

State Legislative Brief

ASSAM

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement (Assam Amendment) Bill, 2023

Key Features

- The Bill amends the 2013 central Act to exempt defence and national security projects from requiring a social impact assessment and consent from land owners prior to acquiring land.
- The state government may choose to pay compensation in lieu of rehabilitation and resettlement for land acquired for defence and national security projects.
- The state government may enter into an agreement to acquire land for public purposes from a landowner who is willing to sell the land.

Key Issues and Analysis

- The proposed amendments may not sufficiently expedite land acquisition for defence or national security projects. The 2013 Act has provisions to speed up land acquisition for defence or national security in urgent situations.
- Paying compensation in lieu of rehabilitation and resettlement may dilute the spirit of primary legislation.
- The concept of voluntary land acquisition is unclear because voluntary transactions of land would be classified as a sale, as opposed to forceful acquisition by the state.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Assam Amendment) Bill, 2023 was introduced in the Assam Legislative Assembly on September 14, 2023. The Bill amends the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in its application to the state of Assam.

PART A: HIGHLIGHTS OF THE BILL

Context

Under the Constitution, the acquisition of property is in the concurrent list, which implies that both Parliament and states can make laws on acquisition.¹ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (2013 Act) is the key central law governing the acquisition of land.² States have their own laws on acquisition or have adopted the 2013 Act, with some changes. Under the 2013 Act, the government can acquire privately owned land. Such acquisition may be done for government, private companies or public-private partnerships (PPPs), but the land must be used for a public purpose. If the acquisition is for a private company or a PPP, the consent of the land owners must be obtained. A Social Impact Assessment (SIA) must be carried out to determine if the potential benefits of the project outweigh the social costs of acquisition. Compensation must be paid to the landowners. For every acquisition, rehabilitation and resettlement of affected families must be carried out. In addition to the 2013 Act and state laws, there are 13 central Acts with provisions for the acquisition of land in specific sectors like railways, special economic zones, and national highways. The provisions related to compensation, and rehabilitation and resettlement under the 2013 Act have been extended to these 13 Acts.³

Several states including Maharashtra, Gujarat, and Tamil Nadu have amended the 2013 Act in its application to their respective states.^{4,5} These amendments exempt land acquired for certain categories of projects from SIA, consent, food security provisions, and Rehabilitation and Resettlement (R&R) provisions. Projects that get exempted are related to defence, rural infrastructure, affordable housing, industrial corridors, and infrastructure including PPPs where the government owns the land (see Table 2 in Annexure).

Key Features

- **Exemptions to national security projects:** The 2013 Act requires the SIA study before the acquisition of land for public purposes. The study includes: (i) assessing if the proposed acquisition serves a public purpose, (ii) estimation of affected families, and (iii) the extent of land, public and private houses, and common properties that are likely to be affected. The Act also prohibits acquisition of irrigated multi-cropped land, barring exceptional circumstances. If the land is being acquired for public-private projects and private establishments they will require the consent of 70% and 80% of the land owners, respectively. The Bill exempts land acquired for projects vital to national security or defence, including preparation for defence or defence production, from these provisions. It also removes the requirement for rehabilitation and resettlement in case of land acquisition for these purposes. Instead, the state government may pay a lump-sum amount as compensation.

- **Award of land without enquiry:** Under the 2013 Act, the collector must give notice and enquire into public objections to the proposed land acquisition. Following the enquiry, the Collector will determine the true area of the land, compensation for the land, and division of the compensation between the persons interested in the land. The Bill allows the collector to carry out these functions without an enquiry if all the concerned persons have reached an agreement in writing.
- **Compensation claims:** Under the Act, if the land was acquired before the commencement of the 2013 Act and compensation for most land holdings was not paid by then, specified beneficiaries will be entitled to compensation as per the 2013 Act. The Bill instead provides that beneficiaries will receive compensation as per the 2013 Act if the land was acquired at least five years before the commencement of the Act. This period will not include delays resulting from legal proceedings.
- **Return of acquired land:** The Act provides that if the acquired land stays unutilised for five years, it must be returned to the original owners, their legal heirs, or to the government land bank. The Bill instead provides that unutilised land must be returned after five years or the period specified for setting up the project, whichever is later.
- **Voluntary acquisition of land:** The Bill allows the state government to enter into an agreement to acquire land for public purposes from a landowner who is willing to sell the land. Where families, other than that of the landowners, are impacted by such acquisition, the state government will also pay a lump sum amount towards their rehabilitation and resettlement.
- **Exception:** The provisions of the Bill will not apply to acquisition under the Assam Land (Requisition and Acquisition) Act, 1964. The 1964 Act allows the state government to require, and if needed, subsequently acquire land mainly for flood control operations. However, the compensation and rehabilitation and resettlement provisions of the 2013 Act may be extended to such acquisition. This can be done only after a resolution is passed by the State Legislative Assembly.

