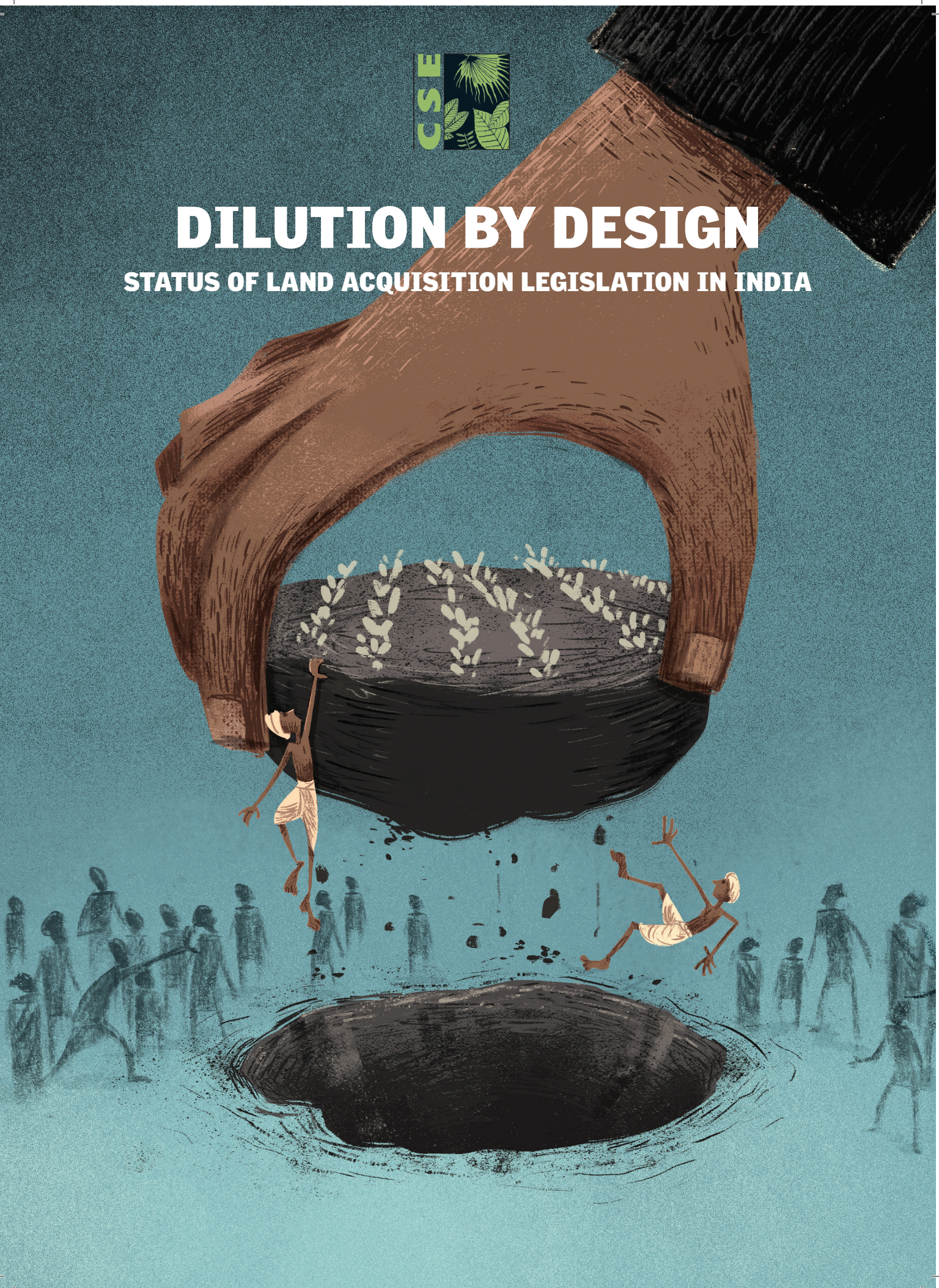




# DILUTION BY DESIGN

## STATUS OF LAND ACQUISITION LEGISLATION IN INDIA



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# **DILUTION BY DESIGN**

## **STATUS OF LAND ACQUISITION LEGISLATION IN INDIA**

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# Foreword

The doctrine of eminent domain has for long been employed by governments across the world to obtain private land for public purposes, on the payment of compensation. In India, the Land Acquisition Act, 1894 was used for more than hundred years (121 years to be exact) to acquire private land.

Post-independence, the Constitution of India contained two important principles having far-reaching ramifications on land acquisition. First, although land was made a state subject, requisition and acquisition of land was made a concurrent subject—both the state as well as the Central governments could legislate on it. Secondly, right to property was made a fundamental right. However, this changed in 1978 when right to property was downgraded to a constitutional right.

Land acquisition has been a highly contentious issue, resulting in several large-scale and many localized conflicts across the country. These struggles usually emerge from the reckless application of the definition of “public purpose”—including those where people are reluctant to part with the land and argue against the merits of the purported public purpose or oppose the use of force—or dissatisfaction with the compensation paid, either because of differences over the value of the land or the nature of the title of the affected people. For example, many people in India do not have title deeds for a particular strip of land, but derive their livelihood from it. Similarly, in many tribal areas, the notion of individual and clear ownership of land is missing, resulting in legal entanglements.

It has long been recognized that the 1894 Act was inadequate to deal with the challenges of land acquisition in a growing democracy like ours. The need for a new law, and a paradigm shift on the subject, was felt most pressingly.

In 2013, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act repealed and replaced the 1894 Act. It curtailed the use of the principles of eminent domain, putting a check on indiscriminate land acquisition for uncertain public purposes. It laid down the requirement of carrying out Social Impact Assessments (SIAs) and introduced new rules to obtain consent of the people who were going to be affected by land acquisition. It also introduced a new mechanism to ensure just compensation and provided means to achieve fair rehabilitation and resettlement (R&R) of the affected community.

RFCTLAAR had several weaknesses. The concept of public purpose continues to be vaguely defined. Many important sectors like railways, national highways and atomic energy, that acquire huge chunks of land, especially in underdeveloped areas, have been kept outside the purview of the Act, except with regard to provisions for compensation and R&R. But despite these deficiencies, the Act was a step in the right direction. It was for this reason that the Act was welcomed by the civil society and the affected people at large.

However, several state governments and the new NDA government that came to power at the Centre in 2014 felt that the RFCTLARR Act put constraints on the process of land acquisition and could potentially stall development projects. In 2015, an Ordinance and, later, a Bill amending some of the key sections of the Act, were introduced. But the Bill could not garner the support of the majority and hence remains in limbo. Meanwhile, several state governments have passed their own statutes on the subject, favouring the tone of the 2015 Amendments over the 2013 Act. They have resorted to a *parti pris* interpretation of the 2013 Act, thus limiting the application of its more progressive provisions. This has resulted in the weakening of the clauses providing for SIAs, dilution of the compensation clause, enfeeblement of the requirements of consent, and reduction in the scope of rehabilitation and resettlement as provided under the 2013 Act.

While changing or diluting the law is one way of easing the acquisition of land, procuring land via direct purchase through negotiations between willing seller and buyer or voluntary acquisitions is another. The Act itself prescribes obtaining a specified area of land via direct negotiations on the condition that R&R requirements are fulfilled. Apart from this, states have also formulated new models such as land pooling to obtain and develop land. How successful these means prove remains to be seen, but they have become very popular with state governments in their quest to acquire land quickly and without much hassle.

The Act also provides for land leases but land is a state subject and each state has its own tenancy laws, so the reach of the Central law in this direction remains limited. But state governments and private developers have resorted to taking land on lease. This facilitates faster access to land, reduces land conflicts and makes the owner a partner in the development process.

To understand some of the issues at hand regarding land acquisition in India, and to compare the current situation with the historical scenario and projections for future, Centre for Science and Environment carried out this research study, in the hope that it will provide reader adequate information on the topic.

The 2013 Act is not perfect. It has several shortcomings. It is marred by procedural requirements and prone to red tape. A good land acquisition law should strike a balance between direct and indirect costs. Direct cost is what developers pay to land losers as compensation for the land acquired and to resettle and rehabilitate them. Indirect cost is what developers pay to carry out the procedures, manage multi-layered bureaucracy, as well as the revenue foregone due to the time taken to acquire land. RFCTLARR Act has increased both these costs.

The need of the hour is to consider the 2013 Act as a starting point and strengthen the positive measures contained in it, while weeding out its defects. A balance between the need for development and the rights of people must be maintained. It is of utmost importance that new India does not leave justice and equality behind in its rapid march towards progress and development.



**Chandra Bhushan**

# Introduction

Land has perhaps been the most prized of human possessions. Its value lies in the fact that it is not merely property, to be enjoyed in times of plenty and to be used as a tradable security in times of adversity, but it also provides human beings a sense of belonging. It is for this reason that people will defend their land with their life. It is also for this reason that most modern democracies recognize the right of a person over their land as an important one, vested in their very right to freedom.

But, on the flip side of the coin, a democracy also subscribes to the notion of the “greatest good of the greatest number”. So most modern states have the sovereign right to take away land from private possession if deemed necessary for public good. As an example, take the case of a railway project connecting a few new states with the national grid. If a few villages refuse to part with their land for the project, the whole operation will be stalled, and everyone in those states will be worse off. In such cases, the government might acquire the land compulsorily, on payment of adequate compensation. This principle forms the basis of the doctrine of eminent domain.

The story in India has been no different. The state has retained and exercised its right to acquire land under the doctrine of eminent domain since antiquity. But the technical aspects of such acquisition differed from place to place within the subcontinent, causing confusion and legal complications. In 1894, the British government decided to unify these disparate laws, customs and norms under a single unified statute to govern the entire sub-continent. Thus was born the Land Acquisition Act of 1894.

The Act streamlined the processes of land acquisition and provided all the benefits of having a single and clear law on a subject. However, over the decades, the law began to lag behind as the political, social and economic landscape of the country changed. Its drawbacks became stark after India gained independence and became a socialist republic.

Gradually, the colonial land acquisition law came to be regarded as hostile to the interests of land owners as it attempted to make land available to the industry through government at a minimal price. Compensation was determined at the behest of the (district) collector without any rehabilitation and resettlement (R&R) benefits. The powers of eminent domain were often used to acquire land for any and every project, in some cases even by force. Although there was a provision for “hearing of objections”, it was little more than eyewash. People’s voice was barely heard. “Public purpose” was vaguely defined and this lack of clarity was misused in unscrupulous practices of land acquisition. A strong need was felt to clearly define public purpose and restrict its scope to acquisition for strategic purposes and projects where the benefits accrue to the general public. The most criticised clause of the colonial law was an “urgency clause”, which did

away with even the provision of hearing of objections, while failing to define “urgent need” properly and leaving it entirely to the discretion of the government. Several amendments were made to update the law, and the last major one in 1984, which tried to increase the compensation amount.

Following the reforms of 1991, the liberalization of the economy, there was a surge in land acquisition by the state but no commensurate legislative effort. This led to massive public outrage and increased conflicts over land acquisition in India (see *Boxes: Posco in Odisha* and *Nagarjuna Thermal Power Plant, Sompeta, Andhra Pradesh*). The need for a new law, and a paradigm shift, was felt most pressingly.

This new law came into existence in the form of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act of 2013 which introduced a slew of new measures to make land acquisition in India more equitable. The Act had several major drawbacks, too, but it was a step in the right direction. Its positives needed to be strengthened and negatives removed.

## POSCO IN ODISHA

In 2005, the Odisha government promised to acquire 1,619 hectare of land for the South Korean steel-making giant POSCO, out of which 1,214 hectare land was forestland. The project faced resistance right from the beginning as the land to be acquired was famous for betel vines and the betel-based economy sustained thousands of people. Even though the farmers were being offered 28 lakh per hectare along with rehabilitation benefits, they still opposed the acquisition since betel farming provided them an annual income of Rs 10 lakh or more per hectare. Thus, the compensation equalled only two–three years earning. Moreover, the betel farmers lacked the skills to be employed in the planned steel plants. While a section of the affected people took the compensation package, the rest protested silently. The state machinery quashed the protests violently leaving five dead and many injured. Due to unsuccessful land acquisition, the project has been scrapped leaving the land unproductive and ecologically devastated. Many farmers who owned vines today work as daily wage labourers and many have exhausted their compensation packages and state at a dark future.





## NAGARJUNA THERMAL POWER PLANT, SOMPETA, ANDHRA PRADESH

In 2008, the government of Andhra Pradesh gave Nagarjuna Construction Company (NCC) permission to construct a power plant in Sompeta. The project was allotted 423.3 hectare of land for the power plant to produce 2,640 MW of power. The then Ministry of Environment and Forest and Climate Change (MoEF) granted environment clearance for the project on 9 December 2009. The villagers in the area were not happy with the project primarily because it would not benefit them either by way of employment or electricity generation. Since most of the communities have no skills other than agriculture and fishing, the villagers feared that project would deprive them of their basic livelihood. Under the leadership of local group Paryavarana Parirakshana Sangham (PPS), the affected people of Sompeta came together to resist the operation of NCC.

In 2009, the people went on a relay hunger strike that lasted till September 2015 (over 2,100 days). On 14 July 2010, NCC tried to take possession of the land with the help of local authorities and armed police force. Two people were killed and many injured in the violence. The incident attracted nationwide criticism. After the firing, environmental clearance (EC) of the project was suspended. On 30 July 2010, MoEF constituted a committee to look into the details of the incidence. The committee report severely criticized the Andhra Pradesh government for allotting wetland terrain to the developers. The case was transferred to the newly constituted National Green Tribunal (NGT). In 2012, the NGT observed that the suspension of the EC was correct since the project had violated the provisions of the Environmental Impact Assessment Notification of 2006, besides wrongly showing wetlands as barren lands.



Martyrs' memorial at Sompeta

Finally, on 29 August 2015, the state government also cancelled the land allotment for the power station and directed that the land be used to set up agri-based industries instead. The company had spent Rs 1,300 crore on various activities related to this project before its EC was cancelled and the land allotted was withdrawn by the government and the project scrapped.

Has this been the case? How have the 2015 Land Ordinance (later Bill) affected the process of land acquisition in India? What strategies have state governments adopted? On the whole, is land acquisition more equitable in India today than it was before?

To find out, Centre for Science and Environment carried out this research to evaluate the working of RFCTLARR Act, 2013 and study various other means of obtaining land in various states from 2013 onwards.

This report is based on quantitative and qualitative analysis of legislations on land acquisition of 28 states and three Union Territories. It required both primary and secondary source of data collection.

The significant primary source of data was queries filed under the Right to Information Act (RTI). These queries asked commonplace questions that could fetch straight answers, like:

1. Under which law was land being acquired?
2. Were social impact assessments (SIAs) being conducted?
3. Was people's consent being taken?
4. Which projects were in the pipeline?
5. How much land has been acquired under the RFCTLARR Act and its various state amendments?

Gujarat, Madhya Pradesh, Bihar, Karnataka and West Bengal did not reply at all to the RTIs filed.

Governmental portals that have uploaded policies, government orders and gazetted notifications were also perused for this research study. Telephonic conversation with several state revenue departments was another source of information.

Secondary sources of data include reviews of newspaper stories, journal articles, and books on land acquisition.

The data used in this document is updated till December 2018.

# The RFCTLARR Act of 2013

In 2013, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (RFCTLARR) came into being. It was welcomed across the country and heralded as a step in the right direction and one of the biggest reforms in the arena of land governance, especially because of its five progressive pillars—curtailment of eminent domain, compensation, social impact assessment (SIA), consent, and rehabilitation and resettlement. It gave the citizenry a say in the processes of development by making land acquisition participative, humane and transparent. It was expected to be a harbinger of equitable land acquisition in India. It attempted to put an end to forcible acquisitions by curtailing the powers under eminent domain, enhanced compensation for landowners significantly, provided for the much needed R&R of families displaced on account of land acquisition and curtailed the abuse of the “urgency” clause. The Act extends to the whole territory of India, but not to Jammu and Kashmir. Except for its provisions for compensation and R&R, the Act does not apply to land acquisition carried out under 13 enactments specified in the Act (see *Annexure 1*).

