

# Legislative Brief

## The Land Acquisition, Rehabilitation and Resettlement Bill, 2011

The Land Acquisition, Rehabilitation and Resettlement Bill, 2011 was introduced in the Lok Sabha by the Minister for Rural Development on September 7, 2011. The Bill has been referred to the Standing Committee on Rural Development (Chairperson Ms. Sumitra Mahajan). The report is due on May 11, 2012.

### Recent Brief:

The Lokpal Bill, 2011  
November 29, 2011

The Pension Fund  
Regulatory and  
Development Authority  
Bill, 2011  
November 28, 2011

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### Highlights of the Bill

- ◆ The Bill provides for land acquisition as well as rehabilitation and resettlement. It replaces the Land Acquisition Act, 1894.
- ◆ The process for land acquisition involves a Social Impact Assessment survey, preliminary notification stating the intent for acquisition, a declaration of acquisition, and compensation to be given by a certain time. All acquisitions require rehabilitation and resettlement to be provided to the people affected by the acquisition.
- ◆ Compensation for the owners of the acquired land shall be four times the market value in case of rural areas and twice in case of urban areas.
- ◆ In case of acquisition of land for use by private companies or public private partnerships, consent of 80 per cent of the displaced people will be required. Purchase of large pieces of land by private companies will require provision of rehabilitation and resettlement.
- ◆ The provisions of this Bill shall not apply to acquisitions under 16 existing legislations including the Special Economic Zones Act, 2005, the Atomic Energy Act, 1962, the Railways Act, 1989, etc.

### Key Issues and Analysis

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

## PART A: HIGHLIGHTS OF THE BILL<sup>1</sup>

### Context

Land acquisition refers to the process by which government forcibly acquires private property for public purpose. The Land Acquisition Act, 1894 (1894 Act) governs all such acquisitions. Additionally, there are 16 Acts with provisions for acquisition of land in specific sectors such as railways, special economic zones, national highways, etc. The 1894 Act does not provide for rehabilitation and resettlement (R&R) for those affected by land acquisition. Currently, the R&R process is governed by the National Rehabilitation and Resettlement Policy, 2007. In 2007, two Bills were introduced in the Lok Sabha: one to amend the Land Acquisition Act, 1894, and the other to provide statutory status to the R&R policy of 2007. These Bills lapsed with the dissolution of the 14<sup>th</sup> Lok Sabha in 2009.

In May 2011, the National Advisory Council recommended combining the provisions of land acquisition and R&R<sup>2</sup> within a single Bill. In July 2011, the Draft Land Acquisition and Rehabilitation and Resettlement Bill was published by the Ministry of Rural Development for public comments.<sup>3</sup> In September 2011, the government introduced the Land Acquisition and Rehabilitation and Resettlement Bill in the Lok Sabha. This Bill will replace the 1894 Act.

### Key Features

The Bill specifies provisions for land acquisition as well as R&R. Some of the major changes from the current provisions are related to (a) the process of land acquisition; (b) rights of the people displaced by the acquisition; (c) method of calculating compensation; and (d) requirement of R&R for all acquisitions.

#### Public purpose

- Land may be acquired only for public purpose. The Bill defines public purpose to include: defence and national security; roads, railways, highways, and ports built by government and public sector enterprises; land for the project affected people\*; planned development; and improvement of village or urban sites and residential purposes for the poor and landless, government administered schemes or institutions, etc. This is broadly similar to the provisions of the 1894 Act.
- In certain cases consent of 80 per cent of the project affected people is required to be obtained. These include acquisition of land for (i) use by the government for purposes other than those mentioned above, and (ii) use by public-private partnerships, and (iii) use by private companies.

#### Process of land acquisition

- The government shall conduct a Social Impact Assessment (SIA) study, in consultation with the Gram Sabha in rural areas (and with equivalent bodies in case of urban areas). After this, the SIA report shall be evaluated by an expert group. The expert group shall comprise two non-official social scientists, two experts on rehabilitation, and a technical expert on the subject relating to the project. The SIA report will be examined further by a committee to ensure that the proposal for land acquisition meets certain specified conditions.
- A preliminary notification indicating the intent to acquire land must be issued within 12 months from the date of evaluation of the SIA Report. Subsequently, the government shall conduct a survey to determine the extent of land to be acquired. Any objections to this process shall be heard by the Collector. Following this, if the government is satisfied that a particular piece of land must be acquired for public purpose, a declaration to acquire the land is made. Once this declaration is published, the government shall acquire the land. No transactions shall be permitted for the specified land from the date of the preliminary notification until the process of acquisition is completed.
- In case of urgency, the above provisions are not mandatory. The urgency clause may be used only for defence, national security, and in the event of a natural calamity. Before taking possession of land in such cases, 80 per cent of the compensation must be paid.