PART B: KEY ISSUES AND ANALYSIS

Need for the Bill

Act:
Sections
2 (1), (2)
4, and
10

Bill:
Clauses
2, 3

Under the 2013 Act, land can be acquired only for public purposes. These include projects vital to (i) national security, (ii) infrastructure projects, and (iii) certain development works.² SIA must be conducted to determine if the benefits from the proposed acquisition outweigh social costs. If the land acquired is multi-cropped irrigated land, it should not exceed the limit notified by the state government. If the land is being acquired for PPPs or private companies, they must obtain the consent of 70% or 80% of the land owners, respectively. The Bill exempts projects vital to national security or defence of the country from requiring the SIA, consent requirements, and the restrictions on acquisition of multi-cropped irrigated land. This may lead to some issues discussed below.

Land acquisition for defence or national security projects is covered under the existing urgency clause

Act:
Sections:
9, 40

As per the Statement of Objects and Reasons of the Bill, the amendments seek to ensure that land is available in a timely manner for public-purpose projects. Therefore, projects vital to national security or defence are being exempt from certain requirements under the 2013 Act. However, the 2013 Act already provides for faster land acquisition in case of urgency related to defence or national security (after 30 days of the Collector publishing the notice). This urgency provision also enables the government to exempt the acquisition from conducting the SIA. However, if land is acquired through the urgency clause, 80% of the compensation is to be paid upfront. Further, an additional 75% of the total compensation is to be paid to the landowners.

Exemptions may not help reduce overall delays in defence and national security projects

Exemptions provided in the Bill may not substantially reduce the time taken to acquire land. Under the 2013 Act, the maximum time required to complete the acquisition process is 50 months. Changes proposed in the Bill would reduce this time to 42 months. Further, delays in such projects are not caused only due to land acquisition. As per the Ministry of Defence (2019), reasons for the project delays include time taken to obtain forest clearances, challenges with climatic conditions and terrain, and shortages of construction material.⁶ Note that, to accelerate strategic and security-related projects, the Forest Conservation Act, 1980 was amended in August 2023 to exclude forest lands intended for such projects and within 100 km of India's border, from the provisions of the 1980 Act.⁷

Similar amendments to the acquisition process had been proposed in a Bill introduced in Parliament in 2015. The Bill enabled the government to exempt certain categories of projects from the requirements of SIA and consent, and the restrictions on acquisition of multi-cropped land. The categories of projects that were exempted included defence, affordable housing, and industrial corridors.⁸ The Bill lapsed with the dissolution of the 16th Lok Sabha.

Table 1 Changes made to the process of land acquisition specified under the LARR Act, 2013

Steps outlined in the 2013 Act*	Time limit specified in LARR Act 2013	Assam Amendment timeline
Social Impact Assessment	6 months	Projects vital to national security and defence are exempt from SIA provisions.
Appraisal of SIA report by expert Committee	2 months	
Examination of the proposal for land acquisition and SIA by the government	No timeline	
Preliminary notification to acquire land after appraisal report	12 months (the government can extend this period)	Same
Declaration to acquire land	12 months (the government can extend this period)	Same
Land acquisition award (compensation)	12 months (the government can extend this period)	Same
Compensation to be paid	3 months	Same
The monetary part of R&R	6 months (includes time for compensation to be paid)**	Same
Total time (without extensions)	50 months	42 months

Sources: The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (Assam Amendment) Bill, 2023; PRS.

Notes: *This computation assumes that each part of the sequential process will take the maximum time permitted under the 2013 Act. Some other requirements run in parallel with the steps outlined in this Table. It must be noted that the 2013 Act allows the time limit to be extended for a couple of processes, and the Bill retains these provisions.

**Possession of land will be given after compensation has been paid (with a time limit of 3 months from the award) and monetary aspects of rehabilitation have been provided (within a time limit of 6 months from the award).

Voluntary acquisition of land

Bill:
Clause 7

The Bill adds a provision which allows the state government to enter into an agreement to acquire land for public purposes from a landowner who is willing to sell the land. However, an acquisition is different from a purchase. A transaction between a willing buyer and seller is a purchase/sale. An acquisition is when a landowner is unwilling to part from his land, and consequently, the government forcibly acquires the land from him. If a landowner is willing to sell his land to the government, it is unclear why such land must be acquired instead.

