



**A Manual of Guidelines
On
Land Acquisition for National Highways
Under
The National Highways Act, 1956**

**Government of India
Ministry of Road Transport and Highways**

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FOREWORD

The total length of National Highways notified in the Country was about 91,000 kms when the present Government took charge in May, 2014. We have been working assiduously for the expansion of NH network during this period and I am happy to share that we have notified about 1,29,000 kms length of National Highways as on date. The Ministry has spearheaded construction of more than 28,000 kms of National Highways till March 2018, which is no mean achievement. We constructed National Highways @ 27 kms per day during FY 2017-18, registering a phenomenal increase, and we hope to reach a construction pace of about 35 kms per day during the current financial year.

The Indian Road Construction industry is well established by now and I believe that the Ministry and its project execution agencies have the potential to construct National Highways @ 50 kms/ day, if we are able to meet the major challenge of timely availability of land for the Right of Way (ROW) for construction of new Highways. Introduction of a new Act for Land Acquisition effective from 01.01.2014, and the applicability of its select provisions to the National Highways Act, 1956 in this behalf, brought about a major change not only in the project cost structure but also the processes. Learning from previous experience, the Ministry has introduced a number of policy initiatives.

The present volume in the form of a Manual of Guidelines on the subject of Land Acquisition for the National Highways addresses various issues in a holistic manner, be it related to legal issues or the processes involved at all stages. This volume is the outcome of single-handed labour of Sh. Y. S. Malik, Secretary, Road Transport & Highways, who has shown his in-depth understanding of the subject right since he joined as Chairman NHAI in November 2016 and thereafter as Secretary during his present tenure. It is amazing to learn that, working over-time, he has been able to write this Manual himself in spite of so many work pressures a Secretary of the Ministry faces. Sh. Malik has addressed various aspects of the subject in a lucid manner. I am sure that meticulous follow-up action would not only lead to all fairness for the landowners but also ensure against any mischiefs encountered in the process of land acquisition. It is my fervent appeal to all concerned, the officers of the Project executing agencies, the Competent Authorities for Land Acquisition and other officers from the State Governments to go through the contents of this volume, word by word, and help us in taking the process of land acquisition forward for the development of National Highways in a seamless manner.

- Nitin Jairam Gadkari

P R E F A C E

Land Acquisition constitutes the first basic requirement for capacity addition of an existing road notified as a National Highway or development of a Green-field National Highway. The introduction of RFCTLARR Act, 2013 and application of its select provisions (First, Second and Third Schedules) with effect from 01.01.2015 for acquisition of land under the National Highways Act, 1956 has added an altogether new dimension for compensation to the landowners.

As per the information gathered from the National Highways Authority of India (NHAI), the average cost of land acquisition was about Rs. 80.00 Lakh per Hectare before 01.01.2015, which has now gone up to about Rs. 3.60 crore per Hectare. Out of a total expenditure of Rs. 1,52,000 crore during the period of last four years (April 2014 to March 2018), the NHAI has spent an amount of Rs. 81,000 crore on the Land Acquisition as against an expenditure of about Rs. 41,000 crore on the Civil Works.

Introduction of an altogether new regime for determination of compensation for acquisition of land under the RFCTLARR Act of 2013 and its application to the NH Act, 1956, led to a number of ambiguities and lack of clarity in the initial stages. The sheer size and scale of expenditure on Land Acquisition for construction and development of National Highways led to a lot of concerns. Notification and application of Multiplication Factor, method of calculation of the total compensation amount, and levy of Administrative Charges for LA for the National Highways by about 13 states, all varying from state to state, emerged as another set of major concerns.

It was at this stage that the issues were identified through an in-depth analysis and a set of Comprehensive Policy Guidelines were issued on the subject vide Ministry's letter dated 28.12.2017. However, a number of issues have been identified requiring further clarity on the subject. Therefore, need arose for addressing these related issues, with updates and legal opinions, which are being addressed through this Manual of Guidelines for all concerned, be it the DPR Consultants, the officers of MoRTH and its project implementing agencies (NHAI, NHIDCL, BRO and the State PWDs), or the Competent Authorities appointed as such for undertaking the Land Acquisition for NH projects. I have made an attempt to cover as much of the ground as possible till date. The need for its further updates cannot be ruled out as we go along. I hope all concerned associated with the process of Land Acquisition for the National Highways and associated purposes find it useful in undertaking the process forward in a seamless manner.

Y.S. Malik
Secretary to Government of India,
Ministry of Road Transport & Highways

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Chapter: 3

Process of Land Acquisition under the NH Act, 1956

Process of Land Acquisition and the steps involved therein:

3.1 Appointment of Competent Authority for land Acquisition (CALA) under Section 3(a) of the NH Act, 1956.

- (i) The first step in the process of Land Acquisition for National Highways under the National Highways Act, 1956 relates to the appointment of Competent Authority for Land Acquisition (CALA) under Section 3(a) of the NH Act, 1956. The CALA is invariably an officer dealing with the land administration in the area and is the custodian of all revenue/ land records, and so appointed by the Central Government on the recommendations of the State Government. This step takes considerable time in getting timely response from the States.
- (ii) It has been observed that the work relating to acquisition of land in various states is undertaken by certain designated officers in their ex-officio capacity. For instance, in Haryana, it is the District Revenue Officer (DRO) who is designated as the Land Acquisition Officer in his ex-officio capacity as the DRO. Wherever such an arrangement is in existence, it is always useful to request the State Government for a standing order from the higher authorities in the State recommending notification of such Officers as CALAs for acquisition of land for the National Highways also. This would save considerable time in getting recommendations in individual cases. The States of Haryana, Tamil Nadu and Andhra Pradesh have already issued such orders. As a sample, the Order issued by the Financial Commissioner, Department of Revenue & Disaster Management, Government of Haryana, is enclosed as [Annexure- 3.1](#).

3.2 Notification under Section 3A of the NH Act, 1956.

"3A. Power to acquire land, etc.- (1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land;

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers one of which is will be in vernacular language."

- (i) Once the CALA is appointed under Section 3(a), representative of the land acquiring agency/ PD concerned approaches the CALA for issue of Preliminary Notification under Section 3A of the NH Act, 1956. This draft Notification is invariably prepared by the DPR consultant based on revenue records obtained from the office of CALA. Preparation of Notification under Section 3A is a demanding job, especially in a linear project, as the possibility of missing out certain small revenue/ *Khata*

numbers cannot be ruled out. This draft notification thus, as submitted to the CALA, must pass through a two or three eye-check so as to ensure that the incidence of missing numbers/ plots is minimised. This draft is then vetted by the CALA before he signs and uploads the same on *Bhoomi Rashi* portal for approval of the competent authority and its publication in the Gazette.

- (ii) Publication of Notification under Section 3A is now much easier and faster with the development, roll-out and implementation of *Bhoomi Rashi* software. The chances of any mistakes creeping in are also minimised in the process.
- (iii) Besides publication of Notification under Section 3A in the Official Gazette, it is equally important that the Notification is also immediately published in two newspapers circulating in the area, of which one must be in vernacular. It has to be noted that the subsequent Notifications under Section 3D and other public notices are also got published in the same set of newspapers.
- (iv) Publication of Notification under Section 3A enables the land acquiring agency to undertake the activities specified under Section 3B, which is reproduced below:

***"3B. Power to enter for survey, etc.** - On the issue of a notification under subsection (1) of section 3A, it shall be lawful for any person, authorised by the Central Government in this behalf, to-*

- (a) make any inspection, survey, measurement, valuation or enquiry;*
- (b) take levels;*
- (c) dig or bore into sub-soil;*
- (d) set out boundaries and intended lines of work;*
- (e) mark such levels, boundaries and lines placing marks and cutting trenches;*
or
- (f) do such other acts or things as may be laid down by rules made in this behalf by that Government.*

3.3 Hearing of Objections (filed under Section 3C and settlement thereof):

***"3C. Hearing of objections.-** (1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.*

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

***Explanation:-** For the purposes of this sub-section "legal petitioner" has the same meaning as in clause (i) of sub-section (i) of section 2 of the Advocates Act, 1961 (25 of 1961).*

(3) Any order made by the competent authority under sub-section (2) shall be final."

- (i) It is clear from a reading of the above that the landowners are given an opportunity by law to file objections before the concerned CALA in respect of the proposed acquisition of their land, be it with respect to the *Khata* numbers, the area under such field number, the nature of land shown in the preliminary notification or any other issue. The landowner is required to file his/ her objection within a period 21 days of the publication of preliminary notification under Section 3A of the NH Act, 1956.
- (ii) It has been brought to the notice of the Ministry that the CALAs have been adopting different practices in calculation of the period of 21 days. While some of them compute the period of 21 days from the date of publication of Notification under Section 3A in the newspapers, certain others have been computing the period of 21 days from the date of publication of the Notification under Section 3A in the Official Gazette. While the Official Gazette is in public domain and, legally speaking, publication of Notification in the Official Gazette is the correct reference point for computing the period of 21 days, however, it has been observed that expecting the landowners in remote rural areas to know about the Government's intent to acquire their land from the Gazette Notifications alone may be a very textual approach. As such, it has been decided that, from now onwards, the period of 21 days for filing objections under Section 3C is to be counted from the date of last publication of the Notification under Section 3A in the newspapers. It is also for these reasons that the publication of Section 3A Notification in the locally circulating newspapers should be an immediate action.
- (iii) It has also been brought to the notice of the Ministry that the CALAs and the officers of MoRTH have generally been treating the particulars of any land, as reflected in Section 3A Notification, as sacrosanct and are reluctant to change/ correct the status even upon receiving a valid objection under Section 3C. The possibilities of certain entries in the Land Revenue Records, which formed the basis for notification published under Section 3A, having not been updated, cannot be ruled out. Hence, in cases, where a landowner points out any such inconsistency with regard to the entry recorded in Section 3A Notification, along with conclusive supporting documents in his/ her objection filed under Section 3C, the same should be given due credence by the concerned officers/ CALA, provided such claimed change had taken place before issue of Section 3A Notification. To illustrate, in case a particular landowner may have got his land use converted from "agriculture" to "non-agriculture" with the approval of competent authority, and he/she adduces evidence of having obtained such approval and also made payment of the fee prescribed for the purpose before issue of Section 3A notification, his claim would prima facie be eligible for admittance. However, such changes have to be accepted with a lot of care and caution/ due diligence because of the scope of inherent mischief in such-like cases.

3.4 Notification under Section 3D of the NH Act, 1956 - Declaration.

"3D. Declaration of acquisition. - (1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified

therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect.

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3A is stayed by an order of court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority."

- (i) It may be noted that while the Notification under Section 3A of the NH Act reflects the intent of the Government to acquire land, the Notification under Section 3D is the declaration by the Government that such land is required. As such, there is every possibility that certain land parcels, which may have been included in the Notification issued under Section 3A, are excluded from the Notification under Section 3D.
- (ii) Once the CALA has settled the objections received by him under Section 3C, for which he must pass orders with regard to each objection or the categories of objections, it is time to issue the Notification under Section 3D of the NH Act, 1956.
- (iii) The draft Notification under Section 3D should duly take into account the corrections that may have been pointed out to the CALA in due course or accepted/ allowed by him in the process of settlement of objections filed under Section 3C.
- (iv) It may be noted that the CALA is fully competent to correct such of the mistakes identified in the Section 3A Notification as are clearly of typographical nature or inadvertent calculation mistakes. The CALA may pass an order in this behalf at the time of preparation of Notification under Section 3D. Similarly, it may come to notice that a particular field number included in Section 3A Notification has been actually partitioned/ divided into smaller parts/ numbers, which had not been updated in the revenue records relied upon at the time of issue of Notification under Section 3A. In such a situation, the law permits inclusion of a smaller part/ parcel of such field number to be mentioned in the Notification under Section 3D. Conversely, if a particular survey number is not at all mentioned in the Notification under Section 3A, it cannot be included in Section 3D Notification. Such a survey number must pass through the stage of Section 3A.

- (v) Further, it has also been observed that the nature of land (agricultural/ non-agricultural) might have been changed in the revenue records inadvertently in a few cases, say from agricultural to non-agricultural or vice-versa, when examined in relation to the corresponding particulars in the notifications published under Sections 3A or 3D. Such inadvertent mistakes/ situations can be remedied by issuing a corrigendum by MoRTH. Therefore, any such inconsistencies need to be urgently brought to the notice of the Ministry by CALA through the concerned officers of implementing agencies for issuing the required corrigendum in time but certainly before the CALA determines at the market value.
- (vi) Once the CALA has done due diligence about the contents of draft Notification under Section 3D, it has to be uploaded on the *Bhoomi Rashi* portal, whereupon, after approval of the competent authority in the Ministry, it is electronically transmitted to the Government Press for publication of the Notification in the Government Gazette. Accordingly, the notification under Section 3D is published in the Gazette.
- (vii) Though the Award in respect of the land acquisition under NH Act, 1956 is announced under Section 3G, it is important to comply with the process stipulated under sub-section (3) of Section 3G before determination of the amount of Award. The said sub-section (3) of Section 3G is reproduced below:

"(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2) [of Section 3G], the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired."

- (viii) It is at this stage that the Notification under Section 3D is also published in two newspapers circulating in the local area, one of which has to be in vernacular, for information of the landowners and for inviting claims from such landowners or persons interested in such land which is included in the Notification published under Section 3D. The CALA has to ensure that the said Notification is published immediately in the same set of locally circulated newspapers in which the Notification under Section 3A was published. Standard template of Notification in terms of sub-section (3) of Section 3G is enclosed as [Annexure- 3.2](#).

3.5 Determination of the amount of Compensation in respect of land by the CALA

3.5.1 Determination of market value of land:

A number of issues have come to notice regarding the acquisition of land, especially those relating to determination of the market value of land, treatment of the nature of land and its impact on the market value of land and the total compensation amount awarded in respect of land acquisition for the National Highways. These are discussed and elaborated in the following sub-paras:

- (i) It is re-iterated in the first instance that the CALAs, though officers from the State Governments, are appointed as such by the Central Government under the NH Act,

1956 and, accordingly, the CALAs are obliged to act in accordance with the provisions contained in the NH Act, 1956 and the guidelines issued by this Ministry in furtherance thereof in discharge of their quasi-judicial functions.

- (ii) Further, it has been observed that the officers-in-charge of the Project Implementing Agencies (e.g. NHAI, NHIDCL, State PWDs and BRO) of the Central Government do not undertake any due diligence qua the amount of Award and leave it entirely to the CALAs on the ground that it is not their domain to question the CALAs in this behalf. This has been the practice followed so far. It may be noted that, as representatives of the land acquiring agency (i.e. the Central Government), they cannot entirely distance themselves in this process. They have to watch the financial interests of the Central Government as representatives of the land acquiring agency. As such, the concerned field officers of MoRTH/ NHAI/ NHIDCL/ State PWDs, executing NH Projects on behalf of MoRTH, may request the concerned CALA to share the Draft Award with them for furnishing their comments, if any. They would generally oversee that the compensation being awarded and paid for land acquisition is in accordance with the law and that any extraneous factors or considerations are not built therein. Any such inconsistencies, timely rectification of which is necessary in the interests of the landowners as well as the Central Government, must be pointed out to the CALA immediately in writing for reconciliation and correction.
- (iii) Provisions of RFCTLARR Act, 2013 relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules are applicable to the land acquisition under the National Highways Act, 1956. Determination of compensation, as prescribed under the First Schedule, is governed under Sections 26 to Section 30 of the RFCTLARR Act, 2013. Total compensation amount includes various components in the following order:

Step 1:	Determination of market value of land in accordance with Sub-section (1) of Section 26, read with sub-section (3) of Section 26 of the RFCTLARR Act, 2013;
Step 2:	Apply the Multiplication Factor to the amount determined in accordance with step 1 above in terms of sub-section (2) of Section 26 of the RFCTLARR Act, 2013;
Step 3:	Calculate the value of assets (buildings, trees etc.) attached to the land under acquisition in terms of Section 29 of the RFCTLARR Act, 2013;
Step 4:	Add the amount determined under Step 2 and Step 3 and then provide for 100% solatium on the amount so arrived;
Step 5:	Calculate the amount @ 12% per annum on the market value determined under Step 1 in terms of Section 30(3) of the Act;
Step 6:	Total Compensation amount = Step 4 + Step 5.

3.5.2 Factors in determination of market value of land:

The exercise for working out the total Compensation amount starts with the determination of market value of land (under acquisition) following the process laid down

and further explained under Section 26 of the RFCTLARR Act, 2013. This issue has been dealt with under the following sub-paras:

- (i) Determination of "basic market value of land" is a highly challenging and contentious subject. The basic market value of land refers to the price at which a landowner is willing to sell and a purchaser is willing to buy the land property. It is extremely challenging to arrive at such a value in each and every case. The RFCTLARR Act relies upon such value either captured through: "(a) the market value, if any, specified in the Indian Stamp Act for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or (b) 'the average sale price for similar type of land situated in the nearest village or nearest vicinity area' which is further qualified through Explanations 1 and 2 under Section 26 stating that: *Explanation 1* - The average sale price referred to in clause (b) shall be determined by taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity during immediately preceding three years of the year in which such acquisition of land is proposed to be made; and *Explanation 2* - stating that 'for determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account'. It is not necessary that both these references may also represent a true and fair market value.
- (ii) A reference to the provision under Section 26(1) (a) of the RFCTLARR Act, 2013, i.e. *"the market value, if any, specified in the Indian Stamp Act for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated"*, would be in order. It is observed that the reference here is to the market value that may have been specified/ determined under the Indian Stamp Act, 1899 for the purposes of registration of property transactions. As a matter of fact, it refers to the value of land that the competent authority in a state may notify as a "guideline" rate for different jurisdictions from time to time for the purpose of registration of property transactions and the value of stamp duty payable thereon. This is a measure primarily resorted to with a view to controlling the practice of under-pricing the transaction value for avoidance of payment of stamp duty in property transactions. It is in very few cases that such rates have been notified in the states in exercise of powers vesting in the Collector under the Indian Stamp Act. This value is known by different connotations from state to state, such as "Collector Rate", or "Circle Rate" or "Guideline Rate" or "Benchmark Rate" as the case may be. The expression "Collector Rate" has been used in these guidelines for reference purposes, wherever required.
- (iii) While examining the awards announced by the CALA in respect of certain LA proposals, it has been observed that there are significant differences between the average of sale deeds as applicable in the area in terms of Section 26 of the RFCTLARR Act, 2013 and the Collector/ Circle rates notified for such areas. As a principle, as stated above, the market value of the land is the value at which the owner is willing to sell and the buyer is willing to buy. However, it is very difficult to notify the Collector Rates based on such exact values. Therefore, the Collector

Rates must have the best possible proximate values for the purpose.