## Salient features

1. The RFCTLARR Act requires a social impact assessment (SIA) study to be conducted for every acquisition of land. An SIA is a preliminary investigation for the determination of public purpose and social impact of a project.
2. In cases of PPP projects and private projects, the Act requires the consent of not less than 70 per cent and 80 per cent, respectively, of those whose land is sought to be acquired.
3. In case the land remains unused after five years, the new Act empowers the states to return the land either to the owner or to the state land bank. A land bank is a governmental equity that focuses on converting such land into productive use.
4. Payment of compensation is up to four times the market value in rural areas and two times the market value in urban areas.
5. To safeguard food security and to prevent arbitrary acquisition, the Act directs states to impose limits on the agricultural land that can be acquired.
6. To address historical injustices, the Act provides two conditions for its retrospective application:
  - a) If compensation had not been awarded in a pending case of land acquisition, or
  - b) If a compensation award had been declared at least five years before the Act came into force, but compensation had not paid and physical possession of the land had not taken place.

This is the most debated provision of RFCTLARR Act. The Supreme Court has passed many landmark judgments on the issue, invalidating pending acquisition proceedings, returning land to the original owners, or directing fresh proceedings.



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In order to ensure food security and prevent arbitrary acquisitions, the RFCTLARR Act directs states to impose limits on the agricultural land that can be acquired

## Major drawbacks

### Delays—time consuming and cost escalating

The time taken to acquire (even one acre) of land under the 2013 RFCTLARR Act is about 4.1 years and the procedure involves multiple steps (see *Table 1: Timeframe for land acquisition*). An independent body has to be set up to conduct SIAs. Its report is to be appraised by another independent entity called an “Expert Group”. An R&R committee, a state-level committee and a national monitoring committee have to be instituted to evaluate reports presented by junior committees. With the involvement of so many bodies, the whole process becomes time-consuming and costly.

### Thirteen enactments kept outside the purview of the Act

Except for its provisions for compensation and R&R, the Act does not apply to land acquisition carried out under 13 enactments specified in the Act. These include railways, national highways, atomic energy and electricity. SIAs and consent are important provisions required in the smallest projects, but are not required for projects under these 13 enactments under which huge chunks of land are acquired in backward areas requiring safeguard, mitigation and development measures.

### Lack of capacity to conduct and evaluate SIAs

An SIA study contributes to the effectiveness of the land acquisition process due to its participative and consultative nature. However, it is yet to prove a successful support tool. Its ineffectiveness, despite the procedure having been laid out in the Central LARR Rules, can be attributed to the poor quality, plagiarized SIA reports submitted by practitioners and the lack of experienced practitioners. For

**Table 1: Timeframe for land acquisition**

	STEPS	TIMELINE
	Completion of the SIA and submission of the SIA report	Within Six months from the date of notification for commencement of an SIA
	Constitution of an Expert Group to appraise the SIA report	No time limit specified
	Submission of appraisal of the SIA report and recommendations of the Expert Group	Two months from the constitution of the Expert Group
	Preliminary notification (under Section 11 of the Act)	Within 12 months from the date of submission of appraisal
	Examination of proposal for land acquisition and SIA by the government	No time limit specified
	Declaration to acquire land for public purpose (under Section 19 of the Act)	Within 12 months from the date of Preliminary Notification
	Award by the collector (under Section 30)	Within 12 months from the date of publication of declaration under Section 19
	Payment of full amount of compensation (within three months) and payment of monetary part of R&R (under Section 38)	Within six months
	Taking possession of land required (under Section 38)	After payments of compensation and monetary part of R&R package have been completed
	Infrastructural components of R&R package to be provided (under Section 38*)	Within 18 months (Exception: Six months for hydel or irrigation projects)
	Displacement of affected families	After completion of R&R
	Total time taken for completion of acquisition process**	4.1 years

\*The time period of 4.1 years is without taking into account 18 months required for the completion of the infrastructural components of the R&R package as the land can be acquired even after the infrastructural process for R&R has started and not necessarily completed.  
 \*\*The time period has been calculated after taking into account maximum time permitted for each step under RFCTLARR Act, 2013.

Source: CSE

example, Government of Haryana has directed the Haryana State Industrial and Infrastructure Development Corporation (HSIIDC) to conduct SIAs for every land acquisition made under the Central Rules. But personal communication with a district town planner for HSIIDC revealed that the corporation does not have the capacity to conduct the surveys and public hearings mandated under the Rules, and seeks to outsource the responsibility to a third party practitioner. Further, the state SIA Unit has to empanel practitioners and agencies for this purpose, but half the states have not done so, which makes identifying qualified practitioners more difficult. Even states where empanelment has taken place, certain practitioners have been favoured over others.

### **Unclear outcomes of SIAs**

The primary endeavour of the 2013 RFCTLARR Act is to curtail the power of governments to acquire land under the principle of eminent domain. Therefore, it provides for the constitution of several independent bodies to ascertain that a project for which land is being acquired serves a bonafide public purpose, while taking away the indiscriminate powers granted to district collectors under the 1894 Act. Yet, in doing so, it stops short. The Act does not make binding the recommendations of the Expert Group (constituted to determine whether a particular case of land acquisition is for a bonafide public purpose or not). The government can proceed with the acquisition process even if the recommendations suggest otherwise. Without making these recommendations mandatory, the improvements over the 1894 Act are merely cosmetic.

### **Vaguely defined public purpose**

One of the major provisions to curtail the power of the government under the principle of eminent domain was defining the term “public purpose” to check forceful and compulsory acquisition. Under the Act, land can only be acquired for projects which serve a public purpose as defined in the Act. These include projects for defence; infrastructure; industry; planned development for a village site; housing facilities for income groups as decided by the government, for project affected people and for natural calamities; tourism; sports; health; etc. With such a long list of broad sectors included under it, the term public purpose itself encompasses a large swathe of meaning. For example, a tourist resort in the dense forest area of Karnataka could qualify as public purpose, irrespective of the fact whether it is privately owned or government property. The term is still battling to find an acceptably moderate definition.

### **Inadequate social monitoring**

The Act provides for a five-year development plan to safeguard the interests of Schedule Castes and Schedule Tribes or a Social Impact Mitigation Plan (SIMP) to safeguard project-affected people, but there is lack of monitoring, making compliance questionable.

The 2013 RFCTLARR Act did a fair job to redress multiple problems but in doing so, several other problems cropped up. The onus of carrying out fair land acquisition now falls upon the states, but the moot question is whether states would indulge in such lengthy procedures or find ways to skirt around them and obtain land through other means.

# What after the 2013 RFCTLARR Act?

Despite its shortcomings, detailed in the previous section, the 2013 RFCTLARR Act was a step in the right direction. It needed to be followed up with laws that strengthened its advantages while making up for its shortcomings. But in 2014, the NDA government introduced an Ordinance (and later, in 2015, a Bill) to amend the Act. This Ordinance (and Bill), ostensibly in an attempt to remove some of the drawbacks of the Act, diluted the applicability of progressive clauses like SIA, prior consent and public hearing. The Ordinance allowed the government to exempt five categories of projects from provisions such as social impact assessment (SIA), limits on acquisition of irrigated multi-cropped or agricultural land and prior consent. These five categories are (i) national security or defence, (ii) rural infrastructure, (iii) affordable housing, (iv) industrial corridors, and (v) infrastructure projects including PPP projects where the Central government owns the land. It also increases the time limit for returning unused acquired land back to the original owner or heir or to a land bank. The Bill also manipulated the retrospective clause and made it government-friendly by excluding the time period in which the acquisition process was held up due to a court order; when a tribunal had specified a time for the possession; or, when land was acquired but compensation amount lay with the court. This leaves many cases of land acquisition out of the purview of the new Act. These amendments leave little daylight between the RFCTLARR Act and the British-era law it replaced (see *Annexure 2*).



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**Citizenry should have a say in development by making the process of land acquisition participative, humane and transparent**

The rationale behind these amendments is that certain provisions of the 2013 Act hinder the processes of vital fast-track development. As the fate of the amendments proposed in the Bill rests with the Joint Committee of Parliament deliberating upon it (a process that has hit a roadblock due to lack of quorum in meetings), many states have devised a range of strategies to circumvent the 2013 Act:

1. Eight states have enacted their own statutes
2. Fourteen states have notified state rules to carry out the provisions of the Central RFCTLARR Act, but a majority of them have diluted such provisions
3. Some states have instituted mechanisms for willing buyer–seller agreements, which gives the overseeing authority greater leeway to move away from the spirit of the Act

### **Enacting state statutes**

Seven states have made use of a constitutional alternative to pass their own law on the matter. Article 254(1) of the Indian Constitution states that if a Central law exists on a concurrent subject under the List III of Schedule VII of the Constitution, it extends to the states as well. However, Article 254(2) provides that if a state passes its own law on a concurrent subject and the law receives the assent of the President after due consideration, the said law will supersede the Central law in that particular state.

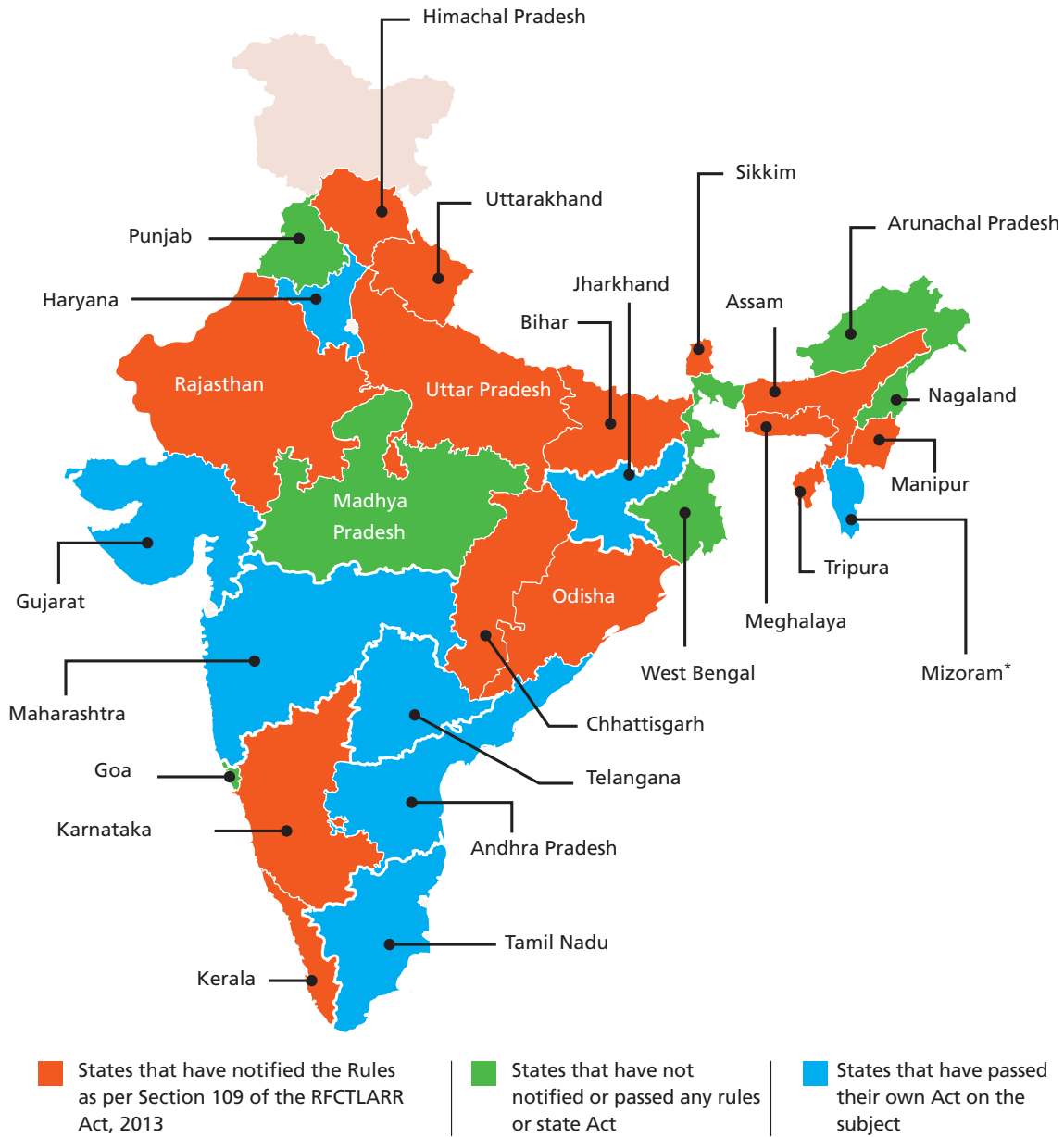
Andhra Pradesh, Gujarat, Jharkhand, Maharashtra and Telangana have directly adopted the amendments proposed by the 2014 Ordinance, which lapsed as of 31 August 2015, in their state Acts. Maharashtra has also excluded land acquisition under four state Acts (the Maharashtra Highways Act, 1955; the Maharashtra Industrial Development Act, 1961; the Maharashtra Regional and Town Planning Act, 1966; and the Maharashtra Housing and Area Development Act, 1976) from the purview of the Central Act. Jharkhand's Amendment Act, 2017 after being passed in the state assembly, was returned by the President as it brazenly overlooked the core concerns of the RFCTLARR Act, 2013, but received President's assent in 2018 when it was sent again to the President without major changes. The law reads that the government "in public interest" and by notification can exempt a range of projects from application of provisions of SIA and prior consent. The very need for SIA is to determine if the project serves a bonafide public purpose but the clause has been diluted.

The President of India passed the Tamil Nadu Amendment Act which added a fifth schedule to the RFCTLARR Act. The amendment states that the provision of the 2013 RFCTLARR Act shall not apply to land acquisition carried out under the state's own three acts (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) concerning the matter. Three-fourths of the acquisitions in the state take place under the purview of these Acts.

Haryana has modelled their state statute after the original 2013 Act.



