

# Rehabilitation and Resettlement under RFCTLAR&R Act, 2013

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## **INTRODUCTION**

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is an Indian Parliament act that regulates land acquisition and laid down rules for granting compensation, rehabilitation and resettlement to the people affected in regions. The Act also has provisions to provide fair compensation to those whose lands are taken away, bring transparency to the acquisition of land or buildings, infrastructural projects under Public or Private Entities and ensures rehabilitation to those affected. The Act has established regulations for land acquisition to attract India's massive industrialization sector under the public private partnership. This Act is a replacement of 1894 Land Acquisition Act, a law established under the British Rule.

## **BACKGROUND OF THE ACT**

The Central Government believed that public concern on land acquisition was growing and inadequate knowledge of land acquisition in the public was heating the issue. Despite formation of the bill, many concerns were of its amendments, as the bill was formed under the British Raj in 1894, hence mentioning of fair compensation for acquiring private land and fair rehabilitation of land owners and those affected by the acquisition of the land was important. The Central government believed that a combined was necessary, one that legally explains clauses of rehabilitation and resettlement and assist the government in acquiring the lands for public purposes.

Provision of public facilities or infrastructure often requires the exercise of legal powers by the state under the principle of eminent domain for acquisition of private property, leading to involuntary displacement of people, depriving them of their land, livelihood and shelter; restricting their access to traditional resource base, and uprooting them from their socio-cultural environment. These have traumatic, psychological and socio-cultural consequences on the affected population which call for protecting their rights, in particular of the weaker sections of the society including members of the Scheduled Castes, Scheduled Tribes, marginal farmers and women. Involuntary displacement of people may be caused by other factors also.

There is imperative need to recognise rehabilitation and resettlement issues as intrinsic to the development, process formulated with the active participation of the affected persons, rather than as externally-imposed requirements. Additional benefits beyond monetary compensation have to be provided to the families affected adversely by involuntary displacement. The plight of those who do not have legal or recognised rights over the land on which they are critically dependent for their subsistence is even worse. This calls for a broader concerted effort on the part of the planners to include in the displacement, rehabilitation and resettlement process framework not only those who directly lose land and other assets but also those who are affected by such acquisition of assets. The displacement process often poses problems that make it difficult for the affected persons to continue their earlier livelihood activities after resettlement. This requires a careful assessment of the economic disadvantages and social impact of displacement. There must also be a holistic effort aimed at improving the all round living standards of the affected people.

The Supreme Court emphasized on the need to enact a new land acquisition law. In November 2011, a joint bench of Justice Lodha and Justice Khehar in their Judgement vehemently remarked " It has been felt that Land Acquisition Act 1894(L.A.A 1894) does not adequately protect the interest of owners / persons interested in the land. For years, the acquired land remains unused. To say the least, the Act has become outdated and needs to be replaced at the earliest with fair, reasonable and rational enactment in tune with the constitutional provisions, particularly Act 300A."

Undoubtedly land acquisition has remained a controversial issue in India resulting in conflicts between social, economic and political structures.

Accordingly, U.P.A(United Progressive Alliance) government brought in the new legislation, Right to fair compensation and Transparency in land acquisition, Rehabilitation and Resettlement Act 2013, with a view to provide for a fair deal to the land owners who had suffered due to weak framework of the Land Acquisition Act 1894.

The R.F.C.T.L.A.R.R was passed by the Parliament on 5th September 2013 and came into force on January 2014. The Act overrode the Colonial Land Acquisition Act (L.A.A.) 1894. The 2013 Act for the first time, integrated Land Acquisition with Rehabilitation and Resettlement (R&R) and Social Impact Assessment (S.I.A.).

## **FACTORS FOR NEW LEGISLATION**

In India, the Land Acquisition Act (L.A.A) 1894 had served as the basis for all government acquisition of land for public purposes. The Government of India adopted the L.A.A 1894. The Constitution of India placed "Acquisition and Requisitioning of Property" as entry 42 in the concurrent list. This meant that both the Centre and State could make laws governing land acquisition. However, in case of conflict between the Central and State Law the Central Legislation would prevail.

