

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act – 2013 (“New Act”)

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IDFC)**



- ✓ **Govt can acquire private lands subject to payment of adequate compensation – Article 31A of Indian Constitution;**

- ✓ **Acquisition of Land – Concurrent List – Entry III of Indian Constitution;**

- ✓ **Land - State List – Entry II of Indian Constitution;**

- ✓ **Public Protest and Litigations;**
- ✓ **Land Acquisition Act 1894 - Outdated;**
- ✓ **Absence of National law for R&R and Compensation**

Preamble of the New Act

“to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto”

IDFC Key Aspects of the New Act

- ✓ **Combined Provisions for Land Acquisition and R&R;**
- ✓ **Higher Compensation;**
- ✓ **Involvement Stakeholders;**
- ✓ **Retrospective Applicability; and**
- ✓ **Institutional Checks and Balances**

Both LA and R&R Provisions will apply when:

- ✓ Government acquires land for its own use, hold and control, including for Govt. owned undertakings and for public purpose;
- ✓ Government acquires land with the ultimate purpose to transfer it for the use of private companies for public purpose - consent from 80% of land owners;
- ✓ Government acquires land for Public Private Partnership Projects for public purpose – consent from 70 % of land owners;

Only R&R will apply when

- ✓ A private company purchase land for a project, and the same exceeds the area thresholds set by the State Governments for such purchase.
- ✓ A private company require the Govt. for acquisition of a part land. Then R&R is applicable for the entire project land (i.e land acquired by the private company and the land acquired by the government)

Public Purpose – Definition

- a) Public purpose include (i) defence and national security; (ii) roads, railway, highways and ports built by the Government and PSUs; (iii) land for the project affected families, planned development; improvement of village or urban sites and residential purposes for the poor and landless

- b) For infrastructure projects, which includes (i) all activities or items listed in the notification of the Government of India in the department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated the 27th March, 2012, excluding private hospitals, private educational institutions and private hotels; (ii) Projects related to agriculture, agro processing, cold storage facilities; (iii) Projects for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy; (iv) Project for water harvesting and water conservation structures, sanitation; (v) Project for Govt. administered, Government aided educational and research schemes;(vi) Project for sports, health care, tourism, transportation of space programme;(vii) Any infrastructure facility as may be notified in this regard by the Central Government

PRE-
NOTIFICATION
STAGE

- **Social Impact Assessment (SIA) - 6 Months**
- **Approval of SIA by the Expert Committee – 2 Months**
- **Approval by the Government.**

NOTIFICATION

- **Publication of Preliminary Notification and Appointment of R & R Administrator - 12 Months from SIA ;**
- **Hearing of Objections;**
- **Decision of the Government ;**

AWARDS

- **Publication of Declaration and R&R scheme – 12 months from the date of Notification ;**
- **Awards (compensation to be paid within 3 months; R&R – within 6 months; Resettlement – 18 months)**

- ✓ **Consultation with Panchayati Raj Institutions;**
- ✓ **Public hearing;**
- ✓ **Appraisal Group Recommendation –**
 - a) the project is for larger public interest;**
 - b) benefits outweigh the cost and adverse impact; and**
 - c) land to be acquired is absolute bare minimum**
- ✓ **Examination and decision by the Government**

- ✓ (a) Circle rate; or
 - (b) The average of the sale price for similar type of land situated in the village or near vicinity, ascertained from top fifty per cent of the sale deeds registered during the preceding three years, where higher price has been paid; or
 - (c) The amount agreed upon as compensation for acquisition of land for private companies or PPP;
- whichever is higher.
- ✓ Once the market value as above is computed, it shall be multiplied by a multiplier factor of upto two in rural areas. Urban areas – remains the same.
 - ✓ Value of the assets attached to land: Building/trees/crop etc;
 - ✓ 100 % Solatium on the compensation determined

- ✓ While determining the market value and the average sale price, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.
- ✓ While determining the market value and the average sale price, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