**Map 1: Approaches to land acquisition legislation across states**



\*Article 371(G) of the Indian Constitution grants special status to the State of Mizoram. As per the Article, no Act of the Parliament in respect to ownership or transfer of land shall apply to the State of Mizoram unless the legislative assembly decides so. Therefore, Mizoram has passed The Mizoram (Land Acquisition, Rehabilitation and Resettlement) Act

Source: CSE compilation

**Table 2: Land acquisition laws across states at a glance**

State	Name of the law
Andhra Pradesh	<ul style="list-style-type: none"> <li>Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Andhra Pradesh amendment) Act, 2018</li> <li>Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Andhra Pradesh) Rules, 2018</li> </ul>
Arunachal Pradesh	<ul style="list-style-type: none"> <li>Jhum Land Regulation, 1947</li> <li>Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement, 2013</li> </ul>
Assam	Assam Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2015
Bihar	Bihar Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2014 and Bihar Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules (Second amendment), 2018
Chhattisgarh	Chhattisgarh Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2016
Goa	Policy on Procurement of land under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for direct procurement of land to set up public purposes projects on a priority basis (for government departments)
Gujarat	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat amendment) Act, 2016
Haryana	<ul style="list-style-type: none"> <li>Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Haryana amendment) Act, 2017</li> <li>Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Haryana) Rules, 2018</li> </ul>
Himachal Pradesh	Himachal Pradesh Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2015
Jharkhand	<ul style="list-style-type: none"> <li>Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Jharkhand amendment) Act, 2017</li> <li>Jharkhand Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2015</li> </ul>
Karnataka	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Karnataka) Rules, 2015
Kerala	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Kerala) Rules, 2015 and state policy for compensation in land acquisition
Madhya Pradesh	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement, 2013
Maharashtra	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra Amendment) Act, 2018
Manipur	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) (Manipur) Rules, 2014
Meghalaya	Meghalaya Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2017
Mizoram	The Mizoram (Land Acquisition, Rehabilitation and Resettlement)(Amendment) Act, 2017
Nagaland	Nagaland Land (Requisition and Acquisition) Act, 1965 and its 1969 amendment, and Nagaland Land (Requisition and Acquisition) Rules, 1965
Odisha	Odisha Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2016
Punjab	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013
Rajasthan	Rajasthan Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2016 and Rajasthan Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules (Amendment), 2018

State	Name of the law
Sikkim	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Sikkim) Rules, 2015
Tamil Nadu	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu amendment) Act, 2014
Telangana	<ul style="list-style-type: none"> <li>Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Telangana amendment) Act, 2016</li> <li>Telangana State Land Acquisition (Consent Award, Voluntary Acquisition and Lump Sum Payment Towards Rehabilitation and Resettlement Rules, 2017</li> </ul>
Tripura	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Rules, 2015
Uttarakhand	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Uttarakhand) Rules, 2015
Uttar Pradesh	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Uttar Pradesh) Rules, 2015
West Bengal	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

Source: CSE compilation

Article 371(G) of the Indian Constitution grants special status to Mizoram. As per the Article, no Act of the Parliament in respect to ownership or transfer of land shall apply to the State of Mizoram unless the legislative assembly ratifies it. Mizoram has passed the Mizoram (Land Acquisition, Rehabilitation and Resettlement) Act, 2017 on the subject.

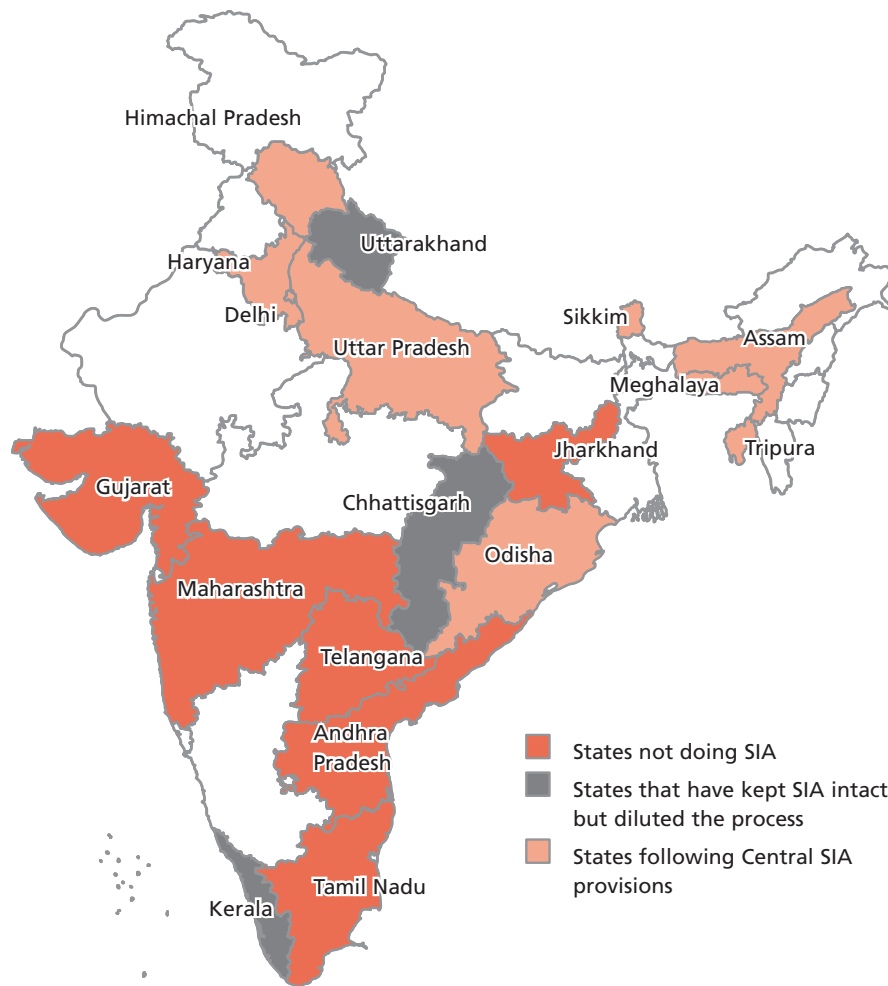
It is pertinent to note here that two other states granted special status by the Indian Constitution have not enacted new statutes but continue to follow their earlier land acquisition laws. In Arunachal Pradesh, land acquisition is carried out as per the Jhum Land Regulations, 1947. The government may acquire any piece of *jhum* land for public purpose. No formal acquisition proceeding is necessary but an opportunity has to be given to those having rights over the piece of land to show cause against such acquisition. The land so acquired, if relinquished, has to be returned to those from whom it was acquired on refund. These regulations do not require conducting an SIA or obtaining the consent of land owners. Nagaland has its own state Act as well, i.e., the Nagaland Land (Requisition and Acquisition) Act of 1965 and its amendment. This Act, too, does not have any provision for conducting an SIA or obtaining the consent of the land owners.

## Notifying state rules

To carry out the provisions of the 2013 RFCTLARR Act, Central Rules were notified in 2015. However, barring a few states (Goa, Madhya Pradesh, Punjab and West Bengal) all other states have either notified their own Rules under Section 109 of the Central Act or under their respective state Acts on the subject. Fourteen states have notified rules under Section 109 of the Central Act. These Rules have adopted certain provisions of the 2015 Land Ordinance too, thereby circumventing the scope of the 2013 Act.

In this section, we have mapped some of the major points of divergence between the state Rules from the RFCTLARR Act of 2013.

**Map 2: Social impact assessment across states**



Source: Down to Earth

**Exemption from conducting SIAs and obtaining prior consent**

Conducting an SIA and obtaining prior consent of the affected families is mandatory for land acquisition under the RFLARR Act, 2013, unless such acquisition has been performed under Section 40, the “urgency clause” (no consent is required for land acquired for government’s own use, hold and control). Conducting an SIA has been seen as a stumbling block in the process of acquisition. Therefore many states, notably Andhra Pradesh, Gujarat, Maharashtra, Telangana, Tamil Nadu and Jharkhand, have removed the requirement of conducting an SIA in their state laws (see *Table 3: Exemptions to provisions under SIA and prior consent*).

Andhra Pradesh, Gujarat and Telangana have exempted five categories of projects (the same as listed in the 2015 Ordinance)—defence, rural infrastructure, affordable housing, industrial corridors and infrastructure projects including PPP projects where the Central government owns the land—from the provisions of SIA and consent. Maharashtra exempts six categories of projects, the aforementioned five as well as an “industrial area or industrial estate”. Section 105 of Tamil Nadu’s

**Table 3: Exemption to provisions under SIA and prior consent**

Provision under the Central law	Andhra Pradesh Gujarat and Telangana	Maharashtra	Tamil Nadu	Jharkhand
SIA and consent: The process of acquisition mandates a social impact assessment study and consent of affected families	Exemption from SIA and consent for five categories of projects—defence, rural infrastructure, affordable housing, industrial corridors and infrastructure projects including PPP projects where the Central government owns the land	Exemption from SIA and consent for six categories of projects—defence, rural infrastructure, affordable housing, industrial corridors, infrastructure projects including PPP projects where the Central government owns the land, and industrial areas and estates	Provisions of the Central Act shall not apply to land obtained under three Tamil Nadu state Acts. These state laws don't require SIA and consent	Exemption from requirement of SIA and prior consent for a range of projects including schools, colleges, hospitals, rail, road, waterways, water supply, electrification, and any other government building, etc.

Source: CSE compilation

### MUMBAI-AHMEDABAD BULLET TRAIN

Under their state amendment Acts, Gujarat and Maharashtra have exempted infrastructure projects including PPP projects where the Central government owns the land, from the provisions of conducting an SIA and obtaining the consent of the affected land owners. The most talked about Mumbai-Ahmedabad bullet train project falls under this category. Funded by the Japan International Cooperation Agency, the project is facing stiff resistance from the farmers of southern Gujarat and northern Maharashtra. "The project will affect 192 villages in Gujarat. Fertile and well-irrigated agricultural land is being diverted for the train project, and no consent has been sought from the gram sabhas," said Jayesh Patel, president of Gujarat Khedut Samaj, leading the opposition to the land acquisition. "The acquisition is in violation of not only our fundamental rights but also our human rights," said Patel.



BHUMIPUTRA/NAPM

RFCTLARR Act exempts land acquired under the three statutes listed in its fifth schedule from the purview of the state RFCTLARR Act. These three statutes are 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. Reportedly, three-fourths of the acquisitions in the state are carried out under these three Acts. Jharkhand exempts a range of project from the requirement of conducting an SIA and obtaining prior consent if the project is considered to be in public interest.

### **SIA—institutional support and facilitation**

The Central RFCTLARR Rules declare that state governments shall identify or establish an independent organization—the State SIA Unit—which has to be responsible for ensuring that SIAs are commissioned and conducted by persons or a body other than the requiring body as per the provisions of the Act in all cases of land acquisition under the Act.

Essentially, an SIA Unit is an independent body that selects an SIA team from a list of empanelled agencies as and when the “appropriate government” issues a notification for conducting an SIA. Since the “appropriate government” issues notification for conducting SIA, it is evident that it cannot be the State SIA Unit as well without a clear and manifest conflict of interest.

Yet several states have been found to be in violation of this basic principle. These states use various tweaks and backdoors to sidestep the requirements of the Central law (see *Table 4: Institutional support for and facilitation of SIA across states*).

For example, Uttarakhand has constituted an SIA committee instead of an SIA Unit. All members of the committee are revenue officials with concerning sub-divisional magistrate as the chairman. All these offices are also directly involved in the land acquisition process. Moreover, the state has not empanelled any agencies for the purpose of conducting SIAs.

In Odisha, the SIA Unit is Nabakrushna Choudhury Centre for Development Studies, but the Secretary or Commissioner (R&R) has been empowered to act as the nodal officer at the state level and the additional district magistrate has been empowered to act as nodal officer at the district level to facilitate SIA teams to complete SIA studies within stipulated periods. By deputing nodal officers to facilitate the SIA process, SIA has been made the responsibility of the state. This contradicts the objective of the Central Act to create SIA Units functioning independent of the state government. Similarly, in states like Andhra Pradesh, Chhattisgarh, Kerala and Jharkhand, the SIA Unit comprises of the Commissioner (R&R) or the “appropriate government” itself. This creates a conflict of interest as they are stakeholders directly and deeply involved in the process of land acquisition.

In Jharkhand, the state rules define “SIA Unit” as an agency (or agencies) notified by the state government to carry out SIA studies and prepare Social Impact Management Plans (SIMPs). The Department of Revenue and Land Reforms

**Table 4: Institutional support for and facilitation of SIA across states**

State	Provisions for the SIA unit	Empanelment of agencies or organizations and selection of the SIA team
Andhra Pradesh	The Commissioner (R&R) has been designated the State SIA Unit to arrange to carry out an SIA study	<ul style="list-style-type: none"> <li>The SIA Unit is required to build and continuously expand state database of qualified SIA resource partners and practitioners</li> <li>Commissioner (R&amp;R) has to select an SIA team for each project from the individuals and institutions empanelled in the state database, comprising at least one woman member.</li> <li>The state has empanelled 11 entities for the purpose of conducting SIAs</li> </ul>
Arunachal Pradesh	No provision	
Assam	<p>The state government through the Commissioner (R&amp;R) has to identify or establish a State SIA Unit and other District SIA Units in consultation with the deputy commissioner of the concerned district to ensure that SIAs are conducted as per the provisions of the Act in all cases of land acquisition.</p> <p>Omeo Kumar Das Institute Of Social Change and Development, Guwahati is the Assam SIA unit</p>	<ul style="list-style-type: none"> <li>The State SIA Unit along with the district SIA Unit is required to build and continuously expand the state database of qualified SIA resource partners and practitioners</li> <li>The Commissioner (R&amp;R) has to select an SIA team for each project from the individuals and institutions empanelled in the state database, comprising at least one woman member</li> </ul>
Bihar	The state government shall notify one or more agencies of repute for carrying out the SIA study. Such agencies shall be notified by the state government as the State SIA Unit. The State SIA Unit shall be responsible for ensuring that SIAs are commissioned and conducted by such persons other than the requiring body as per the provisions of the Act	<ul style="list-style-type: none"> <li>The State SIA Unit has to be responsible for selecting the SIA team for each project from the individuals registered or empanelled in the state database of qualified SIA resource partners and practitioners, essentially comprising of one woman member</li> <li>Anugrah Narayan Sinha Institute of Social Studies (ANSISS) and the Asian Development Research Institute have been empanelled for the purpose of conducting SIAs</li> </ul>
Chhattisgarh	<p>The state government shall identify or establish an SIA unit to ensure that SIAs are conducted as per the provisions of the Act in all cases of land acquisition.</p> <p><i>*Though no SIA Unit has been established but district collectors have been given the powers of an SIA Unit</i></p>	<ul style="list-style-type: none"> <li>The SIA unit has to build and continuously expand the state database of qualified SIA resource partners and practitioners</li> <li>The SIA Unit is required to be responsible for selection of an SIA team from the aforementioned database, with at least one woman member</li> </ul>
Goa	Not available	
Gujarat	<ul style="list-style-type: none"> <li>Section 10(a) of the Gujarat Amendment Act exempts certain categories of projects from the requirement of conducting an SIA</li> <li>The appropriate government (Central or state) has to invite applications from the department of social sciences of recognized universities and colleges, NGOs, and professionals</li> <li>After assessing their capacity and experience through interviews, the appropriate government has to accredit and draw out a list of the departments of social sciences of recognized universities and colleges, NGOs, and professionals for conducting SIAs</li> </ul>	

State	Provisions for the SIA unit	Empanelment of agencies or organizations and selection of the SIA team
Haryana	<ul style="list-style-type: none"> <li>The Additional Chief Secretary to the Government of Haryana (Department of Revenue and Disaster Management) is required to constitute a society, corporation or other body as an SIA Unit. It accredited a unit to conduct an SIA study on any proposed acquisition</li> <li>Haryana Institute of Public Administration (HIPA) has been notified as the State SIA Unit. The Unit is responsible for carrying out the provisions of the Act and its Rules</li> </ul>	<ul style="list-style-type: none"> <li>The SIA Unit has to build and continuously expand the state database of qualified SIA resource partners and practitioners</li> <li>The SIA Unit will be responsible for selecting an SIA team from the aforementioned database, with at least one woman member.</li> <li>While selecting the SIA team, it is to be ensured that there is no conflict of interest involving the appointed team and the "appropriate government"</li> </ul>
Himachal Pradesh	<ul style="list-style-type: none"> <li>The state government has to identify or establish an independent organization which will be responsible for ensuring that SIAs are commissioned and conducted by persons or bodies other than the requiring body as per the provisions of the Act</li> <li>Himachal Pradesh Institute of Public Administration is the state SIA Unit</li> </ul>	<ul style="list-style-type: none"> <li>The SIA Unit has to build and continuously expand the state database of qualified SIA resource partners and practitioners</li> <li>The SIA Unit will be responsible for selecting an SIA team from the aforementioned database, with at least one woman member</li> <li>The state has empanelled 10 entities for the purpose of conducting SIAs</li> </ul>
Jharkhand	Department of Revenue and Land Reforms has to identify, select and empanel agencies to be notified as the State SIA Unit with specific jurisdiction for carrying out an SIA study	<ul style="list-style-type: none"> <li>The SIA Unit is responsible for selecting a team for each project from individuals and institutions empanelled in the state database, with at least one woman member</li> <li>The state government has empanelled 26 entities as SIA Units for Jharkhand</li> <li>Department of Revenue and Land Reforms shall be competent to disqualify and de-empanel any SIA Unit after assigning a reasoned cause</li> </ul>
Karnataka	The state government, through a Commissioner for Rehabilitation and Resettlement, has to establish an independent organization, termed State SIA Unit and District SIA Units, with the Deputy Commissioner of the concerned district responsible for ensuring that SIA studies are commissioned and conducted by such person or bodies other than the requiring body as per the provisions of the Act for all cases of land acquisition under the Act	<ul style="list-style-type: none"> <li>The state SIA Unit is responsible for selecting an SIA agency for each project, from the individuals and institutions registered or empanelled in the state database as SIA resource persons and practitioners. The services of universities, NGOs and research institutes can be obtained for the purpose. The selection of the SIA Agency shall be done in a transparent manner</li> <li>No person can be registered or empanelled as resource person or practitioner unless he is a holder of a master's degree in one of the following subjects: sociology, anthropology, psychology, engineering, social work or environmental science</li> <li>The SIA team should have at least one woman member</li> <li>The state has empanelled 37 entities for the purpose of conducting SIAs</li> </ul>
Kerala	<ul style="list-style-type: none"> <li>The government is required to, for the purpose of conducting an SIA study in accordance with the provisions of the Act, invite applications from individuals and organizations with experience of conducting SIAs</li> <li>After assessing their capacity through an interview and assessment, the appropriate government authority must accredit them to conduct SIA studies for the project and draw out a list of such SIA units</li> </ul>	<ul style="list-style-type: none"> <li>The government is to empanel these SIA units under various categories depending on the scale of the acquisition etc.</li> <li>The state has empanelled eight entities for the purpose of carrying out SIAs</li> </ul>



