

Mapping Dilutions in a Central Law:

A Comparative Analysis of State Level Rules made under The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013

Kanchi Kohli and Debayan Gupta

Centre for Policy Research-Namati Environmental Justice Program

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EXECUTIVE SUMMARY

For the last two years, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has been in the eye of debate and discussed for the controversial changes the National Democratic Alliance (NDA) government had sought to bring about through ordinances. Even though fate of the amendments rests currently with the Joint Parliamentary Committee report, several states have already brought about changes through Rules under Section 109 of the Act.

An examination of these state specific Rules reveals they are headed towards:

- Adopting the changes proposed in the ordinances amending the central law
- Diluting the applicability of the progressive clauses like consent or SIA
- Clarifying procedures for implementation at the state level

The United Progressive Alliance (UPA) government had replaced the Land Acquisition Act, 1894 with the newly enacted RFCLARR Act, 2013. Though critiqued for expanding the definition of public purpose to include the private sector, the new legislations had been welcomed by social movements, farmers groups and NGOs. This is primarily for the need for a Social Impact Assessment (SIA), the requirement for prior consent, food security provisions and clear compensation related provisions. What was also central to this discussion were the clauses which allow for unused land to be returned to original owners.

The Rules framed by the States aim to make the process of land acquisition much simpler for investors. While certain States reduce the time period for the conducting of the SIA process or do away with it in its entirety, there are others who make reductions in the compensation award or modify the applicability of the retrospective clause. There are also States which directly adopt the provisions in the ordinance that aim to remove the requirement for consent from the land acquisition procedure.

This working paper attempts to trace and analyse how the state governments have modified and built upon the central Act. It also looks briefly at litigation that has emerged especially around the applicability of the retrospective clause of the law, ie. which requires the return of unused land to original owners or reinitiating processes under the 2013 law.

INTRODUCTION

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013 has, from the time of its conceptualisation, raised many questions and sparked several debates.¹ The Act, which replaced an earlier 1894 law, was debated over for almost two years. People's movements and civil society organisations had analysed that while the new law had several positive features like consent of land owners or food security related provisions. However, critiques related to the broader definition of public purpose were listed amongst the few fundamental shortcomings.² On the other hand, industries' representatives and their associations expressed felt that the entire process of acquiring land under the new law was expensive and time consuming.³

May 2014 saw a change of government at the Centre. The Bharatiya Janata Party (BJP) led alliance had positioned economic development as an essential theme of the election campaign.⁴ Almost immediately after this change of power, there were statements and press releases by industry outfits. These included statements by the Confederation of Indian Industries (CII) and the Federation of Indian Chambers of Commerce and Industry (FICCI) on 20.05.2014 and 26.05.2014 that questioned the framework of the new law. According to them, the 2013 law would cause serious delays in land acquisition and affect the investment climate in the country.⁵

This was followed by an all states meeting to discuss the provisions of the RFCTLARR Act, 2013 which had been called for by the then Union Minister for Rural Development, Nitin Gadkari, on 27.06.2014.⁶ In this meeting it was proposed that several substantial changes would be made to the RFCTLARR Act, 2013 by way of amendments.⁷

A major set of amendments were introduced by an ordinance, which was promulgated by the President of India on 31.12.2014.⁸ The RFCTLARR (Amendment) Bill, 2015 was then introduced in the Lok Sabha on 24.02.2015. Though it was passed by the lower house on 10.03.2014, the assent of the upper house still remained to be taken.⁹ Even as the matter was debated in the Rayja Sabha, to keep the amendments in operation, the government took the final count of ordinances to three by passing two more ordinances, namely the RFCTLARR (Amendment) Ordinance, 2015 and

¹ Chatterjee, D. (2013, September 23). Why India Inc is not happy with the new land Bill. *Business Standard*. Retrieved from http://www.business-standard.com/article/companies/why-india-inc-is-not-happy-with-the-new-land-bill-113092100369_1.html

² Patnaik, S. (2013, September 7). Land Acquisition Bill has some flaws, say civil society members. *The Hindu*. Retrieved from <http://www.thehindu.com/todays-paper/tp-national/tp-andhrapradesh/landacquisition-bill-has-some-flaws-say-civil-society-members/article5103262.ece>

PTI (2013, November 30). Land Acquisition Act has 'loopholes': Medha Patkar. *The Economic Times*. Retrieved from http://articles.economictimes.indiatimes.com/2013-11-20/news/44285191_1_land-acquisition-act-medha-patkar-resettlement-act

³ Goswami, U. A. (2013, October 10). Land Acquisition will be a time-bound activity: Reports. *The Economic Times*. Retrieved from http://articles.economictimes.indiatimes.com/2013-10-10/news/42903171_1_landacquisition-law-icici-bank-retrospective-applicability

⁴ Ek Bharat-Shreshtha Bharat, Bharatiya Janata Party Election Manifesto 2014, p. 29. Retrieved from http://www.bjp.org/images/pdf_2014/full_manifesto_english_07.04.2014.pdf

⁵ ET Bureau (2014, May 20). Narendra Modi- led NDA government: Industry chambers ready with their economic agenda. *Economic Times*. Retrieved from http://articles.economictimes.indiatimes.com/2014-05-20/news/49974753_1_land-acquisition-act-land-banks-goods-and-services-tax

⁶ ET Bureau (2014, July 15). Government calls for all-party meet to relook on Land Acquisition Act. *Economic Times*. Retrieved from <http://economictimes.indiatimes.com/news/politics-andnation/government-calls-all-party-meet-to-relook-on-land-acquisition-act/articleshow/38395323.cms>

⁷ *Id.*

⁸ Raghuram, G., & Sunny, S. (2015). Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Ordinance 2014: A process perspective (No. WP2015-07-03). Ahmedabad: Indian Institute of Management Ahmedabad, Research and Publication Department.

⁹ Singh, M. (2015, June 1). Land Acquisition Ordinance re-promulgated as Amendment Bill Lies with Joint Parl Committee. 1, *Law Street*. Retrieved from <http://onelawstreet.com/2015/06/land-acquisition-ordinance-re-promulgated-as-amendment-bill-lies-with-joint-parl-committee/>

the RFCTLARR (Second Amendment) Ordinance, 2015 on 03.04.2015 and 30.05.2015 respectively.¹⁰ The December 2014 ordinance had introduced changes in the applicability of the consent and SIA clauses, and extended the scope of “public purpose” to include private hospitals and private educational institutions among other things.¹¹

In May 2015, the decision on the amendments to the law was placed before a Joint Parliamentary Committee (JPC). The JPC comprised 11 BJP members, three National Democratic Alliance (NDA) allies, five Congress members, two Trinamool Congress members and nine members from other state parties.¹² After having taken six extensions to submit its report, the JPC has been granted a seventh one. A change in the chairmanship in the form of Ganesh Singh, a Member of Parliament from Madhya Pradesh has also been made.¹³ The final report, as of 15.08.2016, is still awaited.

The Principal Act of 2013 allows states to create rules under the Act.¹⁴ Several of the states have in fact enacted their own set of RFCTLARR Rules. This working paper aims to trace the deviations in the State Rules from their Central counterparts with respect to provisions for a Social Impact Assessment (SIA), consent, computing of compensation, food security related provisions and the operation of the retrospective clause.

