 - One-third of the compensation would be paid as part of the first installment

- Resettlement in same scheduled area
- Free of cost land for community and social gatherings
- Alienation of tribal lands to be void
- Additional benefits if resettled outside scheduled areas
- Higher land-for-land area for SCs/STs
- Additional amount of rupees 50,000 for SC/ST displaced from Scheduled Areas

Exhibit 10: Land Acquisition Process under RFCTLARR 2013⁶⁸



⁶⁸ LARR_Act Cabinet Version ppt, Ministry of Rural Development, GOI

Exhibit 11: Constitutional Provision on Ordinance

Article 123 of the Constitution of India 1949 provides the following provision of ordinance⁶⁹:

123. Power of President to promulgate ordinances during recess of Parliament.

1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

(2) An ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such ordinance.

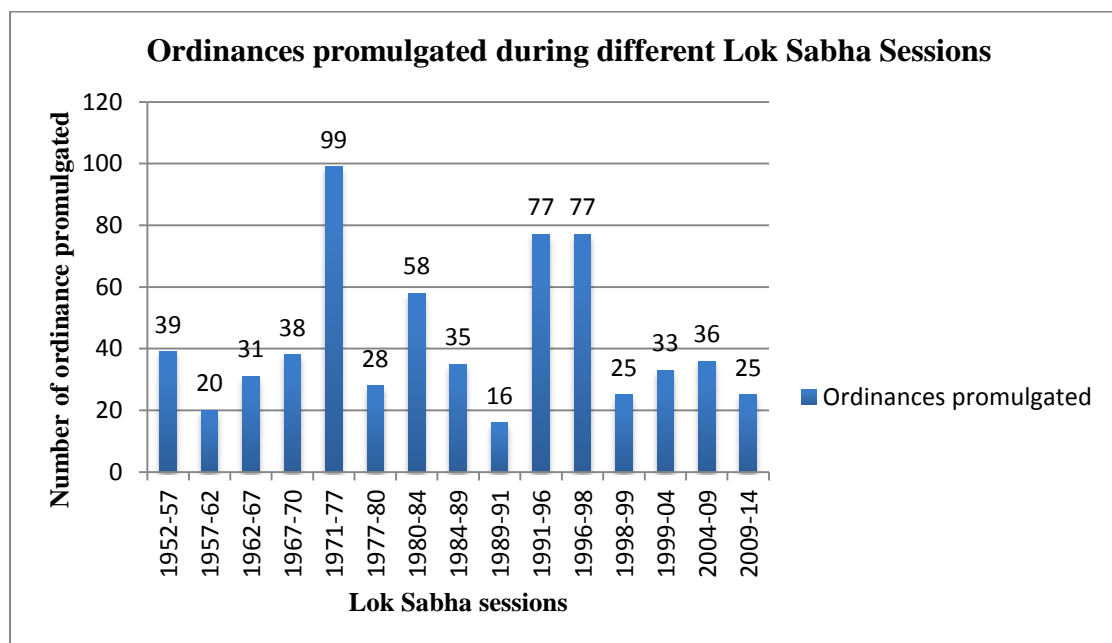
(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

Explanation: Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

⁶⁹ Part V, Constitution of India, Ministry of Law and Justice; accessed at [http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss\(9\).pdf](http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss(9).pdf)

Exhibit 12: Ordinances Passed during various Lok Sabha Sessions⁷⁰

Prime Minister	Lok Sabha Session	Lok Sabha Years	Ordinances Promulgated
Jawaharlal Nehru	1st	1952-1957	39
Jawaharlal Nehru	2nd	1957-1962	20
Jawaharlal Nehru (1962-1964), Gulzarilal Nanda (1964), Lal Bahadur Shastri (1964-1966), Gulzarilal Nanda (1966), Indira Gandhi (1966-67)	3rd	1962-1967	31
Indira Gandhi	4th	1967-1970	38
Indira Gandhi	5th	1971-1977	99
Morarji Desai (1977-1979), Charan Singh (1979-1980)	6th	1977-1980	28
Indira Gandhi	7th	1980-1984	58
Rajiv Gandhi	8th	1984-1989	35
Vishwanath Pratap Singh (1989-1990), Chandra Shekhar (1990-1991)	9th	1989-1991	16
PV Narasimha Rao	10th	1991-1996	77
Atal Behari Vajpayee (May 16 - June 1, 1996), HD Deve Gowda (June 1, 1996 - April 21, 1997), IK Gujral (April 21, 1997 - March 19, 1998)	11th	1996-1998	77
Atal Behari Vajpayee	12th	1998-1999	25
Atal Behari Vajpayee	13th	1999-2004	33
Dr. Manmohan Singh	14th	2004-2009	36
Dr. Manmohan Singh	15th	2009-2014	25
Total			637

Source: PRS Legislative

⁷⁰ "Ordinances promulgated during different Lok Sabha sessions", PRS Legislative, April 21, 2014; <http://www.prsindia.org/theprsblog/?p=3195>

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