State	Provisions for the SIA unit	Empanelment of agencies or organizations and selection of the SIA team
Madhya Pradesh	Not available	
Maharashtra	<ul style="list-style-type: none"> <li>Appointment of an agency for SIA study: An appropriate government authority will invite applications from the departments of social sciences of recognized universities and colleges, NGOs, and professionals. The selected applicants will be responsible for ensuring that SIAs are commissioned and conducted by such agencies as per the provisions of the Act</li> <li>After assessing their capacity and experience through interviews, the government has to accredit them and also draw out a list of such accredited departments of social sciences of recognized universities and colleges, NGOs and professionals who can evaluate SIA studies</li> </ul>	
Manipur	The state government has to identify or establish an SIA Unit to ensure that SIAs are commissioned and conducted as per the provisions of the Act for all cases of land acquisition under the Act	The SIA Unit is required to build and continuously expand the state database of qualified SIA resource partners and practitioners. The SIA Unit will be responsible for selecting a team from the database, with at least one woman member
Meghalaya	The appropriate government authority has to identify or establish an SIA Unit to ensure that SIAs are commissioned and conducted by persons other than requiring body	<ul style="list-style-type: none"> <li>The SIA Unit shall be responsible for selecting an SIA team. No mention of a woman member in the team</li> <li>The SIA Unit for the state is Meghalaya Institute of Governance</li> </ul>
Mizoram	State Institute of Rural Development and Panchayati Raj, Government of Mizoram is the State SIA Unit as well as the institute responsible for carrying out SIAs	
Nagaland	No provision	
Odisha	<ul style="list-style-type: none"> <li>The state government has to identify or establish an SIA unit to ensure that SIAs are conducted as per the provisions of the Act.</li> <li>Nabakrushna Choudhury Centre for Development Studies is the State SIA Unit.</li> <li>The Secretary or Commissioner (R&amp;R) is required to act as a state level nodal officer for facilitating the SIA Unit in ensuring completion of SIA studies within stipulated periods</li> <li>Additional district magistrates are required to act as district level nodal officers to facilitate the SIA teams in ensuring completion of SIA studies within stipulated periods</li> </ul>	<ul style="list-style-type: none"> <li>The authority conducting the SIA study, Nabakrushna Choudhury Centre for Development Studies, is responsible for selecting the SIA team for each project from the individuals and institutions empanelled in the state database of qualified SIA resource partners and practitioners</li> <li>Every SIA team must include at least one woman member</li> </ul>
Punjab	Not available	
Rajasthan	<ul style="list-style-type: none"> <li>Appointment of an agency for the SIA study: An appropriate government authority will invite applications from the departments of social sciences of recognized universities and colleges, NGOs, and professionals. The selected applicants will be responsible for ensuring that SIAs are commissioned and conducted by such agencies as per the provisions of the Act</li> <li>After assessing their capacity and experience through interviews, the government has to accredit them and also draw out a list of such accredited departments of social sciences of recognized universities and colleges, NGOs and professionals who can evaluate SIA studies</li> </ul>	
Sikkim	<ul style="list-style-type: none"> <li>The state government has to identify or establish an SIA Unit to ensure that SIAs are conducted as per the provisions of the Act in all cases of land acquisition under the Act</li> <li>Department of Economics, Statistics, Monitoring and Evaluation, Government of Sikkim is the state SIA Unit</li> </ul>	<ul style="list-style-type: none"> <li>The SIA Unit is required to build and continuously expand the state database of qualified SIA resource partners and practitioners</li> <li>The SIA Unit is responsible for selecting an SIA team from the aforementioned database, with at least one woman member</li> </ul>

State	Provisions for the SIA unit	Empanelment of agencies or organizations and selection of the SIA team
Tamil Nadu	Tamil Nadu State Social Impact Assessment (TNSSIA) Unit is the State SIA Unit. TNSSIA shall function under the overall control of the Commissioner (R&R)	<ul style="list-style-type: none"> <li>The TNSSIA Unit is required to invite applications from departments of recognized universities, colleges and reputed organizations for empanelment as SIA agencies to carry out SIA studies and to prepare Social Impact Management Plans under the Act</li> <li>After assessing the capacities, qualifications and experience of the applicants, the TNSSIA Unit has to empanel eligible applicants as SIA agencies, so as to create a state database of qualified SIA agencies</li> <li>Based on the terms of reference, the TNSSIA Unit is required to select an eligible agency from the empanelled agencies to conduct SIAs</li> </ul>
Telangana	No provision	
Tripura	<ul style="list-style-type: none"> <li>If an acquisition is for a public purpose, the state government will engage a study team to undertake an SIA of the project. It will work for and under the supervision, direction and control of the state government</li> <li>No specific SIA unit has been formed in the state. SIA units are formed against each proposal as and when required</li> </ul>	
Uttar Pradesh	<ul style="list-style-type: none"> <li>The appropriate government authority may nominate the planning department of the government for the purpose of selecting an SIA agency on a case-by-case basis, or can itself identify or establish an independent outsourced district SIA agency, to ensure that an SIA study is conducted by a person other than the requiring body in all cases of land acquisition provided under the Act</li> <li>Gautam Buddha University is the empanelled agency</li> </ul>	<p>For the purpose of empanellment, the appropriate government authority, collector or planning department will invite an application from the department of social work of recognized universities and colleges, NGOs, and professionals. Selected applicants will be responsible for conducting SIAs as per the Act. The appropriate government authority, collector or planning department has to then draw out a list of such accredited people after assessing their capacity through an interview. An Expert Group is then constituted and the name of the agency is notified.</p> <p>A clause providing that at least one member of the team be a woman is absent</p>
Uttarakhand	<p>The state government is required to identify or establish an SIA Unit to ensure that SIAs are conducted as per the provisions of the Act in all cases of land acquisition under the Act.</p> <p>Note: In areas where capable agencies are not available or where engagement of such agencies is not financially feasible, an appropriate government authority may go ahead with the SIA study process through its own employees or officers. For this purpose, the appropriate government authority may nominate a chief development officer (CDO) or other district level officer not below the rank of additional district magistrate as the nodal officer responsible for monitoring the process</p>	<ul style="list-style-type: none"> <li>The SIA Unit has to build and continuously expand the state database of qualified SIA resource partners and practitioners</li> <li>The SIA Unit is responsible for selecting an SIA team from the aforementioned database, with at least one woman member</li> </ul>
West Bengal	Not available	

Source: CSE compilation

has empanelled 46 individuals and institutions as SIA units for the state, to select from as and when an SIA team has to be constituted. A state SIA Unit is supposed to be independent of the government, but in this case, since it does the empanelling, the revenue department has become the SIA unit by default. In Bihar too, “SIA Unit” is defined under the state Rules as an agency appointed by the state government to conduct SIAs and prepare SIMPs. The state has designated two state universities namely Anugrah Narayan Sinha Institute of Social Studies and the Asian Development Research Institute as the SIA Units. They are also expected to conduct the SIAs. This is also incorrect because the SIA Unit cannot also be an SIA conducting agency.

Kerala doesn't have an SIA Unit but has empanelled various agencies to conduct SIAs. In Tripura, the government conducts an SIA only if the acquisition serves public purpose. But whether an acquisition serves public purpose or not can only be established after conducting an SIA. This paradox creates a loophole in the law, rendering it vulnerable to manipulation.

Gujarat doesn't have an SIA Unit and only lays out the provision of the state government agencies for the purpose of conducting SIAs. It also enables acquisition on the ground of urgency and on recommendation of the Central government. It is interesting to note that while the Central (RCFTLARR) Act does not allow the Centre to obtain land in that manner, it can recommend that the Gujarat government obtain land through its own Act. This unorthodoxy calls the health of these laws into question.

However, some states are taking steps in the right direction. In Assam, the state Rules had made the Commissioner (R&R) responsible for carrying out SIAs, in contravention of the federal law, but as on 2 January 2017, the Assam government notified Omeo Kumar Das Institute Of Social Change and Development, Guwahati as the (independent) organization for carrying out SIAs. Himachal Pradesh also has a designated SIA Unit and empanelled agencies. Fact of the matter is that states in which small chunks of land are acquired have a more inclusive acquisition process compared to states where large tracts of land are acquired.

Data from RTI pleas in four states—Kerala, Jharkhand, Andhra Pradesh and Himachal Pradesh—shows that a majority of the agencies empanelled for conducting SIA in the states are regional. These agencies are well-versed with the cultural and social dynamics of their respective states; therefore, they will be able to point out the impacts precisely and suggest ameliorative measures. Such practices need to be encouraged in other states as well.

### **The process of conducting SIAs**

Many states have established their own rules providing for the constitution of an independent multidisciplinary “Expert Group ” as per the provisions of the Central Act. An expert group evaluates SIA report to determine whether a project serves public purpose or not, and make recommendations within two months. The process of conducting SIAs differs among states on the basis of its timeline, notice period and appraisal of the SIA report by the Expert Group (see *Table 5: The process of conducting SIA across states*).

**Table 5: The process of conducting SIA across states**

State	Timeline for submission of an SIA report	Notice period for ensuring participation in public hearing	Appraisal of an SIA report by the Expert Group
Central RFCTLARR Rules	Six months	At least three weeks	Constitution and time period for recommendations: two months
Andhra Pradesh	Six months	One week	The “appropriate government” is required to constitute an independent multi-disciplinary Expert Group for appraisal of an SIA report and SIMP as per the provisions of Section 7 of the RFCTLARR Act
Arunachal Pradesh	No provision		
Assam	Six months	Three weeks	An Expert Group is to be constituted under subsection (1) of Section 7 of the RFCTLARR Act to evaluate an SIA report and make recommendations within two months
Bihar	Six months	Three weeks	An Expert Group constituted under subsection(1) of Section 7 of the RFCTLARR Act is required to evaluate an SIA report and make its recommendation on it within a period of two months from the date of its constitution
Chhattisgarh	Six months	No time period has been specified	An Expert Group needs to be constituted under subsection (1) of Section 7 of the RFCTLARR Act to evaluate an SIA report and make recommendations on it within two months
Goa	Not available		
Gujarat	Six months	Two weeks	An Expert Group is to be constituted under Section 7 of the RFCTLARR Act to evaluate an SIA report
Haryana	Six months	Three weeks	An Expert Group is required to be constituted under subsection (1) of Section 7 of the RFCTLARR Act to evaluate the SIA report and make recommendations on it within two months
Himachal Pradesh	Six months	Three weeks	An Expert Group is to be constituted under subsection (1) of Section 7 of the RFCTLARR Act to evaluate an SIA report and make recommendations on it within two months
Jharkhand	Six months	Two weeks	The concerned deputy commissioner will be the “appropriate government” and will constitute an Expert Group as per the provisions given in subsection (1) of Section 7 of the RFCTLARR Act and the group will make recommendations within two months
Karnataka	Six months	Three weeks	<ul style="list-style-type: none"> <li>The State SIA Unit is responsible for the selection of an Expert Group, duly taking proposals from deputy commissioners of the districts into consideration, for the appraisal of SIA reports and SIMPs</li> <li>The Expert Group shall consist of two social scientists, two representatives of panchayats or municipality, two experts on rehabilitation, and a technical expert in the subject relating to the project. The experts may be drawn from government departments, NGOs or the private sector but shall not include members belonging to the requiring body. The Expert Group shall evaluate the SIA report and make its recommendation to that effect within a period of two months from the date of its receipt by the Expert Group</li> </ul>

State	Timeline for submission of an SIA report	Notice period for ensuring participation in public hearing	Appraisal of an SIA report by the Expert Group
Kerala	Six months	Two weeks	No provision
Madhya Pradesh	Not available		
Maharashtra	Six months	Two weeks	<ul style="list-style-type: none"> <li>The State government has to constitute a multi-disciplinary Expert Group consisting of :                             <ol style="list-style-type: none"> <li>Two non-official social scientists</li> <li>Two representatives of the panchayat, gram sabha, municipality or municipal corporation of the area in question, of which at least one member should be a woman</li> <li>Two experts on rehabilitation or those having contributed in framing the rehabilitation policy of the state</li> <li>Secretary of the forest department and secretary of the department in whose jurisdiction the project lies</li> <li>A technical expert, not below the rank of an executive engineer, from a field related to the project</li> </ol> </li> <li>Secretary of the forest department will be the chairperson of the Expert Group</li> <li>The Expert Group has to make recommendations within two months of its constitution</li> </ul>
Manipur	Six months	Three weeks	An Expert Group is constituted under sub-section (1) of Section 7 of the RFCLARR Act and it has to evaluate an SIA report and make recommendations on it within two months from the date of its constitution
Meghalaya	Six months	Three weeks	SIA reports are to be evaluated by an Expert Group constituted under Subsection (2) of Section 7 of the RFCLARR Act and the group will make recommendations
Mizoram	Six months	Adequate publicity	<ul style="list-style-type: none"> <li>An Expert Group constituted under Subsection (1) of Section 7 of the state Act will include the following:                             <ol style="list-style-type: none"> <li>Two social scientists</li> <li>Two representatives of the village council or local council or municipality</li> <li>Two experts on rehabilitation</li> <li>A technical expert in the subject related to the project</li> </ol> </li> <li>The government may nominate a person from amongst the members of the Expert Group as the chairperson of the group</li> <li>The Expert Group has to make recommendations within two months from the date of its constitution</li> </ul>
Nagaland	No provision		
Odisha	Six months	Two weeks	An Expert Group needs to be constituted as per the provisions of subsection (1) of Section 7 of the RFCLARR Act
Punjab	Follows Central Rules		