Using the power given under section 109 of the Act, the Central and several State Governments passed certain rules. The Central Rules related to SIA was the first set of rules to be enacted in August 2014.¹⁵ The other states like Andhra Pradesh¹⁶, Assam¹⁷, Bihar¹⁸, Himachal Pradesh¹⁹, Jharkhand²⁰, Sikkim²¹, Telangana²², Tripura²³ and Uttar Pradesh²⁴ all passed rules after the Central Government.

Rules	Date of Enactment	Language/s	Source
RFCTLARR (SIA and Consent) Rules, 2014 (Central)	08.08.2014	Hindi and English	http://www.rlarrdc.org.in/images/RFCTLARR_SIA_and_Consent_Rules_2014.pdf
RFCTLARR (Compensation, Rehabilitation and Resettlement, Development Plan) Rules, 2015 (Central)	18.12.2015	Hindi and English	http://www.rlarrdc.org.in/images/RFCTLARR_Compensation_R_R_Development_Plan_Rules_2015.pdf

¹⁰ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (RFCTLARR): Understanding the amendments (2015). *Land Acquisition: The Act, the Ordinance and the Bill*. New Delhi: Public Policy Research Centre (PPRC). Retrieved from http://www.pprc.in/upload/Land%20Acq-Understanding%20Amendments_JUNE2015.pdf

¹¹ *Id.*

¹² Choudhary, K., & Mohan, A. (2015, May 14). Land Bill unlikely to have a smooth passage in joint Parliamentary committee. *Business Standard*. Retrieved from http://www.business-standard.com/article/politics/land-bill-unlikely-to-have-a-smooth-passage-in-joint-parliamentary-committee-115051301748_1.html

¹³ JPC on land Bill Gets 7th extension and a new Chairperson (2016, July 22). *The Hindu*. Retrieved from <http://www.thehindubusinessline.com/news/national/jpc-on-land-bill-gets-7th-extension-and-a-new-chairperson/article8886673.ece>

¹⁴ Section 109 of the RFCTLARR Act, 2013.

¹⁵ RFCTLARR (SIA and Consent) Rules 2014 (08.08.2014).

¹⁶ Andhra Pradesh RFCTLARR Rules, 2014 (20.11.2014).

¹⁷ Assam RFCTLARR Rules, 2015 (31.07.2015).

¹⁸ Bihar RFCTLARR Rules, 2014 (27.10.2014).

¹⁹ Himachal Pradesh RFCTLARR (SIA and Consent) Rules, 2015 (09.04.2014).

²⁰ Jharkhand RFCTLARR Rules, 2015 (30.03.2015).

²¹ Sikkim RFCTLARR Rules, 2015 (02.03.2015).

²² Telangana RFCTLARR Rules, 2015 (19.12.2015).

²³ Tripura RFCTLARR Rules, 2015 (22.04.2015).

²⁴ Uttar Pradesh RFCTLARR Rules, 2015 (12.05.2015).

Andhra Pradesh RFCTLARR Rules, 2014	21.11.2014	English	http://www.rlarrdc.org.in/images/Government_of_AP-Rules.pdf
Assam RFCTLARR Rules, 2015	31.07.2015	English	http://www.rlarrdc.org.in/images/Assam%20Final%20Rules.pdf
Bihar RFCTLARR Rules, 2014	27.10.2014	Hindi and English	http://www.rlarrdc.org.in/images/Government_of_Bihar-Rules.pdf
Chhattisgarh Rules enacted via General Order No. F 4-28/Seven-1/2014	05.05.2014	Hindi and English	http://www.rlarrdc.org.in/images/chattishgarh_govt_1_1_.pdf
The RFCTLARR (Gujarat Amendment) Act, 2016	22.02.2016	English	https://sabrangindia.in/sites/default/files/files/The%202016%20Gujarat%20Bill.doc
Haryana RFCTLARR (Amendment) Rules, 2014	04.12.2014	Hindi and English	<a href="http://www.rlarrdc.org.in/images/Haryana_Right_To_FairCompensation_Rules_2014_2.pdf<sup>25</sup">http://www.rlarrdc.org.in/images/Haryana_Right_To_FairCompensation_Rules_2014_2.pdf²⁵
Himachal Pradesh (SIA and Consent) Rules, 2015	09.04.2015	Hindi and English	http://www.indiaenvironmentportal.org.in/files/file/RighttoFairCompAct.pdf
Jharkhand RFCTLARR Rules, 2015	30.03.2015	English	http://www.rlarrdc.org.in/images/Government%20of%20Jharkhand%20Rules.pdf
Madhya Pradesh Rules enacted via Notification No. F 16-15(1)-(9)-2014-VII-Sec. 2A	03.10.2014	Hindi and English	http://www.rlarrdc.org.in/images/Govt.%20of%20MP-Rules_opt.pdf
Sikkim RFCTLARR Rules, 2015 (Draft)	02.03.2015	English	http://www.rlarrdc.org.in/images/Gaz_no_64_of_2015.pdf
Telangana RFCTLARR Rules, 2014	19.12.2014	English	http://www.rlarrdc.org.in/images/Telangana_State_RFCTLARR_Rules.pdf
Tripura RFCTLARR Rules, 2015	22.04.2014	English	http://www.rlarrdc.org.in/images/TRIPURA%20RULES.pdf
Uttar Pradesh RFCTLARR Rules, 2015 (Draft)	12.05.2015	English	http://www.rlarrdc.org.in/images/Govt.%20of%20Uttar%20Pradesh%20Draft%20Rules.pdf

²⁵ Note: The Act is no longer available online. It is only the final Bill as debated in the Gujarat Assembly.

SOCIAL IMPACT ASSESSMENT (SIA)

One new feature which is present in the RFCTLARR Act, 2013 and absent in the Land Acquisition Act, 1894 is the provision for a Social Impact Assessment (SIA). The provision for conducting the SIA received a mixed response.²⁶ The bodies, which usually require land for acquisition, both public and private, were apprehensive of a long drawn procedure leading to unnecessary delays in the process of acquiring land. Others felt that a due process would be followed to not only ascertain the public purpose, but also the beneficiaries for receiving compensation, which will include both landed, and those whose livelihoods depend on the land.

The RFCTLARR Act, 2013 in Chapter II, provides for the way in which the social impact of a land acquisition is to be determined. However, under Section 109 (1) of the Act, the appropriate Government (Central/State) is allowed to make rules to carry out certain provisions of the Act. The manner of preparing and publishing the report of the SIA is one such provision, which may be carried out by rules made by the “appropriate Government.”²⁷

What is the SIA Process According to 2014 Central Rules?

As per the Central Rules, in order to carry out the SIA, the appropriate Government has to first issue a notification, which must necessarily include:

- Name of the project developer, a brief description of the proposed project and the extent of land proposed for acquisition, the project area and affected areas.
- The main objectives of the SIA and key activities including consultations, survey and public hearing/s.
- Whether there is a requirement for taking the consent of Gram Sabhas and/or land owners.
- The timeline for the SIA and the final deliverables [SIA Report and Social Impact Management Plan (SIMP)], and their manner of disclosure.
- A statement that any attempt at coercion or threat during the carrying out of this entire exercise will render the same null and void.
- Contact information of the SIA Unit.²⁸

This notification is to be made available in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil in the regional language. It is also to be published in the form of posters and pamphlets, which should be affixed at conspicuous places and circulated in the affected area. It even needs to be uploaded on the website of the appropriate Government.²⁹ Further, there is a requirement that this notification be published within 30 days after the deposit of the processing fee for carrying out the SIA.³⁰

The SIA has to be carried out in consultation with the concerned Panchayat, Municipality or Municipal Corporation, at a village or ward level in the affected areas.³¹ The SIA Report must then be submitted to the appropriate Government within six months of the date of the commencement of the SIA study.³²

²⁶ Ramesh, J., & Khan, M. A. (2015). *Legislating for justice: The making of the 2013 land acquisition law*. New Delhi: Oxford University Press.