- (iv) As such, it is imperative that the Collector/ Circle rates are notified by the respective District Collectors/ Competent Authorities in the States, which has some proximate linkage/ relationship with the average rates collated from the sale deeds. While a deviation up to 10 to 15% of the average rate of sale deeds could be understandable, the Collector/ Circle rates cannot be and should not be with a high degree of variance in comparison to the average of sale deeds, especially when seen in relation to the sale deeds executed even during the year immediately preceding the issue of Notification under Section 3A of the NH Act, 1956.
- (v) It has also been observed in certain cases that the Collector/ Circle Rates are pegged at levels much higher than the value/ price commanded by such land in the market, perhaps in some overzealousness to augment the state income from stamp duty. For instance, if the average of sale deed rates in an area works out to about Rs. 30.00 lakh per acre, the Collector/ Circle rates could vary between Rs. 25 lakh to Rs. 35 lakh per acre, but it certainly calls for a deeper examination and, perhaps correction, if the Collector Rate notified for such area is Rs. 40/ 50 lakh or even higher per acre. Such a practice is bound to result in major distortions in determining the market value of land being acquired for the National Highways. As such, it is important that wherever the Collector Rate, which is being adopted as the reference point for determination of market value, is more than 10 to 15% of the average of Sale Deeds executed during the previous year, such abnormality/ deviation is pointed out to the District Collector for rectification. The period of one year is being taken here because the Collectors/ Competent Authorities are generally guided by the market values captured through the Sale Deeds executed in the previous year. Needless to say, the reference point in time for any such rates is the date of Notification under Section 3A of the NH Act, 1956. It is, therefore, the duty of the concerned officers of the Project Implementing Agencies, following the principles of prudent financial management, to examine such variations and appropriately raise issues with the CALA/ District Collectors where such deviations do not establish a reasonable relationship with the average of sale deeds.
- (vi) In order to maintain greater objectivity in the matter, it would be useful to compile the details in this behalf in the following two tables in order to arrive at a correct appreciation. The historical data in respect of the Collector/ Circle Rates for a period of previous 4-5 years in Table-1 would indicate if there is a sudden increase therein, and if so, as to whether there is any well founded reason for the same. Similarly, the information in Table-2 would be helpful in establishing a relationship between the two sets of market values:

Table: 1						
Sr. No.	Name of the Village/ Area	(Benchmark Rates/ Collector Rates) per Hac./ Acre				
		2010-11	2011-12	2012-13	2014-15	2015-16
1						
2						
3						

Table: 2						
Sr. No.	Name of Village	Area under Acquisition (in Hac.)	Market Value derived from Sale Deeds (50% of the higher ones) for three years preceding the Notification under Section 3A	Market Value as captured from the Sale Deeds executed during one year preceding the Year of Section 3A Notification	Applicable Benchmark Rates/ Collector Rates	Difference between Col. 5 & 6
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1						
2						
3						
4						
5						
6						

3.5.3 Nature/ Category of Land:

The next important factor, which plays an important role in determination of market value of land, pertains to the "nature/ category of land" i.e. agricultural/ residential/ commercial/ industrial etc. These aspects are discussed in the following sub-paras:

- (i) The nature/category of land (i.e. Agricultural/ Residential/ Industrial/ Commercial) is regulated under various statutes applicable from State to State. For instance, in the states of Haryana, it is regulated under the Punjab Scheduled Roads and Controlled Areas (Restrictions of Unregulated Development) Act, 1963, while in the state of Punjab, it is regulated under The Punjab Regional and Town Planning and Development Act, 1995 including related statutory mechanism covered under Punjab Urban Development laws. In case of Bihar, it is regulated under "The Bihar Agricultural Land (Conversion for Non-agricultural Purposes) Act, 2010". In case of Karnataka state, it is the "Karnataka Land Revenue Act, 1964" and, so on and so forth in all other states. This issue has been examined in a note on the basis of rulings of the Hon'ble Supreme Court on the subject. This note is enclosed separately as [Annexure-3.3](#).
- (ii) It has to be noted that certain states are following a practice of constitution of Committees of Officers to determination the category of land [agricultural/ non-agricultural (residential/ industrial/ commercial)]. Any such mechanism may not be sustainable if it is not in accordance with the law applicable in the concerned state. For example, the subject matter in Bihar is regulated as per the "*The Bihar Agricultural Land (Conversion for Non-agricultural Purposes) Act, 2010*" and a Committee of officers would have no place for the purpose in the scheme of the said Act.
- (iii) The issue of determination of basic market price of land has to be dealt with at two/ three levels. First, with regard to the category of land (agricultural/ residential/ industrial/ commercial), second, in the case of agricultural land, it is with reference to the value of land from agricultural production/ point of view -

irrigated by canal system, irrigated by tube-well, rain-fed etc. which is defined in terms of its fertility and water availability, leading to three crops/ two crops or a single crop in a year.

- (iv) A deeper examination of the subject and the rulings by Courts on the subject shows that the nature of land does not necessarily change from "agricultural" to 'non-agricultural' only because the landowner has put his land to such "non-agricultural" use, unless he has got the land use changed with the approval of the competent authority and paid the prescribed charges for the same as per the statute or rules applicable in the state. Where a person has constructed a shop on his land, it does not render the nature of said land to "commercial" until such landowner has got such a land use changed with the approval of the competent authority on payment of such CLU charges as may be applicable. In such a case, where the landowner has not got his land use converted from "agricultural" to any other conforming use (residential/ industrial/ commercial), the nature or category of land shall remain as "agricultural" and the landowner would only be entitled to compensation for the structure raised on such land in addition to the market value of land treating the nature of such land as "agricultural".
- (v) It has also been observed in certain cases that landowners got the Change in Land Use (CLU) approval after the issue of preliminary notification. In some cases, it is done on the date of application, in certain others these have also been ante-dated. Wherever any such Conversion/ Change in Land Use has been done/ allowed after the issue of Preliminary Notification under Section 3A, the same cannot be entertained and considered under law for determination of basic market value and has to be ignored. As such, it is important that any such claim would be admissible only if the CLU has been obtained on payment of the prescribed fee before the date of publication of Preliminary Notification under Section 3A in Official Gazette. CALAs have to ensure compliance in this behalf.
- (vi) There are instances where the authorities competent to allow or permit or grant any such conversion of land have granted such permissions even after publication of notifications under Sections 3A or 3D. When confronted, they either take the plea that they were not aware that the subject land was acquisition under the NH Act, 1956 or that they did so in discharge of their statutory duties or as per state policies. Therefore, it is important that, henceforth, the concerned CALA and the officer-in-charge of the land acquiring agency make it a point to endorse copies of these Notifications to the authorities concerned with the subject of "Change of Land Use/ Conversion of land" in the state under acknowledgement.
- (vii) It is also important to note that there may be some isolated transactions of very small area at very high rates, which do not represent the average price of land in that area. The value of any such transaction has to be discounted/ ignored as specified under *Explanation 4* under Section 26 of the RFCTLARR Act, 2013. As a matter of fact, the guiding principles laid down in Section 23 and Section 24 of the Land Acquisition Act, 1894 regarding what has to be taken into account and what has to be ignored still hold good. As a matter of fact, the Hon'ble Supreme Court

has held in the matter of "*Hookiyar Singh v. Special Land Acquisition Officer, Moradabad* AIR 1996 SUPREME COURT 3207" that:

"It is settled law that the burden of proof of market value prevailing as on the date of publication of Section 4(1) notification is always on the claimants. Though this Court has time and again pointed out the apathy and blatant lapse on the part of the acquiring officer to adduce evidence and also improper or ineffective or lack of interest on the part of the counsel for the State to cross-examine the witnesses on material facts, it is the duty of the Court to carefully scrutinise the evidence and determine just and adequate compensation. If the sale deeds are found to be genuine, the market value mentioned therein must be presumed to be correct. If the genuineness is doubted, it cannot be relied upon, Proper tests and principles laid down by this Court must be applied to determine compensation".

- (viii) There is yet another related issue qua the determination of basic market value of land in the case of land situated in a "planned and developed area" and the land situated in an unplanned undeveloped area. Both are not at all comparable even if the land is situated in close vicinity. *For example*, there may be a planned urban colony with plotted area and development of all infrastructure facilities. The basic market value of such plotted area is bound to be higher as any such planned and developed area involves not only the area utilised under common facilities e.g. roads, parks etc. (which gets loaded on to the net plotted area) but also the expenditure incurred on provision of internal infrastructure (construction of roads, water supply systems, drainage, electrical systems etc.), whereas it is not so in the case of unplanned and undeveloped land. Hence, if any parcel of land is proposed to be acquired in an area situated in close vicinity of the developed plotted area, the rates of such developed plotted area cannot be used as a reference point for determination of the basic market value of undeveloped area.
- (ix) Similarly, the market value of land is determined on the basis of its existing use as on the date of preliminary notification and not on the basis of its future potential.
- (x) Further, it has to be noted that the preliminary notification for land acquisition is always prepared on the basis of entries in revenue records. It is also a common knowledge that revenue records may not be updated at all times. It is for this reason that a landowner gets an opportunity under Section 3C of the NH Act to file his objections, including qua the nature of land shown in the preliminary notification under Section 3A. Upon production of satisfactory evidence through such objection, the CALA is competent to allow such change to be reflected in the Notification under Section 3D. Once the stage of Section 3D has been crossed, the CALA would not have the liberty to allow such change in the nature/ category of land, unless so directed by a Court of Law.

3.5.4 Determination of Compensation for the Structures and other assets

- (i) Apart from determination of the basic market value of the land under acquisition, the CALA has to take into account the value of assets attached to such land. These assets may be in the form of built-up structures, fruit trees, normal trees, any other

such assets. Generally, the CALA is required to get the valuation of such assets carried out from the respective competent authorities e.g. from the PWD or approved valuers in respect of structures, from an Horticulture Officer in respect of fruit trees, from the Forest Officer in respect of general trees etc.

- (ii) As regards the valuation of structures, the principle generally followed is that in the first instance, a view is formed regarding the quality of construction i.e. A/ B or C category. The value is then worked out on the basis of applicable Schedule of Rates (SOR), which is then depreciated based on the age of the structure. It has come to notice that the Collectors notify the rates for structures from time to time in certain states. In one state the rates so notified have been reported as Rs. 41,000/- per sq mtr, which translates to about Rs. 3800/- per sq ft. It is a common knowledge that the cost of new construction of an "A" class structure (unless it is a star hotel) varies between Rs. 15,00 to Rs. 2,000 per sft. Any distortion in the valuation of a structure has a multiplier effect as it also counts for 100% solatium on such assessed value. As such, the CALAs are expected to undertake due diligence in assessing the values of assets attached to the land being acquired.

3.5.5 Compensation for structures on Government Land/ Public Assets:

- (i) Once MoRTH has notified any land for acquisition for a road project or associated facilities, the CALA is duty-bound under law to determine the compensation for the subject land and the structures, trees or any other assets attached to such lands or standing thereon as on the date of issue of notification under Section 3A of the NH Act, 1956. However, creation of any such asset or change in the nature of any such asset including value addition therein on or after the issue of Section 3A Notification is not taken into account for payment of any compensation. As such, it is in the interest of the acquiring agency that the status of any such assets is captured, as early as possible, upon issue of the Notification, through photographs/ videography so as to ensure the genuineness of determination of compensation.
- (ii) Exceptions to the legal position, as highlighted under para (i) above, are required in cases where the land-owning entity is agreeable to transfer the land without any cost to the Central Government. These land owning entities and the structures thereon may belong to different categories for which the method and process of payment of compensation for the structures is given in the following paragraphs:
- (iii) **Payment of compensation for the Government structures on Government land falling within the project RoW:**
 - (a) **'Government Land'** include land vesting in the Central/ State Government, but does not include the land vesting in the Central/ State owned undertakings and institutions; Local bodies like Municipal Corporations, Municipalities, Gram Panchayats etc., Public Sector Undertakings and Autonomous bodies of the Central/ State Government.
 - (b) Government structures include structures owned by the Central/ State Government, but does not include the structures standing on the land vesting

in the Central/ State owned undertakings and institutions; Local bodies like Municipal Corporations, Municipalities, Gram Panchayats etc., Public Sector Undertakings and Autonomous bodies of the Central / State Government.

- (c) The land vesting in the Central/ State Government is transferred to Central Government/ MoRTH free of cost. In cases where ownership of acquired land is vested with the Urban Local Bodies/ Gram Panchayats/ PSUs/ Autonomous Bodies, compensation for the land is payable as per law.
 - (d) As for the payment of compensation for the structures, there could be two options. One option is to pay the compensation for the cost of structures as per the valuation by the Competent Authority of the Government or the valuation done by the approved agency of the project executing agency and vetted by the competent authority of Government, duly recommended by the CALA/ concerned Government. Second option is to pay the estimated/ approved cost of reconstruction of the said facility, net of salvage value of the structure to be demolished, on an alternate piece of land (to be arranged by the State Government at its own cost).
 - (e) In case of reconstruction of such facility at an alternate location, either the work could be executed by the concerned Government agency or it could be got executed by the project implementing agency of MoRTH through its Concessionaire/ Contractor at the approved cost estimates as mentioned above, on the specific request received from the Government Agencies. In all such cases, reconstruction of such structures should be done over the land provided by Government agency. No cost of land for relocation would be paid.
- (iv) **Payment of compensation for the Common Property Resources (CPRs) on Government land.**

All such facilities which are meant for the common use of the public (like religious structures (e.g. temples, mosques/ churches), Cremation facilities, Schools etc. may be considered as Common Property Resources (CPRs). Considering the sensitivity involving public sentiments, compensation may be paid for such structures following either of the options mentioned in para (iii) (d) above. In such cases where the option of replacement/ relocation is considered expedient, cost estimates should be restricted only to the essential minimum structure required for such purpose and no enhancement or addition would be made. However, the preferred option should be recommended by the CALA/ in consultation with the stakeholders.

- (v) **Payment of compensation for private structures like houses & other buildings on Government land:**
- (a) There are instances where people are granted patta/ ownership rights on the land under any law of the State including abadi/ assigned land. In such cases compensation would be paid for the structures only on the recommendation

of the CALA/ State Government. The procedure for valuation of such structures will be followed as mentioned in above paragraphs.

- (b) There may be cases where people have been living on the government land for a long period and State Government determine such persons as bona-fide & genuine users of the said land. Such a right must have been created by the Government through an instrument/ GO of the government. Other civic facilities like water supply, roads, electricity etc. are also provided to them by the Government but no ownership document is available with them. In such cases ex-gratia may be paid for the structures based on the valuation done by following the procedures mentioned in the above paras, provided the proposal is received through CALA/ Government.

(vi) General Principles:

- (a) It should be ensured that no amount of compensation is paid for the government land and also for the land where relocation of structures is proposed.
- (b) The valuation of the structures should be done either by the appropriate State Government Agency or vetted by them in case valuation is done by NHAI through the private certified approved agency.
- (c) The proposal should have been received from the CALA/ concerned Government agency.

3.5.6 Other factors

- (i) Another issue has cropped up regarding the change of ownership of land during the process of acquisition. Though Section 11(4) of the RFCTLARR Act places a restriction on any transaction of the land subsequent to the Preliminary Notification, it is not applicable to the NH Act, 1956. Further, since the proceedings of land Acquisition continue for some time, the possibility of a landowner deciding to sell or transfer his/ her land during these proceedings cannot be ruled out. It is on this account that the law recognises the landowner or the person interested therein. As such, the successor-in-interest, whether by way of inheritance or by way of sale/ purchase of the subject land, remains entitled to receive the compensation in respect of such land subject to such person being a bona-fide successor-in-interest.
- (ii) Notwithstanding the above scenarios, it is important to note that any improvement done in or over the subject land after issue of Notification under Section 3A has to be ignored. Conversely, any damage done to the land has to be duly factored while determining the compensation amount. It is in this context that the DPR consultants are expected to capture the status of land at the time of survey using the appropriate technology (e.g. LiDAR/ Drone-imaging/ Videography). *To illustrate*, in one case, a landowner may undertake construction of some building over the subject land to get undue benefit in determination of compensation amount (in the

form of 100% solatium) or take up plantation of trees on the land under acquisition after publication of Section 3A Notification. Such developments have to be ignored while determining the compensation amount. It is precisely for this reason that the landowner is paid an additional amount calculated @ 12% from the date of Preliminary Notification till the announcement of Award under sub-section (3) of Section 30 of the RFCTLARR Act, 2013. To illustrate another situation, a landowner may decide to sell the "ordinary earth" from his field to a third party after the publication of Preliminary Notification in the Official Gazette, with the intention of making extra money from such sale. In the process, the landowner ends up creating a negative value to the land under acquisition. Any such occurrence has to be duly factored by the CALA while determining the compensation amount.