State	Timeline for submission of an SIA report	Notice period for ensuring participation in public hearing	Appraisal of an SIA report by the Expert Group
Rajasthan	Six months	Three weeks	<ul style="list-style-type: none"> <li>The state government will constitute a multi-disciplinary Expert Group consisting of:               <ol style="list-style-type: none"> <li>Two non-official social scientists</li> <li>Two representatives of the panchayat, gram sabha, municipality or municipal corporation of the area in question, of which at least one should be a woman</li> <li>Two experts on rehabilitation, or someone who has contributed in framing the rehabilitation policy of the state</li> <li>A technical expert not below the rank of an executive engineer in a field relating to the project</li> </ol> </li> <li>The chairperson will be nominated by the state government from amongst the members</li> <li>The Expert Group has to make recommendations within two months of its constitution</li> </ul>
Tamil Nadu	Not specified	At least two weeks	<ul style="list-style-type: none"> <li>In the case of SIA reports and SIMPs under subsection (1) of Section 6 of the RFCTLARR Act, recommendations of the Expert Group under subsection (6) of Section 7 must be placed in the concerning office</li> <li>Constitution of an Expert Group has not been specified</li> </ul>
Sikkim	Six months	At least two weeks	<ul style="list-style-type: none"> <li>The "appropriate government" will constitute a multidisciplinary Expert Group for the evaluation of an SIA report. The group will consist of:               <ol style="list-style-type: none"> <li>Two non-official social scientists</li> <li>Two representatives of the panchayat, gram sabha, municipality or municipal corporation of the area in question, of which at least one should be a woman</li> <li>Two experts on rehabilitation, or people who have contributed in framing the rehabilitation policy of the state</li> </ol> </li> <li>A technical expert not below the rank of an executive engineer in the field or subject related to the project</li> <li>A chairperson shall be nominated by the "appropriate government" from amongst the members</li> <li>The Expert Group shall make its recommendations within two months</li> </ul>
Telangana	No provision		
Tripura	Six months	Two weeks	An Expert Group will have to be constituted under subsection (2) of Section 7 of the RFCTLARR Act to evaluate SIA reports along with SIMPs

State	Timeline for submission of an SIA report	Notice period for ensuring participation in public hearing	Appraisal of an SIA report by the Expert Group
Uttar Pradesh	Six months	One week	<ul style="list-style-type: none"> <li>The “appropriate government” has to constitute a multidisciplinary Expert Group as provided under subsection (1) of Section 7 of the RFCTLARR Act. The Expert Group consists of:               <ol style="list-style-type: none"> <li>Two non-official social scientists to be nominated by the government</li> <li>Two representatives of the panchayat, gram sabha, municipality or municipal corporation of the area in question</li> <li>Two experts on rehabilitation</li> <li>A technical expert in the subject relating to the project</li> </ol> </li> </ul>
Uttarakhand	Six months	Three weeks	<ul style="list-style-type: none"> <li>An Expert Group needs to be constituted under subsection (1) of Section 7 of the RFCTLARR Act to evaluate an SIA report and make recommendations within two months. By a notification, Uttarakhand constituted an Expert Group with the chief development officer as its chairman, and membership comprised of the panchayat pramukh, two social scientists and two rehabilitation experts appointed by the district magistrate and two other government officers</li> </ul>
West Bengal	Not available		

Source: CSE compilation

Uttarakhand’s notification for constitution of the independent multidisciplinary Expert Group is in complete contravention with the Central Act. As per the Act, the Expert Group ought to be an independent body and cannot be comprised of government officials directly involved in the process of land acquisition considering the fact that the Expert Group is responsible to determine if the project serves any public purpose, and if its social costs and impacts outweigh the benefits. Whereas, the chairperson of Uttarakhand’s Expert Group is the chief development officer (CDO), whose office is deeply involved in the process of acquisition. This is a clear conflict of interest.

Initially, the state rules of Rajasthan made the secretary of the department procuring the land chairperson of the Expert Group. This contradiction was rectified through an amendment in 2018, whereby the state government has to nominate the chairperson from amongst the members of the Expert Group. Karnataka sets out the state SIA Unit to select the Expert Group after duly taking the proposals from the deputy commissioners of the districts in consideration, for appraisal of an SIA or an SIMP.

As per the Central law, the Expert Group is supposed to be constituted by the appropriate government. Although, the question arises whether the government can constitute an independent and unbiased body that will be able to determine if the project serves public purpose or not.



CSE/PHOTOLIBRARY

People voicing their concerns as the state machinery conducts a public hearing

### **Public hearing**

The RFCTLARR Act states that the notice period for ensuring participation in public hearing has to be at least three weeks, but certain states have circumvented this provision by reducing the notice period to one–two weeks. While Andhra Pradesh and Uttar Pradesh governments will serve a notice period of one week to ensure participation in public hearing, Jharkhand, Kerala, Odisha, Sikkim, Tamil Nadu and Tripura will serve a notice of two weeks. Mizoram doesn't specify the time period, instead providing that adequate publicity should have been achieved. In this manner, public participation is minimized and intervention by land rights activists evaded. Such dilutions raise questions about the seriousness with which SIAs are conducted.

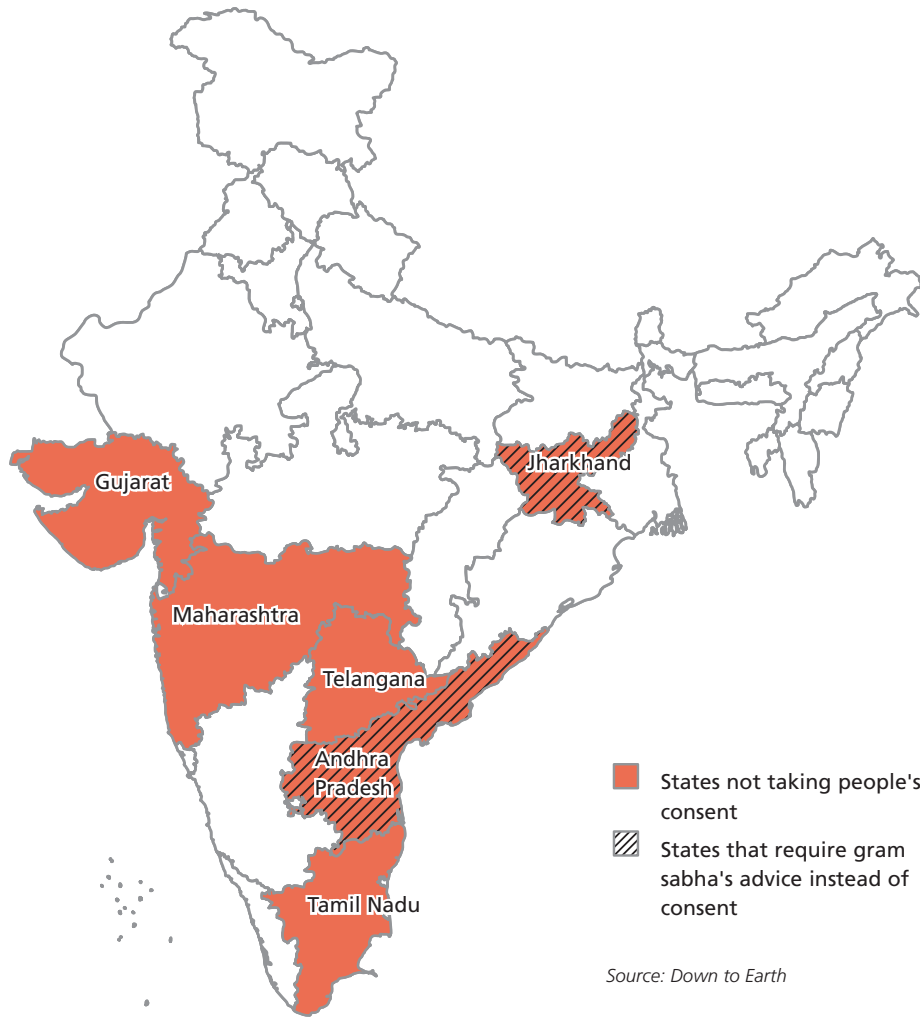
### **Consent of the gram sabhas**

The Central Act provides that as far as possible, no acquisition of land can take place in Scheduled Areas. It also provides that “where such acquisition does take place, it should be done only as a demonstrable last resort”. In case of acquisition or alienation of any land in Scheduled Areas, prior consent of the concerned gram sabha or panchayat or autonomous district council should be obtained—including for acquisition under the urgency clause.

Although, the consent of gram sabhas for land acquisition in Scheduled Areas is a must, the duration of the notice period, quorum for obtaining consent, and women representation differs across states (see *Table 6: Consent of gram sabhas for land acquisition*).



**Map 3: Provisions for consent**



**Table 6: Consent of gram sabhas for land acquisition**

State	Notice period for holding a gram sabha	Requisite quorum for obtaining consent of a gram sabha	Women representation
Central Rules	Three weeks	50 per cent	One-third
Andhra Pradesh	<ul style="list-style-type: none"> <li>Scheduled areas: Consent compulsory ( Except the five exempted categories )</li> <li>Non scheduled areas: Consultation</li> </ul>		
Arunachal Pradesh	No provision		
Assam	No provision		
Bihar	Three weeks	50 per cent	One-third
Chhattisgarh	The consent of the concerned gram sabha has to be obtained in Scheduled Areas but the process and timeline has not been categorically mentioned.		
Goa	Not available		
Gujarat	<ul style="list-style-type: none"> <li>In case of Scheduled Areas mentioned in the Fifth Schedule of the Indian Constitution, the consent of a gram sabha has to be sought prior to the consent of the land owners</li> <li>The details of the prior consent process with respect to gram sabhas have not been laid out</li> </ul>		
Jharkhand	Two weeks	The quorum is one-third of the total membership	One-third of the total women members of the gram sabha
Haryana	No provision		

State	Notice period for holding a gram sabha	Requisite quorum for obtaining consent of a gram sabha	Women representation
Himachal Pradesh	Three weeks	The quorum is the same as prescribed in the Himachal Pradesh Panchayati Raj Act, 1994 (one-third of the total membership), the Himachal Pradesh Municipal Corporation Act, 1994 or the Himachal Pradesh Municipal Act, 1994 (half of the total numbers)	Absent
Karnataka	Three weeks	50 per cent	One-third of the total women members of the gram sabha
Kerala	Three weeks	Absent	Absent
Madhya Pradesh	Not available		
Maharashtra	In case of land situated in Scheduled Areas mentioned in the Fifth Schedule of the Indian Constitution, the consent of a gram sabha has to be sought prior to the consent of the land owners		
Manipur	Three weeks	50 per cent	One-third
Meghalaya	Prior consent of the autonomous council has to be taken before issuing a notification under Section 4 of the Central Act		
Mizoram	No provision		
Nagaland	No provision		
Odisha	<ul style="list-style-type: none"> <li>In all cases of acquisition or alienation of land in Scheduled Areas, consent of the concerned gram sabha and panchayats need to be obtained before the publication of the notification under Section 11 of the RFCTLARR Act</li> <li>Consultation with the gram sabha in Scheduled Areas has to be in accordance with the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996</li> </ul>		
Punjab	Not available		
Rajasthan	In all cases of acquisition of land in Scheduled Areas of the Fifth Schedule of the Constitution of India, the consent of the concerned gram sabha needs to be obtained in accordance with the provisions of the Rajasthan Panchayat Raj Act, 1999	One-tenth of total number of members	Women members shall be in proportion to their population.
Sikkim	Two weeks	50 per cent	One-third
Tamil Nadu	Consent of the concerned gram sabha has to be obtained before the initiation of the consent process of affected families. The details of the process have not specified		
Telangana	No provision		
Tripura	In case of acquisition in Scheduled Areas, consent of the concerned gram sabha or, where there is no gram sabha, consent of a panchayat or autonomous district council has to be obtained in all cases of acquisition whether for public purpose or for private companies or for public private partnership in a manner similar to obtaining consent of affected people with suitable modifications where deemed necessary by the collector		
Uttar Pradesh	Two weeks	The quorum shall be the same as defined under the U.P. Panchayat Raj Act, 1947, i.e., one-fifth of the number of members will constitute the quorum	One-third
Uttarakhand	The state doesn't have Scheduled Areas as described in the Fifth Schedule of the Indian Constitution		
West Bengal	Not available		

Source: CSE compilation

Chhattisgarh, Maharashtra and Tamil Nadu don't specify their own process of acquiring consent of the gram sabhas, contrary to the elaborate explanation on the issue in the Central rules. It may, thus, be implied that these states follow the Central rules on the matter. Several states such as Uttar Pradesh and Sikkim have reduced the duration of the notice period from three to two weeks. Himachal Pradesh has reduced the quorum from 50 per cent to one-third of the gram sabha. In four states— Himachal Pradesh, Odisha, Rajasthan and Uttar Pradesh—for all cases of land acquisition in Scheduled Areas under the Fifth Schedule of the Constitution of India, the consent of the concerned gram sabha needs to be obtained in accordance with the provisions of the state Panchayat Raj Acts. These Acts have different quora, varying from half to one-fifth or one-tenth, as specified in their respective Acts. Andhra Pradesh and Jharkhand, on the other hand, have removed the provision of taking consent of the gram sabha altogether. The states' land acquisition Act provides for taking gram sabha's "advice" rather than consent. These modifications reveal that states are trying to hamper the spirit of public participation and consultation in such a vital process enshrined in the 2013 Act.

### **Consent of affected land owners under PPP and private projects**

The Central law has mandated prior consent of 70 per cent and 80 per cent of the affected land owners for PPP and private projects respectively. All but six states have enacted their own laws and exempted certain categories of project from this. The consent needs to be recorded in a signed declaration at the public hearing conducted for the SIA. Land owners unable to attend the meeting may submit their signed declaration within 21 days from the date of the meeting. In Gujarat, Kerala and Maharashtra, there is no provision for obtaining the opinion of land owners who remain absent from the meeting; whereas in Uttar Pradesh, absentees and those who do not get their opinion recorded in the signed declaration shall be considered as having no objection to the ongoing proposed acquisition.

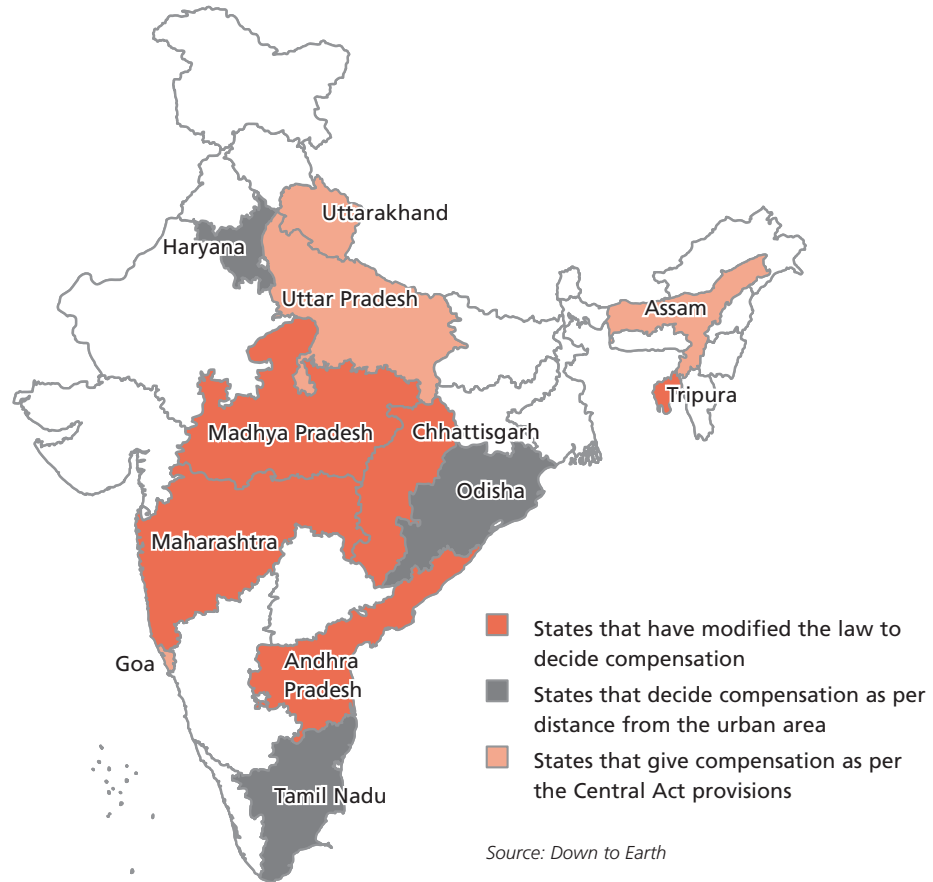
### **Compensation**

Compensation is the heart of land acquisition. Acquisition without compensation has been considered a violation under Article 14 of the Indian Constitution, thereby making it the most important clause of the Act.