²⁷ Section 109 (2) (d) of the RFCTLARR Act, 2013.

²⁸ Part B of Form I of the RFCTLARR (SIA and Consent) Rules, 2014.

²⁹ Rule 3 (1) of the RFCTLARR (SIA and Consent) Rules, 2014.

³⁰ Proviso to Rule 3 (1) of the RFCTLARR (SIA and Consent) Rules, 2014.

³¹ Rule 3 (2) of the RFCTLARR (SIA and Consent) Rules, 2014.

³² Rule 3 (3) of the RFCTLARR (SIA and Consent) Rules, 2014.

The SIMP shall be submitted along with the SIA Report. Like the notification previously mentioned, both shall be available in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil in the regional language, be published in the form of posters and pamphlets to be affixed and circulated in the affected area, and be uploaded on the website of the appropriate Government.³³

Difference between Central Rules and State Rules

I. Provisions related to the manner of conducting the SIA

The manner in which the SIA is to be conducted is not very different in the Central Rules and the various State Rules. The only notable difference herein is that unlike the Centre, certain states, such as Andhra Pradesh, Assam and Sikkim, require the SIA Report to be broken down into three parts: Project Impact Report, Project Feasibility Report and SIMP.³⁴

II. Provisions related to duties of the SIA team

The Central Rules talk about the kind of tasks which the SIA team created must carry out.³⁵ Most of the states have copied this verbatim, but two of them, namely Jharkhand and Sikkim, differ in this regard.

The corresponding rule in Jharkhand allows the appropriate Government to blacklist the SIA team/Unit due to incapacity on their part.³⁶ It may then allot the SIA study to another SIA Unit or constitute another SIA team to complete the SIA process.³⁷ Power is also given to the Revenue and Land Reforms Department to disqualify and de-empanel any SIA Unit after assigning a reasoned cause.³⁸ The Sikkim Rules however lack the requirement for having a web-based workflow for the SIA and an information management system for the land acquisition, rehabilitation and resettlement.³⁹ Having these, however, would help ensure that relevant documents are maintained and disclosed as per provisions of the Act.

III. Provisions related to selection of the SIA team

With respect to the selection of the SIA team, the Central Rules require all members of the SIA team to give an undertaking that no team member or family of the team member is to receive any direct or indirect benefit from any stakeholder in the project.⁴⁰ This provision is absent in the Andhra Pradesh, Assam and Sikkim Rules.

IV. Provisions related to the process of conducting SIAs

The process of conducting an SIA is the same across all states and the Centre, except for in Uttar Pradesh, where it deviates on three counts. Firstly, with regard to the time period for furnishing information relevant to conducting the SIA, while the Central Rules prescribe 10 days, Uttar Pradesh extends the same to 15 days.⁴¹ Secondly, of the 10 things which are required to be assessed while carrying out the SIA as per the Centre, the Uttar Pradesh lists only the first five.⁴² Determining additional requirements pertaining to the nature of the land, size of holdings, ownership patterns, land prices, changes in ownership etc., all of which are required as per the Central Rules, are not listed in the Uttar Pradesh Rules. The process of conducting an SIA under the Uttar Pradesh Rules is therefore a lot less comprehensive than its Central counterpart. Thirdly, in the Uttar Pradesh Rules, the time period for conducting the

³³ Rule 3 (5) of the RFCTLARR (SIA and Consent) Rules, 2014.

³⁴ Rule 6 (5) of the AP Rules; Rule 5 (4) of the Assam Rules; Rule 3 (4) of the Sikkim Rules.

³⁵ Rule 4 of the RFCTLARR (SIA and Consent) Rules, 2014

³⁶ Rule 7 (3) of the Jharkhand Rules, 2015.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Rule 5 of the Sikkim Rules, 2015.

⁴⁰ Rule 6 (7) (ii) of the RFCTLARR (SIA and Consent) Rules, 2014.

⁴¹ Para 33 of the Uttar Pradesh Rules, 2015.

⁴² Para 34 of the Uttar Pradesh Rules, 2015.

SIA and submitting the report is fixed at two months, with the option of being extended to six months. In the Central Rules, however, the time period is fixed for six months.⁴³

V. Provisions related to conducting public hearings

Along with the SIA, a public hearing needs to be held in the affected areas. The public hearing ensures that the people are able to voice their concerns regarding the acquisition taking place. To ensure that the public participate in the hearing, the Central Rules require for a three week notice to be given in a 5 km radius from where land is to be acquired.⁴⁴ The three week notice has been reduced to two weeks in a few states, like Jharkhand and Sikkim,⁴⁵ and one week in a few others like Andhra Pradesh, Telangana, and Uttar Pradesh.⁴⁶

VI. Provisions related to evaluation of the SIA Report and SIMP

Post submission of the SIA Report and the SIMP, the procedure among the states and the Centre is by and large the same except for in Uttar Pradesh. The Uttar Pradesh Rules allow for objections to be made on the draft SIA Report and the draft SIMP⁴⁷ which is something absolutely unique and absent from all other rules.

The process for appraisal of the SIA Report and SIMP and the consideration of the same by an Expert Group is the same across the states and there are no real differences among the Rules.

Vii. Provisions related to inventory of waste/barren/unutilised land

The only remaining deviation between the Central and State Rules can be seen in Jharkhand's rule regarding keeping an inventory of waste, barren and unutilised land. The provision in the Jharkhand Rules, unlike its other counterparts, lists out the limits on irrigated multi-cropped land and agricultural land which can be acquired.⁴⁸

CONSENT

The Requirements for Consent and its Legal Process under the Central Rules

The prior consent of affected land owners has to be obtained by the "appropriate Government" through the District Collector, as a pre-requisite to the process initiating land acquisition.⁴⁹ As per the Act, the appropriate Government could either be the State or the Centre, depending on where the land being acquired is situated.⁵⁰ If the land is within the territory of a state, the State Government is the appropriate Government.⁵¹ For all land situated in a Union Territory other than Puducherry, the appropriate Government will be the Central Government. For Puducherry it will be the Government of Puducherry.⁵² If the land is situated in more than one state, the appropriate Government will be the Central Government in consultation with the concerned State Governments and Union Territories.⁵³

The appropriate Government has the responsibility of having to take suitable steps for updating land and other revenue records in the affected areas, so that the occupants of the land can be identified for initiating the prior consent process.⁵⁴ Prior consent has to be taken when the appropriate Government acquires land for a Public Private

⁴³ Para 37 of the Uttar Pradesh Rules, 2015.

⁴⁴ Rule 8 (3) of the RFCTLARR (SIA and Consent) Rules, 2014.

⁴⁵ Rule 12 (4) (ii) of the Jharkhand Rules, 2015; Rule 9 of the Sikkim Rules, 2015.