- (iii) Another issue pertains to the **Unit of measurement** of the land. The standard unit used for acquisition of land for the National Highways is "**Hectare**". It has been observed that the CALAs announce the Award using different standard Units e.g. Marlas/ Sq. Meter/ Sq. Yard. It is in sync with the process that the same Standard Unit of measurement of land is used in the Awards i.e. "Hectare" rather than using any other units of measurement of land.
- (iv) Read with sub-para (iii) of para 3.5.1, the method of calculation of the Compensation amount is given below with the help of an illustration:

Illustration		
Step	Action in Sequence	Illustrative Amount (per ha.)
1	Determination of <u>basic market value</u> of land in accordance with Sub-section (1) of Section 26, read with sub-section (3) of Section 26 and Section 28 of the RFCTLARR Act, 2013, say:	40,00,000/-
2	Apply the Multiplication Factor to the amount determined in accordance with step 1 above in terms of sub-section (2) of Section 26 of the RFCTLARR Act, 2013	Say, MF is 1.25 = 50,00,000/-
3	Calculate the value of assets (buildings, trees etc.) attached to the land under acquisition in terms of Section 29 of the RFCTLARR Act, 2013, say:	5,00,000/-
4	Add the amount determined under Step 2 and Step 3 and then provide for 100% solatium on the amount so arrived:	50,00,000/- + 5,00,000/- = 55,00,000 x 2 = 1,10,00,000/-
5	Calculate the amount of interest on <u>basic market value</u> @ 12% in terms of Section 30(3) of the Act, Say:	4,00,000.00
6	Total Compensation amount	1,14,00,000/-

3.6 Announcement of the Award under Section 3G by the CALA:

- (i) The Competent Authority for Land Acquisition (CALA) is required to announce the Award under Section 3G. The CALA has to carefully apply himself to the issues and guidelines enunciated in the fore-going paragraphs while finalising his Award. A perusal of certain awards announced by the CALAs shows that there is need to standardise the same to some extent. Accordingly, the indicative template for

essential components of an Award order has been prepared and is enclosed as [Annexure - 3.4](#). CALAs are advised to follow the standard template with such changes or variations, as may be found necessary on case-to-case basis.

- (ii) The CALA, while announcing the Award under Section 3G, shall append a certificate at the end of his Award that he/ she has strictly followed the legal provisions and the Ministry guidelines in determination of the compensation amount.

3.7 Disbursement of Compensation amount:

- (i) It has been observed that the process of disbursement of compensation amount to the landowners or the persons interested therein goes on for a long period for a variety of reasons, which leads to delays in taking possession of the land acquired and required for construction of the Highway. Some of the most common reasons could be stated as under:
 - (a) A number of landowners do not come to know about the Award having been announced by the CALA;
 - (b) The landowners do not furnish the details of their Bank Accounts to the CALA in time, for whatsoever reasons. As a result, the compensation amount cannot be deposited in the accounts of the concerned landowners using the PFMS and the RTGS system of Banking;
 - (c) There are certain landowners who do not maintain their usual residence where the land is situated and can be called as absentee landowners. These absentee landowners visit the CALA offices for collection of compensation amount as per their convenience;
 - (d) The land records are not updated and the successors-in-interest are not clearly identified with their respective shares.

3.8 Public Notices for expediting Disbursement of Compensation amount:

It is, therefore, important that the CALAs adopt the following procedure in order to ensure timely disbursement of the amount of compensation to the landowners/ persons interested therein, and possession of the acquired land is not delayed for non-payment of the compensation amount:

- (i) Apart from issue of notice to the landowner/ person interested therein in terms of sub-section (1) of Section 3E of the NH Act, 1956, a **public notice** may also be published in the same set of two newspapers in which the Notification under Section 3A (3) was published informing the landowners/ persons interested in the acquired land about the announcement of the Award by the CALA in respect of subject land, calling upon them to collect the compensation amount from the office of CALA within a period of 60 days.

(ii) Typical sample/ template of this Public Notice is as follows:

Format of the **First Public Notice** to be issued by the CALA upon announcement of Award under Section 3G of the NH Act, 1956.

Public Notice

Announcement of Award for acquisition of land for construction of National Highway for Land owners/ persons interested therein and payment of Compensation Amount

Kind attention of all landowners/ interested persons is invited to the Notification dated _____ issued under Section 3A of the NH Act, 1956 for acquisition of land for the building/ construction of a National Highway and the Notification dated _____ issued under Section 3 D of the NH Act, 1956 and published in the following newspapers:

Sr. No.	Notification	Names of Newspapers in which published	Date of Newspaper
1	Section 3 A		
2	Section 3 D		

It is informed that the undersigned has announced the Award in respect of the said land under Section 3G of the NH Act, 1956 vide order dated _____.

The land acquiring agency (MoRTH/ NHAI/ NHIDCL) has placed the requisite amount of compensation at the disposal of the undersigned. Notices have also been issued to the concerned landowners/ interested persons as required under Section 3 E of the NH Act, 1956.

Accordingly, all the concerned landowners/ interested persons are hereby informed/ notified through this additional **Public Notice** that the Compensation amount is hereby offered to all the landowners. Further, it may be noted that:

- ❖ The compensation amount in respect of all such landowners, who have already submitted their Bank account details, is being credited to their respective bank Accounts through RTGS;
- ❖ The landowners, who have not submitted their Bank Accounts details, may do so immediately in the office of the undersigned and the amount shall be credited to their accounts within one week of the receipt of such Bank Account details;
- ❖ All other claimants entitled to receive the compensation amount may collect their amount of compensation from the office of the undersigned on any working day between _____ am to _____ pm within a period of 60 days.

It may further be noted that since the amount of Compensation has been determined and tendered to the concerned landowners/ persons interested therein through this additional public notice, any failure to collect the compensation amount would be to their account and the amount shall be deemed to have been paid on expiry of this period of sixty days from the date of publication of this notice.

The landowners/ persons interested therein are further called upon to surrender or deliver the possession of the subject land to the undersigned, failing which the possession of subject land will be taken with police assistance on expiry of the period of 60 days.

(_____)
Competent Authority for Land Acquisition, and
(name of the regular office and address)
Dated: _____

- (ii) As soon as the period of 60 days is over, another public notice may be caused to be published in the same set of newspapers, calling upon such landowners to surrender their acquired land or deliver possession thereof to the competent authority forthwith, failing which the possession shall be taken with the assistance of the local police in accordance with sub-section (2) of Section 3E of the NH Act, 1956.

Sample of the Second Public Notice to be issued by the CALA upon announcement of Award under Section 3 G of the NH Act, 1956.

Public Notice

for Land owners/ persons interested therein for

Payment of Compensation amount and Delivery of possession of land acquired for construction of a National Highway

Kind attention of all landowners/ interested persons is invited to the Public Notice published in the following newspapers informing them regarding:

- ❖ Announcement of award;
- ❖ Calling upon them to collect the compensation amount within a period of 60 days; and
- ❖ Requesting the landowners to handover the possession of the subject land to the undersigned.

Sr. No.	Names of Newspapers in which published	Date of Newspaper
1		
2		

The prescribed time of 60 days has expired on _____.

The compensation amount in respect of Landowners who had furnished their Bank Account details has been credited to their respective accounts. Further, cheque payments have also been made to those who approached this office during this period. As regards the payment of the compensation amount to the balance landowners, they are again advised to approach this office for getting their payments at the earliest as the amount already stands tendered vide Public Notice dated _____;

Accordingly, all the landowners/ interested persons are hereby called upon to hand over the possession of the acquired land to the undersigned immediately, failing which the same shall be taken with the police assistance in accordance with sub-section (2) of Section 3 E of the NH Act, 1956.

(_____)

Competent Authority for Land Acquisition, and

(name of the regular office and address)

Dated: _____

3.9 Interest on delayed payment of Compensation:

- (i) Formerly, the Land Acquisition Act, 1894 and presently the RFCTLARR Act, 2013 contains provisions for payment of interest on the amount of enhanced compensation to the landowners. Such provisions existed under Section 28(1) of the 1894 Act and Section 72 of the RFCTLARR Act, 2013. As per the provisions in the National Highways Act, 1956, the acquiring agency is required to place the amount at the disposal of CALA for announcement of the award and the CALA, in turn, is required to tender such amount to the landowners or the persons interested in such land as per *"The National Highways (Manner of Depositing the Amount by the Central Government with the Competent Authority for Acquisition of Land) Rules, 1998"* (as amended from time to time). Once the amount of Award has been placed at the disposal of CALA by the Acquiring Agency and the CALA has notified the landowners/ persons interested therein to receive/ collect such amount, there is no provision for payment of any such interest on account of delayed disbursement of compensation because such delayed disbursement is on account of delay on the part of the landowners in receiving the compensation amount.
- (ii) It is for this reason that it has been decided to issue additional Public Notices calling upon the landowners to collect the compensation amount as explained under para 3.8 above. Non-payment of interest has also been made a part of these Public Notices. Therefore, it may be noted that no such amount of interest is payable in respect of any delays in disbursement of compensation amount after having issued the said Public Notices.
- (iii) The landowners may raise an issue of delayed payment and claim interest thereon in matters of disputes where they make an application for reference to the Principal Court of Civil Jurisdiction for resolution of such disputes. It is for this reason that it is advised that in all such matters, the concerned CALA, while making a reference to the Civil Court, may also seek the leave of the Court to deposit such amount with the Court so that the amount stands paid as far as the Acquiring Agency and the CALA are concerned.
- (iv) The Project executing agencies of MoRTH should consider setting-up a mechanism for audit of each award to ensure that: (a) the government money, meant for the purpose, has been disbursed to the rightful landowners/ interested persons, (b) that there are no double payments for the same land. CALA shall ensure that amount placed at his disposal for land acquisition under an Award has been fully, timely and correctly disbursed.

3.10 Possession of Land for the Highway Project

- (i) It has been observed in a number of cases that the CALAs give paper possession of the acquired land to the officers of the Authority, with or without payment of compensation to the landowners. Once the amount determined by CALA u/s 3G has been deposited by the acquiring agency as per Section 3H(1), the CALA has to issue the Public Notices, as provided under para 3.8 above in addition to individual notices to the landowners, calling upon them to surrender land or deliver

possession within 60 days of service of such notice, as prescribed under Section 3E(1) of the National Highways Act, 1956.

- (ii) As per the laid down procedure, the DPR consultant undertakes the job of installation of boundary pillars of the acquired land. It has been observed that the landowners, more so in respect of agricultural land, remove the boundary pillars and sow the next crop in the acquired land as they are tempted to use the land since the actual construction/ development of land has not taken off in such areas. Therefore, the Project Implementing Agencies should immediately upon announcement of the Award proceed to take physical possession of land, followed by clearing & grubbing of such acquired land including trenching at the edges of RoW, by mechanical means using the graders, dozers, excavators, etc. The landowners are expected to recognize that such lands no longer belongs to them and do not undertake to cultivate such area for the next crop. This practice has to be adopted and put in place without exception forthwith.
- (iii) The DPR consultants, as a part of their obligations prescribed in the RFPs, are required to undertake DRONE/ LiDAR survey in the process of determination of alignment/ preparation of details for Section 3A notification. As such, the photographs/ maps from such DRONE/ LiDAR survey have to be taken and archived as part of the records as an evidence of the land use/ any structure existing on such land on the date of preliminary notification, i.e. under Section 3A of the National Highway Act, 1956. This is important because any change in the land use/ improvement on nature of land made by the landowner after the issue of preliminary notification under Section 3A, does not qualify to be taken into account for determination of compensation for the land.

3.11 Missing Plots and acquisition of land:

- (i) Missing out certain plots/ parcels of land in the process of land acquisition for road projects, being linear in nature, cannot be ruled out and could be acceptable to a certain limit as prescribed in the RFPs for Consultants. However, the experience shows that adequate and timely attention is not being paid to the acquisition of land in respect of such missing plots, resulting in hindrances in smooth execution of the project at the implementation stage.
- (ii) It is also a fact that the Appointed Date is declared based on a joint memorandum, containing an inventory of the site, prepared after a joint site inspection by the representatives of the Contractor/ Concessionaire, the Consultant and the Project Implementing Agency. As such, a joint memorandum reflects the status of land acquisition at the time of declaration of the Appointed Date for any project. It also implies that the details of missing plots are duly recognized and such missing plots are identified at the time of this joint survey. It is important that the representatives of the Contractor/ Concessionaire, the Consultant and the Project Implementing Agency take due cognizance of such missing survey numbers/ plots / land parcels at the time of joint inspection and make a specific mention of such missing plots in the joint memorandum.

- (iii) The Project Implementing Agency has to ensure that such missing plots are acquired within a maximum period of six months of the declaration of the Appointed Date. Based on the facts mentioned in the joint inspection report/ memorandum or if otherwise noticed, the officer concerned shall immediately draw up a proposal for acquisition of such missing survey numbers/plots within 15 days of the declaration of the Appointed Date and send his proposal to the Ministry through the concerned authorities for issue of notifications under Section 3A of the National Highways Act, 1956. Any efforts towards direct purchase of land under such missing plots should be initiated and taken up only after issue of notification under Section 3A. In case the officer finds that the owners of such missing plots are not agreeable or willing to enter into negotiated purchase of such land at the rates of compensation already announced in respect of adjoining lands, the CALA concerned shall settle the objections filed under Section 3C in respect of the new Notification issued under Section 3A, and move a proposal for acquisition of the land under missing plots under Section 3D within a maximum period of three months of the issue of notification under Section 3A and complete the process of completion of LA proceedings with announcement of award under Section 3G in respect of such missing survey numbers. In no case, the acquisition of such missing plots/ survey numbers shall go beyond the first bill payment in the case of EPC contract or six months of the declaration of the Appointed Date in other cases, whichever is earlier.
- (iv) The Regional Officer concerned in the case of projects being executed through the State PWDs, the Project Director concerned in the case of NHAI and the NHIDCL shall submit a certificate of having completed the land acquisition of missing numbers 15 days before the completion of six months from the Appointed Date in respect of the project in execution under his control/ jurisdiction, failing which it will be treated as a case of laxity in the performance of official duties by the concerned officer.

3.12 Mutations/ Sale Deeds of the land acquired/ procured for National Highways:

- (i) All National Highways vest in the Union as per Section 4 of the National Highways Act, 1956. MoRTH and its agencies, entrusted with the NH Projects for development and maintenance thereof, are required to maintain an inventory of all assets created in the process, including the land acquired under the Act and the land procured or purchased through negotiations, (more relevant to procurement of land under the missing plots).
- (ii) The process requires sanction of mutations in respect of the land acquired under law, and execution of sale deeds in respect of land purchased/ procured through negotiations. It is extremely important to ensure that the mutations for the land acquired are got sanctioned from the revenue authorities in the name of "President of India through the Ministry of Road Transport & Highways" simultaneously with the possession thereof.
- (iii) Similarly, as regards the land procured/ purchased through negotiations, sale-

purchase deeds are to be got executed in favour of "President of India through the Ministry of Road Transport & Highways" simultaneously with the payment of consideration amount.

Earlier, there were problems at places regarding the 'authorised person' to remain present before the competent authorities on behalf of the President of India. Now, this issue has been resolved with requisite delegations by the Ministry of Home Affairs vide their order dated 3rd August 2018, enclosed as Annexure 2.6 in this Manual. Accordingly, it is directed that the concerned officers-in-charge of the projects shall ensure that the needful is done in this behalf as mentioned above. It shall be the responsibility of the Project Implementation Agencies (MoRTH through the State PWDs/ NHAI/ NHIDCL/ BRO) to create a system at their headquarters for proper inventory management and system of monitoring for all assets and compliance on the subject.

3.13 Role and responsibilities of DPR Consultants, the officer of the Project Executing Agency and the CALAs at different stages of Land Acquisition

The roles and responsibilities of the three main stakeholders, namely, (i) the DPR Consultants, (ii) the officers-in-charge of the project executing agencies (i.e. NHAI, NHIDCL, State PWDs and the BRO), and (iii) the Competent Authorities for Land Acquisition (CALAs), and have been discussed at different places in this Manual. However, it is deemed necessary to give a consolidated position of their roles and responsibilities at one place. An attempt is made to sum-up the same broadly in the following paragraphs:

3.13.1 Role and responsibility of DPR Consultants

The DPR Consultants, in the process of their deliverables, discharge a pro-active role in providing support system and assistance to the CALA for acquisition of land for the highway project. Broadly stating, the DPR Consultants are expected to:

- (i) To delineate and propose the most optimal alignment and take care of geometrics of the road to meet safety parameters while finalizing the DPR;
- (ii) Identify and avoid (to the extent feasible) all such structures (religious structures, public utilities, cremation grounds, private structures) in the RoW of the road project that could become major hindrances at the time of project execution;
- (iii) Procure or create digitized, geo-referenced cadastral/ land revenue maps for the purposes of land acquisition activities. Where state governments or local agencies have already digitized cadastral maps, the consultant shall arrange to procure such maps. The digitized map should exactly match the original map so that the dimensions and area of plots can be extracted from the map itself.
- (iv) Co-ordinate collection of all relevant land revenue records (including Khasra maps, Khatiyan, Jamabandi etc.) from the local land revenue administration office required for preparation of Draft notification under Section 3A of the NH Act.

- (v) Identify and list all land parcels that need to be acquired as part of project road. Conduct Joint measurement survey in conjunction with CALA, the Executing Agency and the Land Revenue Department to verify land records.
- (vi) Assist the CALA and the Project Executing agency in: preparation of statutory notification under Sections 3A, the CALA during hearing of objections received under Section 3C, recording of hearings and completion of this process, preparation of draft notification under Section 3D and completion of the LA process at every stage, timely publication of notifications and public notices in newspapers at every stage;
- (vii) Clear identification and preparation of an inventory of the assets attached to the land under acquisition (e.g. structures, trees, crops or any such assets which should be valued for payment of compensation);
- (viii) Co-ordination with offices of various departments like Land Revenue Office (or Tehsil), Registrar office and other State departments (public works department, horticulture department, forest department etc.) for valuation of assets (Structures, trees, crops etc.) attached to the land and liaison with respective State authority for authentication of the valuation.
- (ix) Prepare an inventory of all the utilities (electrical/ water supply lines/ gas pipelines etc. - both linear and cross-overs) and all such structures (religious structure, public utilities, cremation grounds, private structures) in the RoW of the road project that could become major hindrances at the time of project execution;
- (x) Carefully avoid location of any Flyover/ VUP/ elevated structure where a high tension electricity line (66/132/220/400 KV etc.) is crossing over so as to avoid raising of such line at such point, while designing the road projects;
- (xi) Assist in demarcation of the acquired land and installation of the boundary stones/ pillars/ peg-markings along the RoW of the alignment;
- (xii) Identification of land parcels missed out from acquisition in the first round and assist the Authority and the CALA in preparation of Draft Notifications for acquisition of the land under missing plots.