Example : Determining Total Compensation for loss of Land and Assets

10 acres of Mr. A's unirrigated agricultural land in village X is affected

Market value of Agricultural land: 10 lakhs per acre

Market value of Mr. A's land as per the New Act: 1 crore x 2 times: 2 crores

Market value of 10 Neem trees: Rs. 1 lakh

Market value of storage room: 2 lakhs

Market value of well with pumpset: Rs. 2 lakhs

Market value of standing crop damage: Rs. 5 lakh

Total compensation for affected assets including land: Rs. 2.1 crores (A)

Solatium @ 100% of Total compensation: Rs. 2.1 crores (B)

Interest @ 12% per annum: Rs. 25.2 lakhs (C)

Total compensation for Land and assets : A+B+C:4.452 crores

ILLUSTRATIVE SLIDING SCALE

This multiplier factor will gradually rise from 1 to 2 as we move away from urban locations into rural areas.

The precise slabs will be left to respective State Governments.

Illustrative Sliding Scale

(precise scale to be determined by each State Government)

Radial Distance from urban area (km)	Multiplier Factor
0-10	1.00
10-20	1.20
20-30	1.40
30-40	1.80
40-50	2.00



IDFC Key R&R Benefits for Affected Families

- ✓ **Subsistence allowance at Rs. 3000 per month per family for 12 months;**
- ✓ **(a) employment for one member per affected family; or (b) Rupees 5 lakhs per family; or (c) Rupees 2000 per month per family as annuity for 20 years, with appropriate index for inflation;**

The option of availing (a) or (b) or (c) shall be at the discretion of the Affected Family

- ✓ **If house is lost, a constructed house;**
- ✓ **Rs 50,000 for transportation;**
- ✓ **Rs 50,000 towards Resettlement Allowance;**
- ✓ **Grant of Rs. 1.25 lacs for artisans, small traders etc;**



IDFC Key R&R Benefits for the Affected Families

- ✓ **The resettlement area should also provide at least 25 infrastructural amenities including schools and playgrounds, health centers, roads and electric connections, assured sources of safe drinking water for each family, panchayat ghars, fair-price shops and seed-cum-fertilizer storage facilities, places of worship and burial and cremation grounds; and**
- ✓ **The monetary R&R entitlements will have to be provided within six months of the passing of the R&R award while the infrastructure R&R benefits will have to be extended within 18 months of the passing of the award.**

Land Owners

- ✓ Family whose land is acquired or displaced from their land;
- ✓ Those who are assigned land by the Govt.
- ✓ Right holders under the Forest Right Act, 2006

Livelihood Losers

- ✓ Families including agricultural laborers, tenants, artisans - more than 3 years prior to acquisition of land;
- ✓ Scheduled Tribes and other traditional forest dwellers; and
- ✓ Dependents of forests or water bodies – more than 3 years

- ✓ **Only in exceptional circumstances acquisition of multi cropped land is permitted;**
 - ✓ **An equivalent area of cultivable wasteland shall be developed or an amount equivalent land value shall be deposited;**
- The above conditions are not applicable for linear projects such as roads, irrigation canals, power lines etc;**
- ✓ **States are also required to set a limit on the area of agricultural land that can be acquired in any given district.**

- ✓ **Where no award under Section 11 of the 1894 Act has been made, the new law will apply with regard to compensation;**
- ✓ **Where an award has been made but the affected individuals have not accepted compensation or have not yet given up possession, and the proceedings have been pending for 5 years or more, provisions of the new law will apply;**
- ✓ **Where a majority of individuals in an affected area have not received compensation then the new law will apply;**
- ✓ **If any land has been purchased through private negotiations on or after 5th September, 2011 and if the same land is acquired under the New Act within three years from the date of commencement of the New Act, then 40% of the compensation paid to such land acquired shall be shared with the original land owners.**

Institutional Framework

- ✓ **National Land Acquisition & Rehabilitation and Resettlement Dispute Settlement Authority - responsible for adjudication of disputes relating to Central Projects;**
- ✓ **The National Monitoring Committee - supervisory powers and will keep an oversight over all central level projects;**
- ✓ **State Land Acquisition & Rehabilitation and Resettlement Dispute Settlement Authority - corresponding body to the Central Authority in resolving disputes relating to State level projects;**
- ✓ **State Commissioner RR - responsible for overall administration of LA & RR; and**
- ✓ **The District Collector, Administrator R&R and the RR Committee - will operate at the Project level, and will be responsible for overall implementation and coordination, administering project level RR and keeping oversight over RR implementation respectively.**