However, the law failed to address some important issues associated with land acquisition particularly forcible acquisitions, the definition of "Public purpose, widespread misuse of the "Urgency" clause, compensation, and lack of transparency in the acquisition process, participation of communities whose land was being acquired and lack of R & R package. The Supreme Court Judgments on various occasions spelt out divergent views in "Public Purpose". In the State of Bombay v. R.S. Nanji, 1956, the Supreme Court of India observed "it is impossible to precisely define the expression "Public Purpose". In each case, all the facts and circumstances will require to be closely examined in order to determine whether a public purpose has been established. Prima facie, the government is the best judge as to whether public purpose is served by using a requisition order, but is not the sole judge. The courts have the jurisdiction and it is their duty to determine this matter whenever a question is raised whether a requisition order is or is not for a public purpose.

In Coffee Board v. Commissioner of Commercial Taxes, 1988, The Supreme Court of India again stated "Eminent domain is an essential attribute of sovereignty of every state and authorities are universal in support of the definition of eminent domain as the power of the sovereign to take property for public use without the owner's consent upon making just compensation.

## **SHORTCOMINGS OF THE LAND ACQUISITION Act, 1894**

The shortcomings of the Act are dealt below to have first-hand information about the developments that lead to amend the Land Acquisition Act 1894.

(a) Threat to the land owners: - The Land Acquisition Act 1894 encouraged, forced land acquisitions. As per the Land Acquisition Act 1894 once the acquiring authority decided to acquire land, the act provides for carrying out the acquisition without thinking for a moment about the problems, difficulties and hardships encountered by Land owners. In a way the land losers were bulldozed forcefully, mercilessly.

(b) No Protection: - Lack of proper forum or mechanism by the Government to stall the forced land acquisition, excepting a hearing U/s 5A where there is no scope for a discussion or negotiations to redress the sufferers and the views expressed are not taken seriously by the officers conducting the hearing.

(c) Rehabilitation & Resettlement: - The Land Acquisition Act 1894 is absolutely silent regarding the efforts for Rehabilitation and Resettlement of those displaced by the acquisition.

(d) Urgent Need: - This clause has become very controversial and faced stiff criticism by all sections of the society. This clause is silent as to the true and correct definitions of urgent need and such that the authority exercised discretionary powers without any proper and justified grounds. This resulted in spree of land acquisitions under the guise of urgency clause in utter disregard to the principles of natural justice and law of equity.

(e) Disparity in Compensation: - Even while fixing the rates of compensation for the land acquired no justification was made as the rates never matched the prevailing rates which should have been more appropriate, logically correct and acceptable in the normal course without giving any scope for arbitrariness.

## **PURPOSE OF RFCTLAR&R ACT, 2013**

The primary objective of the Act was to fair compensation, through R & R of those affected, adequate safeguards for their well being and completes transparency in the process of land acquisition.

The most important features of the Act were:

1. The Consent of 80% land owners concerned was needed for acquiring land for private projects and 70% land owners for public private projects (P.P.P).
2. The term "Public Purpose" which was left vague in the Land Acquisition Act (L.A.A) 1894 was restricted to land for strategic purposes, infrastructural projects, planned development or improvement of village or urban sites or residential purpose for weaker section and persons residing in areas affected by natural calamities or displaced.
3. The compensation was increased to four times the market value in rural areas and twice the market value in urban areas.
4. R & R package for the affected families with additional benefits to the Scheduled Castes and Scheduled Tribes families.

## **PROCESS FLOW OF LAND ACQUISITION AND REHABILITATION & RESETTLEMENT UNDER THE NEW ACT.**

- Application for Acquisition by Requiring Body
- Notification for preparation of SIA study (Section 4)  
( SIA study to be completed within 6 months of notification)
- Evaluation of SIA report by Expert group within 2 months of its Constitution (Section7)  
Negative recommendation of Expert group
- Abandon Project (Section 7(4))  
If Positive, Recommendation (Section 7 (5))  
Government to Recommend Land Acquisition (Section 8 (2))
- Preliminary Notification (PN) to be issued within 12 months of Section 7
- Recommendation for Land Acquisition (Section 11) or SIA report will lapse (Section14)
- Collector to update Land Records (Section 12(5))
- Preliminary survey of land to be carried out (Section 12)
- Filing of Objections (Section 15) within 16 days of Preliminary Notification.
- Preparation of Rehabilitation and Resettlement Scheme by ARR (Section 16)
- Publication of Draft Rehabilitation and Resettlement Scheme.
- Hearing of objections (Section 15(2))
- Collector to make a report and submit to Government along with his recommendation
- Public hearing on R&R Scheme
- ARR to submit Draft R&R scheme to Collector (Section 16(6))
- After Review, Collector submits Draft R&R scheme along with his suggestions to Commissioner R&R (Section 17 (2))
- Publication of approved R&R Scheme (Section 19(2))
- Declaration by Government along with summary of R&R scheme after deposit of Land Acquisition Cost by the Requiring Body (Section 19) within 12 months from Preliminary Notification or Preliminary Notification Rescinded.
- Land to be marked out, measured and planned if not already done under Section 12 (Section 20)
- Notice to Persons Interested (Section 21)
- Land Acquisition Award within 12 months of the Declaration or else Land Acquisition Proceedings Lapses (Section 23)
- Compensation and Final Award to Land Owners ( Section 27 and Section 30)
- Rehabilitation and Resettlement Award (Section 31)
- Taking Possession of Acquired Land (Section 38)