3.13.2 Role and responsibility of the officer-in-charge of the Project Executing Agency

The officer-in-charge of the project executing agency is expected to discharge his role as the owner of the project at every stage of completion of the LA process and establish his project ownership by taking the lead at every stage. Briefly stating, his role and responsibilities include the following:

- (i) Active coordination and collaboration with the DPR Consultants regarding all aspects of land acquisition right from the stage of preparation of DPR/ Feasibility Report;

- (ii) At the first level, call on the concerned Deputy Commissioner/ District Collector and the CALA to brief them about the road project and the need for timely acquisition of land for the said project. Keep this contact on a continuing basis;
- (iii) At the next level, coordinate with and liaise with the concerned field officers from the Departments of PWD, Forest, Horticulture, Electricity and other Utility owning departments and brief them about the importance of the project and their support;
- (iv) Request the Deputy Commissioner/ District Collector to convene periodical review meetings of all concerned with refreshments/ lunch/ dinner hosted by the officer-in-charge of the project executing agency.
- (v) Ensure timely issue of Notifications under Sections 3(a), 3(A) & 3(D) of the National Highways Act, 1956;
- (vi) Ensuring timely conduct of Joint measurement survey, wherever required;
- (vii) Coordination with the CALA and officers of other concerned departments, i.e. Forest, Horticulture, PWD for valuation of assets attached to the land and for seeking pre-project statutory clearances;
- (viii) To assist the CALA in determination of market value of land as per the provisions of the Act, while observing the guidelines issued by the Ministry of Road Transport & Highways in furtherance of the Act in this behalf;
- (ix) To bring any deviation from legal provisions/ guidelines to the Notice of the CALA for necessary correction at the draft stage of the Award, correct positioning of the nature/ category of land in the Award, assist the CALA in correctness of mathematical calculations, and to ensure that compensation for Government land is not included in the Award;
- (x) Expeditious settlement of compensation claims/ declaration of award;
- (xi) Identification of missing plots and expediting the LA process for the same;
- (xii) Expediting appointment of Arbitrators, as and when required;
- (xiii) Challenging Arbitral Awards, in event of their being unreasonable;
- (xiv) Mutation of acquired land in favour of Central Government in the Record of Rights;
- (xv) To ensure strict compliance of Guidelines issued by MoRT&H from time to time.

3.13.3 Role and responsibility of the Competent Authority (Land Acquisition)

- (i) To devise an action plan for completion of the land acquisition proceedings in a time-bound manner;
- (ii) To ensure that the land acquisition proceedings are undertaken in accordance with the provisions of the NH Act, 1956 read with the applicable provisions of RFTCLARR Act, 2013, and the guidelines issued by the Ministry in furtherance thereof;
- (iii) To check that the nature of land reflected in the 3A notification is as per Revenue Records;

- (iv) To get the joint measurement survey conducted, if required;
- (v) To hear and settle the objections received from the landowners/ persons interested in the land under Section 3C of the NH Act;
- (vi) Critical examination of documents submitted by landowners regarding their claims for change in nature/ category of land;
- (vii) Make all efforts to collect the details of Bank Accounts of landowners/ persons interested therein while inviting claims, using the formats given in this Manual for the purpose so as to ensure that the compensation amount is immediately credited to the accounts of the landowners;
- (viii) Publication of the two Public Notices in newspapers for speedy disbursement of compensation amount to the landowners, crediting the compensation amount to the bank accounts of the landowners and taking possession of land/ its handing over to the executing agency;
- (ix) If any dispute arises as to the apportionment of the amount for any part thereof or to any person to whom the same or any part thereof is payable, the case shall be referred to the Principal Civil Court of original jurisdiction for its decision in the matter;
- (iv) To facilitate the mutation of land in the name of Central Government.

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Annexures to Chapter-3

Sample of an Order under Section 3(a) of the NH Act by the State Government



HARYANA GOVERNMENT
REVENUE AND DISASTER MANAGEMENT DEPARTMENT

ORDER

The Government of Haryana nominates the concerned District Revenue Officer of a District and in his absence the link officer concerned, for appointment as the Competent Authority for Land Acquisition for acquisition of Land within his jurisdiction under the National Highway Act, 1956 to expedite the Land Acquisition activities.

KESHNI ANAND ARORA

Chandigarh, dated
December 04, 2018

Addl. Chief Secretary & Financial Commissioner to Govt.,
Haryana, Revenue & Disaster Management Department.

Endst. No.5954- E-2-2017/ 161

Chandigarh, date the 09/01/18

A copy is forwarded to the following for information and necessary action :-

1. The Principal Accountant General (A&E), Haryana, Chandigarh.
2. All the Divisional Commissioners in the State.
3. All the Deputy Commissioners, in the State.
4. All the District Revenue Officers in the State.

Sandeep
Superintendent Estt;

for Addl. Chief Secretary & Financial Commissioner to Govt;
Haryana, Revenue & Disaster Management Department.

Endst. No.5954- E-2-2017/ 162

Chandigarh, date the 09/01/18

A copy is forwarded to the Secretary to Ministry of Road Transport & Highways, Government of India w.r.t. their D.O. No. NH-11011/224/2017-LA, dated December 14, 2017 for information and necessary action.

Sandeep
Superintendent Estt;

for Addl. Chief Secretary & Financial Commissioner to Govt;
Haryana, Revenue & Disaster Management Department.

A copy is forwarded to the Additional Chief Secretary to Govt, Haryana, PWD (B&R) for information and necessary action.

Sandeep
Superintendent Estt;

for Addl. Chief Secretary & Financial Commissioner to Govt;
Haryana, Revenue & Disaster Management Department.

To

The Additional Chief Secretary to Govt; Haryana
PWD (B&R)

P
09/01/18

U.O No. 5954-E-2-2017/ 37

Chandigarh, dated the 09/01/18

Template for Notification under Section 3 (D) read with sub-section (3) of Section 3G

Ministry of Road Transport and Highways

Notification

<New Delhi>, the _____, 20____

S. O. _____. Whereas the Central Government, in the Ministry of Road Transport and Highways, declared its intention to acquire the land specified in the Schedule annexed to the Notification bearing No. _____ dated _____ published in the Gazette of India, Extraordinary, Part II, Section 3, issued under sub-section (1) of Section 3 A of the National Highways Act, 1956 (48 of 1956) (hereinafter referred to as the said Act) for building (widening/ four-laning, etc), maintenance, management and operation of NH No. _____ on the stretch of land from km _____ to Km _____ in the district of _____ in the state of _____;

And whereas, the substance of the said notification was published in “ <name of the newspaper > ” dated _____ and the “ <name of the Newspaper > ” dated _____, under sub-section (3) of section 3A of the said Act.

And whereas the Competent Authority has received objections filed under Section 3-C, considered and settled the same appropriately;

And whereas, in pursuance of sub-section (1) of section 3D of the said Act, the Competent Authority has submitted its report to the Central Government;

And whereas, upon receipt of the said report of the competent authority and in exercise of the powers conferred by sub-section (1) of section 3D of the said Act, the Central Government has declared that the land specified in the said Scheduled should be acquired for the aforesaid purpose;

And whereas, the said declaration has been published in the Gazette of India, Extraordinary, Part II, bearing No. _____ dated _____ as required under Section 3D of the said Act;

And further, in pursuance to sub-section (2) of section 3D of the said Act, the Central Government hereby declares that on publication of this notification in the Official Gazette, the land specified in the said **Schedule** shall vest absolutely in the Central Government, free from all encumbrances.

Now, therefore, in compliance of sub-section (3) of Section 3G, the Competent Authority hereby invites all the landowners or persons interested in the land being acquired under these proceedings to submit their claims in respect of the land mentioned in the **Schedule** given here-in-below within a period of 15 days (by _____ <mention date & time>) from the date of publication of this Public Notice in the office of the Competent Authority i.e. <give the address of the office>.

All the persons interested [owner of the lands and other interested person(s)] in the lands specified in the **Schedule** given below are hereby called upon **to submit their claims in the said land** (their share, area of land, any assets attached thereto e.g. structures/ trees etc. and state the nature of the respective interest in such lands along with relevant records. The said landowners or persons interested therein shall **also furnish the particulars of their Bank Accounts to which they would like their compensation amount to be credited**. The claims may be submitted in the following indicative format:

Name of village/ Town	Name of the Landowner/ interested person	Field Survey No.	Area of land in his share	Any structures/ trees/ tube-well attached to the land	Name of the Bank & Branch in which he/ she holds the Account	Particulars of the Bank Account No. _____, IFSC Code of the Bank Branch

SCHEDULE

Brief Description of the land to be acquired, with or without structures, falling within _____ in the district of _____ in the state of _____:

Sr. No.	Survey No. / Plot No.	Type of Land	Nature of Land	Area in Hectares	Names of Landowners/ Interested person
1		Private	Irrigated		
2		Government	Barani/ Dry		
3					

Note on land use pattern change and compensation payable

Set out below is a note on whether land use pattern may be changed on the owner or occupier's own accord or if it would necessarily require the competent authority's permission. Further, a related question that arises is whether such a change would make a difference in the compensation payable for the acquisition of such land by the Government.

Change in land use pattern

Based on a preliminary review, it appears that change in land use pattern or conversion falls under the state legislature's law-making powers¹ and consequently any case laws on this issue are limited and pegged to the relevant state statute. For instance in Bihar, under Section 3 of the Bihar Agriculture Land (Conversion For Non-Agriculture Purposes) Act, 2010 (Conversion Act), the conversion of an agricultural land for non-agricultural purposes requires an application to be filed before the competent authority in the form prescribed along with the applicable conversion fee.² Section 6, Conversion Act also states that in case the competent authority believes that an agricultural land has been put to non-agricultural use without the requisite permission, then such agricultural land would be deemed to have been converted into non-agriculture purpose (in an unauthorized manner). Further, such non-authorised conversion would be penalized with 50% of the conversion fee over and above the conversion fee payable. Thereafter, as per Section 5(4), Conversion Act, the land-owner or occupier would be directed to use the land for its original purpose within 6 months of the service of the notice by the competent authority, or to take such other steps as may be required such that the land may be used for its original purpose, failing which action will be initiated against such owner or occupier.³

A question may arise as to whether an agricultural land may be deemed to be converted from agricultural to non-agricultural purpose through sustained use for non-agricultural purposes. This was answered in the negative by the Supreme Court of India in *State of Karnataka and Ors. v. Shankara Textiles Mills Ltd*⁴. The Court, referring to the Karnataka Land Reforms Act, 1961 and the Karnataka Land Revenue Act, 1964 held the following:

"The obvious purpose of this Section is to prevent indiscriminate conversion of agricultural land for non-agricultural use and to regulate and control the conversion of agricultural land into non-agricultural land. Section 83 of that Act provides for different rates of assessment for agricultural and non-agricultural land. That provision strengthens the presumption that agricultural land is not to be used, as per the holder's sweet will, for non-

¹ Entry 18, List II, Schedule VII, The Constitution of India.

² Also reiterated in *Bipin Tiwari and Ors. v. The State of Bihar and Ors.*, 2015(3) PLJR 387 (Patna HC).

³ In cases where the conversion of land had taken place before the commencement of the Conversion Act, but after the coming into force of the Bihar Tenancy (Amendment) Act, 1993, the person who is responsible for conversion would still be required to inform the competent authority of such conversion along with the relevant fee prescribed, as per Rule 5, The Bihar Agriculture Land (Conversion for Non Agriculture Purposes) Rules, 2011.

⁴ (1995) 1 SCC 295.

agricultural purposes. This is also clear from the absence of any provision under that Act requiring permission to convert non-agricultural land into agricultural land. In a country like ours, where the source of livelihood of more than 70 per cent of the population, is agriculture, the restriction placed by the Revenue Act is quite understandable. Such provision and restriction are found in the Revenue Acts of all the States in the country. The provision has, therefore, to be construed as mandatory and given effect to as such.

The mere fact that at the relevant time, the land was not used for agricultural purpose or purposes subservient thereto as mentioned in Section 2(18) of the Act or that it was used for non-agricultural purpose, assuming it to be so, would not convert the agricultural land into a non-agricultural land for the purposes either of the Revenue Act or of the Act, viz., Karnataka Land Reforms Act. To hold otherwise would defeat the object of both the Acts and would, in particular, render the provisions of Section 95(2) of the Revenue Act, nugatory.”

Section 95(2) of the Karnataka Land Revenue Act, 1964, which the court refers to, states that to divert a land assessed or held for agriculture to any other purpose, the occupant needs to take permission from the relevant authority. Further, Section 96 of the said Act states that in case such land has already been diverted for another purpose, without taking permission, the competent authority may evict the occupant from such land and impose a penalty on the person responsible for such diversion. These provisions are substantially similar to Sections 3 and 6 of the (Bihar) Conversion Act, which require permission for diverting an agricultural land for uses which are non-agricultural and impose a penalty for undertaking such a conversion/diversion without permission. Therefore, it may be argued that the principle carved out by the Supreme Court of India as to the mandatory nature of the permission for conversion may be applicable to Bihar as well.

Basis the above case laws and statutes, it appears that unless permission has been granted by the relevant authorities to convert land from its original purpose of agricultural use to non-agricultural use, the land use pattern would not be changed. If however, the owner or occupier of land has put the relevant land to non-agricultural usage (without the requisite permission), a penalty would be imposed and the said owner or occupier would be directed to use the land for its original purpose. Further, the landowner or occupier may not be allowed to claim that the sustained use of the land for non-agricultural purposes alone would change the nature of the land.

Compensation for acquisition of agricultural land

The second issue to be dealt with is the compensation payable when the Government acquires land which is agricultural in nature. Under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Land Acquisition Act 2013)⁵, such compensation depends on the market value of the land.⁶ The computation of such market value would hinge on factors such as whether or not the land has been converted for non-agricultural purposes, the potential for which the land was reasonably capable of being used, the existence of structures on the land, the proximity to

⁵ Previously, Land Acquisition Act, 1894.

⁶ Section 27, Land Acquisition Act 2013.

highways and so on.⁷

Given that the market values of lands used for agricultural and non-agricultural purposes (specifically industrial purposes) differ significantly, it becomes important to ascertain the law on how compensation is to be paid for lands which have either not been converted or have been illegally converted from agricultural to non-agricultural purposes.

The Supreme Court of India in *Sharadamma v. Special Land Acquisition Officer and Ors.*⁸ held that in case land has not actually been converted from agricultural to non-agricultural use, compensation cannot be paid at the rate prescribed for non-agricultural land.⁹

In *Goa Housing Board v. Rameshchandra Govind Pawaskar and Anr.*,¹⁰ the Supreme Court of India held that even though the Government may choose to use the relevant piece of land for commercial or industrial purposes, it does not give the owner of the land the right to get the market value of the land as one with non-agricultural potential. If the land has not been converted for non-agricultural use by taking permission under the relevant statute, then the land would be treated as agricultural land when calculating the market value for compensation purposes.

Therefore, in conclusion, it may be understood that unless a piece of land which was originally agricultural is converted with permission from the relevant authorities after paying the required conversion charges, the land would not be treated as non-agricultural when computing the market value for compensation. This position seems to hold good even when such agricultural land has been used by the owner or occupier for non-agricultural purposes without taking the aforesaid permission. However, it is to be noted that the compensation payable would also vary depending on the location of the land, its proximity to industries and roads, and so on.

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⁷ *Bilkis v. State of Maharashtra*, (2011) 12 SCC 646.

⁸ (2007)11 SCC 347.

⁹ In the instant case, the compensation amount was reduced by the conversion charge.

¹⁰ AIR 2012 SC 193.

**Essential components of the Award to be announced by the Competent Authority under
Section 3G**

**Office of Competent Authority for Land Acquisition
under National Highways Act, 1956**

Dated: ____/ ____/ 201 ____

**In the matter of Award of Compensation u/s 3G & 3H of the National Highways Act
1956, in respect of acquisition of land for development of National Highway No. ____;
Stretch ____; Village: ____; Tehsil ____ District
____; State: ____**

Order

Whereas the Ministry of Road Transport and Highways, Government of India, has decided to undertake development of a National Highway (bearing No. ____) in the State of _____, which requires acquisition of land for the said National Highway infrastructure project, and the undersigned was appointed as the Competent Authority for Land Acquisition u/s 3a of the National Highways Act, 1956, vide Gazette of India Notification S.O. No. _____ dated _____;

2. Whereas the Central Government, after being satisfied that land was required for a public purpose i.e. the building, maintenance, management or operation of the National Highway No. _____, Stretch from _____ to _____, declared its intention to acquire such land measuring _____ Hectares u/s 3A(1) of the NHs Act, 1956, vide Gazette of India Notification S.O. No. _____ dated _____. The said notification was also published in the newspapers, namely, _____ and _____ dated _____ and _____ respectively, whereby an opportunity was afforded to the landowners to file their objections under Section 3 (C) , if any .

3. Whereas a total of _____ objections were received in the office of the undersigned by the due date and time. The said objections were duly heard and disposed off vide a separate order dated _____ .