⁴⁶ Rule 11 of the Andhra Pradesh Rules, 2015; Rule 11 of the Telangana Rules, 2015; Rule 10 of the Uttar Pradesh Rules, 2015.

⁴⁷ Rule 12 of the Uttar Pradesh Rules, 2015.

⁴⁸ Rule 17 (ii) & (iii) of the Jharkhand Rules, 2015.

⁴⁹ Rule 16 (1) and (2) of the RFCTLARR (SIA and Consent) Rules, 2014.

⁵⁰ Section 3 (e) of the RFCTLARR Act, 2013.

⁵¹ Section 3 (e) (i) of the RFCTLARR Act, 2013.

⁵² Section 3 (e) (ii) and (iii) of the RFCTLARR Act, 2013.

⁵³ Section 3 (e) (iv) of the RFCTLARR Act, 2013.

⁵⁴ Rule 16 (3) of the RFCTLARR (SIA and Consent) Rules, 2014.

Partnership (PPP) where ownership of the land remains with the Government,⁵⁵ and for acquisition for private companies where a public purpose is involved. The consent provisions are as follows:

- For a private company acquiring land for a public purpose, consent of at least 80% of the affected families.⁵⁶
- For a private company where a PPP is involved, consent of at least 70% of affected families must be taken.⁵⁷

The appropriate Government is empowered under the Act for making rules to govern the process of obtaining prior consent.

As per the process under the Central Rules on SIA and Consent, Gram Sabhas (village assemblies) must be held in the affected areas. The date, timing and venue for the Gram Sabhas will be notified by the District Collector in consultation with representatives of the Gram Panchayats or Autonomous District Councils three weeks before the Gram Sabha is to be held. Apart from this, the District Collector is also given the responsibility to conduct public awareness campaigns in order to get more participation in the Gram Sabhas.⁵⁸

The following procedure, as per the Central Rules on SIA and Consent, must be followed when obtaining consent from the Gram Sabhas:

- Names and signatures of attendees must be taken and kept on record.⁵⁹
- The requisite quorum of the Gram Sabha must be at least 50% of the total members and one-third of the total women members of the Gram Sabha must also be present during the meeting.⁶⁰
- Printed copies of the proposed terms and conditions for Rehabilitation and Resettlement and compensation must be made available in the local language at least three weeks before the Gram Sabha meeting.⁶¹
- In case of PPP and private projects, representatives from the Requiring Body must be present at the Gram Sabha meetings, so that the queries of the local populace can be answered. These representatives are those who are competent to take decisions and negotiate terms of Rehabilitation and Resettlement and compensation ("the terms").⁶²
- The terms must be explained to the Gram Sabha in the local language and the signatures of the members of the Gram Sabha will be obtained on such terms.⁶³
- The Gram Sabha upon deliberating will pass a resolution with majority either giving or withholding consent. This resolution shall contain the negotiated terms and conditions that the Requiring Body has committed to and been signed by the District Collector or designated district officer and the representative of the Requiring Body.⁶⁴

⁵⁵ Section 2 (2) (a) of the RFCTLARR Act, 2013.

⁵⁶ Affected families for this Section is limited to Sections 3 (c) (i) and (v) of the RFCTLARR Act, 2013, which are restricted to persons owning immovable property or those who have got land under a government scheme.

⁵⁷ Section 2 (2) (b) (i) and (ii) of the RFCTLARR Act, 2013.

⁵⁸ Rule 17 (1) of the RFCTLARR (SIA and Consent) Rules, 2014.

⁵⁹ Rule 17 (2) of the RFCTLARR (SIA and Consent) Rules, 2014.

⁶⁰ Rule 17 (3) of the RFCTLARR (SIA and Consent) Rules, 2014.

⁶¹ Rule 17 (4) of the RFCTLARR (SIA and Consent) Rules, 2014.

⁶² Rule 17 (5) (i) of the RFCTLARR (SIA and Consent) Rules, 2014.

⁶³ Rule 17 (5) (ii) of the RFCTLARR (SIA and Consent) Rules, 2014.

⁶⁴ Rule 17 (6) (i) of the RFCTLARR (SIA and Consent) Rules, 2014.

- Upon receiving the resolution, the same shall be countersigned by the District Collector or a designated district level officer and then handed over to the Panchayat representatives.⁶⁵
- If a resolution does not contain an explicit statement of consent, a statement of the negotiated terms and conditions will be invalid.⁶⁶
- The proceedings will be video recorded, documented in writing and be made available in the Panchayat offices and uploaded on the website of the appropriate Government.⁶⁷
- Members of the SIA team are to be present to assist the Gram Sabha.⁶⁸

A list of all affected land owners must be prepared and made available in the affected area in the form of posters and hand-outs and by displaying the list in conspicuous areas at least 10 days before obtaining consent.⁶⁹ In case there are any objections, the reason for the same will be recorded in writing and conveyed to the concerned person within 10 days.⁷⁰

The following things must be made available in the local language to every member from whom consent is sought:

- A copy of the draft SIA Report (if readily available).
- Initial compensation package being offered for Rehabilitation and Resettlement.
- A list of rights that the village and residents enjoy under various national/state legislations.
- A written statement signed by the District Collector ensuring no coercion or intimidation in cases where consent is denied.
- The contact details of an officer who is to be contacted in case of any coercion.⁷¹

Further, the District Collector or any officer appointed by the District Collector must attend the Gram Sabha and affected land owners meetings.⁷² The appropriate Government must also ensure that the documents related to the SIA are made available to the land owners and all requests for information by them are provided within seven days following the request.⁷³

The Requiring Body is supposed to appoint representatives who are competent enough to take decisions and negotiate the terms and conditions for Rehabilitation and Resettlement and compensation.⁷⁴ These appointed representatives have to be present at the meeting of the affected land owners so as to answer the queries raised by them.⁷⁵ They also must provide all information on the project and if required, any additional information.⁷⁶

⁶⁵ Rule 17 (6) (ii) of the RFCTLARR (SIA and Consent) Rules, 2014.

⁶⁶ Rule 17 (7) of the RFCTLARR (SIA and Consent) Rules, 2014.

⁶⁷ Rule 17 (8) of the RFCTLARR (SIA and Consent) Rules, 2014.

⁶⁸ Rule 17 (9) of the RFCTLARR (SIA and Consent) Rules, 2014.

⁶⁹ Rule 18 (1) (i) and (ii) of the RFCTLARR (SIA and Consent) Rules, 2014.

⁷⁰ Rule 18 (2) of the RFCTLARR (SIA and Consent) Rules, 2014.

⁷¹ Rule 19 (2) (a-e) of the RFCTLARR (SIA and Consent) Rules, 2014.

⁷² Rule 19 (3) of the RFCTLARR (SIA and Consent) Rules, 2014.

⁷³ Rule 19 (4) of the RFCTLARR (SIA and Consent) Rules, 2014.

⁷⁴ Rule 20(1) of the RFCTLARR (SIA and Consent) Rules, 2014.

⁷⁵ *Id.*

⁷⁶ Rule 20 (2) of the RFCTLARR (SIA and Consent) Rules, 2014.

Comparison between Central and State Rules' provisions

The basic requirements under the Central Rules for initiating the process of obtaining consent, as mentioned above, are quite similar to those in the rules of the various states, except for Andhra Pradesh, Telangana and Tripura. These states have no provisions for obtaining consent in their rules.