#### Compensation to the land owners

The compensation for land acquisition is determined by the Collector and awarded by him to the land owner within two years from the date of publication of the declaration of acquisition. The process of determination of compensation is given below.

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\* The Bill defines “affected family” to include (i) landowners; (ii) agricultural labourers, tenants who have been working in the affected area for three years prior to the acquisition; (iii) tribals and forest dwellers; (iv) families whose livelihood for the previous three years is dependent on the forests or water bodies; and (v) families who have been given land by the state or central government.

- First, the market value of the acquired land is computed as the higher of (i) the land value specified in the Indian Stamp Act, 1899 for the registration of sale deeds; or (ii) the average of the top 50 per cent of all sale deeds in the previous three years for similar type of land situated in the vicinity.
- Once the market value is calculated, it is doubled for land in rural areas. There is no doubling of value in urban areas. Then, the value of all assets attached to the land (trees, buildings, etc) is added to this amount. On this amount, a 100 per cent solatium, (i.e., extra compensation for the forcible nature of acquisition), shall be given to arrive at the final compensation figure.
- Land owners whose property is acquired using the urgency provisions shall be given an additional 75 per cent of the market value of the land.

### Process of Rehabilitation and Resettlement

- The Bill requires R&R to be undertaken in case of every acquisition. Once the preliminary notification for acquisition is published, an Administrator shall be appointed. The Administrator shall conduct a survey and prepare the R&R scheme. This scheme shall then be discussed in the Gram Sabha in rural areas (equivalent bodies in case of urban areas). Any objections to the R&R scheme shall be heard by the Administrator. Subsequently, the Administrator shall prepare a report and submit it to the Collector. The Collector shall review the scheme and submit it to the Commissioner appointed for R&R. Once the Commissioner approves the R&R scheme, the government shall issue a declaration identifying the areas required for the purpose of R&R. The Administrator shall then be responsible for the execution of the scheme. The Commissioner shall supervise the implementation of the scheme.
- In case of acquisition of more than 100 acres, an R&R Committee shall be established to monitor the implementation of the scheme at the project level. In addition, a National Monitoring Committee is appointed at the central level to oversee the implementation of the R&R scheme for all projects.
- In case the land is being privately purchased (100 acres in rural areas and 50 acres in urban areas), an application must be filed with the Collector who shall forward this to the Commissioner for approval. After the application has been approved, the Collector shall issue awards as per the R&R scheme.

### Rehabilitation and Resettlement entitlements

- Every resettled area is to be provided with certain infrastructural facilities. These facilities include roads, drainage, provision for drinking water, grazing land, banks, post offices, public distribution outlets, etc.
- The Bill also provides the displaced families with certain R&R entitlements. These include, among other things, (i) land for a house as per the Indra Awas Yojana in rural areas or a constructed house of at least 50 square metres plinth area in urban areas; (ii) a one-time allowance of Rs 50,000 for affected families; and (iii) the option of choosing either mandatory employment in projects where jobs are being created or a one-time payment of Rs 5 lakh or an inflation adjusted annuity of Rs 2,000 per month per family for 20 years.

### Other provisions

- A Land Acquisition and Rehabilitation and Resettlement Authority shall be established for settling any disputes relating to the process of acquisition, compensation, and R&R.
- There shall be no change of ownership of acquired land without prior permission from the government. Land may not be used for any purpose other than for which it is acquired.
- Acquired land which has been unused for 10 years from the date of possession shall be returned to the Land Bank of the government. If any unused acquired land is transferred to another individual, 20 per cent of the appreciated land value shall have to be shared amongst the original land owners.
- The government may temporarily occupy and use any piece of waste or arable land for a public purpose. This occupation may be for a period of not more than three years. The compensation of such land may be decided mutually by the owner of the land and the Collector. Any disagreement on matters relating to compensation or the condition of the land on being returned shall be referred to the Land Acquisition and R&R Authority.
- In any district, land acquisition will be restricted to a maximum of five per cent of irrigated multi-crop land.
- The provisions of this Bill shall not apply to land acquisition under 16 existing laws. These include: the SEZ Act, 2005, Atomic Energy Act, 1962 and the National Highways Act, 1956.

## PART B: KEY ISSUES AND ANALYSIS

### Comparison between the 1894 Act and the proposed Bill

The Bill aims to balance the need for land for development with fair compensation to the land owners and R&R for the affected families. The table below highlights some of the significant changes from the 1894 Act.