4. Whereas, on receipt of the report from the Competent Authority, the Central Government declared that the subject land, as specified in the Schedule, should be acquired in terms of Section 3D, vide Gazette Notification bearing No. _____ dated _____. On the publication of the said declaration under Section 3D, the land described in the Schedule attached thereto vested absolutely in the Central Government free from all encumbrances;

5. Whereas, consequent upon publication of the Notification under Section 3D in the Government Gazette as aforesaid, the said Notification was also published in two newspapers, namely " < name of the newspaper> dated _____, and <name of the newspaper> dated _____, as required under sub-section (3) of Section 3G, inviting claims from the landowners/ persons interested therein by or before _____ ;

6. Whereas, having received the claims from the landowners and having examined the

same, the undersigned has applied his mind and considered the various factors for determining the basic market value of land in respect of land is as under:

6.1 Village/ Town: _____

- (i) Details of Sale-deeds registered in respect of the land for similar type of area in the village or nearby vicinity area during immediately preceding three years of the year in which such acquisition of land is being made are given in **Appendix-1**.
- (ii) Details of One-half of the total number of higher sale deeds or the agreements to sell in which the highest sale price has been mentioned out of those mentioned in Appendix -1 [in terms of Explanation 2 under Section 26] are given in **Appendix-2**.
- (iii) The average basic market value of land, based on the above, works out to Rs. _____ per Hectare.
- (iv) The Collector Rate notified in respect of the land/ area vide Order bearing No. _____ dated _____ is Rs. _____/ Hectare.
- (v) The Collector Rate/ Average Sale Price as deduced from **Appendix-2**, being the higher value, the basic market value of land is determined as Rs. _____/- per Hectare.

Notes:

- (i) Having given the above essential particulars, the CALA shall proceed to complete the balance part of the Award before its declaration.
- (ii) At the end, the CALA shall also adduce a Certificate to the effect that the Compensation amount has been determined in accordance with law, read with the guidelines issued by the Ministry of Road Transport & Highways in furtherance thereof.

Chapter - 4

Arbitration under the NH Act, 1956

- 4.1 While the Land Acquisition Act of 1894 Act contained provision for reference to the Court under Section 18 of the Act *ibid*, the RFCTLARR Act, 2013 provides for establishment of an Authority for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement etc. The National Highways Act, 1956 contains provisions of appointment of an Arbitrator, as also reference to the Principal Civil Court of original jurisdiction for the disposal of any such disputes.
- 4.2 The related provisions under the NH Act, 1956 are reproduced below:

"Section 3G

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration-

(e) the market value of the land on the date of publication of the notification under section 3A;

(f) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(g) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(h) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

3H. Deposit and payment of amount. -

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit."

- 4.3 It is clear from the above provisions that the jurisdictions of the Arbitrator and the Principal Civil Court of original jurisdiction are clearly demarcated and divided as under:

Arbitrator		Principal Civil Court of Original Jurisdiction	
(i)	Determination of the Compensation amount if the amount determined by the Competent Authority is not acceptable to either of the parties;	(i)	If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.
(ii)	Arbitrator is to be appointed by the Central Government;		
(iii)	Subject to the provisions of this Act, provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.		

4.4 Procedural issues:

- (i) As per the legal provisions, the aggrieved party must file an application in writing with the Arbitrator, spelling out its grievance qua the compensation amount which it seeks to challenge. In case of any other disputes [Section 3H(4)], the aggrieved party has to make an application in writing to the Competent Authority (CALA), who shall in turn refer the same to the Principal Civil Court of jurisdiction for resolution of the said dispute.
- (ii) The situation mentioned under sub-para (i) above would require that the Arbitrator is appointed by the Central Government almost simultaneously with the announcement of Award by the CALA. As such, the acquiring agencies shall follow the process for appointment of Arbitrators as given under the related paras in this chapter.
- (iii) Arbitral proceedings are to be completed within a period of one year as per Section 29A of The Arbitration and Conciliation Act, 1996. However, completion of Arbitral proceedings or resolution of disputes referred to the Arbitrator or a Civil Court may

take even a bit longer time (about a year or so) due to the processes involved therein. The landowners or the persons interested therein cannot use this as an *alibi* for not handing over the possession of the acquired land which stands vested in the Central Government with the publication of Notification under Section 3D for carrying forward the execution of the NH project. As such, the landowners may receive/ accept the compensation amount awarded and tendered by the Competent Authority under protest (if they so decide) reserving the right to prefer recourse to arbitral proceedings, failing which the tendered amount shall be deemed to have been paid to them and possession of the acquired land taken and handed over to the acquiring agency.

Conversely, where the acquiring agency decides to challenge the Award of the Competent Authority, for whatsoever reasons, it may make a reference to the Arbitrator appointed for the purpose. In such an event, the Acquiring agency may, wherever required, offer to deposit the amount of undisbursed compensation with the Arbitrator as per the Award and proceed further.

- (iv) As stated earlier, the Arbitrator appointed to decide the references made to him is expected to do so within a period of one year. It is not only important to adhere to these timelines for timely disposal of any such issues but also because any delayed arbitral awards, if awarded with higher compensation amount, entails payment of interest on such incremental amount. As such, these have inherent financial implications for the acquiring agency.
- (v) A perusal of the provisions contained in the related Sections of NH Act, as reproduced under para 4.2 above, would show that the NH Act does not prescribe any time-lines within which the agrieved parties should file their application before the Arbitrator. Needless to say, any such application must be filed within a reasonable period. Since the NH Act has no specific provision in this behalf, the provisions of Limitation Act, 1963, which provide for a limitation period of 3 years, would be applicable in such cases till any specific provision is made under the NH Act, 1956 in this behalf.

4.5 Having explained the legal position, it is important to discuss the substance and the process of arbitration as explained in the following paragraphs:

4.5.1 Appointment of Arbitrators

- (i) As mentioned in Chapter 2, the Hon'ble Supreme Court has held in Civil Appeal No. 5250 of 2018 (arising out of S.L.P. (C) No. 20049 of 2017) vide its order dated May 16, 2018 that the Central Government alone is competent to appoint the Arbitrator under Section 3 (G) (5) of the NH Act, 1956. A copy of the Order is attached as [Annexure 2.10](#).
- (ii) MoRTH and its project executing agencies have been generally comfortable with the appointment of Divisional Commissioners/ Deputy Commissioners/ Additional Deputy Commissioners/ Additional District Magistrates as Arbitrators on the recommendations of the respective State Governments, little realising that these

officers have their hands full with their regular work and are generally short of time to attend to the arbitration proceedings, which is perceived as additional workload. There are officers, who may have hundreds of arbitration cases pending at their level and it might take a few years before these are decided/ settled. As a matter of fact, in one typical case, decided after a gap of 10 years, the NHAI had to pay a huge amount on account of enhanced compensation along with interest thereon for all these years.

- (iii) Keeping in view the problems faced in speedy disposal of arbitral references in matters of Land Acquisition under the provisions of National Highways Act, it has been decided that in order to strengthen and institutionalise the system, henceforth, wherever required, retired officers, with adequate knowledge and experience of revenue and land administration, be also appointed as the Arbitrators in addition to the existing arrangements. The Ministry of Road Transport & Highways (in the Land Acquisition Division) shall empanel retired officers from all the states for appointment as Arbitrators. The qualifications for empanelment of retired officers as Arbitrators would be as under:
 - (a) Should have retired as a member of the IAS/ Provincial or State Civil Service/ Any other service dealing with the subject of Land and Revenue Administration;
 - (b) The Candidate should have retired at least two levels above the level of the Competent Authority in the given state hierarchy.
 - (c) The Officer should be recommended for empanelment as Arbitrator by the Chief Secretary of the State concerned on the basis of his competence in the subject and integrity for appointment as Arbitrator;
 - (d) The Upper age limit for appointment as Arbitrator should not be more than 70 years.

4.5.2 Terms and Conditions of Appointment of Arbitrators:

- (i) A retired officer shall be appointed as Arbitrator for a defined jurisdiction, which could be co-terminus with that of a Divisional Commissioner in the State;
- (ii) He shall be paid a consolidated monthly remuneration of Rs. 1,50,000/- per month (or the last pay drawn minus pension if the officer retired at the level of a Secretary to the State Government/ Joint Secretary to the Govt of India, if the same is higher than Rs. 1,50,000/-);
- (iii) In addition to the above remuneration, the appointee shall also be paid a fixed amount of Rs. 20,000/- per month towards meeting his transportation needs;

- (iv) Further, the officer would also be entitled to engage one secretarial staff (retired government servant or from the open market) for an amount not exceeding Rs. 30,000 per month, and one Multi-tasking staff (MTS) for an amount not exceeding Rs. 12,000 per month.

4.5.3 Office/ Working-space:

- (i) The retired Officer appointed as an Arbitrator, depending upon the volume of work, may either make arrangement for the place/ office he would like to hold his hearings, preferably in consultation with the concerned Divisional Commissioners/ District Magistrates to use their Court Rooms/ Office space once a week or so, subject to availability;
- (ii) In the alternative, the RO/ PD concerned of the NHAI/ RO of the Ministry shall make arrangements for office accommodation in their offices for holding hearings in the arbitral proceedings.

4.6 Expenditure-sharing

Though the appointment of the Arbitrator is made by the Central Government under Section 3G (5) of the NH Act, 1956, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act. Accordingly, the expenditure incurred on the apportionment of costs of Arbitration shall be decided by the Arbitrator in terms of Section 31A of The Arbitration and Conciliation Act, 1996.

4.7 Follow-up Action on the Arbitral Awards:

- (i) In case the Arbitral Award is acceptable to the authorised Project Executing Agency, the amount shall be deposited with the Competent Authority, along with interest thereon, as per law within 07 working days of the receipt of Arbitral Award for further payment to the concerned landowners/ persons interested therein.
- (ii) Wherever, either party finds that the Arbitral Award requires correction and interpretation, it may file an application under Section 33 of the Arbitration and Conciliation Act, 1996 within 30 days for the said purpose.
- (iii) In case either of the parties is aggrieved with the Arbitrator's Award, it may take recourse to a Court under Section 34 of The Arbitration and Conciliation Act, 1996, (Chapter VII of the Arbitration and Conciliation Act, 1996) strictly within a period of 3 months, reckoned from the date of receipt of signed copy of the Arbitral Award (ref. Section 31(5) of the Act *ibid*).

4.8 Reference to the Principal Civil Court of original jurisdiction:

- (i) In matters where any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof

is payable, upon an application made in writing by the landowner or the person interested therein in this behalf, the competent authority shall refer the dispute to the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated for its decision. The CALA shall also submit a list of the claimants along the details of their land and the amount payable as per his Award to such claimants.

- (ii) In matters where a reference is made to the principal civil court of original jurisdiction for resolution of a dispute as mentioned above, the Competent Authority may also seek the leave of the Court to deposit the amount of compensation with the court for its apportionment and disbursement among the entitled persons after resolution of the dispute. Upon depositing the amount with the Civil Court, the compensation amount shall be deemed to have been paid to the landowners or the persons interested therein, with no further claims on this account.

4.9 Record-keeping about the cases referred for Arbitration and the Civil Court of jurisdiction:

- (i) The project implementing agencies of MoRTH shall ensure putting in a place a robust system of maintaining the database of: (a) the references made to the Arbitrators, (b) the matters pending with the Arbitrators, and (c) the matters decided by the Arbitrators. These agencies shall also create an equally efficient system for defending its interests before the Arbitrators and challenging the same, wherever required.
- (ii) Similar arrangements would be made in respect of references made to the Principal Courts of Civil Jurisdiction for resolution of other disputes.

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Chapter - 5

Second and Third Schedules of the RFCTLARR Act, 2013

5.1 The Department of Land Resources, Ministry of Rural Development, Government of India, issued The RFCTLARR (Removal of Difficulties) Order, 2015 vide Notification dated 28th August, 2015. The said Order is reproduced below:

- “(1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.
- (2) It shall come into force with effect from the 1st day of September, 2015.
- (3) The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.”

5.2 The Second Schedule and the Third Schedule to the RFCTLARR Act, 2013 have been reproduced as [Annexure- 5.1](#) and [Annexure-5.2](#) respectively along with comments in respect of each of the points. It is highly relevant to go through the “**Statement of Objects and Reasons**” accompanying the Bill when presented before both houses of Parliament to understand the context where the statutes may be silent. Some of the paragraphs from this Statement are extracted below with added emphasis:

“6. Provision of public facilities or infrastructure often requires the exercise of powers by the State for acquisition of private property leading to 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, particularly in case of the weaker sections of the society including members of the Scheduled Castes (SCs), the Scheduled Tribes (STs), marginal farmers and their families.

7. There is an imperative need to recognise rehabilitation and resettlement issues as intrinsic to the development process formulated with the active participation of affected persons and families. Additional benefits beyond monetary compensation have to be provided to families affected adversely by involuntary displacement. The plight of those who do not have 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 for those who directly lose their land and other assets but also for all those who are affected by such acquisition. The displacement process often poses problems that make it difficult for the affected persons to continue their traditional livelihood activities after resettlement. This requires a careful assessment of the economic

disadvantages and the social impact arising out of displacement. There must also be holistic effort aimed at improving the all-round living standards of the affected persons and families.

10. The law would apply when Government acquires land for its own use, hold and control, or with the ultimate purpose to transfer it for the use of private companies for stated public purpose or for immediate and declared use by private companies for public purpose. Only rehabilitation and resettlement provisions will apply when private companies buy land for a project, more than 100 acres in rural areas, or more than 50 acres in urban areas. The land acquisition provisions would apply to the area to be acquired but the rehabilitation and resettlement provisions will apply to the entire project area even when private company approaches Government for partial acquisition for public purpose.

23. The Bill also provides for the basic minimum requirements that all projects leading to displacement must address. It contains a saving clause to enable the State Governments, to continue to provide or put in place greater benefit levels than those prescribed under the Bill.

24. The Bill would provide for the basic minimum that all projects leading to displacement must address. A Social Impact Assessment (SIA) of proposals leading to displacement of people through a participatory, informed and transparent process involving all stake-holders, including the affected persons will be necessary before these are acted upon. The rehabilitation process would augment income levels and enrich quality of life of the displaced persons, covering rebuilding socio-cultural relationships, capacity building and provision of public health and community services. Adequate safeguards have been proposed for protecting rights of vulnerable sections of the displaced persons.

5.3 It is also relevant to reproduce the definitions of following words/ expressions to complete the context:

Section 3(k) - **“displaced family”** means any family, who on account of acquisition of land has to be relocated and resettled from the affected area to the resettlement area;

Section 3(zc)- **“Resettlement Area”** means an area where the affected families who have been displaced as a result of land acquisition are resettled by the appropriate Government.

5.4 A cumulative reading the above shows that the fundamental guiding principle to the applicability of the Second and Third Schedule in respect of any land acquisition appears to be that the measures and reliefs secured under these Schedules accrue to the persons who are displaced or rendered unsettled due to involuntary acquisition of their land as these Schedules relate to the Rehabilitation and Resettlement of the affected families, displaced or rendered unsettled due to such land acquisition.

5.5 It would be equally relevant to mention that the Road Infrastructure is an out and out public purpose and development of this infrastructure is taken up for the public use and overall economic progress of the country. It is linear in nature and the affected area is limited to the Right of Way acquired for expansion of an existing road or construction/

development of an altogether green-field road. Depending upon the configuration of a road as per the National Highway Standards, the Right of Way varies between 15 mtrs (for a two-lane Configuration) to about 100 mtrs (for an Expressway) at the maximum. In case of 4/6/8 lane National Highways, the limits of RoW have been prescribed between 45 mtrs to 70 mtrs.

5.6 Acquisition of land for the required RoW of a National Highway, as explained above, causes minimal displacement and dislocation of the affected persons. It would be more of an exception if the entire land-holding of a person/ family gets acquired in the process. As such, the number of "Displaced families" requiring "Resettlement and Rehabilitation" is almost unknown. To conclude, the provisions of Second and Third Schedule of the RFCTLARR Act, 2013 in respect of acquisition of land for the construction/ expansion/ development of National Highways are attracted only where it leads to dislocation and displacement of an affected family from the affected area. As a matter of fact, while acquisition of land for a National Highway may still attract certain provisions of the Second Schedule to a very limited extent, the provisions of the Third Schedule are not at all attracted in these cases.

5.7 Accordingly, comments have been made against the related point in a few cases where provisions of the Second Schedule may be attracted (Please see **Annexure 5.1**). Before considering grant of any relief in terms of the Second Schedule, the CALA has to unequivocally certify that the affected family has been displaced and dislocated to another area.

5.8 As regards the Third Schedule to the RFCTLARR Act, 2013, it may be noted that it is applicable only where large scale displacement or dislocation and resettlement of the affected families is involved (i.e. projects involving acquisition of large blocks of land e.g. Hydel Project, an Industrial Township, an Urbanisation Project etc.). This kind of a situation never occurs in the case of linear projects like the National Highways. As such, the provisions of the Third Schedule are not attracted in the case of land Acquisition for the NH Projects.