- ✓ **The Ancient Monuments and Archaeological Sites and Remains Act, 1958**
- ✓ **The Atomic Energy Act, 1962**
- ✓ **The Damodar Valley Corporation Act, 1948**
- ✓ **The Indian Tramways Act, 1886**
- ✓ **The Land Acquisition (Mines) Act, 1885**
- ✓ **The Metro Railways (Construction of Works) Act, 1978**
- ✓ **The National Highways Act, 1956**
- ✓ **The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962**
- ✓ **The Requisitioning and Acquisition of Immovable Property Act, 1952**
- ✓ **The Resettlement of Displaced Persons (Land Acquisition) Act, 1948**
- ✓ **The Coal Bearing Areas Acquisition and Development Act, 1957**
- ✓ **The Electricity Act, 2003 (36 of 2003)**
- ✓ **The Railways Act, 1989**

The Central Government shall by notification within one year from the date of commencement of the New Act modify or amend the above enactments to bring them at par with the compensation and R&R benefits as espoused in the New Act

Other Key Provisions

- ✓ **25 % of Compensation Amount can be offered in the form of shares subject to acceptance by the land owners;**
- ✓ **In urbanisation projects, 20% of the developed land can be offered at a price equal to the cost of acquisition and the cost of development subject to acceptance by the land owners;**
- ✓ **If the States have better compensation and R&R Policy, the Affected Families shall be entitled to get the same;**
- ✓ **No change in land use permitted without permission from the Government; and**
- ✓ **Land not used without development need returned to the landowners or the land bank ;**
- ✓ **Tenants, Share–Croppers will also get compensation apart from R&R Benefits**

 **IDFC Implications for the Corporates**

- ✓ **R&R and Cost of Land Procurement would be in the range of 3 to 4 % of the total project costs for industrial projects**
- ✓ **Getting consent from the land owners would be time consuming**
- ✓ **Forced to acquire land from larger number of land owners through private negotiations.**
- ✓ **Title is not guaranteed**
- ✓ **Without Administrative Land Reforms - Implementation New Act will be a challenge.**

Key Differences

L A Act, 1894

- ✓ Preliminary Notification;
- ✓ Filing of objections;
- ✓ Declaration; and
- ✓ Enquiry and Award;

New Act , 2013

- ✓ Social Impact Assessment (SIA) – to be completed within 6 months;
- ✓ Preliminary Notification - to be issued within 12 months from SIA completion ;
- ✓ Filing of objections - to be filed within 60 days from the date of preliminary notifications ;
- ✓ Publication of Draft Declaration and R&R scheme – to be made 12 months from the date of declaration; and
- ✓ Enquiry and Award

Key Differences

L A Act, 1894

- ✓ Market Value; and
- ✓ Solatium – 30%

New Act, 2013

- ✓ minimum land value, if any, specified in the Indian Stamp Act, 1899 for the registration of sale deeds or (b) the average of the sale price for similar type of land situated in the village or vicinity, ascertained from fifty per cent of the sale deeds registered during the preceding three years, where higher price has been paid; or (c) the amount agreed upon as compensation for acquisition of land for private companies or PPP, whichever is higher.
- ✓ Once the market value as above is computed, it shall be multiplied by a multiplier factor of upto two in rural areas. Urban areas – remains the same.
- ✓ Value of the assets attached to land: Building/trees/crop etc;
- ✓ 100 % Solatium on the compensation determined
- ✓ .

Key Differences

R& R Policy – 2007

- ✓ SIA - 400 families in plain areas
- ✓ SIA – 200 families in hilly areas;
- ✓ R&R – applicable all categories;

New Act, 2013

- ✓ SIA- no threshold;
- ✓ Acquired land cannot be transferred other than public purpose;
- ✓ Unutilized land (more than 5 years) shall revert to the original owners or the Land Bank;
- ✓ R&R is applicable for private acquisition in certain cases determined by the concerned state government.

Thank You