## **PROVISIONS OF REHABILITATION AND RESETTLEMENT UNDER RFCTLAR&R ACT, 2013**

Under Section 31, the Collector shall pass Rehabilitation and Resettlement Awards for each affected family in terms of the entitlements provided in the Second Schedule.

- The Rehabilitation and Resettlement Award shall include all of the following, namely:—
  - (a) Rehabilitation and resettlement amount payable to the family;
  - (b) Bank account number of the person to which the rehabilitation and resettlement award amount is to be transferred;
  - (c) Particulars of house site and house to be allotted, in case of displaced families;
  - (d) Particulars of land allotted to the displaced families;
  - (e) Particulars of one time subsistence allowance and transportation allowance in case of displaced families;
  - (f) Particulars of payment for cattle shed and petty shops;
  - (g) Particulars of one-time amount to artisans and small traders;
  - (h) Details of mandatory employment to be provided to the members of the affected families;
  - (i) Particulars of any fishing rights that may be involved;
  - (j) Particulars of annuity and other entitlements to be provided;
  - (k) Particulars of special provisions for the Scheduled Castes and the Scheduled Tribes to be provided.

Under Section 32, in every resettlement area, the Collector shall ensure the provision of all infrastructural facilities and basic minimum amenities specified in the Third Schedule.

Under Section 35, the Collector shall have powers to summon and enforce the attendance of witnesses and to compel the production of documents by the same means, and in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908).

Under Section 36, the appropriate Government may at any time before the award is made by the Collector under section 30 call for any record of any proceedings for the purpose of satisfying itself as to the legality or propriety of any findings or order passed or as to the regularity of such proceedings and may pass such order or issue such direction in relation thereto as it may think fit

(Provided that the appropriate Government shall not pass or issue any order or direction prejudicial to any person without affording such person a reasonable opportunity of being heard)

Under Section 37, the Collector declares the final award

(1) The Awards shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and market value of the land and the assets attached thereto, solatium so determined and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his awards to such of the persons interested who are not present personally or through their representatives when the awards are made.

(3) The Collector shall keep open to the public and display a summary of the entire proceedings undertaken in a case of acquisition of land including the amount of compensation awarded to each individual along with details of the land finally acquired under this Act on the website created for this purpose.

Under Section 38, the Collector has the power to take possession of land to be acquired.–

(1) The Collector shall take possession of land after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule commencing from the date of the award made under section 30.

(2) The Collector shall be responsible for ensuring that the rehabilitation and resettlement process is completed in all its aspects before displacing the affected families.

Under Section 39, the Collector shall not displace any family which has already been displaced by the appropriate Government for the purpose of acquisition under the provisions of this Act, and if so displaced, shall pay an additional compensation equivalent to that of the compensation determined under this Act for the second or successive displacements.

Under Section 40 there are Special powers in case of urgency to acquire land in certain cases.–

(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of thirty days from the publication of the notice, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances.



(2) The powers of the appropriate Government under sub-section (1) shall be restricted to the minimum area required for the defence of India or national security or for any emergencies arising out of natural calamities or any other emergency with the approval of Parliament.

Under Section 42, Reservation and other benefits available to the Scheduled Tribes and the Scheduled Castes in the affected areas shall continue in the resettlement area.

- Whenever the affected families belonging to the Scheduled Tribes who are residing in the Scheduled are relocated outside those areas, than, all the statutory safeguards, entitlements and benefits being enjoyed by them shall be extended to the area to which they are resettled regardless of whether the resettlement area is a Scheduled Area or not.
- Where the community rights have been settled under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007), the same shall be quantified in monetary amount and be paid to the individual concerned who has been displaced due to the acquisition of land in proportion with his share in such community rights.