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Annexures to Chapter-5

Comments on the Second Schedule

[See Sections 31(1), 38(1), and 105(3)]

Sr. No.	Elements of Rehabilitation and Resettlement Entitlements	Entitlement/ provision	Comments on MoRTH/ NHA's responsibility
(1)	(2)	(3)	(4)
1.	Provision of housing units in case of displacement	<p>(1) If a house is lost in rural areas, a constructed house shall be provided as per the Indira Awas Yojana specifications. If a house is lost in urban areas, a constructed house shall be provided, which will be not less than 50 sq mts in plinth area.</p> <p>(2) The benefits listed above shall also be extended to any affected family which is without homestead land and which has been residing in the area continuously for a period of not less than three years preceding the date of notification of the affected area and which has been involuntarily displaced from such area:</p> <p style="padding-left: 40px;">Provided that any such family in urban areas which opts not to take the house offered, shall get a one-time financial assistance for house construction, which shall not be less than one lakh fifty thousand rupees:</p> <p style="padding-left: 40px;">Provided further that if any affected family in rural areas so prefers, the equivalent cost of the house may be offered in lieu of the constructed house:</p> <p style="padding-left: 40px;">Provided also that no family affected by acquisition shall be given more than one house under the provisions of this Act.</p> <p><i>Explanation.</i> – The houses in urban area may, if necessary, be provided in multi-storied building complexes.</p>	<p>(i) This benefit is envisaged for the "affected family" in case of displacement.</p> <p>(ii) It is an admitted position that certain residential units may come within the RoW or extended RoW in the process of Land Acquisition for a road project. The owners of such dwelling units are in any case entitled to the price of land situated under such dwelling units, as also the assessed value of the structure. In addition to the above, such land-owners would also be entitled to a constructed house in terms of para (1) under Column (3) above, if the affected family is displaced and dislocated from the area.</p> <p>(iii) The "Indira Awas Yojana", as referred to in the Second Schedule, has been revamped as "Pradhan Mantri Gramin Awaas Yojana" now for the Rural areas.</p> <p>(iv) Similarly, the Ministry of Housing and Urban Affairs is implementing a scheme known as "Pradhan Mantri Awas Yojana- Housing for All (Urban)" for the Urban areas.</p> <p>(v) Both the above Ministries have specified the size of the dwelling units being provided to the beneficiaries and the financial</p>

Sr. No.	Elements of Rehabilitation and Resettlement Entitlements	Entitlement/ provision	Comments on MoRTH/ NHAI's responsibility
(1)	(2)	(3)	(4)
			<p>limits for construction/ provision of such units under the above schemes. It is natural that the costing of such units would also get suitably adjusted from time to time.</p> <p>(vi) It is, therefore, in order that a family, whose dwelling unit is lost in the process of acquisition of land for a NH Project <u>and is displaced and dislocate from the affected area</u> is also paid the amount prescribed under the two schemes at such time, subject to a minimum of Rs. 1.50 Lakh, in addition to the compensation amount for the land and the structure paid to them.</p> <p>(vii) The possibility of an affected family being in unauthorised occupation of such land cannot be ruled out. In such cases, while the affected persons/ family would not be entitled to any compensation for the land and the assessed value of the structure (being in unauthorised occupation by way of encroachment on public land), however, the affected family, if displaced and dislocated, would still be entitled to the benefits as per para (vi) above under the Second Schedule if it has been in occupation of such place for a period of three years or more.</p>
2.	Land for Land	<u>In the case of irrigation project</u> , as far as possible and in lieu of compensation to be paid for land acquired, each affected family owning agricultural land in the	Not attracted in the case of NH Projects

Sr. No.	Elements of Rehabilitation and Resettlement Entitlements	Entitlement/ provision	Comments on MoRTH/ NHA's responsibility
(1)	(2)	(3)	(4)
		affected area and whose land has been acquired or lost, or who has, as a consequence of the acquisition or loss of land, been reduced to the status of a marginal farmer or landless, shall be allotted, in the name of each person included in the records of rights with regard to the affected family, a minimum of one acre of land in the command area of the project for which the land is acquired: Provided that in every project those persons losing land and belonging to the Scheduled Castes or the Scheduled Tribes will be provided land equivalent to land acquired or two and a one-half acres, whichever is lower.	
3.	Offer for Developed Land	<u>In case the land is acquired for urbanization purposes</u> , twenty per cent of the developed land will be reserved and offered to land owning project affected families, in proportion to the area of their land acquired and at a price equal to the cost of acquisition and the cost of development: Provided that in case the land owning project affected family wishes to avail of this offer, an equivalent amount will be deducted from the land acquisition compensation package payable to it.	Not attracted in the case of NH Projects
4.	Choice of Annuity or Employment	<p>(a) The appropriate Government shall ensure that the <u>affected families</u> are provided with the following options:</p> <p>(b) where jobs are created through the project, after providing suitable training and skill development in the required field, make provision for employment at a rate not lower than the minimum wages provided for in any other law for the time</p>	The scheme of "Rehabilitation and Resettlement" is applicable in cases where the landowner, whose land is acquired, and the landless family whose source of livelihood is dependent upon such landowner, is dislocated and compelled to change his place of residence or business due to such acquisition. This situation normally does not occur in the case of

Sr. No.	Elements of Rehabilitation and Resettlement Entitlements	Entitlement/ provision	Comments on MoRTH/ NHAI's responsibility
(1)	(2)	(3)	(4)
		<p>being in force, to at least one member per affected family in the project or arrange for a job in such other project as may be required; or</p> <p>(c) one time payment of five lakhs rupees per affected family; or</p> <p>(d) annuity policies that shall pay not less than two thousand rupees per month per family for twenty years, with appropriate indexation to the Consumer Price Index for Agricultural Labourers.</p>	<p>acquisition of land for linear projects like National Highways, unless a person's entire land-holding is acquired. The Second Schedule refers to Sections 31(1), 38(1), and 105(3) of the RFCTLARR Act and these sections do not contain any provision in respect of this component of "Choice of Annuity or Employment".</p> <p>Secondly, even if it is assumed that these provisions have a correlation with the overall scheme of RFCTLARR Act, 2013, this component has multiple options, which have to be specified by the appropriate government. It is beyond the Competent Authority or the Collector to make an Award in this behalf in the absence of any provision by the Appropriate Government.</p>
5.	Subsistence grant for displaced families for a period of one year	Each affected family which is displaced from the land acquired shall be given a monthly subsistence allowance equivalent to three thousand rupees per month for a period of one year from the date of award. In addition to this amount, the Scheduled Castes and the Scheduled Tribes displaced from Scheduled Areas shall receive an amount equivalent to fifty thousand rupees. In case of displacement from the Scheduled Areas, as far as possible, the affected families shall be relocated in a similar ecological zone, so as to preserve the economic opportunities, language, culture and community life of the tribal communities	This provision is attracted in the case of <u>displaced families</u> . This would be applicable in cases where the family whose land is acquired, or the landless family whose source of livelihood is dependent on such landowning displaced family. In each such case, an amount of Rs. 36,000 would be payable. Further, if such displacement of any family from the Scheduled Castes and the Scheduled Tribes takes place in the Scheduled Areas, an additional amount of Rs. 50,000/- would be payable.

Sr. No.	Elements of Rehabilitation and Resettlement Entitlements	Entitlement/ provision	Comments on MoRTH/ NHA's responsibility
(1)	(2)	(3)	(4)
6.	Transportation cost for displaced families	Each affected family which is displaced shall get a onetime financial assistance of fifty thousand rupees as transportation cost for shifting of the family, building materials, belongings and cattle.	Again, this would be applicable in cases <u>where a family is displaced and is compelled to change its place of residence to any other location.</u> This would not apply if the displaced family does not have to change its place of residence or business to any other village/ town.
7.	Cattle shed/ Petty shops cost	Each affected family having cattle or having a petty shop shall get one-time financial assistance of such amount as the appropriate Government may, by notification, specify subject to a minimum of twenty five thousand rupees for construction of cattle shed or petty shop as the case may be.	The one-time financial assistance of Rs. 25,000/- or the amount as may be prescribed by the appropriate government, would be payable to an affected family if the land where its source of livelihood was existing (petty shop/ cattle), comes under acquisition.
8.	One-time grant to artisan, small traders and certain others	Each affected family of an artisan, small trader or self-employed person or an affected family which owned non agricultural land or commercial, industrial or institutional structure in the affected area, and which has been involuntarily displaced from the affected area due to land acquisition, shall get one-time financial assistance of such amount as the appropriate Government may, by notification, specify subject to a minimum of twenty-five thousand rupees	Applicable only in cases of involuntary displacement of the affected family from the affected area due to land acquisition.
9.	Fishing rights	In cases of irrigation or hydel projects, the affected families may be allowed fishing rights in the reservoirs, in such manner as may be prescribed by the appropriate Government	Not attracted in the case of NH Projects
10.	One-time Resettlement Allowance	Each affected family shall be given a one-time Resettlement Allowance of fifty thousand rupees only.	This provision would apply only where <u>an affected family is displaced and has to re-settle</u>

Sr. No.	Elements of Rehabilitation and Resettlement Entitlements	Entitlement/ provision	Comments on MoRTH/ NHAI's responsibility
(1)	(2)	(3)	(4)
			<u>somewhere else due to acquisition of his land.</u>
11.	Stamp duty and registration fee	<p>(1) The stamp duty and other fees payable for registration of the land or house allotted to the affected families shall be borne by the Requiring Body.</p> <p>(2) The land for house allotted to the affected families shall be free from all encumbrances.</p> <p>(3) The land or house allotted may be in the joint names of wife and husband of the affected family.</p>	<p>This provision would be applicable only in rare cases where an alternate residence or land is <u>allotted</u> to the affected family. The amount of Stamp Duty would be paid only upon submission of documentary evidence to that effect.</p>

(Refer to para 5.9 of Chapter- 5)

The Third Schedule
[See sections 32, 38(1) and 105(3)]

Sr. No.	Component of infrastructure amenities provided/ proposed to be provided by the acquirer of land	Details of infrastructure amenities provided by the acquirer of land
1	Roads within the resettled villages and an all-weather road link to the nearest pucca road, passages and easement rights for all the resettled families be adequately arranged.	
2	Proper drainage as well as sanitation plans executed before physical resettlement.	
3	One or more assured sources of safe drinking water for each family as per the norms prescribed by the Government of India.	
4	Provision of drinking water for cattle.	
5	Grazing land as per proportion acceptable in the State	
6	A reasonable number of Fair Price Shops	
7	Panchayat Ghars, as appropriate	
8	Village level Post Offices, as appropriate, with facilities for opening saving accounts.	
9	Appropriate seed-cum-fertilizer storage facility if needed	
10	Efforts must be made to provide basic irrigation facilities to the agricultural land allocated to the resettled families if not from the irrigation project, then by developing a cooperative or under some Government scheme or special assistance	
11	All new villages established for resettlement of the displaced persons shall be provided with suitable transport facility which must include public transport facilities through local bus services with the nearby growth centres/ urban localities.	
12	Burial or cremation ground depending on the caste communities at the site and their practices.	
13	Facilities for sanitation, including individual toilet points.	
14	Individual single electric connections (or connection through non-conventional sources of energy like solar energy), for each household and for public lighting	
15	Anganwadis providing child and mother supplemental nutritional services	
16	School as per the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009)	
17	Sub-health centre within two kilometres range	
18	Primary Health Centre as prescribed by the Government of India	

Sr. No.	Component of infrastructure amenities provided/ proposed to be provided by the acquirer of land	Details of infrastructure amenities provided by the acquirer of land
19	Playground for children	
20	One community centre for every hundred families	
21	Places of worship and chowpal/ tree platform for every fifty families for community assembly, of numbers and dimensions consonant with the affected area	
22	Separate land must be ear marked for traditional tribal institutions	
23	The forest dweller families must be provided, where possible, with their forest rights on non-timber forest produce and common property resources, if available close to the new place of settlement and. in case any such family can continue their access or entry to such forest or common property in the area close to the place of eviction, they must continue to enjoy their earlier rights to the aforesaid sources of livelihood.	
24	Appropriate security arrangements must be provided for the settlement, if needed.	
25	Veterinary service centre as per norms.	

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Chapter - 6

Bhoomi Rashi -

Ministry's e-initiative to fast track the Land Acquisition Process

Introduction:

Given the time taken in completion of various processes involved in Land Acquisition for the National Highways, the Ministry has taken an e-initiative known as *Bhoomi Rashi*, with the help of NIC, for transforming the complete landscape in this behalf. The portal has been developed and successfully implemented. The internal movement of files for issuance various Notifications under different Sections of the NH Act, 1956 used to take anywhere between three to six months earlier. Now, it happens within a maximum of 15 days. A total of 1792 notifications have been issued through the portal during the current financial year so far since its roll-out and one payment has been successfully tested through PFMS by CE-RO Rajasthan. The *Bhoomi Rashi* portal comprises details of 724 districts, 6494 sub-districts (tehsil/taluka) and 6,57,424 villages of the country. Credit goes to Ms. Leena Nandan, the Additional Secretary in the Ministry and her team, together with the NIC team, for full-scale implementation of this initiative. The note below details various features of this initiative, which can be adopted and adapted by other Ministries and even the States with a little bit of customization of the software.

6.1 The vision of the Ministry of Road Transport & Highways is to fast-track economic growth, for which improved road connectivity, specifically expansion and up-gradation of the National Highways network, is of vital importance. In pursuance of this Vision, the Ministry's objective, inter-alia, is to transform systems and structures by re-engineering current processes and procedures.

6.2 It was observed that the process of issuing various Notifications for Land Acquisition was beset with delays. Hence, it was decided to develop a Land Acquisition (LA) system which would provide linkage across authorities, eliminate the need of physical copy, reduce the formatting errors/ clerical mistakes and enable easy tracking of the draft notifications. The concept, once decided, was then given shape by the Ministry's Land Acquisition Wing, and NIC was mandated in November 2016 to design a complete web utility that would bring in required efficiencies.

6.3 The LA process involves several stakeholders, right from the State PWDs who prepare the DPRs on the basis of which the land is acquired, state revenue officials who carry out the actual land acquisition, to the Project zones of the Ministry/ NHAI/ NHIDCL which obtain approval of the Minister (competent authority) to the Land Acquisition notifications. Hence, there were extensive stakeholder consultations over a period of six months, culminating in the final design of the utility, titled '*Bhoomi Rashi*'. A total of 36 Training/orientation sessions were organized over a period of six months in each state with the officers who would actually be using the portal for submitting the draft notifications

and their suggestions were also incorporated in the software.

6.4 *Bhoomi Rashi* portal was tested between December 2017 and March 2018 to iron out glitches and make the processing hassle-free. It has been made mandatory for all implementing agencies since April 1, 2018, and has replaced the manual system of issuance of draft notifications.

6.5 This chapter attempts to capture the entire exercise, right from defining the problem, to the process involved in designing the web portal for bringing in efficiency and transparency through e-governance, and finally, the implementation of the portal '*Bhoomi Rashi*'.

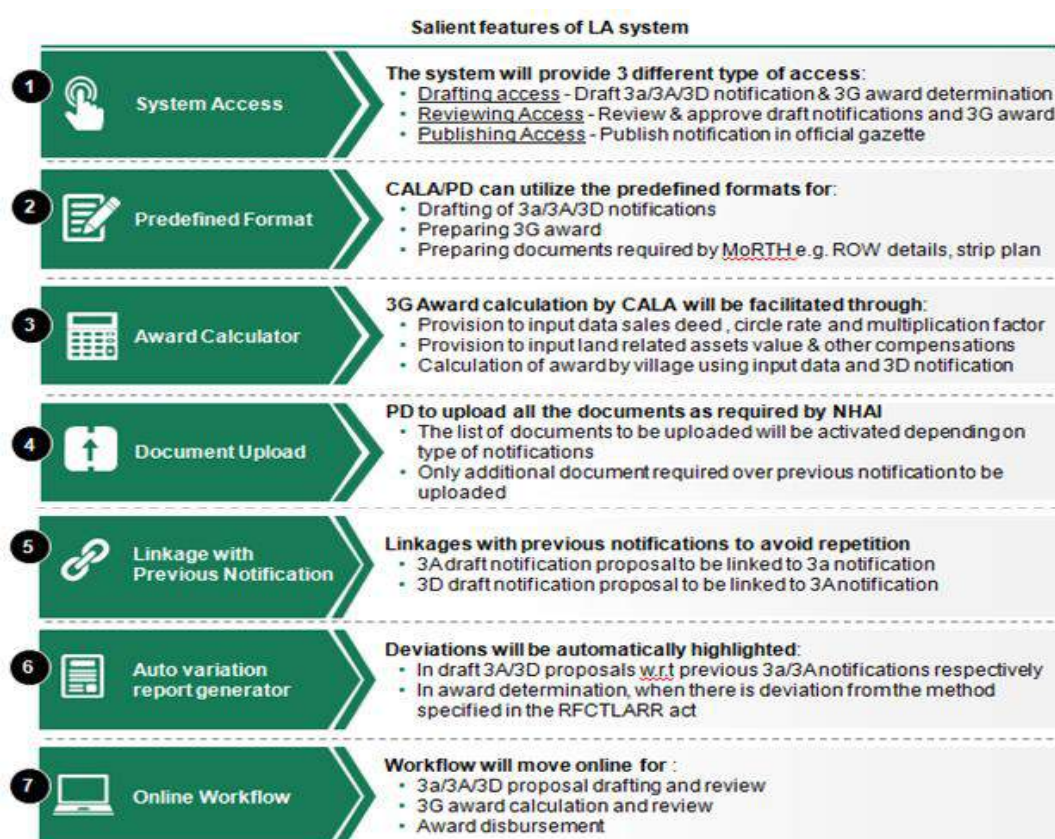
6.6 Close analysis of the LA notification process showed that the delays were on account of the following major issues:

- (i) **Incorrect draft notification preparation by CALA:** Preparation of draft notification at CALA office was a manual process and frequently there was no linkage between draft notifications viz. 3a vs. 3A vs. 3D and finally to the award calculation (3G). This led to errors in draft preparation and award calculation. Typical errors included change in land area, change in nature of land, missing beneficiary names, spelling errors etc.
- (ii) There was **no standardized format**, being used by CALAs for preparation of draft notifications, which rendered legal vetting of draft notification even more challenging. Once an error was made by CALA in the draft notification, he alone could rectify it. Hence, a fresh rectified draft notification needed to be submitted by CALA to the PIU for consideration of gazette publication.
- (iii) **Errors in draft notification preparation by project team:** NHAI has mandated preparation of fresh draft preparation by PIUs based on the draft notification submitted by CALA. This task was again conducted manually by PIUs with no linkage with corresponding previous notifications. This led to errors during the draft preparation. Typical errors included missing land plots, change in land area, change in nature of land, missing beneficiary names, spelling errors etc.
- (iv) **Incomplete documentation:** Though efforts were made by MoRTH and NHAI to reduce errors e.g. standardized format and checklist provided to PIUs for sending draft notifications, adherence to the guidelines remained low. Multiple cases were observed with missing checklist documents and submission in incorrect/incomplete format. It was noticed that 75% of draft 3A notifications and 90% of draft 3D notifications had one or more observations.
- (v) **Physical movement of draft notifications:** The draft preparation and review process involved physical copy. Movement of physical draft files between different agencies viz. CALA, project team, RO office, NHAI HQ/ MoRTH was a time-consuming exercise. Moreover, there were frequent observations on the draft notifications and hence a physical copy needed to be re-sent by the project team (albeit in some minor observations or special cases emails were also accepted),

hence increasing the response time of project team.