Gujarat has incorporated all the amendments proposed in the 2014 ordinance into its Rules.

I. Provisions exempting the requirement for consent

Dilution in the consent clauses in certain states like Tamil Nadu, Gujarat, Maharashtra, Telangana and Rajasthan have been done by way of amendments.

In the month of January 2015, the Tamil Nadu Legislative Assembly passed the RFCTLARR (Tamil Nadu Amendment) Act, 2014.⁷⁷ It introduced a new section to the Central Act, 105-A, whereby land acquisition carried out under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 and the Tamil Nadu Highways Act, 2001 is exempt from provisions of the RFCTLARR Act. Four-fifths of the acquisition carried out in the state of Tamil Nadu is through these three Acts, and requirements for consent are absent in all three Acts. The RFCTLARR here is rendered obsolete in the cases where land is acquired under these Acts.⁷⁸

However, the Madras High Court has directed the State Government to explain how it was able to pass an amendment after the expiry of the statutorily permitted time period of one year, which had expired, on 01.01.2015. Though the State Amendment received Presidential assent on 01.01.2015, it was published in the Government Gazette on 05.01.2015, which is four days after the expiry of the statutory time period. The Madras HC division bench has directed the State Government to maintain status quo and not go ahead with the acquisition of land for the Uppur Thermal Power Plant in a writ petition which had been filed by 12 land owners from the Ramanathapuram district, challenging the provisions of the RFCTLARR (Tamil Nadu Amendment) Act, 2015.⁷⁹

Gujarat has gone a step further than the Tamil Nadu government by incorporating all of the amendments, which the NDA has been trying to pass for the last two years, in the form of the RFCTLARR (Gujarat Amendment) Act, 2016.⁸⁰ According to the Statement of Object and Reasons, this amendment aims to dilute the stringent provisions and make the “lengthy” and “difficult” process of land acquisition “smooth and easy” since Gujarat is an “industrially progressive” state.⁸¹ The Amendment exempts projects that are vital to the national security or defense of India, rural infrastructural projects, affordable housing for poor people, industrial corridors and other infrastructural projects, including projects under public private partnerships from the purview of the RFCTLARR Act, 2013 and thus the provisions related to SIA and consent do not apply to such projects.⁸² The Department of Land Resources (DoLR), the Union Ministry of Rural Development and the Union Ministry of Home Affairs have recently noted that the

⁷⁷ Tamil Nadu Government Gazette, Chennai, Monday, January 5, 2015.

⁷⁸ Mohan, S. (2016, July 12). How to dilute your state's land acquisition laws in easy steps, with examples. *Catch News*. Retrieved from <http://www.catchnews.com/india-news/how-to-dilute-your-state-s-land-acquisition-laws-in-easy-steps-with-examples-1468323398.html>; Land acquisition law amended (2014, December 9). *The Hindu*. Retrieved from <http://www.thehindu.com/news/national/tamil-nadu/land-acquisition-law-amended/article6675142.ece>

⁷⁹ HC seeks explanation on State amendment (2016, June 16). *The Hindu*. Retrieved from <http://www.thehindu.com/news/cities/Madurai/hc-seeks-explanation-on-state-amendment/article8734671.ece>

⁸⁰ Bhardwaj, A. (2016, July, 19). Did you know Gujarat and Rajasthan passed Land Acquisition Bills? *NewsLaundry*. Retrieved from <http://www.newsLaundry.com/2016/04/29/did-you-know-gujarat-rajasthan-passed-land-acquisition-bills/#>

⁸¹ Statement of Objects and Reasons, The RFCTLARR (Gujarat Amendment) Bill, 2016.

⁸² PTI (2016, March 31). Gujarat dilutes Land Act; discards 'consent' clause on Acquisition. *The New Indian Express*. Retrieved from <http://www.newindianexpress.com/nation/Gujarat-Dilutes-Land-Act-Discards-Consent-Clause-on-Acquisition/2016/03/31/article3356224.ece>

amendments in the Gujarat Bill are very similar to the ones which the NDA government has been trying to pass, and therefore referred the Bill to the JPC on the land bill. Pursuant to that, the DoLR, the Union Ministry of Rural Development and the Union Home Ministry refused to send the Bill to the President for his assent.⁸³ This however was overlooked as the Bill did eventually find its way to the President of India. As of 08.08.2016 it has become a law in Gujarat.⁸⁴

Rules of the Maharashtra Government and the Draft Rajasthan Land Acquisition Bill also dilute the consent requirement of the Central Act. Both these Rules mention that consent will be taken for private projects only and not for PPPs.⁸⁵ The Rajasthan Government has further diluted the concept of consent by passing two Bills which relate to land acquisition. The Special Investment Region Bill allows the Government to enter into any land, which has been declared as a Special Investment Region, and acquire the same. Its counterpart, the Rajasthan Land Pooling Scheme Bill, allows for the consolidation of small landholdings.⁸⁶ Though there has been no direct amendment to the RFCTLARR Act, 2013 the two Bills passed by the Rajasthan Government allow it to bypass provisions of the Act.

On 30.07.2015, the Government of Telangana passed an order.⁸⁷ To expeditiously procure land for public projects, the Government came out with a framework, which allows land owners to participate in the development process by willingly selling their land for consideration, on the basis of an agreement between the land owners and the Procuring Agency. The Procuring Agency as approved by the District Level Land Procurement Committee (DLLPC) is to be headed by the District Collector.

The order of the Telangana Government, as opposed to the Central Act, provides for compensation only to the people with land and there is no provision for the landless poor and labourers who also stand to lose a lot upon acquisition of land in their area. The order was thus challenged in the Hyderabad High Court by the landless labourers.⁸⁸ The single judge bench of Justice Suresh Kait dismissed the order on the grounds that it did not provide for any Rehabilitation or Resettlement of the landless labourers and artisans, and also failed to provide enhanced compensation to the affected people.⁸⁹ The State Government appealed the quashing of the order and the matter was sent to a division bench of the Hyderabad High Court. The division bench first asked the Government to frame a policy to rehabilitate and resettle the affected families (agricultural labourers, artisans and others) of land acquisition.⁹⁰ Thereafter, on 11.08.2016, the Hyderabad High Court selectively stayed the order of the single judge which quashed the G.O. MS No 123.⁹¹ The Court made it very clear that the stay applied only for the land which was

⁸³Davel, K. (2016, June 30). Centre rejects Gujarat govt's land bill. *The Times of India*. Retrieved from <http://timesofindia.indiatimes.com/city/ahmedabad/Centre-rejects-Gujarat-govts-land-bill/articleshow/52982413.cms>

⁸⁴ Gujarat's new land acquisition Bill approved by President (2016, August 11). *The Hindu*. Retrieved from <http://www.thehindu.com/news/national/other-states/gujarats-new-land-acquisition-bill-approved-by-president/article8974894.ece>

⁸⁵ Alarming Land Amendments in various states in India— A dangerous proposition for the poor Indian farmers (2015, September 10). *Intercultural Resources*. Retrieved from <https://icrindia.wordpress.com/2015/09/10/alarming-land-amendments-in-various-states-in-india-a-dangerous-proposition-for-the-poor-indian-farmers/>

⁸⁶ Khan, H. (2016, April 06). Rajasthan: Raje govt passes Bills to ease land acquisition. *The Indian Express*. Retrieved from <http://indianexpress.com/article/india/india-news-india/rajasthan-raje-govt-passes-bills-to-ease-land-acquisition/>

⁸⁷ G.O. MS No. 123 of the Land and Revenue Department of the Government of Telangana.