Paying compensation in lieu of R&R may dilute the spirit of the legislation

Bill:
Clause 8

The Bill requires the state government to pay compensation in lieu of providing rehabilitation and resettlement (R&R) for projects vital to national security. This may dilute the spirit of the legislation. As per the preamble of the 2013 Act R&R is crucial to make affected people active participants in development. The National Rehabilitation and Resettlement Policy 2007 states that R&R helps affected families to rebuild their lives and safeguard the rights of vulnerable communities.⁹

The Standing Committee on Rural Development that examined Land Acquisition Rehabilitation and Resettlement Bill, 2011 recommended that provisions granting state governments the ability to modify compensation and R&R should be in the letter and spirit of the legislation.¹⁰ The Standing Committee on Defence (2005) also recommended the Ministry of Defence to take appropriate initiatives for the rehabilitation and resettlement of people displaced from land acquired by them.¹¹

The threshold to hold government employees accountable is raised

Act:
Sections
86, 87

Under the 2013 Act, if a government employee commits an offence, the head of the government department will be held guilty unless he can demonstrate that he has taken necessary steps with due diligence. Similar provisions exist for directors of a company and partners of a firm. The Bill replaces the provision for government officials to state that if a government employee commits an offence under the 2013 Act, prior sanction of the government will be required before prosecuting him. This may raise the threshold for government employees to be deemed accountable.

Bill:
Clauses

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Note that this differs from the Lokpal and Lokayuktas Act 2013, where prior sanction for prosecution is needed from the Lokpal, and not the government.¹²

Annexure

Table 2: Comparison of state amendments to the Land Acquisition Act, 2013

	Assam (Bill)	Andhra Pradesh, Karnataka, Telangana ¹³	Maharashtra, Gujarat ⁴	Haryana ¹⁴	Jharkhand ¹⁵	Tamil Nadu ⁵
Projects which can be excluded from (i) consent provisions, (ii) social impact assessment, (iii) food security provisions	National Security or defence	(i) National security or defence, (ii) rural infrastructure, (iii) affordable housing, (iv) industrial corridors and (v) infrastructure projects	(i) National security or defence, (ii) rural infrastructure, (iii) affordable housing, (iv) industrial corridors and (v) infrastructure projects	Not specified	(i) Government infrastructure projects (ii) transport projects, and (iii) housing for economically weaker sections	Not specified
Compensation in lieu of resettlement and rehabilitation	Yes; for some projects	Yes; for some projects	Yes; for some projects	No	No	No
Return of underutilised land within five years or the period specified for setting up the project, whichever is later	Yes	Yes	No; can only return underutilised land within five years	No; can only return underutilised land within five years	No; can only return underutilised land within five years	No; can only return underutilised land within five years
Prior sanction of the government will be required before prosecuting a government employee	Yes	Yes	Yes	Yes	No	No

Source: See respective endnotes for the respective state laws; PRS.

- List III (42), [Seventh Schedule](#), Constitution of India.
- [The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013](#).
- [The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement \(Removal of Difficulties\) Order, 2015](#).
- [The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement \(Maharashtra Amendment\) Act, 2018](#), [The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement \(Gujarat Amendment\) Act, 2018](#).
- [The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement \(Tamil Nadu Amendment\) Act, 2014](#).
- [Report No. 50](#): Provision of all-weather road connectivity under Border Roads Organisation (BRO) and other agencies up to international borders as well as the strategic areas including approach roads an appraisal, Standing Committee on Defence, February 12, 2019.
- [The Forest Conservation \(Amendment\) Act, 2023](#).
- [The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement \(Second Amendment\) Bill, 2015](#).
- [The National Rehabilitation and Resettlement Policy, 2007](#).
- [31st Report](#): The Land Acquisition, Rehabilitation and Resettlement Bill, 2011, Standing Committee on Rural Development, May 17, 2012.
- [13th Report](#): A critical review of rehabilitation of displaced persons, Standing Committee on Defence, August 3, 2006.
- Clause 23, [The Lokpal, and Lokayuktas Act 2013](#).
- [The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement \(Andhra Pradesh Amendment\) Act, 2018](#), [The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement \(Karnataka Amendment\) Act, 2019](#), [The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement \(Telangana Amendment\) Act, 2016](#).
- [The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement \(Haryana Amendment\) Act, 2018](#).
- [The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement \(Jharkhand Amendment\) Act, 2018](#).

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