- (vi) **Routing of draft notification through RO:** Draft notifications are currently routed through RO office. Though it is imperative for the RO to be aware of the draft notification status, nevertheless, the routing of files increases the time taken for review process. For NHAI, it was observed that on an average about 4 weeks' time was lost because of movement of 3A and 3D draft notification through RO office.
- (vii) **Tracking of Draft Notification:** Currently tracking of draft notification only starts after receipt of draft notification at NHAI HQ/ MoRTH. But tracking of file is equally important, right from the point when CALA prepares the draft notification. Since LA is a critical element of the project and changes in alignment result in the need for additional notifications of the new land area, it is imperative to keep track of the status of draft land acquisition notifications so that the points, where the delays have been taking place, can be identified and corrective action taken right away.

6.7 Land Acquisition System



6.8 As mentioned earlier, the current draft notification review process involved multiple delays. It was, therefore, decided to develop an integrated Land Acquisition System with 7 major features:

- (i) **System Access:** There are 3 different type of access viz. Drafting access, Reviewing access, and the Publishing access. Drafting access is provided to CALA office for

preparing the draft notification on the system and for award calculation; reviewing access is provided to the corresponding authority to review the draft notification and publishing access has been provided to the official printing press for publication in the Official Gazette.

- (ii) **Pre-defined Format:** The new system provides a pre-defined format for preparation of 3a, 3A and 3D draft notifications to be utilized by CALA. Apart from this, the Land Acquisition system can also provide a pre-defined format for preparation of award (3G). The Land Acquisition system also provides pre-defined format for submission of documents like ROW details, strip-plan required for legal vetting of the draft notification.
- (iii) **Award Calculator:** Greater transparency to the current award calculation method and facilitation of award calculation by CALA through linkage to the 3D notification is another outcome. CALA can input additional data like sale deeds, circle rates, structure valuation etc. and the final award can be calculated based on the pre-defined formula specified under RFCTLARR ACT, 2013.
- (iv) **Document Upload:** The Land Acquisition system has provision for upload of documents. The documents to be uploaded would depend on the type of notification and only additional document would be required to be uploaded.
- (v) **Linkage with previous notification:** The new structure provides linkage between draft notification and previous Gazette notification. 3A draft notification would be linked to 3a notification and 3D notification would be linked to previous 3a and 3A notification. However, the system would also allow the user with drafting access to modify the information linked from previous notification for selected field including nature of Land, area of land and the beneficiary.
- (vi) **Auto variation report generator:** The system enables highlighting of variations between the draft notification and previous gazette notification i.e. variation between draft 3A notification and 3a notification or 3D draft notification and 3a/3A notification. The system also has provision to highlight variations in method of Award calculation against the one prescribed under RFCTLARR Act, 2013.
- (vii) **Complete online workflow:** All the draft notification review process is now online. This has ensured that there is no physical movement of draft notifications. The online workflow also allows for a transparent tracking of the draft notifications.

6.9 Bhoomi Rashi (Land Acquisition Automation System)

6.9.1 Overview

- (i) The funds out of which Compensation is to be paid in lieu of land acquired under the National Highways (NHs) Act, 1956, are placed solely at the disposal of the Competent Authority for Land Acquisition (CALA). In the case of the National Highways Authority of India (NHAI) projects and the National Highways Interconnectivity Improvement Projects (NHIIP), these funds are placed in a joint

account held in the name of CALA and Project Director (PD). Funds are disbursed by CALA after declaration and finalization of land acquisition awards. Since Land Acquisition involves huge amounts of Compensation and the whole process takes place over a prolonged period, therefore, these funds are unnecessarily parked in CALA's account for a long time, thereby, resulting in blocking of funds. Also, the need of the hour is to move towards e-transfer of benefits directly to the accounts of the beneficiaries.

- (ii) It stands to reason that a workflow-based automation of the extant Land Acquisition process for NH projects through development and operationalization of a comprehensive web-based portal would enhance efficiency of the entire process. The benefits of such a portal would be faster process completion, transparent fund transfer to the land owners/ beneficiaries and reduction of procedural errors. Integration of the portal with e-Gazette (Ministry of Urban development) is essential.

- (iii) A comparison between the existing procedure and the new procedure is as under:

Procedure existing before Bhoomi Rashi	New Procedure under Bhoomi Rashi
<ul style="list-style-type: none"> ❖ Opening of CALA account in bank after determination of amount payable as compensation by CALA (Section 3G) ❖ Bill Preparation by State PWD/RO and payment by RPAO ❖ Transfer of money to CALA Account (Section 3H1) ❖ Disbursement of Compensation to Beneficiaries (Section 3H) 	<ul style="list-style-type: none"> ❖ All CALAs be registered on PFMS & will be mapped under respective RO ❖ The CALA (through PFMS) will prepare a Digital Payment Advice (Using Dig Sign) with all requisite payment details of beneficiary. ❖ On the basis of DPA prepared by CALA(s), PFMS will consolidate the amount State/ RO wise. ❖ The RO will prepare sanction along with bill on PFMS for RPAO (Already doing in 6 RPAOs) ❖ The RPAO will make payment & issue DPA (on PFMS) for transferring of funds from CFI to the CALA A/c. (PFMS already implemented for 6 RPAOs) ❖ Accounting entries will be made on PFMS ❖ Funds shall be released to the designated CALA Accounts through Accredited Bank. ❖ Reverse Payment Scroll from Bank to complete Accounting entries (already being done) ❖ As soon as the funds reach CALA A/c, the PFMS will give instructions electronically to sponsor bank of CALA to transfer money from CALA A/c to the end beneficiary. (PFMS is integrated with more than 100 Banks through server to server CBS) ❖ Reverse scroll from sponsor bank to intimate settlement/ success to CALA on PFMS

6.9.2 Broad Features of the developed system:

The broad features of the system are as follows:

(i) Project Scope

- ❖ The application is bilingual i.e. English & Hindi
- ❖ Preparation of interface for adding project basic details including LA sanction details.
- ❖ Preparation of interface for Land Acquisition locations i.e. villages
- ❖ Preparation of Interface for CALA details
- ❖ Interface for generating LA notification
- ❖ Interface for Land Details
- ❖ Interface for generation of 3a, 3A & 3D notification: organizational email IDS for all those involved in the process flow to ensure smooth e-office management
- ❖ Interface for Objections and processing
- ❖ Interface for compensation determination and finalization
- ❖ Interface for Arbitrator
- ❖ Interface for generation of pay order for PFMS
- ❖ Generation of web service for getting payment status and beneficiary validation from PFMS
- ❖ Interface for Land owners and affected parties
- ❖ Interface for grievance submission

(ii) Master Data

The following data has been incorporated and would be updated from time to time by the administration:

- ❖ **States:** All states of India (E Gov Standards Master Data)
- ❖ **Districts:** Under each state, details of districts of India (E Gov Standards Master Data)
- ❖ **Sub Districts / Tehsil/ Taluka:** Under each district, details of sub districts (E Gov Standards Master Data)
- ❖ **Police Stations** (to be added by RO) under each sub district
- ❖ **Villages:** Under each Sub District→Police Station, details of villages (E Gov Standards Master Data)
- ❖ **Interest Percentage:** For payment of interest on amount decided by Arbitrator with effective date
- ❖ All Regional offices of MoRTH, NHAI & NHIDCL with login credentials for RO user with DDO Code
- ❖ Users under MoRTH
- ❖ Arbitrators with login credentials (to be added by RO)

(iii) Security:

- (a) The system is completely secure and OTP based security is provided at each level. At the time of login, the system would send a One Time Password on the registered mobile number of CALA, RO user through SMS. On entering the number in the web application, the system would complete the login process.
- (b) Similarly, whenever the users (CALA & RO) submit any form, the system would send the OTP and on entering the same the system would finally submit the form.

(iv) Language

- ❖ Data Entry in English→System would convert it in Hindi and show in a parallel text box
- ❖ For all master data, both Hindi & English would be added. While selection, English (Hindi) would be shown. On selection, selected value would be shown in parallel LABEL field.
- ❖ In reports, first data would be shown in English and after page break, report in Hindi would be shown.
- ❖ →Contact & Bank details would be optional till 3A. During 3D stage it would be mandatory.
- ❖ →Auto Create login credentials for all
- ❖ →This data can be modified at a later stage; however, the total area of the survey number cannot be increased under any circumstances.

(v) Alerts

- ❖ On generation of login credentials
- ❖ Finalization of survey numbers
- ❖ Finalization of compensation (by CALA, RO, MoRTH/ NHAI/NHIDCL)
- ❖ On Payment

(vi) Options for land owners and interested parties

After login, they can:

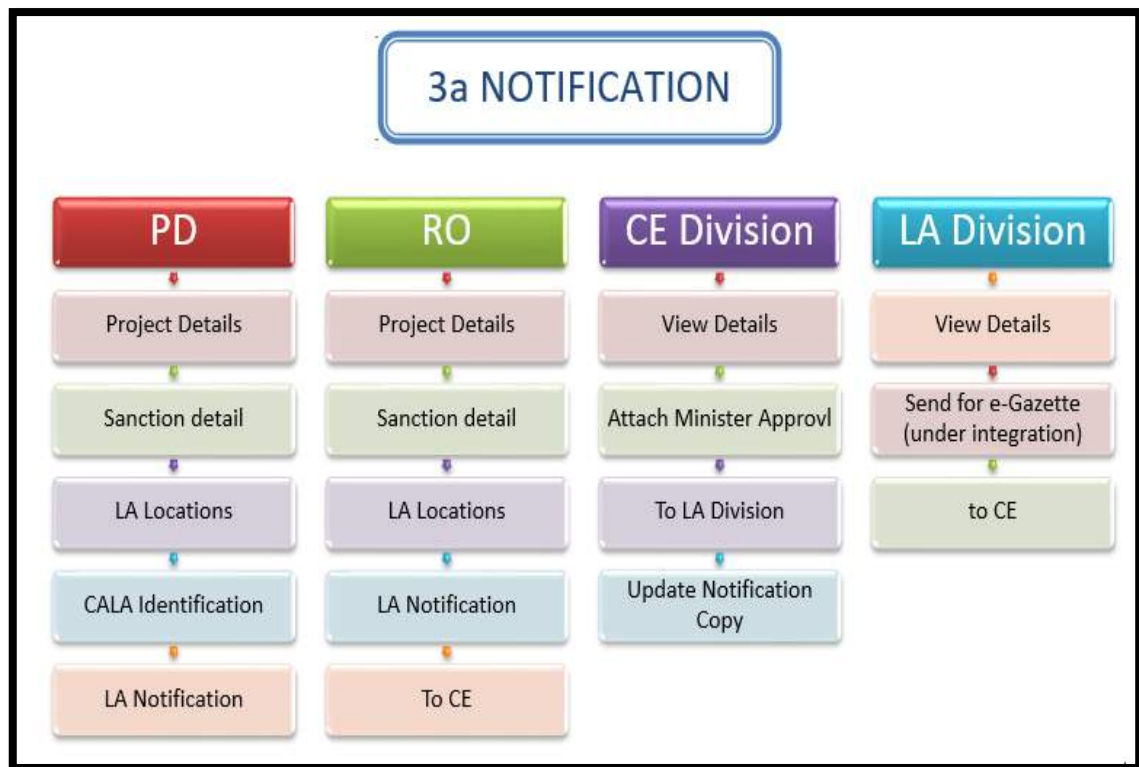
- ❖ View status of their survey number
- ❖ File Grievance

6.9.3 Grievance filing:

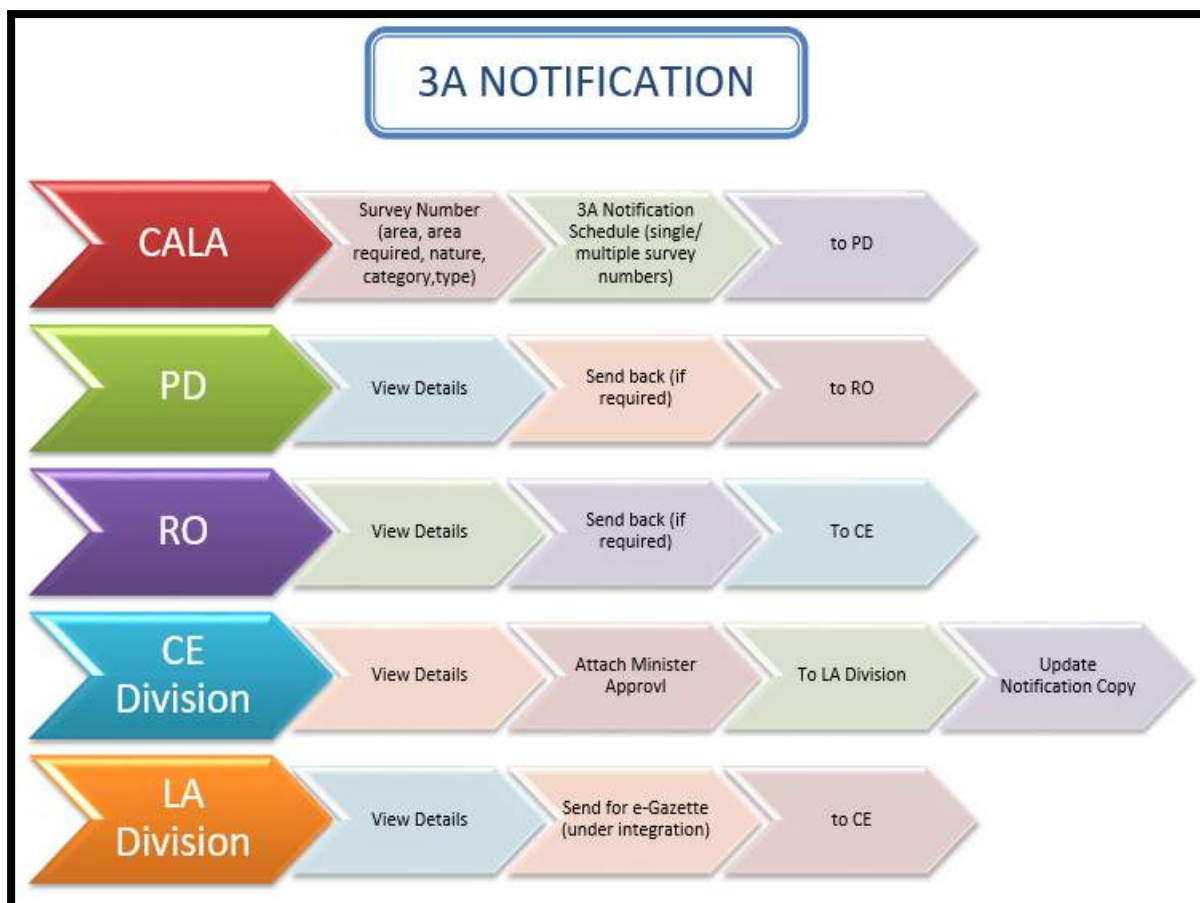
File Grievance Type	<input checked="" type="radio"/> Survey Related <input type="radio"/> Compensation Related <input type="radio"/> Payment related
Enter Grievance	<div></div>
SUBMIT	

6.10 Land Acquisition stages captured in the system

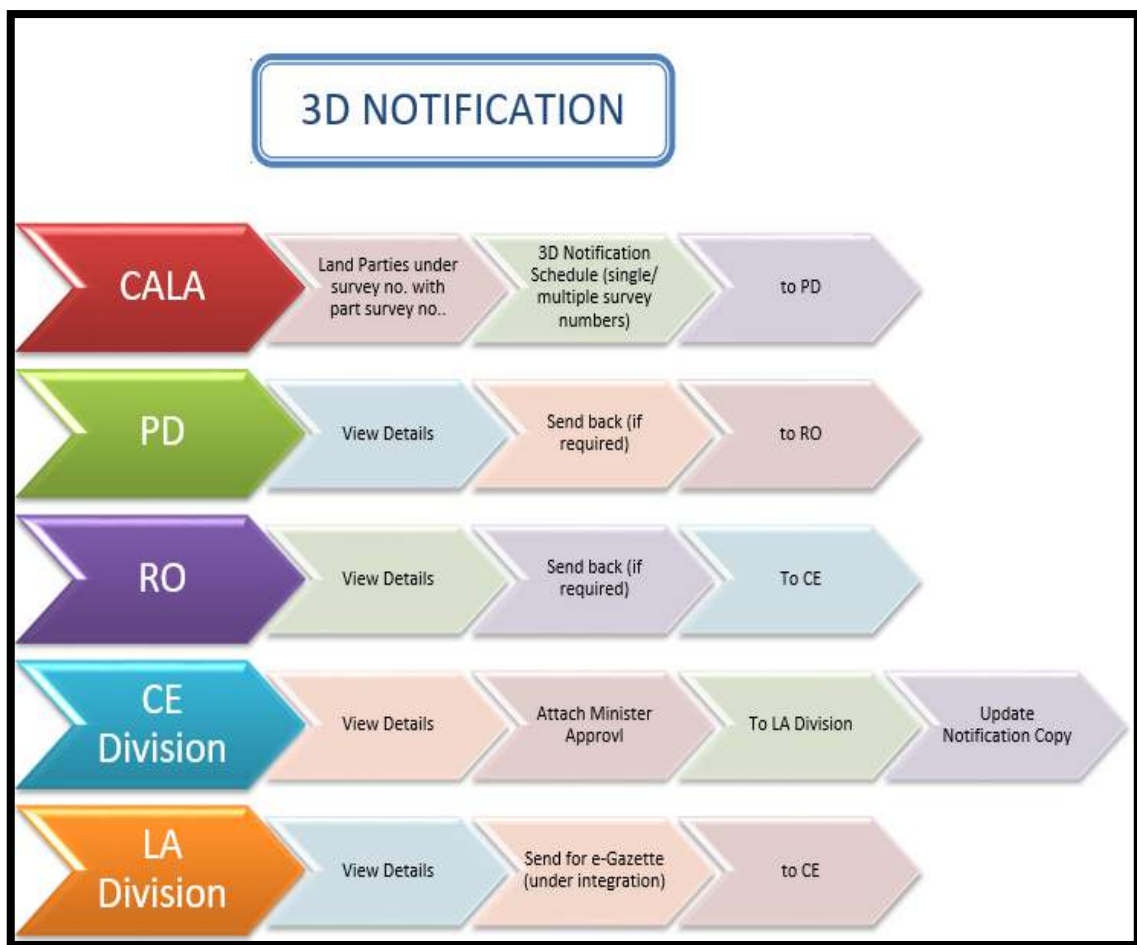
- (i) Provision has been made for adding local unit of land measurement for each state. Along with that, the admin would also add the conversion factor in hectares. This would enable the CALA and ROs to enter the data in the units as per land records available and system would do the necessary calculation i.e. the data would be available in both local unit and hectares. The notification schedule for 3a, 3A & 3D is available in both English & Hindi and would be auto generated; however, the user would be able to make necessary changes. Data entry would be done in English and the system would transliterate the data in Hindi as well. Since this might not be 100% accurate, there is a provision to make changes in Hindi, if deemed necessary. Please refer to the diagrammatic presentation on the following page.
- (ii) In all such cases, 3a amendment would be done, and the software supports the functionality required. On final approval i.e. entry by CE, the system would send email & SMS alert to all CALAs with their username and password to login. The CALA would also receive a separate alert with login credentials of their data entry operator.