There are various Institutional mechanisms for Rehabilitation & Resettlement:-

- Sec. 43—Administrator for Rehabilitation and Resettlement Formulation, Execution and monitoring of R&R Plan.
- Sec. 44—Commissioner for Rehabilitation and Resettlement -Supervision of formulation, implementation of R&R Plan and post implementation social audit in consultation with Gram Sabha.
- Sec. 45—Rehabilitation and Resettlement Committee at project level (more than 100 acres) - monitor and review R&R.
- Sec. 48—50 -National Monitoring Committee at central level & State Monitoring Committee at State level.

## **BENEFITS UNDER REHABILITATION AND RESETTLEMENT**

Various provisions have been made for the affected families towards their displacement on account of land acquisitions by the governments.

The following are the details:

- Houses: - All affected families are entitled to a house provided they have been residing in an area for five years or more and have been displaced. In case of refusal to accept the house, the affected families are offered a one-time financial grant in lieu of the same.

- Employment or Annuity: - All the affected families are given a choice of annuity or employment.
  1. If employment is not forthcoming, they are entitled to a one time grant of Rs 5, 00,000/- (Rupees Five Lakhs Only) per family.
  2. Alternatively, they will be provided with an annuity payment of Rs 2,000/- (Rupees Two Thousand Only) per month per family for 20 years, subject to inflation.
  3. Subsistence Allowance: All affected families which are displaced from the land acquired shall be given a monthly subsistence allowance, equivalent to Rs 3,000/- (Rupees Three Thousand Only) per month for a period of one year from the date of the award.
  4. All the affected families are also given training and skill development along with providing employment.
  5. All the affected families are given multiple monetary benefits such as transport allowance of Rs 50,000/- (Rupees Fifty Thousand Only) and Resettlement allowance of Rs 50,000/- (Rupees Fifty Thousand Only)
  6. One-time financial assistance: - Each affected family of an artisan, small trader or self-employed person shall get one- time financial assistance of such amount as the appropriate government may by notification specify subject to a minimum of Rs 25,000/- (Rupees Twenty Five Thousand Only).
  
- In case of acquisition of land for irrigation or hydroelectric project the Rehabilitation & Resettlement shall be completed six months prior to submergence of the lands proposed to be acquired.
  
- Possession: - The Collector shall take possession of land only ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements commencing from the date of the award. However, families will not be displaced from this land till their alternative Rehabilitation & Resettlement sites are ready for occupation.
  
- Time-Limits: - The components of the Rehabilitation & Resettlement package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of 18 months from the date of the award.
  
- Schedule Two of the Act enlists R&R benefits for the affected families. In case of irrigation projects, as far as possible, each affected family is proposed to be given one acre of land in the command area. Persons belonging to SC or ST and losing their land will be provided two and a one-half acres of the land. If the land is acquired for urbanization purpose, twenty percent of the developed land will be reserved and offered to the land losers. Mandatory employment to at least one member per affected family. If it is not possible, then onetime payment of rupees five lakhs per affected family or annuity policy that pays rupees two

thousand per month per family for twenty years. Onetime financial assistances like transportation cost, cattle shed/petty shop costs etc.

- Resettlement and Rehabilitation benefits to all affected families (in addition to compensation)

R & R Package- Choice of employment or Rs 5 lakhs or Rs 2000 per month for 20 years.

One-time Resettlement Allowance :Rs. 50,000/ Cattle shed/petty shops-Rs. 25,000/ One time grant to artisan/traders/self employed-Rs. 25,000/ – Fishing rights in reservoir – Land for land–Irrigation projects (as far as possible) 1 acre of land (2.5 acres for SCs/STs in command area Displaced Families Housing in case of displacement–Rural Areas (IAY specifications); Urban areas (constructed house not less than 50 sq.mts in plinth area/min Rs. 1,50,000) Subsistence grant for all displaced families–Rs. 3000 per month for one year (additional Rs. 50,000/ for SCs/STs). Transportation grant for all displaced families-Rs. 50,000/ – All monetary rehabilitation grants and benefits are adjusted based on the Consumer Price Index. – Stamp duty/registration to be paid by the requiring body Important R & R Benefits Important R & R Benefits

- Infrastructure Facilities in Resettlement Areas

Third Schedule lists amenities/facilities to be developed in the rural areas. These include roads, drainage, sources of safe drinking water for affected families, drinking water for cattle, grazing land, fair price shops, Panchayat Ghars, village level post office, Burial or Crimination Ground, Anganwadi, community centres, health centres, playground etc.