**Table1: Comparison of some key features between the 1894 Act and the 2011 Bill**

Issue	1894 Act	2011 Bill
Public Purpose	Includes several uses such as infrastructure, development and housing projects. Also includes use by companies under certain conditions.	No significant change.
Consent from affected people	No requirement.	Consent of 80 % of displaced people required in case of acquisition for private companies and public-private partnerships.
SIA	No provision.	SIA has to be undertaken in case of every acquisition.
Compensation	Based on the market value.	Market value doubled in rural areas and not in urban area.
Market Value	Based on the current use of land. Explicitly prohibits using the intended use of land while computing market value.	Higher of: (a) value specified for stamp duty, and (b) average of the top 50% by recorded price of sale of land in the vicinity.
Solatium	30 %	100 %
Resale of land	No provision.	Prior permission of the government required.
Sharing of profit	No provision.	If the acquired land is unused and is transferred, 20% of the profits shall be shared with the original land owners.
R&R	No provision for R&R.	R&R necessary for all affected families. Minimum R&R entitlements to be provided to each affected family specified.

Sources: Land Acquisition Act, 1894 and Land Acquisition and Rehabilitation and Resettlement Bill, 2011; PRS.

### Exemption of certain Acts

#### Absence of R&R provisions for some acquisitions

The Bill specifies 16 Acts such as the Atomic Energy Act, 1962, and the National Highways Act, 1956 which will be exempt from its provisions. The central government has the power to modify this list. The compensation and R&R provisions under some of these Acts are different from this Bill. For example, the National Highways Act and the Atomic Energy Act provide that the compensation shall be based on the market value of the land on the date the notification is published. Both these Acts do not stipulate any R&R provisions.

#### Purchase of land by private companies

The Bill provides that R&R provisions are mandatory for all private purchases through private negotiations if the land purchased is over 100 acres in rural areas or 50 acres in urban areas. This raises two issues (i) jurisdiction of Parliament to make laws on purchase of land; and (ii) possible circumvention of R&R provisions.

#### Jurisdiction of Parliament to make laws on purchase of land

It is not clear whether Parliament has jurisdiction to require R&R on purchase of agricultural land through private negotiations. Parliament derives its power to make laws on 'acquisition and requisition of property' from Item 42 of the Concurrent List. Further, 'transfer of property, *other than agricultural land*, registration of documents and deeds' is included in the Concurrent List (Item 6). However, 'transfer and alienation of agricultural land' is included in the State List (Item 18). If it is interpreted that the R&R arises out of transfer of agricultural land, the issue may fall within the sole jurisdiction of state legislatures. On the other hand, if the interpretation is that this subject is primarily related to R&R, which is not specified in any of the three lists, then it may fall within the ambit of the residuary power of Parliament specified in the Union List (Item 97).

#### Possible circumvention of R&R requirements

A private company that acquires or purchases more than 50 acres of land in urban areas or 100 acres in rural areas is required to rehabilitate and resettle affected families. This threshold can be circumvented by a private company by purchasing multiple parcels of land, each under the prescribed limit, through other entities.

Clause 98 &  
Fourth  
Schedule

Clause 2 (2) (a)  
& Proviso 2 (b)

## Social Impact Assessment

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### No threshold for the SIA

- Clause 4 (1) The Bill requires an SIA study to be conducted for every acquisition of land. There is no minimum threshold for the land to be acquired. This could lead to delays in the implementation of various government welfare schemes such as building public toilets under the Total Sanitation Campaign or building bus shelters.

### No detailed guidelines for the Expert Group appraising the SIA

- Clause 7 The Bill provides for an independent multi-disciplinary expert group which shall evaluate the SIA. This group would be required to assess whether (i) the project serves the stated public purpose; (ii) it is in the larger public interest; and (iii) the potential benefits outweigh the costs and adverse impact. There are no guidelines to determine the methodology for such assessment and the Bill does not provide for such guidelines to be delegated to the Rules. This could lead to lack of consistency in the assessment of projects by different expert groups.

## Requirement of consent from the project affected people

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### Consent required from project affected people and not just land owners

- Clauses 3 (za) (vi) and (vii) The Bill requires consent to be obtained from 80 per cent of the project affected people. This means groups other than owners such as agricultural labourers and sharecroppers may also be required to give their consent. This provision differs from other existing laws such as the Industrial Disputes Act, 1947, and the Companies Act, 1956. In all these Acts, in the case of closure or change of ownership of the company, consent is required to be obtained only from the owners although the livelihood interest of all the employees is protected. The Land Acquisition (Amendment) Bill, 2007 (which lapsed in 2009) required consent to be obtained from 70 per cent of the land owners and not the affected people.

### Differential treatment of public and private enterprises

- Clauses 3 (za) (vi) and (vii) In the case of acquisition of land for the purpose of railways, highways, ports, power, irrigation projects, etc., requirement of consent from project affected people is applicable only to private companies and not to PSUs. This may lead to a situation where two companies wanting to make an acquisition for the same project will have to fulfil different conditions on the basis of the nature of their ownership.