Compensation has to be paid according to the market value of the land, plus the value of any additional assets attached to the land. The Act devised a formula to rectify the problems in the determination of land value by introducing a multiplier factor. The Act recommends that this multiplier factor be two for rural areas and one for urban areas. In addition, a gift or added compensation (equal to the compensation calculated according to the formula) is also provided to make giving up the land lucrative. It is called solatium. This makes the compensation four times the market value in rural areas and two times the market value in urban areas.

However, deciding the multiplier factor has been left to the discretion of the states. It can be argued that a uniform multiplier factor across the country can penalize states that maintain their land records up-to-date. This is so because in states where land records are up-to-date, the market value can be calculated quite

**Map 4: Compensation across states**



accurately, unlike in states with poor land record management whose market value would only be a fraction of the actual value of the land.

The multiplier factor used in any state is also an indication of the state’s attitude towards providing fair compensation. In February 2016, the Central government passed an order fixing the multiplier factor at two for all cases of acquisition made in rural areas. But most states have retained their own multiplying factors (see *Table 7: Multiplier factors for land in urban and rural areas*).

As we have seen, compensation is intimately related to land titles which are not conclusive in India. RTI responses suggest that land revenue departments across the country, barring a few states, don’t have sufficient land records. Modernizing land records could not have been made a part of the RFCTLARR Act since land is a state subject outside the legislative domain of the Parliament.

For states such as Andhra Pradesh, Chhattisgarh, Madhya Pradesh, Maharashtra, Telangana and Tripura—where the multiplier factor for rural areas is fixed at less than two—the calculation will result in a value which is less than what it would be if the multiplier factor specified in the RFCTLARR Act, 2013 had been used. One of the main benefits of enhanced compensation is to act as a financial safeguard for land owners as well as a deterrent against reckless acquisition of land at dirt cheap prices. A low multiplier provides neither of these benefits. Then there is

**Table 7: Multiplier factors for land in urban and rural areas**

States	Multiplier for urban areas	Multiplier for rural areas
RFCTLARR Act	1	2
Andhra Pradesh	1	1.25 1.5 (Scheduled Areas)
Arunachal Pradesh	As per provisions laid out in the Central Act along with the First Schedule of RFCTLARR Act	
Assam	1.5	2
Bihar	As per provisions laid out in the Central Act along with the First Schedule of RFCTLARR Act	
Chhattisgarh	1	1
Goa	1	2
Gujarat	Not available	
Haryana	1	Radial distance from urban area 0–10 km: 1.25 10–20 km: 1.5 20–30 km: 1.75 Above 30 km: 2
Himachal Pradesh	Not available	
Jharkhand	As per provisions laid out in the Central Act along with the First Schedule of the RFCTLARR Act	
Karnataka	Not available	
Kerala	Not available	
Madhya Pradesh	Not available	1
Maharashtra	1.1	1.2
Manipur	Not available	
Meghalaya	Not available	
Mizoram	No clause of multiplier	
Nagaland	Not available	
Odisha	Not available	Radial distance from urban area 0–10 km: 1 10–20 km: 1.2 20–30 km: 1.4 30–40 km: 1.8 Above 40 km: 2
Punjab	Not available	
Rajasthan	Not available	
Sikkim	Not available	
Tamil Nadu		Radial distance from urban area Within 30 km: 1.25 30–50 km: 1.5 Beyond 50 km: 2
	Not available	1.25
Tripura	1	1
Uttar Pradesh	As per provisions laid out in the Central Act along with the First Schedule of RFCTLARR Act	
Uttarakhand	Not available	2
West Bengal	Not available	Not available

Source: CSE compilation

the curious case of Mizoram, where the state Act doesn't provide a multiplier factor at all. Also, the award of solatium is different in the state, solatium may be in addition to the compensation payable to any person whose land has been



Farmers and land owners en route to a gathering to protest against false promises for higher compensation in a village in Uttar Pradesh

acquired compulsorily; solatium is not paid in case the land is acquired on an offer made voluntarily by the land holder or through private negotiations.

The market value of land differs widely between urban and rural areas, particularly as the distance from urban areas increases, but the multiplier factors across the country are very similar for urban and rural areas. To ensure fair compensation, the multiplier factor for rural areas should ideally be much higher than that for urban areas.

The Central government considers it necessary to extend benefits available to the land owners under the RFCTLARR Act, 2013 to similarly placed land owners whose lands are acquired under the 13 enactments specified in the Fourth Schedule of the Act. Therefore, it was decided to uniformly apply the beneficial provisions of the RFCTLARR Act relating to determination of compensation and rehabilitation and resettlement to the land owners under the said enactments. National Highway Authority of India and Indian Railways have come out with notifications regarding the same. Information is not available about the others.

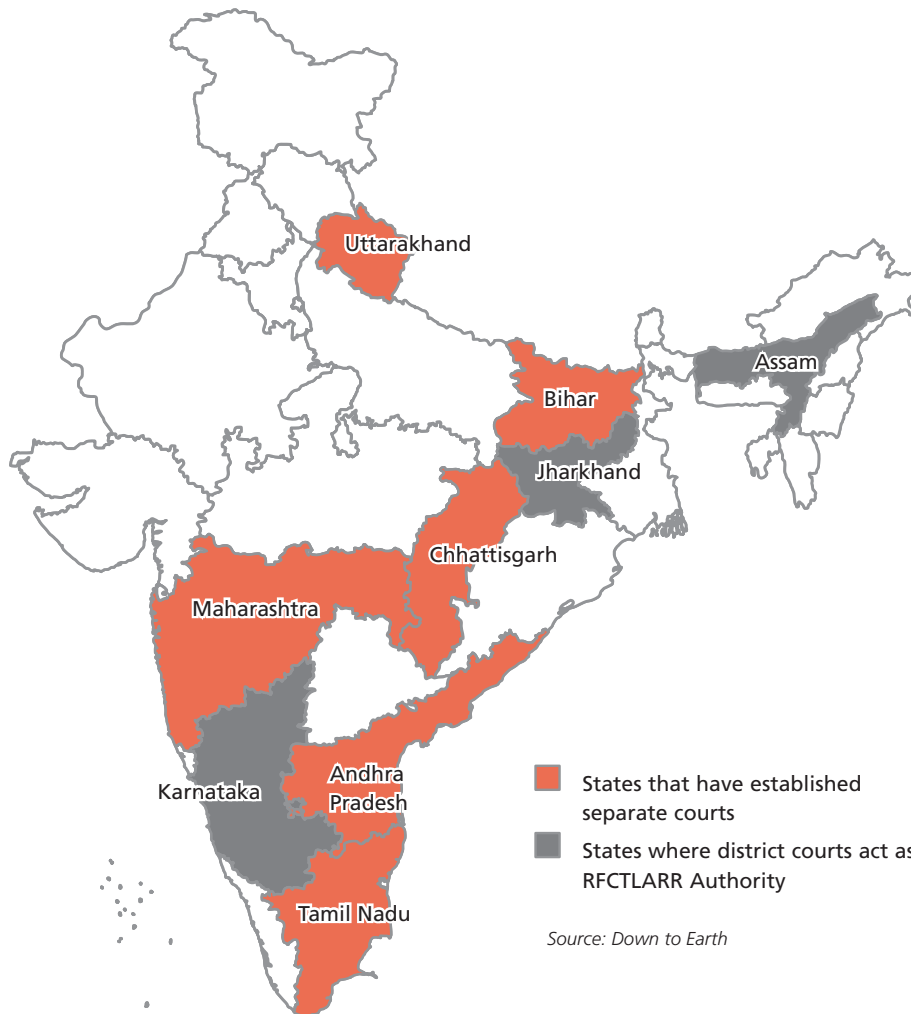
### **Land acquisition, rehabilitation and resettlement (LARR) authority**

As per Section 51 of the Central Act, the “appropriate government” has to establish, by notification, one or more authorities to be known as “the Land Acquisition, Rehabilitation and Resettlement Authority” for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement. Assam, Jharkhand and Karnataka, instead of establishing a separate authority, have delegated the job to the district courts. This is contrary to the provision clearly laid out in the Central Act that no civil court other than the high court (under Article 226 or Article 227 of the Constitution) or the Supreme Court shall have jurisdiction to entertain any dispute relating to land acquisition

in respect of which the collector or the authority is empowered by or under this Act, and no injunction can be granted by any court in respect of any such matter. This implies that the authority shall be a separate body and not integrated with the district court.

The main reason to establish such an authority was to lessen the burden of the district courts; therefore, the appeals also lie only to the high court. This ensures speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement within six months. But after mapping the status, it can be observed that not all states have established the LARR authority (see *Table 8: Establishment and composition of LARR authority across states*).

**Map 5: LARR authority across states**



**Table 8: Establishment and composition of LARR authority across states**

States	Establishment of LARR authority	Composition of LARR authority
Andhra Pradesh	<ul style="list-style-type: none"> <li>The state government is required to establish, by notification in the official gazette, the LARR authority</li> <li>The government has notified three such offices at Tirupati, Vijayawada and Vishakhapatnam</li> </ul>	Not available
Arunachal Pradesh	No such authority	
Assam	The state government needs to establish, by notification in the official gazette, the LARR authority but till the time such an authority is established, the state government, with the consent of the high court has declared courts of district judges to act as the authority	
Bihar	The state government has established the LARR authority on 1 May 2016	A retired district court judge is the presiding officer of the authority
Chhattisgarh	The state government has established the LARR authority on 28 January 2016.	A retired district court judge is the presiding officer of the authority
Goa	Not available	
Gujarat	A provision exists but implementation of the same can't be mapped	
Haryana	The state government needs to establish the LARR authority. Implementation of the same can't be mapped	Not available
Himachal Pradesh	The state government follows the Central Act and hence, has a provision of LARR authority but no such authority has been established yet	The concerned sub-divisional magistrate looks after the disputes and further appeals are made to the divisional commissioner
Jharkhand	The state government has to establish by notification in the official gazette a LARR authority	Till such an authority is established, the state government with the consent of the high court has declared the concerned district court judge to act as the authority
Karnataka	The state government needs to establish the LARR authority. Implementation of the same can't be mapped	The government through notification had designated first additional district and session's judge of the district as presiding officer. If there's no additional district judge, the principal judge would become the presiding officer of the authority (in whichever district the land acquisition is under process)
Kerala	The state government follows the Central Act and hence, has the provision of LARR authority but no such authority has been established yet	
Madhya Pradesh	Not available	
Maharashtra	The state government has established by notification in the official gazette the LARR authority at Nagpur	
Manipur	Not available	
Meghalaya	As per the Central Act but implementation of the same can't be mapped	
Rajasthan	The appropriate government, for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement, has to establish, by notification, one or more authorities to be known as "the Land Acquisition, Rehabilitation and Resettlement Authority"	The presiding officer can be a serving district judge, a retired district judge or a legal practitioner as appointed by the state government
Sikkim	The government has to issue guidelines for constitution and functioning of LARR authority. Implementation of the same can't be mapped	



States	Establishment of LARR authority	Composition of LARR authority
Mizoram	<ul style="list-style-type: none"> <li>The government is required to, for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement, establish, by notification, one or more authorities to be known as—the Land Acquisition, Rehabilitation and Resettlement Authority to exercise jurisdiction, powers and authority conferred on it by or under this Act</li> <li>The Government is also required to specify in the notification referred to in Subsection (1) of Section 60 the areas within which the authority may exercise jurisdiction for entertaining and deciding the references made to it under Section 60 or applications made by the applicant under second proviso to the Subsection (1)</li> </ul>	<ul style="list-style-type: none"> <li>The Authority has to consist of one person (referred to as the presiding officer) and two other members to be appointed, by notification, by the government.</li> <li>Notwithstanding anything contained in Subsection (1), the government may authorize the presiding officer of one authority to discharge also the functions of the presiding officer of another authority.</li> <li>A person will not be qualified for appointment as the presiding officer of an authority unless: <ul style="list-style-type: none"> <li>(a) He is or has been a district judge or district magistrate or officer of the law department not below the rank of joint secretary; or</li> <li>(b) He is a qualified legal practitioner for not less than 10 years</li> </ul> </li> </ul>
Nagaland	No authority	
Odisha	The rules do not mention anything about the LARR authority	
Punjab	Not available	
Tamil Nadu	<ul style="list-style-type: none"> <li>Tamil Nadu has created LARR authority in 32 districts with presiding officer being the principal district judge</li> <li>The LARR authority shall have the powers of a civil court in the adjudication of any matter relating to availing of rehabilitation and resettlement benefits through false claims or fraudulent means</li> </ul>	The presiding officer can be a serving district judge, a retired district judge or a legal practitioner as appointed by the state government
Telangana	Even though Telangana has its own act, it is only an amendment to the RFCTLARR, Act, 2013 and, as per the Telangana Amendment, no changes have been made regarding the LARR authority	The state hasn't formulated the authority yet
Tripura	The appropriate government has to, for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement, establish, by notification, one or more authorities to be known as "the Land Acquisition, Rehabilitation and Resettlement Authority"	Presiding officer may be an in-service or retired judicial officer, or a qualified legal practitioner.
Uttar Pradesh	The state government shall establish, by notification in the official gazette, the LARR authority for the purpose of providing speedy disposal of disputes relating to land acquisition in the state	Constitution is under process.
Uttarakhand	The state government has established by notification in the official gazette the LARR authority	Not available
West Bengal	Not available	

Source: CSE compilation

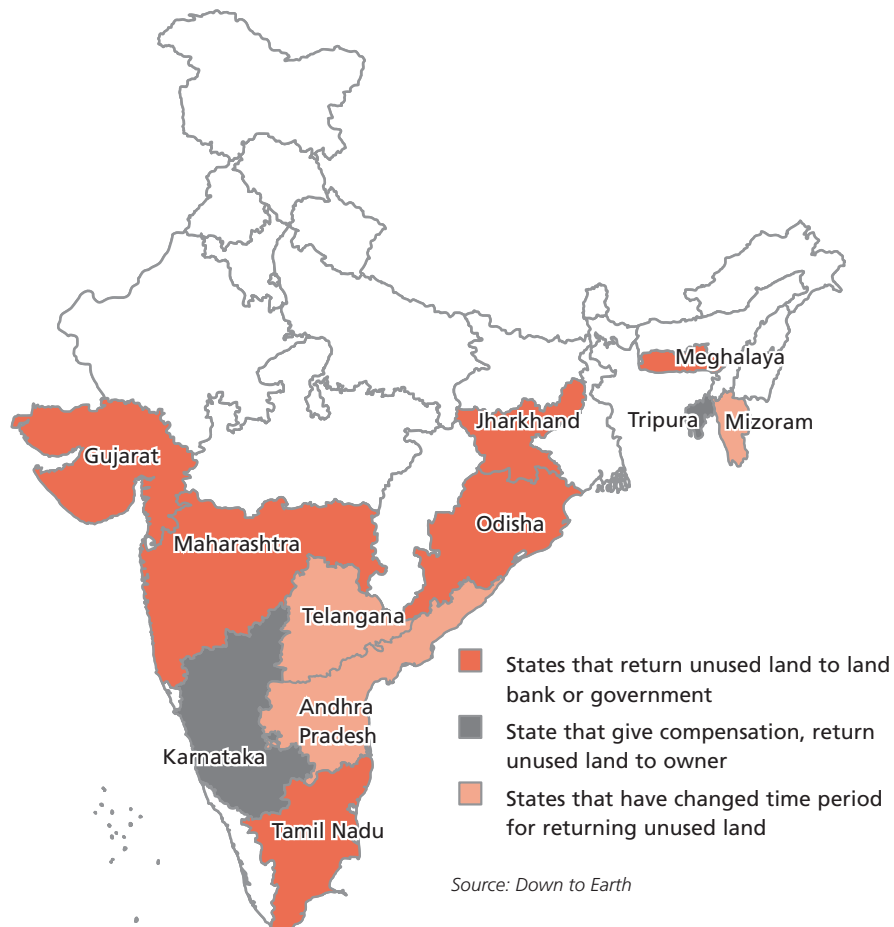
### Returning unused land

As per Section 101 of the RFCTLARR Act, 2013 when a piece of land remains unused for a period of five years from the date of taking possession, it may be returned either to the original owners and their legal heirs or reverted to the government land bank; however, provisions differ across states in their detail (see *Table 9: Provisions for returning unused land across states*).