## THE FIRST SCHEDULE [ 30 (2)] COMPENSATION FOR LAND OWNERS

Serial No.	Component of compensation package in respect of land acquired under the Act	Manner of determination of value
1	2	3
1	Market value of land	To be determined as provided under section 26.
2	Factor by which the market value is to be multiplied in the case of rural areas	1.00 (One) to 2.00 (Two) based on the distance of project from urban area, as may be notified' by the appropriate Government.
3	Factor by which the market value is to be multiplied in the case of urban areas	One
4	Value of assets attached to land or building	To be determined as provided under section 29
5	Solatum	Equivalent to one hundred per cent. Of the compensation amount of land mentioned against serial number 1
6	Final award in rural areas	{(1x2 )+ 4)+ 100 %
7.	Final Award in Urban Area	{ (1x3)+4)+100%

under the old Act, land compensation was calculated in a simple manner by taking the average of 3 years registration price added with 30% solatium and 12% interest over it. However, the cost of permanent objects existing over the land is also finally added at the time of making the award

- LA Act, 1894 empowers the appropriate Government to acquire land under urgency provision for any public purpose U/s 17. However, in new RFCTLAR&R Act, the urgency provision is restricted to:
  - (a) Acquisition of land for defence of India; or
  - (b) National security
  - (c) For any emergency arising out of natural calamities.

An additional 75 percent of total compensation shall be paid which was not a provision in Old act

- If private purchase is beyond certain limits as specified by the appropriate Governments then the R&R benefits has to be extended to the affected families. The R&R scheme has to be approved by the Commissioner for the R&R and No land use is change permitted if R&R is not complied as per the award passed by the collector. Application to Collector has to include the purpose, particular of land to be purchased.

## **SHORTCOMINGS OF THE RFCTLAR&R Act**

The Act has a few shortcomings.

First, the meaning of “Public Purpose” which had been progressively enlarged in the existing Act to include land for private companies remains as it is.

Second, those who are the tillers of the land are often tenants of absentee landlords who usually pocket the compensation. The same in the case with landless cultivators in occupation of government lands, who may not get any compensation.

Third, many private companies are circumventing the mandatory “Prior Consent” clause by deploying brokers to purchase lands in advance.

## **CONCLUSION**

With rapid modernisation and industrialisation it is inevitable for the government to dial down on new Land Acquisition projects which requires rehabilitation and resettlement of the displaced. While resettling the displaced families in a colony or cluster, care must be taken to restore their livelihood, socio-cultural identity, cultural practices and social customs. Efforts must also be made to preserve archaeological sites/ monuments at their new place of relocation. Special attention must be paid to develop good host and guest relationship. Besides, civic amenities should be provided for a decent community living. To ensure proper resettlement, a socio-cultural survey must be meticulously done in all the ongoing Projects. The infrastructure survey ensures that the lost community infrastructures are replaced in the new place of relocation. To improve the quality of lives, better infrastructural facilities in the shape of roads, electricity, drinking water, and deep bore well, ponds, schools, panchayat ghar, anganwadi centre etc. must be provided after thorough discussion and active participation of the displaced families. This helps to maintain cordial relationship between the displaced and the government as well as the project proponent.

**FORM-L**

(See rule-35 of the Odisha .....Rules, 2015 )

**Award for Rehabilitation and Resettlement**

Land Acquisition case No.

1	Name of the project:							
2	Number and date of declaration under which the land is to be acquired:							
3	Location and extent of the land in acres, the number of field plots with specification, the village in which situated							
4	Description of the housing units, transportation cost, housing allowances, annuity, employment subsistence grant, cattle shed, petty shop, one time resettlement allowances etc.							
5	Name /Names of persons interested in the land and the nature of their respective claim for rehabilitation and resettlement.							
6	Apportionment of the amount of compensation Area (in acres)	Sl. No.	Name of claimants/ affected family	R&R entitlements	Bank Ac. No.	Amount payable to each	Non monetary entitlements	Remarks
					(a) House to be allotted (b) Land to be allotted (c) Fishing rights (d) Annuity (e) Employment (f) Transportation cost, (g) Housing allowances, (h) Employment (i) Subsistence grant (j) Cattle shed, (k) Petty shop, (l) One time resettlement allowances			
7	Date on which R&R entitlements given to the affected family.							

Date:

Signature