⁸⁸ Nagaraju, J. (2016, August 03). High Court quashes Telangana's controversial land acquisition GO 123. *Asianet News Network*. Retrieved from <http://newsable.asianetnews.tv/south/court-quashes-telanganas-controversial-go-123>

⁸⁹ No interim order on GO 123, State government told to frame policy as per Land Act (2016, August 06). *The New Indian Express*. Retrieved from <http://www.newindianexpress.com/states/telangana/No-interim-order-on-GO-123-State-government-told-to-frame-policy-as-per-Land-Act/2016/08/06/article3565538.ece>

⁹⁰ TS submits new rehab policy for land oustees (2016, August 09). *The New Indian Express*. Retrieved from <http://www.newindianexpress.com/states/telangana/TS-submits-new-rehab-policy-for-land-oustees/2016/08/09/article3570448.ece>

⁹¹ Hyderabad HC selectively stays land order of Telangana Governemnt (2016, August 10). *The Deccan Chronicle*. Retrieved from <http://www.deccanchronicle.com/nation/current-affairs/100816/telangana-gets-conditional-go-ahead-from-hyderabad-hc.html>

being acquired for the National Investment and Manufacturing Zone (NIMZ) which was being set up in the Medak district.⁹²

II. Provisions related to Fifth Schedule Areas

In Jharkhand and Bihar's Rules there are special provisions with respect to certain areas, which are present in the Fifth Schedule. The Rules require that consent from the Gram Sabha be taken when land is under the Fifth Schedule.⁹³ Further, in cases where a linear acquisition of land is being done, a Gram Sabha must either be set up at the Gram Panchayat level when more than one village is involved, or at the Panchayat Samiti level when more than one Gram Panchayat is involved, or at the District Board Level where more than one block in a district is involved.⁹⁴

III. Provisions related to the procedure for taking consent from the Gram Sabhas

With respect to the quorum of the Gram Sabha, the Himachal Pradesh Rules vary from the Central and other State Rules. As per the Himachal Pradesh Rules, the quorum is to be fixed according to provisions of either the Himachal Pradesh Panchayati Raj Act, 1994 (one-third of the total members)⁹⁵ or the Himachal Pradesh Municipal Corporation Act, 1994 (half of the total members⁹⁶) or the Himachal Pradesh Municipal Act, 1994 (half of the total members⁹⁷).⁹⁸ It does not, however, specify which Act is to be applied in which cases, and the exact quorum requirement. Further, the requirement of having at least one-third women members has been neglected in these Rules. The Jharkhand Rules also specify a requirement of having one-third of the total members to be present as quorum.⁹⁹ With respect to the display of terms and conditions of acquisition, the Sikkim Rules reduce the three week requirement to 15 days, which reduces the amount of time the public has to view the terms and conditions and give consent.¹⁰⁰

IV. Provisions related to the consent of land owners

Something exclusive to the Assam Rules with respect to consent of affected land owners is the provision which allows consent to be taken on the basis of their land holding. People with combined interest in the same area of land may give combined consent.¹⁰¹ Be it the consent of the Gram Sabha or of the affected land owners, the Bihar and Jharkhand Rules peculiarly state that in cases where consent has been obtained under the manner prescribed in the Rules, the same cannot be withdrawn for any reason whatsoever.¹⁰²

V. Provisions related to roles and responsibilities of the appropriate Government/Requiring Body

Apart from the Centre and Bihar, Himachal Pradesh, Jharkhand, Karnataka and Sikkim, none of the other states have any provisions which clearly enlist the roles and responsibilities while obtaining consent of the appropriate Government or the Requiring Body.

COMPUTING COMPENSATION

One of the fundamental problems of the old law on land acquisition (Land Acquisition Act, 1894) was that the amount of compensation which was to be paid was calculated on a case to case basis, and based on the market value of the

⁹² *Id.*

⁹³ Rule 20 of the Bihar Rules, 2014; Explanation to Rule 20 of the Bihar Rules, 2014.

⁹⁴ *Id.*

⁹⁵ Section 5 (3) of the Himachal Pradesh Panchayati Raj Act, 1994.

⁹⁶ Section 30 of the Himachal Pradesh Municipal Corporation Act, 1994.

⁹⁷ Section 30 of the Himachal Pradesh Municipal Act, 1994.

⁹⁸ Rule 17 (3) of the Himachal Pradesh (SIA and Consent) Rules, 2015.

⁹⁹ Rule 20 (3) of the Jharkhand Rules, 2015.

¹⁰⁰ Rule 14 (4) and Rule 15 (4) of the Sikkim Rules, 2015.

¹⁰¹ Rule 18 (3) of the Assam Rules, 2015.

¹⁰² Rule 19 (10) and 20 (4) of the Bihar Rules, 2015 and Rule 19 (10) and 20 (4) of the Jharkhand Rules, 2015.

land.¹⁰³ The poor land record management and under reporting of prices by purchasing parties were reported to have led to alterations in the market value of the land.¹⁰⁴ Thus, the market value as it existed on the records was in reality lesser than the actual value of the land. In order to ensure that fair compensation is given to the land owners, the framers of the law devised a formula in the RFCTLARR Act, 2013. The formula, it is expected, will ensure that human error will be reduced and one can arrive at a value closer to the actual market value.

Procedure as per the RFCTLARR Act, 2013

In the simplest of terms, the method to fix the deficiency in market rates requires that the market value is multiplied by a fixed number (multiplying factor) and then a solatium is imposed on the value arrived at.¹⁰⁵ The multiplying factor is different in rural areas (2.00 in the Central Act) and urban areas, and in case of rural areas it is to be determined by the appropriate Government and is fixed at 1.00 in the urban areas.¹⁰⁶ The Central Government, being the appropriate Government in some cases, has fixed the multiplying factor as per the provisions of the RFCTLARR Act at 1.00 in the urban area and at 2.00 in the rural areas¹⁰⁷.

In some cases of acquisition, the State Governments are the appropriate Government. With respect to land being acquired in the urban areas the multiplying factor is fixed at 1.00 in all of the states which have passed notifications regarding the multiplying factor. However, the multiplying factor for land being acquired in the rural areas is where differences among the various states arise.

Differences between the Centre and the States

In states like Haryana¹⁰⁸, Chhattisgarh¹⁰⁹ and Tripura,¹¹⁰ the multiplying factor for rural land is fixed at 1.00. The calculation of market value when done as per the aforementioned state's Rules will result in a value which is half of what would be calculated had the multiplying factors in the RFCTLARR Act and the Central Government notification been used.