## Computation of compensation paid to land owners

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### Basis of calculation of the market value of land in rural areas unclear

- Clause 26 Compensation shall be calculated on the basis of the market value of land and the value of assets attached to the land. The market value of land is determined by taking into account the higher of: (i) the minimum land value in the Indian Stamp Act, 1899 or (ii) the average of the top 50 per cent of the reported sale price during the preceding three years for similar type of land in vicinity. In the case of land in rural areas, the value of land determined by this method is further doubled. A possible reason for this doubling could be to compensate for under reporting of the transacted price in registration deeds. However, this may not provide an accurate estimation of the value of the land.

### Land transactions after SIA could affect the compensation amount

- Clause 11 (4) Transactions on the proposed land to be acquired shall be frozen from the date of issue of the preliminary notification till the time the process of land acquisition is completed. This is done to prevent sale of land just before the acquisition which could drive up prices. However, the possibility of land acquisition would be known from the time of the SIA process. This implies that there could be sale of different parcels of land in the vicinity from the time of the SIA till the issue of the preliminary notification. As the compensation for land is linked to the actual transactions in the three years prior to the preliminary notification, these sales during the SIA process may increase prices.

## Subsequent transfer or sale of land

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### Computation of profit sharing may be difficult in some cases

- Clause 96 If the acquired land is transferred without any development, 20 per cent of the appreciated land value must be distributed amongst the original land owners. Computation of the appreciated land value may be possible in case the transaction involves only transfer of land. However, it may be difficult to compute the value of land if the transfer is part of a larger transaction. For example, company A owns some undeveloped land as well as a number of other assets (factories, sales centres etc.) and company B takes over company A. In this case, company B will pay a consolidated price for all assets (including land) and it would be difficult to compute the price paid for land that could have been previously acquired.

## No R&R provisions for temporary occupation of land

Clause 75 &  
Clause 68

Under the Bill, the government may temporarily acquire waste and arable land for a maximum period of three years. This raises three issues. First, the Bill does not provide any guidelines for computing the compensation in such cases. Second, the R&R provisions mentioned in the Bill would not be applicable to such acquisitions. Third, the Bill specifies that in case of a dispute between the owners of the land and temporary occupants, the matters may be referred to the Land Acquisition and R&R Authority. However, it does not provide for a process to appeal against the decision of the Authority in such cases. [The Bill provides for appeal to the High Court only against the compensation award for acquisition and not for temporary acquisitions.]

## Standing Committee Recommendations on the 2007 Bills

The Land Acquisition (Amendment) Bill, 2007 and the R&R Bill, 2007 were referred to the Standing Committee on Rural Development. The Committee made recommendations, some of which have not been included or have been incorporated with certain modifications in the 2011 Bill.

**Table 2: Some recommendations of the Standing Committee not fully incorporated in the Bill, 2011**

Issue	Standing Committee Recommendations	2011 Bill	Comments
Benefits for the displaced people	Benefits should be doubled at every subsequent displacement.	No such provision.	Not incorporated.
SIA	There should be discretion in deciding whether an SIA is necessary below a specified threshold.	SIA has to be undertaken in case of every acquisition.	Incorporated with some modifications.
Compensation by way of issuing shares and debentures	The issue of shares and debentures is not practical and should be over and above the admissible compensation.	Shares can be issued as part compensation. It cannot exceed 25% of the market value of the land.	Not incorporated.
Dispute Settlement Authority	The Authority should consist of at least three persons, including the chairperson.	The Authority consists of only one person.	Not incorporated.
Rate of interest (if compensation not paid before taking possession)	Rate of interest should be increased from nine percent to 15 percent.	If compensation is not paid before taking possession, a nine percent interest shall be levied. In case of any default, the interest is 15 percent.	Incorporated with some modifications.

Sources: Standing Committee Report on Land Acquisition (Amendment) Bill, 2007 and Standing Committee Report on Rehabilitation and Resettlement Bill, 2007; Land Acquisition, Rehabilitation and resettlement Bill, 2011; PRS.

### Notes

1. The brief has been written on the basis of the Land Acquisition, Rehabilitation and Resettlement Bill, 2011 introduced in the Lok Sabha on September 7, 2011.
2. Press release dated May 25, 2011 of the National Advisory Council available at [http://nac.nic.in/press\\_releases/25\\_may\\_2011.pdf](http://nac.nic.in/press_releases/25_may_2011.pdf)
3. The Draft Land Acquisition and Rehabilitation and Resettlement Bill, 2011, which was published by the Ministry of Rural Development for public comments, available at <http://rural.nic.in/sites/downloads/policies/Final.pdf>

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