Mizoram and Telangana have substituted the period of five years with a period specified for setting up of any project or five years, whichever is later. Whereas, Jharkhand, Meghalaya and Odisha do not have the provision of returning the land to the original owners or their legal heirs as it transfers the land directly to a land bank. Jharkhand has started putting common lands under land bank for easy and faster availability of land when needed. Meghalaya has a threshold for putting unused acquired land back in the land bank, which is only if 50 per cent of the proposed project has not been physically implemented on the ground.

Gujarat, Maharashtra and Tamil Nadu have vested the power of possession of unused land in the “appropriate government”. In Karnataka and Tripura, unused land is returned to the original owner or their legal heirs, once they pay the

**Map 6: Return of unused land**



**Table 9: Provisions for returning unused land across states**

States	Provision
Andhra Pradesh	When a piece of land acquired under the Act remains unused for a period of five years from the date of taking possession by the requiring body, it has to be returned to the original owner, their legal heirs or to the land bank by issuing a notice to the requiring body for whom the land was acquired, and by giving an opportunity of being heard and by providing a compulsory written order by the district collector in this regard
Arunachal Pradesh	Since land in Arunachal Pradesh is acquired under the Jhum Land Regulations, the procedure of returning an acquired piece of land may also fall under those regulations. The regulation states that the land so acquired, if relinquished, has to be returned on refund of compensation, if any
Assam	When a piece of land acquired under the Act remains unused for a period of five years from the date of taking possession by the requiring body, the same has to be returned to the original owner, their legal heirs or to the land bank by issuing a notice to the requiring body for whom the land was acquired, and by giving an opportunity of being heard and by providing a necessary order by the district collector in this regard
Bihar	When a piece of land acquired under the Act remains unused for a period of five years from the date of taking possession by the requiring body, it has to be returned to the original owner, their legal heirs or to the land bank by issuing a notice to the requiring body for whom the land was acquired, and by giving an opportunity of being heard and by providing a compulsory written order by the district collector in this regard
Chhattisgarh	No provision
Goa	Not available
Gujarat	<p>If any land acquired under the Act remains unused for a period of five years from the date of taking possession, then a notice shall be issued by the "appropriate government" to the requiring body to hand over the possession of the said land to the appropriate government. On handing over the possession of the land, the appropriate government within a period of one month from the date of taking possession issues notices to all government departments and public agencies asking them whether they need the said land for any public purpose or any projects. If the said land is not required for any other public purpose, it shall be deposited to the land bank.</p> <p>In case any owner or legal heirs wants he land back, they can make an application to the state government within six months for return of the acquired land. The state government may take appropriate decision on such application with respect to the Gujarat Land Revenue Code, 1879</p>
Haryana	When a piece of land acquired under the Act remains unused for a period of five years from the date of taking possession by the requiring body, it has to be returned to the original owner, their legal heirs or to the land bank by issuing a notice to the requiring body for whom the land was acquired, and by giving an opportunity of being heard and by providing a compulsory written order by the district collector in this behalf
Himachal Pradesh	When a piece of land acquired under the Act remains unused for a period of five years from the date of taking possession by the requiring body, it has to be returned to the original owner, their legal heirs or to the land bank by issuing a notice to the requiring body for whom the land was acquired, and by giving an opportunity of being heard and by providing a compulsory written order by the district collector in this regard (Compensation excluding solatium to be returned).
Jharkhand	Where any land acquired under the Act remains unused for a period as provided in the Act, the same has to be returned to the land bank of the state government by issuing a notice to the requiring body for whom the land was acquired and by giving an opportunity of being heard, and by providing a compulsory written order by the state government in this regard
Karnataka	<p>If, in the opinion of the state government, land acquired for public purpose under the Act remains unused for a period of more than five years from the date of taking physical possession, it may direct the deputy commissioner to issue a notice to the requiring body and, giving reasonable and sufficient opportunity of being heard, pass necessary written orders to revert such unused land to:</p> <p>(a) Original land owner or their legal heirs as the case may be  (b) Land bank which is a governmental equity that focuses on converting such land into productive use</p>

States	Provision
Kerala	No provision
Madhya Pradesh	Not available
Maharashtra	If any land acquired under the Act remains unused for a period of five years from the date of taking possession, then a notice needs to be issued by the "appropriate government" to the requiring body to hand over the possession of the said land to the appropriate government. On handing over the possession of the land, the appropriate government, within a period of one month from the date of possession, issues notices to all government departments or public agencies asking them whether they need the said land for any public purpose or any public project (only if full budgetary provision is provided for). If no entity requests for such a land then the land shall be returned to the original owners after passing a written order by the appropriate government and after recovering the land acquisition amount which was paid to the owner at the time of award with an added interest
Manipur	Not available
Meghalaya	When any land acquired under the Act remains unused (i.e. 50 per cent of the proposed project is not physically implemented on the ground) for a period specified for setting up of any project or for five years, whichever is later, from the date of taking over the possession, the land will vest in the land bank of the government
Mizoram	When any land, acquired under this Act remains unused for a period specified for setting up of any project or for five years whichever is later from the date of taking possession, the same may be returned to the original owner, legal heirs or to the land bank of the government by reversion in the manner as may be prescribed by the state government
Nagaland	No provision
Odisha	If land has been acquired and possession taken but it has not been utilized within the period of five years from the date of possession, then it will be reverted to the state and deposited in the land bank automatically
Punjab	Not available
Rajasthan	When a piece of land acquired under the Act remains unused for a period of five years from the date of taking possession by the requiring body, it has to be returned to the original owner, their legal heirs or to the land bank by issuing a notice to the requiring body for whom the land was acquired, and by giving an opportunity of being heard and by providing a compulsory written order by the district collector in this regard
Sikkim	Where any land acquired under the Act remains unused for a period of five years from the date of taking over the possession by the requiring body, the same will be returned to the original owner or owners or their legal heirs, as the case may be, or to the land bank by issuing a notice to the requiring body and by giving an opportunity of being heard and by passing necessary written order by the district collector in this behalf. The appropriate government has to, by notification, form a land bank
Tamil Nadu	Where any land acquired under the Act remains unused for the period of five years from the date of taking over possession of land by the requiring body, the collector needs to, in the first instance examine as to whether that land may be required for any other public purpose. If he is satisfied that such land will be required for any other public purpose, he shall certify the same and recommend the state government to revert the land to any government entity that focuses on the conversion of government owned vacant, abandoned, unused acquired lands and tax-delinquent properties into productive use.  The Collector also needs to issue a notice regarding the reversion of land, to the requiring body for whom the land was acquired. The state government is also required to, after giving an opportunity of hearing to the requiring body, pass a written order returning such land to the land bank
Telangana	Period of five years has been substituted for a period specified for setting up of any project or five years, whichever is later, to be returned to the original owner or the land bank
Tripura	Where land already acquired remains unused for a period of five years from the date of taking possession of the same, the government shall, before returning any unused land to the original owner or legal heirs or to the land bank under section 101 of the Act

States	Provision
Uttar Pradesh	When a piece of land acquired under the Act remains unused for a period of five years from the date of taking possession by the requiring body, it has to be returned to the original owner, their legal heirs or to the land bank by issuing a notice to the requiring body for whom the land was acquired, and by giving an opportunity of being heard and by providing a compulsory written order by the district collector in this regard
Uttarakhand	When a piece of land acquired under the Act remains unused for a period of five years from the date of taking possession by the requiring body, it has to be returned to the original owner, their legal heirs or to the land bank by issuing a notice to the requiring body for whom the land was acquired, and by giving an opportunity of being heard and by providing a compulsory written order by the district collector in this regard
West Bengal	Not available

Source: CSE compilation

current market value of the land as determined under the Act, or the amount already paid as compensation along with enhanced compensation if any, at the time of acquisition under this Act, whichever is higher. In most such cases, land owners are unlikely to have the financial muscle to make a one-time return of such large sums. Therefore, this provision works as an indirect deterrent to the return of unused land.

Transferring large tracts of land to a state's land bank makes land clearances easy and deprives people of their land rights, especially Scheduled Tribes by taking away their limited sources of livelihood, along with their ethnic, linguistic and cultural identity. Therefore, to make the process of land acquisition transparent, it is important to have access to the details of land held by the states under land banks. Ideally, the "appropriate government" needs to form a land bank and the state revenue department has to maintain a village-wise land bank data. These provisions are necessary to ensure that the absolute minimum land is acquired. But information state governments have on land banks is limited.

### Development plan

According to RFCTLARR Act, 2013, for projects involuntarily displacing Scheduled Castes or Scheduled Tribes (SC/ST) families, a development plan needs to be prepared. The Act lays down the details of the procedure for the protection of their land rights, but not for restoration of titles. The plan also needs to contain a programme for the development of alternate fuel, fodder and non-timber forest produce resources on non-forest lands within a period of five years, sufficient to meet the requirements of the tribal or marginalized caste communities.

A provision exists in all states for a five-year development plan to be prepared by the administrator, rehabilitation and resettlement (R&R) commissioner, other "appropriate government" or, in the case of Odisha, the agency conducting SIA that is required to attach the development plan along with the SIMP. In Karnataka and Uttar Pradesh, a development plan has to be prepared by the state government in consultation with the concerned social justice department of the state and the village panchayats or urban local bodies in that area. Information for Gujarat, Kerala, Maharashtra, Manipur and Sikkim on this issue is not available.



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Tribals displaced by mining activity standing in solidarity

Development plans are important to ensure that the ethnic, linguistic and cultural identity of the affected communities remains intact. The statutory safeguards and entitlements available to them may in no way be curtailed due to their displacement.

### **Direct purchase, land banks and land on lease**

Besides modifying the law or introducing subtle changes in the rules, states can also obtain land by making a direct purchase through negotiations with a willing seller. The rationale for this circumvention is that the normal land acquisition process laid out in the 2013 Act is cumbersome, time-consuming and costly. Development projects need to be started and completed swiftly as they are in public interest. The RFCTLARR Act of 2013 itself lays out provisions for willing buyer and willing seller negotiations. Section 46 of the Act deals with purchase of land through private negotiations, while providing for compulsory provisions of R&R in such cases.

In concurrence with the Act, Odisha has notified direct purchase of upto 10 hectares of land in a single village. Interestingly, a few states and Union Territories including Chandigarh, Delhi, Goa, Himachal Pradesh, Jharkhand, Maharashtra, Telangana and Uttar Pradesh acquire land beyond the purview of RFCTLARR, 2013 through policies of obtaining land via direct negotiations, private purchase and land pooling.

## WHY NOT LEASE LAND INSTEAD OF MAKING AN ACQUISITION?

Section 104 of the 2013 Act states that government is free to exercise the option of taking land on lease, instead of making an acquisition. However, since this is a state subject, states should amend their tenancy laws to facilitate the entry of industry in the land market. Taking land on lease is a win-win situation for both the land owners as well as the developers since the owner earns a stable income, retains ownership of the land, and has the right to renegotiate when the lease is over. Land on lease is a worldwide practice. In case of Australia's largest wind farm, the Chalicum Hills Wind Farm set up in August 2003 with a capacity of 52.5 MW, each of the farming families who leased land to Pacific Hydro for the wind generators and connecting roads, received revenue payments for the life of the wind farm. In France, landowners with wind turbines on their land receive 70 per cent of the royalties as rent on land lease. In the case of High Winds Farms in Solano County, California, US the project developer paid US \$25.5 million (lump sum) as a lease payment which was distributed among eight landowners over the 25 year life of the project.

A perfect example of this model in India is Rays Power. This large solar company, by means of entering into a lease agreement with the landowners has taken 202 hectare of land on lease for setting up a 100 MW solar power project in Roorkee, Uttarakhand. As part of the agreement, landowners are receiving a lump-sum amount of at least Rs 1 lakh per acre per year from the project developers for the lease period. Also, at the end of the period landowners are free to sell their land to the developer. This facilitates faster access to land for the project developer. It also reduces land conflicts since the owner becomes a partner in the project. NTPC also procures land on lease.

This way no social impact assessment reports, R&R schemes or consent is needed, since owners are not actually losing land. This will speed up projects, ensure rapid economic growth, and create millions of new jobs. It will make farmers partners in development, not victims. There is massive social security linked to land and, therefore, dissociating with land is a stigma. If land is leased and the government is the owner's tenant, it is a matter of social pride.

**Rays Power, a large solar company, has taken land on lease for its plant at Roorkee, Uttarakhand**



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In Uttar Pradesh, land required for the Purvanchal Expressway is being obtained as per a government order relating to purchase which provides for willing buyer and seller agreements without mentioning any provisions for R&R. About 93 per cent of the land required for the project, a new six-lane highway that will connect the towns of Ghazipur and Azamgarh with the capital Lucknow, has been purchased through direct negotiations. The land owners were granted only compensation and no R&R benefits (as provided under the 2013 Act). Yet the process went through smoothly. Acquisition of the remaining land is underway.

Jharkhand and Telengana also have Private Land Direct Purchase Policies that lay down the procedure for direct negotiations. The states also have their respective Land Acquisition Acts.

To make the process of obtaining land via this method even easier and more lucrative for land owners, states have started offering enhanced compensation in such cases. For example, Maharashtra promises 25 per cent enhanced compensation if land is being obtained through a direct purchase. Chandigarh offers upto 10 per cent premium on the compensation to the land owners if land is acquired under its policy of acquisition through negotiations. In addition, land owners also gain a waiver of stamp duty and registration fee on future purchase of any land or building. This policy is applicable where acquisition is for government departments or undertakings. How successful and socially foolproof these direct means of acquisition will be remains to be seen. At present, they seem to be faring well.

Another upcoming method of land acquisition is by creating land pools. As per this model, for every acre given for development projects, the landowner gets a specified area of the developed land back. This model bore good results in the process of development of Amravati, the planned capital of Andhra Pradesh. NITI Aayog lauded the model as one that could be replicated in other places around the country.

Urban planning of Delhi is the responsibility of the Delhi Development Authority (DDA). In 2014, the DDA notified a “Policy for direct purchase of private land through negotiations”, rationalizing that the procedure of land acquisition established in the 2013 RFCTLARR Act is cumbersome and time-consuming. Moreover, in October 2018, DDA notified the Land Pooling Regulations, 2018, which allows it to use consolidated land for development projects. The land owners will get a part of the developed land back.

Apart from fresh acquisitions, new purchases of land and the creation of land pools, states like Jharkhand also resort to the safety of land banks, of late putting commons in such banks. There is no doubt that transferring large tracts of land to the state’s land bank provides for fast and easy land clearances, but it should not be done without addressing people’s land rights.