Assam assigns the multiplying factor based on the distance of the land from an urban area. In cases where the land is within 10 km of an urban area, the multiplying factor is fixed at 1.50, and in cases where the land is situated beyond 10 km from an urban area, the multiplying factor is fixed at 2.00.¹¹¹ The Rajasthan Land Acquisition Bill, 2014 which is still in the draft stage, assigns multiplying factors similar to the Assam Rules, and they are also based on the distance of the land from an urban area. However, unlike the other Government Rules and the Act itself, the multiplying factors in Rajasthan are significantly higher. For land situated within 5 km of urban land, the multiplying factor is fixed at a figure between 1.25 and 2.00.¹¹² For land situated more than 5 km from urban land, the multiplying factor will be 2.25 to 4.5 for waste/banjara/barani land¹¹³, and between 2.5 and 4.5 if the land is irrigated/double cropped land.¹¹⁴

¹⁰³ Asian Development Bank (2007). Expropriation laws and practices: India. *Compensation and Valuation in Resettlement: Cambodia, People's Republic of China, and India*, 32-49. Retrieved from http://www.landesia.org/wp-content/uploads/2011/01/ADB-RDI_Report_on_Land_Taking_Law_and_Practice_in_China_India_Cambodia.pdf

¹⁰⁴ Singh, R. (2012). Inefficiency and abuse of compulsory land acquisition: An enquiry into the way forward. *Economic and Political Weekly*, 47(19), 46-53. Retrieved from <http://www.cdedse.org/pdf/work209.pdf>

¹⁰⁵ Section 26 (2) of the RFCTLARR Act, 2013.

¹⁰⁶ Serial no. 2 and 3 of the First Schedule to the RFCTLARR Act, 2013.

¹⁰⁷ S.O. 425 (E) of the Central Government (09.02.2016).

¹⁰⁸ Notification No. 2331-R-S-2014/16094 of the Revenue and Disaster Management Department of the Haryana Government (04.12.2014).

¹⁰⁹ Notification No. F-4-28/Seven-1/2014 of the Revenue and Disaster Management of the Chhattisgarh Government (04.12/.2014).

¹¹⁰ Notification No. F.30 (08)-REV/ACQ/10/P-1 of the Revenue Department of the Government of Tripura (09.02.2015).

¹¹¹ Notification No RLA 300/2013/Pt-II/7 of the Revenue and Disaster Management Department of the Assam Government (22.12.2014).

¹¹² Rule 13 (b) (i) (A) of the Rajasthan Land Acquisition Bill, 2014.

¹¹³ Rule 13 (b) (i) (B) of the Rajasthan Land Acquisition Bill, 2014.

¹¹⁴ Rule 13 (b) (i) (C) of the Rajasthan Land Acquisition Bill, 2014.

PROVISIONS RELATED TO FOOD SECURITY

The year 2013 saw two very important Acts being passed in the Indian Parliament. One was of course the RFCTLARR Act, 2013 and the other was the National Food Security Act, 2013.¹¹⁵ Concerns related to food security have also been addressed in the RFCTLARR Act.¹¹⁶ The Act has a special provision with respect to food security.¹¹⁷ Under the Act, irrigated multi-cropped land cannot be acquired, except under exceptional circumstances and as a demonstrable last resort.¹¹⁸

Provision as per the RFCTLARR Act, 2013

In case an exceptional circumstance does arise which leads to an acquisition, the appropriate Government has been given the responsibility of assigning the limit up to which such land can be acquired.¹¹⁹ When such an acquisition does take place, the Act requires that an equivalent area of cultivable wasteland is developed for agricultural purposes; or a sum of money, equivalent to the value of the land, is to be deposited with the appropriate Government for enhancing food security by investing in agriculture.¹²⁰ If in case the land being acquired is not irrigated multi-cropped land, but agricultural land, the appropriate Government must ascribe limits of the total net sown area for a district/state.¹²¹ The aggregated acquisition cannot exceed the limit as set by the appropriate Government.

Food Security Provisions in the State Rules

For the purposes of this section, the appropriate Government could be the State Government as well as the Central Government. The only state however, which has the elements of Section 10 (of the RFCLARR, 2013 related to Food Security) imbibed in its Rules, is Jharkhand. As per Rule 17, the limit on acquisition of irrigated-multi cropped land is fixed at no more than 2% of the total irrigated land available in the state.¹²² With respect to agricultural land that is not irrigated multi-cropped land, the limit is fixed at no more than one-fourth of the total net sown area in the state.¹²³

Notifications of State Governments with Respect to Food Security

Even before the Jharkhand Rules had been passed, in the year 2014 the governments of Chhattisgarh and Madhya Pradesh had passed notifications assigning limits on the acquisition of irrigated multi-cropped/agricultural land. In Chhattisgarh, the limit for irrigated multi-cropped land is no more than 2% of the total irrigated land in the area, and for agricultural land it is no more than 1% of the total net sown area in the state.¹²⁴ As per the notification of the Madhya Pradesh Government, the area of irrigated multi-cropped land and aggregate acquired for all projects in a district cannot be more than the highest of such an area in an agricultural year during the last 10 years.¹²⁵ The limit on acquisition of agricultural land is fixed at no more than 50% of the total net sown area in the state.¹²⁶

The most recent notification in relation to food security came from the Centre, with the Central Government fixing the limit on irrigated multi-cropped land at no more than 1% of the total multi-cropped land determined for the

¹¹⁵ Editor's Note, 6 NUJS L. Rev. (2013).

¹¹⁶ Chapter III of the RFCTLARR Act, 2013.

¹¹⁷ Section 10 (1) of the RFCTLARR Act, 2013.

¹¹⁸ Section 10 (2) of the RFCTLARR Act, 2013.

¹¹⁹ *Id.*

¹²⁰ Section 10 (3) of the RFCTLARR Act, 2013.

¹²¹ Section 10 (4) of the RFCTLARR Act, 2013.

¹²² Rule 17 (ii) of the Jharkhand RFCTLARR Rules, 2015.

¹²³ Rule 17 (iii) of the Jharkhand RFCTLARR Rules, 2015.

¹²⁴ Notification No F4-28/Seven-1/2014 of the Revenue Department of the Government of Chhattisgarh (04.12.2014).

¹²⁵ Notification No F 16-15 (5)-2014-VII-Sec.2A of the Revenue Department of the Government of Madhya Pradesh (29.09.2014).

¹²⁶ Notification No F 16-15 (6)-2014-VII-Sec.2A of the Revenue Department of the Government of Madhya Pradesh (29.09.2014).

relevant block for a period of five years.¹²⁷ Further, in the same notification, the Central Government also notified that the acquisition of agricultural land in aggregate for all projects in a district shall not exceed 5% of the net sown area in a district.¹²⁸

SECTION 24: RETROSPECTIVE OPERATION

Section 24 dealing with retrospective operation is the most debated, invoked and litigated section of the RFCTLARR Act, 2013.¹²⁹ The need for a clause pertaining to this was realised when just a few months before work on the new land acquisition was started, there were riots in certain villages as a result of wrongful acquisition of land for the purpose of constructing the “Yamuna Expressway”.¹³⁰ Although the Government of Uttar Pradesh had enacted a Land Acquisition Policy in the year 2011, it was prospective in nature.¹³¹ Thus, it was realised that there were several historical injustices which were directly a result of the draconian Land Acquisition Act, 1894 and these could not be addressed via the creation of any new law, unless the law was made retrospective. Thus, the retrospective clause found its way into the RFCTLARR Act, 2013.

Operation of the Retrospective Clause in the RFCTLARR Act, 2013

1. In cases where an award has been passed under the old law, the proceedings will be as per the provisions of the old Act.¹³²
2. In cases where acquisition has been initiated under the old Act but an award has not yet been made, the affected party will be entitled to compensation under the new Act.¹³³
3. When acquisition proceedings have been started under the old Act and an award has been passed at least five years before the commencement of the new Act, and the physical possession of the land had not been taken or the compensation not been paid, the proceedings would have deemed to have lapsed and fresh proceedings can thus be started under the new Act.¹³⁴
4. In cases where a “majority” of the people have not accepted the compensation received from an award under the old Act, the awardees will be entitled to compensation as per provisions of the new Act.¹³⁵

Interpretation of the Clause by the Indian Judiciary

I. “When would compensation be deemed to have been paid?”

As soon as the new Act came into force, there were 18 appeals, which were filed to the Supreme Court, all invoking the retrospective clause. The issue in all of these 18 appeals, filed by the land owners who stood to lose their lands as a result of the Pune Municipal Corporation acquiring land for the purpose of a “Forest Garden”, was the same. An award had been passed at least five years before the passing of the new Act, but the applicants had refused to accept compensation. The acquiring body, which was the Pune Municipal Corporation, contended that it had fulfilled all of its obligations upon depositing the amount with the Government treasury. A three judge bench of the Supreme Court held that the compensation would be deemed to have had been paid only if the amount had first been offered to the

¹²⁷ S.O. 1757 (E) of the Central Government (12.05.2016).

¹²⁸ *Id.*

¹²⁹ Ramesh, J., & Khan, M. A. (2015). *Legislating for justice: The making of the 2013 land acquisition law*. New Delhi: Oxford University Press.

¹³⁰ Report of the National Human Rights Commission. Retrieved from <http://nhrc.nic.in/dispatch.asp?fno=2379>

¹³¹ The Uttar Pradesh Land Acquisition Policy, 2011. Retrieved from <http://awas.up.nic.in/policies/New%20L.A.%20Policy%2002.06.11.pdf>

¹³² Section 24 (1) (a) of the RFCTLARR Act, 2013.

¹³³ Section 24 (1) (b) of the RFCTLARR Act, 2013.

¹³⁴ Section 24 (2) of the RFCTLARR Act, 2013.

¹³⁵ Proviso to Section 24 (2) of the RFCTLARR, 2013.

individuals before being deposited in the treasury.¹³⁶ A curious development in this regard took place with the passing of a notification on 24.11.2014 by the Goa Government. Through this notification, an amendment was made to Section 24 (2) and a new proviso was added to the already existing one.¹³⁷ The proviso essentially allows for a situation expressly prohibited by the *Pune Municipal Corporation* Judgment by discharging the Collector of all liability in cases of land acquisition wherein the award has been made and the compensation has been deposited in the Government Treasury or any other financial institution.¹³⁸

II. How is “physical possession” defined?

The second aspect in the retrospective clause applicability is the need to take physical possession of the property and payment of compensation to affected land owners in cases wherein an award has been passed. The question of when the compensation would have been deemed to have been deposited is well explained in the *Pune Municipal Corporation* case. The Supreme Court, however, in two cases subsequent to the *Pune Municipal Corporation*, delved into the operation of the “physical possession” clause. In both the cases, the Court held that the words “compensation has not been paid” and “physical possession has not been taken” are independent of each other and even if one of the two conditions have not been satisfied, the acquisition would be deemed to have lapsed.¹³⁹

III. Challenge of the Constitutional validity

The Constitutional validity of Section 24 (2) is currently being challenged by Reliance Industries in the state of Gujarat.¹⁴⁰ A group of farmers filed a petition in the Gujarat High Court against the acquisition of land for a Special Economic Zone in Jamnagar. The land had been acquired five years prior to the commencement of the Act. The farmers claimed that the retrospective clause would apply and as a result of that, the possession which Reliance had should have lapsed. Reliance instead challenged the validity of the Section in question.¹⁴¹

CONCLUSION

The power to make Rules under the Act has been given to allow states to take further and improve upon the provisions of the Act. Instead, the states have used their rule making power to make small changes, which restrict the scope of the Act. In the themes discussed in this paper, the following trends have emerged:

- **SIA:** States such as Uttar Pradesh have taken steps to change the time period within which an SIA study will be carried out or reduce the scope of the study. Jharkhand, Sikkim, Telangana, Andhra Pradesh and Uttar Pradesh have reduced the notice period for conducting a public hearing. These changes end up challenging the preamble of the law and dilute the importance of the whole SIA process. In some states, the provision for the SIA is done away with in its entirety.
- **Consent:** The concept of free prior informed consent is central to the process of acquisition of land, especially that laid out in the 2013 law. The State Rules could have elaborated on the process of how this can be operationalised to arrive at fair and transparent decision making around land acquisition. On the contrary, some states have decided to do away with consent entirely. These include Andhra Pradesh, Telangana, Tripura and Gujarat, questioning the very objectives of the Central Act. Gujarat has in fact included all the changes that were being proposed in the amendment ordinance into the State Rules, in effect making the

¹³⁶ *Pune Municipal Corporation v. Harakchand Misrimal Solanki* (2014) 3 SCC 183.

¹³⁷ Notification No. 8/1/2014-LA of the Revenue Department of the Goa Government.

¹³⁸ *Id.*

¹³⁹ *Bharat Kumar v. State of Haryana* (2014) 6 SCC 586; *Bimla Devi v. State of Haryana* (2014) 6 SCC 583.

¹⁴⁰ Centre opposes Reliance plea against new land Act clause (2016, February 19). *The Indian Express*. Retrieved from <http://indianexpress.com/article/india/india-news-india/centre-opposes-reliance-plea-against-new-land-act-clause/>

¹⁴¹ Bhatt, S. (2016, January 12). Why all eyes are on the Reliance's land acquisition case. *The Indian Express*. Retrieved from <http://indianexpress.com/article/india/india-news-india/why-all-eyes-are-on-this-land-case/>

ordinance come to light, pending the decision of the Parliamentary Standing Committee. There are also changes in the quorum of the Gram Sabha (village assembly) and combined consent clauses incorporated by some states.

- **Calculating compensation:** The deviations among the states with respect to the determination of the multiplying factor defeats the purpose of having a fixed multiplying factor. The amount of compensation that will be available across the states will not be uniform, especially in light of the changes made by states such as Haryana, Chhattisgarh and Tripura. Further, certain states have the same multiplying factor for both urban and rural areas, as a result of which the amount of compensation available in the rural and urban area would be the same.
- **Food security:** Having a provision with regard to food security ensures that there is no acquisition of land at the cost of losing multi-cropped and other agricultural lands, unless there is no other option. A few states such as Chhattisgarh and Madhya Pradesh, and the Centre as well, have passed notifications affixing limits on acquisition of such land. There is absolutely no uniformity in any of these limits. Moreover, none of the Rules put forth any clarity as to what the “exceptional circumstances” or the “demonstrable last resorts” which are requirements as per the RFCTLARR Act, 2013 even are, and instead only prescribe the limits up to which such land can be acquired.
- **Retrospective operation:** The attempt of the Government had been to try and rectify some of the damages that the Land Acquisition Act, 1894 had caused by making the RFCTLARR Act, 2013 a retrospectively operational law. There was ambiguity around how this section would be operationalised. The Supreme Court has interpreted some of the key wordings of Section 24 of the RFCTLARR Act, 2013 to bring in some clarity. However, the fate of the section now rests with the Gujarat High Court where the constitutional validity of the section has been challenged.

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