Another interesting and rather successful way of obtaining land is through leases. As per section 104 of the RFCTLARR Act, the government is free to exercise the option of taking land on lease, instead of acquisition. Taking land on lease is a win-win situation for both the land owners and the developer since the owner earns a stable regular income, retains the ownership of land and has a right to renegotiate when the lease is over.

However, since land is a state subject, states will have to amend their tenancy laws and upscale their land records management to facilitate such negotiations in the land market. This will speed up projects, decrease indirect costs, ensure rapid economic growth, create millions of new jobs and decrease the likelihood of conflict. It will make land losers partners in development and mark an end to compulsory acquisitions.

# SIA on the ground

An SIA is a preliminary investigation for the determination of public purpose and social impact of the project, to ascertain whether land acquisition could be carried out at an alternate site, and to ensure that the absolute minimum land is acquired. Therefore, SIA has been hard-coded into the DNA of the act as it lessens the chances of forceful acquisition. Under the RFCTLARR Act, an SIA has to be conducted for every proposed land acquisition, except land acquisitions taking place under the “urgency clause”. How has this provision been implemented on the ground?

**Table 10: Land acquisition from 2014–17 across nine states in India**

State	Total land acquired during 2014–17 (approximately)	Under NHAI Act, Railway Act and 11 other enactments	Under Section 40 of RFCTLARR Act (the “urgency clause”)	SIA conducted prior to acquisition
Uttarakhand	303	Railway: 224.5 NHA: 68.84	10.68	SIA conducted for only one project: Railway Vikas Nigam Limited acquisition in 13 villages
Haryana	1,314	NHA: 792	None	No SIA conducted
Odisha	518	NHA: 190	None	SIA conducted for 30 projects with certain exemptions made under the “urgency clause”
Jharkhand	421	None	None	SIA conducted for several projects
Tripura	165	None	None	SIA conducted for Oil and Natural Gas Limited, Indian Oil Corporation Limited, Food Corporation of India, Railways, and rural infrastructure projects
Meghalaya	427	None	20 (Indo–Bangla fencing)	SIA conducted for NH-44, NH 40, etc. by Meghalaya Institute of Governance (State SIA Unit)
Arunachal Pradesh	460 (281 ha under Jhum Land Regulation, 1947)	None	179.8	No SIA conducted
Maharashtra	2,500 (2,244 under RFCTLARR Act)	None	None	No SIA conducted as per information provided in reply to an RTI
Andhra Pradesh	114,288 (77,624 under RFCTLARR Act)	None	None	SIA conducted for a majority of projects

Source: CSE compilation



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Women taking the lead at a public hearing conducted during an SIA study

According to the data received under RTI queries made to 28 states, little land is being acquired under the RFCTLARR Act, 2013 (see *Table 10: Land acquisition since 2014–17 across nine states in India*). In Andhra Pradesh, Jharkhand, Meghalaya, Odisha, Tripura and Uttarakhand, land is being acquired as per the provisions of RFCTLARR Act, 2013. SIAs are only being conducted by five states—Andhra Pradesh, Himachal Pradesh, Jharkhand, Meghalaya and Odisha. Andhra Pradesh has conducted SIAs for a lot of projects such as railway lines, barrages and, most importantly, for the development of the capital city, Amravati. However, Andhra Pradesh and Jharkhand have now diluted the SIA clause.

Himachal Pradesh has conducted SIAs and uploaded every report on the revenue department's website. It adheres to the provisions of the RFCTLARR Act, 2013 to the letter. In Sikkim, SIAs are underway for a couple of projects. Meanwhile, Maharashtra was acquiring land without conducting SIAs but after the enactment of the Maharashtra Amendment Act, 2018, six project categories have been exempted from the requirement of an SIA study.

Many other states have made exemptions from conducting SIAs for projects under the urgency clause. A similar exemption has been made in many cases under the guise of public purpose. This is incorrect. It is the job of the Expert Group to determine whether a project serves public purpose or not, and this determination is based on the findings of the SIA. Therefore, the requirement of an SIA cannot be done away with by declaring a project to be serving public purpose ab initio. It is also interesting that the recommendations of the Expert Group have not been made binding.



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**The affected people become partners in the process of development which leads to an improvement in their socio-economic status**

In Arunachal Pradesh, no SIA has been conducted since land is acquired under the Jhum Land Regulations and compensation is paid as per the RFCTLARR Act. Puducherry has notified its Rules in 2017, although no land has been acquired under the RFCTLARR Act yet. Only a stalled project where acquisition was underway as per the old Act is now being completed under the new Act, in accordance with the retrospective clause.

On the contrary, there are states where the provisions for conducting SIAs exist on paper but implementation cannot be mapped. In a telephonic conversation, a revenue official of Uttar Pradesh said that the state has empanelled Gautam Buddha University as an SIA unit and an SIA has been conducted for the Purvanchal Expressway but has not been put in the public domain. Likewise, Bihar has also empanelled the Anugrah Narayan Sinha Institute of Social Studies (ANSISS) and the Asian Development Research Institute for the purpose of conducting SIAs but no report has been put in the public domain.

Assam has a provision for conducting SIAs but there have been no assessments of any project yet. Kerala has notified its Rules but verbal evidence obtained from revenue officials suggests that no land has been acquired under the RFCTLARR Act. However, compensation and R&R packages have been given to people affected by the Kochi metro project as per the new RFCTLARR Act, 2013. This depicts lacunae in the legislation and the execution of the legislation.

The Central land act is in place along with rules notified by the states but land is still being acquired via other legislations circumventing and overriding the RFCTLARR Act, 2013.

# The way forward

Despite its flaws, the Central RFCTLARR Act of 2013 was a step in right direction, but instead of removing its loopholes, interventions at the Central and state levels have resulted in dilution of its progressive clauses. A major intervention was the Ordinance and Bill (currently with Joint Committee of Parliament) introduced by the NDA government in 2014–15 which did away with some of the progressive provisions of the 2013 Act on the premise that the procedure it laid down for acquisition of land was cumbersome and time-consuming. However, despite doing away with the requirement of conducting an SIA, the time period of the process of acquisition could only be reduced by eight months from the original 50 months. This clearly indicates that while substantial compromises were made on the progressive provisions of the new land acquisition law, the rationale behind these compromises and their results are not clear.

Our findings indicate that a majority of the states have notified rules in order to carry out the provisions of 2013 RFCTLARR Act but have diluted the procedure prescribed in the original Act. Six states have passed their own statutes on the subject, replicating the lapsed 2014–15 Ordinance and Bill. Huge chunks of land are acquired in these six states. They are also resource-rich or geostrategically important, placing them firmly at the centre of developer's acquisition dreams. Land in these states needs to be obtained at a fair price and within a reasonable time, but it cannot be done in a manner which leaves farmers' interests in jeopardy.

A few states are following the 2013 Act to the letter, but very little land is being acquired in these states. In general, one of the chief aims of the 2013 Act was to curtail the powers given to the government under the principle of eminent domain. After these dilutions, it can be said that the states have taken a big step backwards, bringing them closer to the old colonial law.

However, parallel to this a new trend has emerged which bypasses the 2013 Act. On the premise that the procedure the 2013 Act recommends is lengthy, cumbersome and time-consuming, government agencies such as development authorities or corporations are coming up with alternate means of obtaining land, that are seen as speedy and, ultimately, cost-effective. Such means include direct purchase, land pooling and land on lease.

People queued up to pool and give their land for the development of Amravati, the planned capital city of Andhra Pradesh. As per this land pooling model, for every acre given for development projects, the landowner will get specified area of developed land back. Farmers voluntarily offered 13,354 hectares to the Andhra Pradesh Capital Region Development Authority. On 18 October 2018, the DDA notified Land Pooling Regulations which allows the Authority to use consolidated land for development projects. The landowners will get a part of the developed land back.

Alternatively, governments may take land on long-term leases rather than purchasing or acquiring it. Again, land owners will find this method attractive as they retain ownership and earn assured returns along with an option to renegotiate when the lease expires.

Cost of land acquisition has two elements. One is the price paid upfront for acquisition, i.e., the compensation and R&R benefits provided to those who lose the land, livelihood or both. There is also an indirect price borne by developers to carry out the procedure, manage the multi-layered bureaucracy, handle litigations, as well as the opportunity cost in terms of revenue forgone due to delays.

The direction of any amendment to land law should be to strike a good balance between direct and indirect costs of land acquisition. It should substantially increase direct costs and drastically cut down indirect costs. Unfortunately, by delaying the process of acquisition, the 2013 Act doesn't seem to strike a good balance.

Developers are agreeable to paying the direct costs, but are perturbed by the indirect costs, especially the time taken for land acquisition. This is reflected in the increasing popularity of direct purchases, even if the compensation amount (the direct cost) is higher.

But to ensure a fair system of land pooling, direct purchase or land leasing in the country, it is imperative to have clear land titles (a legal document of land ownership) as it protects the rights of the title-holder against claims made by anyone else on the property. Since land titles in the country are unclear due to various historical reasons and information asymmetry, so far it is unclear if landowners are benefitting from these alternate methods of acquisition. But if the objective of the RFCTLARR Act was to minimize acquisition and promote purchase, then the Act has made headway. Up until now this method has helped government bodies to obtain land faster and free of any conflict. However, the states' methods of acquisition by diluting the law are certainly not in favour of landowners due to increased litigations. The government will have to seriously look at the original Act and make some amendments in this regard.

While the unrealistic timeline of the land acquisition process needs to be rectified, the government also needs to be nuanced about where the law can be applied. The provisions of RFCTLARR Act, apart from compensation and R&R, do not apply to 13 enactments specified within the Act. These include railways, national highways, atomic energy and electricity. SIAs and consent are important provisions required in the smallest projects, but are not required for projects under these 13 enactments under which huge chunks of land are acquired.

In the five years after it came into force, hardly anyone has been satisfied with the RFCTLARR Act. Seven states have rejected the Act to create their own. The rest are likely to follow soon. It is time for the authorities assess the situation and take crucial decisions to take the country forward on the subject of land acquisition.

# Annexures

## **Annexure 1: Exemptions in the 2013 land statute**

The RFCTLARR Act of 2013 exempts 13 Acts (which also regulate acquisition of land) from its purview, with the exception of provisions regarding compensation and R&R in these Acts. The 13 exempted Acts are:

1. National Highways Act, 1956
2. Railways Act, 1989
3. Coal Bearing Areas Acquisition And Development Act, 1957
4. The Petroleum And Minerals Pipelines Act, 1962
5. Atomic Energy Act, 1962
6. Metro Railways Act, 1978
7. The Electricity Act, 2003
8. Ancient Monuments And Archaeological Sites And Remains Act, 1958
9. Land Acquisition (Mines) Act, 1885
10. Requisitioning And Acquisition Of Immovable Property Act, 1952
11. Damodar Valley Corporation Act, 1948
12. Indian Tramways Act, 1886
13. Resettlement Of Displaced Persons Act, 1948

## Annexure 2: A comparison of land acquisition statutes of India

Provision	Land Acquisition Act, 1894 as amended in 1984	Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015
Social impact assessment (SIA)	No provision	Has to be conducted for every project with the exception of those under Section 40, i.e., the urgency clause	Grants power to the "appropriate government" to exempt certain projects
Prior consent of affected families	<ul style="list-style-type: none"> <li>Notice to persons interested shall be issued by the collector and shall require for such persons to appear personally or by agent before the collector to account their interests</li> <li>No public hearing for the purpose of consent</li> </ul>	Consent of 70 per cent and 80 per cent of the affected families for PPP and private projects respectively	Grants power to the "appropriate government" to exempt certain projects
Prior consent of gram sabhas	No provision	In case of acquisition of any land in Scheduled Areas, the prior consent of the concerned gram sabha, the panchayats or the autonomous district councils shall be obtained, including acquisition made under the urgency clause	No modification
Compensation	No criteria laid out for determining market value. Compensation is determined at the discretion of the collector or as per the stamp value	Market value to be determined as per the Indian Stamp Act, average sale price, or the consented amount of compensation in case of acquisition for private companies and PPP projects	No modification
	No provision	Market value is to be multiplied by a multiplier factor for both rural and urban areas so as to increase the compensation	
	Award of solatium—30 per cent on the market value	Award of solatium—100 per cent on the market value	
	9 per cent interest per annum on the market value from the date of publication of notification till date of possession of land or award by collector	9 per cent interest per annum on the market value from the date of publication of notification till date of possession or award by collector	



<b>Provision</b>	<b>Land Acquisition Act, 1894 as amended in 1984</b>	<b>Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013</b>	<b>Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015</b>
Rehabilitation and resettlement schemes	No provision	Provides that such schemes shall include particulars of the rehabilitation and resettlement entitlements of each title and non-title holder whose livelihoods are primarily dependent on the land being acquired and where resettlement of affected families is involved: (i) A list of government buildings to be provided in the resettlement area and (ii) Details of the public amenities	No modification
Special provisions for SCs and STs	No provision	In cases of land acquisition involving involuntary displacement, a five-year development plan shall be prepared, laying down the procedure for settling land rights and a programme for economic development	No modification
Separate judicial court	Civil courts to deal with all disputes arising due to land acquisition	The appropriate government (Central or state) shall establish, by notification, one or more authorities to be known as 'The Land Acquisition, Rehabilitation and Resettlement Authority' for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement or to exercise jurisdiction, powers and authority conferred on it by or under this Act	Addition of Section 67(A): Hearing to be held by the authority in the district to decide grievances
Return of unused land	No provision	When any land acquired under this Act remains unused for a period of five years from the date of possession, the same shall be returned to the original owner or owners or their legal heirs, or to the land bank	The time limit of five years is substituted by "a period specified for setting up of any project or for five years, whichever is later"
Special provision to safeguard food security	No provision	No irrigated multi-cropped land to be acquired under this Act unless as a demonstrable last resort, and in no case shall the acreage of land thus acquired exceed the limit notified by the state government	Grants power to the "appropriate government" to exempt certain projects from this provision
Urgency clause	In cases of urgency, the "appropriate government" may take possession of any land needed for a public purpose	In cases of urgency, the "appropriate government" may take possession of any land for: (i) Defence or national security (ii) Emergencies arising out of natural calamities (iii) Any other emergency with the approval of the Parliament	No modification

<b>Provision</b>	<b>Land Acquisition Act, 1894 as amended in 1984</b>	<b>Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013</b>	<b>Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015</b>
Retrospective clause	Not applicable	Land Acquisition Act of 1894 will continue to apply in certain cases, where an award has been made. However, if such an award was made five years or more before the enactment of the RFCTLARR Act, 2013, and the physical possession of land has not been taken or compensation has not been paid, the RFCTLARR Act, 2013 will apply	The Bill states that in calculating this time period, any period during which the proceedings of acquisition were held up: <ul style="list-style-type: none"> <li>(i) Due to a stay order of a court</li> <li>(ii) A period specified in the award of a Tribunal for taking possession</li> <li>(iii) Any period where possession has been taken but the compensation is lying deposited in a court or any account</li> </ul> will not be counted
Land on lease	No provision	The appropriate government (Central or state) has the option of taking land on lease, instead of acquisition, for any public purpose	No modification

Source: CSE compilation



Land is the most prized of human possessions, providing us food, resources and a "solid footing"—quite literally—as well as a sense of identity and belonging. In modern democracies, it is also the battleground between people's right over it on the one hand and the notion of the "greatest good of the greatest number" on the other hand. The doctrine of eminent domain has been employed by governments to acquire private land for public purposes all over the world as well as in India.

Land was acquired in India under the colonial era Land Acquisition Act, 1894 for more than a hundred years. Its gross inadequacies and archaisms were sought to be addressed by a new Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act in 2013. The new Act had shortcomings, but was a step in the right direction. However, the Central government and many state governments have been circumventing and weakening the application of this Act through various legal means at their disposal.

What is the rationale for such strategies? How far have they been successful? What does the future hold? Is there a possibility of a better land acquisition regime in India? This report delves deep into these questions.



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