- ❖ Provision is there to remove any village (till 3A has not been done)
- ❖ Provision is there to add additional CALA
- ❖ Provision to change CALA jurisdiction



- ❖ Can add survey numbers only under 3a notified villages
- ❖ 3A amendment is possible only in case of increase in survey number area
- ❖ For minor change in notified 3A, provision is there for 3A corrigendum; however, the complete workflow/process for notification would be followed
- ❖ At 3A stage itself the CALA has the option to add details of Land Owners and affected parties
- ❖ If Land parties have been added, then on 3A notification, system would send login credentials to land parties through SMS & email.
- ❖ The Land parties would also be able to post their objections online



- ❖ Under each survey number, details of land owners and affected parties would be added along with bank details and contact details:
 - At this stage, the CALA would be able to send beneficiary (land parties) details for verification to PFMS (once integration is done)
 - 3D will be done for only those survey numbers where 3A has been notified
- ❖ There is no pending objection
- ❖ Once the CALA has decided the amount of compensation to be paid to a beneficiary or more than one beneficiary, CALA would initiate action for payment on the basis of integration with PFMS.

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Annexure

**Copy of the Comprehensive Guidelines dated 28.12.2017
(Without Annexures)**

No. NH -11011/ 30/ 2015 - LA
Government of India
Ministry of Road Transport & Highways
Transport Bhawan, 1, Parliament Street, New Delhi-110001

Dated, the 28th of December, 2017

To

1. Chief Secretaries to all State Governments/ Administrators of UTs;
2. The Additional Chief Secretary/ Principal Secretary/ Secretary, Public Works Departments of all State Governments/ Union Territories;
3. The Chairman, National Highways Authority of India, G-5&6, Sector- 10, Dwarka, New Delhi-75;
4. The Managing Director, National Highways Infrastructure Development Corporation Ltd, PTI Building, Parliament Street, New Delhi- 110001.

Subject: Land acquisition under the National Highways Act, 1956 comprehensive guidelines thereon.

Sir,

I am directed to say that the land required for National Highway Projects is acquired under the provisions contained in Section 3 of the National Highways (NH) Act, 1956. Pursuant to the enactment of the RFCTLARR Act of 2013 and its coming into force with effect from 01.01.2014, certain provisions of the 2013 Act became applicable to the other related Acts mentioned in the Fourth Schedule, including the NH Act, 1956 with effect from 01.01.2015 in terms of Section 105(3) of the RFCTLARR Act, 2013.

2. Accordingly, the Ministry of Road Transport & Highways (MoRTH) has issued various OMs/ Circulars on the subject from time to time, as mentioned at **Annexure-1**. Similarly, the Department of Land Resources, Ministry of Rural Development, have also issued guidelines/ orders on the subject, being the nodal Department of Government of India for the administration of RFCTLARR Act, 2013 and its application to the other related statutes mentioned in the Fourth Schedule of the Act *ibid*. These guidelines/ orders/ clarifications are mentioned in **Annexure - 2**.

3. The entire issue has been examined afresh in view of the clarifications emerging in due course of time. The Ld. Attorney General of India has also been consulted on certain issues. Accordingly, it has been decided to issue these comprehensively revised guidelines in supersession of the guidelines issued hereinbefore. These are as follows:

4. **Applicability of the 'RFCTLARR Act 2013' to the enactments mentioned in the Fourth Schedule of the Act *ibid*:**

- (i) The 'RFCTLARR Act 2013' came into force with effect from 01.01.2014. Section 105 of the Act deals with the subject of applicability of provisions of the RFCTLARR Act,

2013 to the related statutes enumerated in the Fourth Schedule. Provisions of Section 105 (3) read as under:

“(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.”

- (ii) The Central Government came out with an Ordinance (No. 9 of 2014) dated 31st December, 2014, entailing an amendment to, inter-alia, Section 105 vide Clause 10 of the Ordinance, substituting sub-section (3) of Section 105 and omitted Sub-section (4) of Section 105. The substituted sub-Section (3) is reproduced below:

“(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1st January 2015.”

- (iii) The provisions of Ordinance No. 9 of 2014 were continued further vide Ordinance No. 4 of 2015 dated 03.04.2015 and vide Second Ordinance dated 30.05.2015 (No. 5 of 2015) which was valid up to 31st August, 2015.

- 4.2 Subsequently, the Department of Land Resources, Ministry of Rural Development, Government of India, issued The RFCTLARR (Removal of Difficulties) Order, 2015 vide Notification dated 28th August, 2015. The said Order is reproduced below:

“(1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.

(2) It shall come into force with effect from the 1st day of September, 2015.

(3) The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.”

- 4.3 It is clear from a reading of the above that requisite action in compliance of Section 105(3) was taken within one year's time with the promulgation of Ordinance No. 9 of 2014 dated 31.12.2014. This position continued with the issuance of two Ordinances in 2015, which was thereafter followed by the 'Removal of Difficulties

Order” without any break in time. As such, operation of the provisions of RFCTLARR Act 2013, which came into effect from 01.01.2014, has been given effect in respect of the enactments specified in the Fourth Schedule (including the NH Act, 1956) with effect from 01.01.2015, in compliance of sub-section (3) of Section 105 of the RFCTLARR Act, 2013.

- 4.4 Following the notification of the aforesaid Ordinances, the Ministry of Road Transport & Highways issued a letter dated 29.04.2015 whereby the select provisions of RFCTLARR Act, 2013 were made applicable to the NH Act, 1956 with effect from 01.01.2015. A conjoint reading of the aforesaid shows that the Ordinance (Amendment) remained in force till 31st August 2015. ‘*Removal of Difficulties Order*’ was issued by the Department of Land Resources on 28th August 2015, which took effect from 01.09.2015. However, since the date of application of the selected relevant provisions of the RFCTLARR Act, 2013 to the NH Act, 1956 was 01.01.2015 in terms of the Ordinance (Amendment) No. 9 of 2014, it remains an unambiguous and accepted position that the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule have been made applicable to all cases of land acquisition under the NH Act, 1956, i.e. the enactment specified at Sr. No. 7 in the Fourth Schedule to the RFCTLARR Act, **with effect from 01.01.2015.**

4.5 Applicability of Section 24 of the RFCTLARR Act 2013 to the NH Act, 1956.

- (i) MoRT&H had issued instructions vide OM bearing No. 11011/30/2015-LA dated 13th January 2016 clarifying that Section 24 of the RFCTLARR Act, 2013 was applicable to the NH Act, 1956. However, the issue as to whether Section 24 of the RFCTLARR Act, 2013 is applicable to the NH Act, 1956 has been under consideration and revisited in consultation with the Ld. Attorney General, who has observed as under:

“A reading of Section 24 makes it abundantly clear that the provision is applicable only to acquisitions that have been undertaken under the Land Acquisition Act, 1894, in as much as the legislative intent can be ascertained from the specific mention of the ‘Land Acquisition Act, 1894’. Further, Section 105(1) of the RFCTLARR Act 2013 specifically excludes the application of any Section of the RFCTLARR Act 2013 to the Acts mentioned in the Fourth Schedule. The only exception to Section 105(1) is Section 105(3), which makes only the First, Second and Third Schedule applicable to the Fourth Schedule Acts.”

- (ii) As such, it is now clear that Section 24 of the RFCTLARR Act, 2013 is not applicable to the acquisitions under the NH Act, 1956.

4.6 Date of determination of market value of land

- (i) Another related but important question is regarding the date on which the market value of land is to be determined in cases where land acquisition proceedings had

been initiated under the NH Act, 1956 and were at different stages as on 31.12.2014. While there is no ambiguity regarding land acquisition proceedings initiated on or after 01.01.2015, this question assumes significance in view of the financial implications in respect of cases where the process of acquisition was at different stages as on 01.01.2015.

- (ii) Section 26 of the RFCTLARR Act stipulates that *“the date for determination of market value shall be the date on which the notification has been issued under Section 11 (corresponding to Section 3 A of the NH Act)”*. Same was the position under the 1894 Act. This is further fortified from the provisions contained in Section 69(2) of the RFCTLARR Act. As such, it is clarified that the relevant date of determination of market value of land is the date on which notification under Section 3 A of the National Highways Act, 1956 is published.
- (iii) By now, it is also a settled proposition that the First, Second and Third Schedule of the RFCTLARR Act, 2013 shall be applicable to the NH Act, 1956 with effect from 01.01.2015. As such, the following is clarified:
 - (c) All cases of Land acquisition where the Awards had not been announced under Section 3G of the NH Act till 31.12.2014 or where such awards had been announced but compensation had not been paid in respect of majority of the land holdings under acquisition as on 31.12.2014, the compensation would be payable in accordance with the First Schedule of the RFCTLARR Act, 2013.
 - (d) In cases, where the land acquisition process was initiated and award of compensation under Section 3G had also been announced before 01.01.2015 but the full amount of Award had not been deposited by the acquiring agency with the CALA, the compensation amount would be liable to be determined in accordance with the First Schedule w.e.f. 01.01.2015;
 - (e) In cases, where the process of acquisition of land stood completed (i.e. Award under Section 3G announced by CALA, amount deposited by the acquiring agency with the CALA, and compensation paid to the landowners in respect of majority of the land under acquisition) as on or before 31.12.2014, the process would be deemed to have been completed and settled. Such cases would not be re-opened.

5. Payment of additional amount calculated @ 12% on the market value in terms of sub-section (3) of Section 30 of the RFCTLARR Act, 2013

- 5.1 Another issue that has emerged pertains to the admissibility of payment of an additional amount calculated @12% per annum on the market value of land in respect of acquisitions under the NH Act, 1956 as it is not mentioned under the First Schedule to the RFCTLARR Act, 2013. The position has been carefully examined in terms of the provisions in this behalf. Sub-section (3) of Section 30 of the RFCTLARR Act reads as under:

“In addition to the market value of the land provided under Section 26, the Collector shall, in every case, award an amount calculated at the rate of twelve percent per annum on such market value for the period commencing on and from the date of publication of the notification of the Social Impact assessment study under sub-section (2) of Section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.”

5.2 Sub-section (3) of Section 105 of the RFCTLARR Act stipulates that:

“The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.”

5.3 The proviso under Section 26 of the RFCTLARR Act stipulates that *“the date for determination of market value shall be the date on which the notification has been issued under Section 11 (corresponding to Section 3 A of the NH Act)”*. Similarly, Section 69 (2) of the RFCTLARR Act, 2013 also stipulates that such additional amount is to be *“calculated @ 12% on such market value for the period commencing on and from the date of publication of the preliminary notification under section 11 in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier”*. Since the acquisition of land for the National Highways is exempted from the Social Impact Assessment, it is absolutely clear from a harmonious reading of all related provisions that the calculation of such amount shall be made with effect from the date of publication of the Notification under Section 3A of the NH Act, 1956.

5.4 The compensation amount has to be determined in accordance with the First Schedule, (which contains references to Section 26, 29 and 30(1) of the RFCTLARR Act) in its application to the NH Act. Provision for amount calculated @ 12% interest is under sub-section (3) of Section 30 of the RFCTLARR Act, to which no reference has been made in the First Schedule. Further, Section 30(3) stipulates that the additional amount calculated @ 12% is payable with effect from the date of publication of the notification of the Social Impact Assessment Study, which is not applicable to the land acquisition for National Highways. On the other hand, Section 69(2) of the RFCTLARR Act, 2013 stipulates that the additional amount calculated @12% is to be calculated from the date of publication of the preliminary notification under Section 11 (corresponding to Section 3(a) of the NH Act, 1956). Further, the Ordinances and the Removal of Difficulties Order do not include the portion *“being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of*

this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be". Hence, a strict textual reading of the relevant provisions shows that it is an arguable point if the 'amount' under Section 30(3) is payable in respect of land acquired under the NH Act, 1956 or not.

- 5.5 However, a harmonious reading of all the related provisions of the RFCTLARR Act, the pronouncements of the Courts on payment of compensation under Section 23 (1A), Section 23(2) and Section 28 of the Land Acquisition Act, 1894 in respect of land acquired under the NH Act, 1956, read with Section 105(3) of the RFCTLARR Act, 2013, especially when the market value has to be reckoned as on the date of issue of Section 3A of the NH Act, would go to show that payment of 'amount' of 12% on the market value of land from the date of publication of Section 3A of the NH Act, 1956 till the announcement of award under Section 3G or taking possession of land, whichever is earlier, is payable.
- 5.6 This issue has been examined in detail by the Ld. Attorney General who has finally opined *"that a holistic reading of the provisions of the RFCTLARR Act, 2013 would require the payment of the 'amount' mentioned under Section 30(3) of the RFCTLARR Act, 2013"*. As such, in supersession of the OM bearing No. NH-11011/140/2017-P&M/LA dated 7th September 2017, vide which it was clarified that the said 'amount', not being part of the First Schedule to the Act, was not payable in respect of land acquisition under the NH Act, 1956, **it is clarified that the 'amount' calculated @ 12% per annum, as prescribed under Section 30(3) of the RFCTLARR Act, 2013, though not specifically mentioned in the First Schedule, would be payable to the landowners.**
- 5.7 Still, another set of two questions arise i.e. (i) the date from which the amount payable under Section 30(3) is to be calculated, and (ii) as to whether the 'amount' as mentioned in Section 30(3) of the RFCTLARR Act, 2013 is a **stand-alone component and paid as such** or it would get added to the market value, and then count for the purposes of Multiplication Factor and/ or Solatium also. This issue has also been examined by the Ld. Attorney General, whose opinion is reproduced below:

"There are **two other issues** that are related to payment of 'amount' under Section 30(3). **The first** is in regard to the date from which this amount has to be calculated. Section 30(3) states that this date will be the date of 'social impact assessment' under Section 4 of the RFCTLARR Act. However, Section 4 is not applicable to the national Highways Act, Therefore, as was being done earlier, this amount may be paid from the date of issuance of preliminary notification under Section 3A of the National Highways Act. **The second issue** is in regard to whether this 'amount' is a standalone component or whether the same has to be calculated after addition of the multiplication factor and solatium. The answer to this question is to be found in Section 30(3) which clearly states that the amount is payable in addition to to the market value of the land and is calculated as a percentage of 'market value'. There is a distinction between 'market value' and compensation. Market value is determined under Section 26. Section 27 provides that the Collector having determined the total market value, will proceed to determine the compensation. This compensation is determined under Section 28 of the Act. Therefore, a reading of these sections would lead to the conclusion that the

‘amount’ has to be awarded only on the ‘market value’ which in turn is determined under Section 26 of the Act.”

- 5.8 It may be noted that the computation of different components of the total compensation is in seriatum and sequential from Section 26 to Section 30 of the RFTCLARR Act, 2013. Keeping the aforesaid opinion of the Ld. Attorney General in view, and the fact that the payment of ‘amount’ under Section 30(3) has been prescribed as “In addition ...” after the provision for payment of solatium, **it is clarified that it would be payable as a ‘stand-alone component’ and shall not count for the purposes of Multiplication Factor and the Solatium.** Illustration given in **Annexure - 4** to these guidelines may be referred for correct method of calculation of the compensation amount.

6. Issue of the Multiplication Factor (MF)

- 6.1 It is clear that the compensation of land acquired under the NH Act, 1956 with effect from 01.01.2015 is to be determined in accordance with the provisions contained in the First Schedule to the RFCTLARR Act, 2013 (in so far as it relates to the Multiplication Factor prescribed by the appropriate government).
- 6.2 The Department of Land Resources, Ministry of Rural Development, Government of India issued a Notification dated 9th February 2016 in this behalf, which reads as under:

“In exercise of the powers conferred by column No. 3 of serial No. *2 of the First Schedule read with sub-section (2) of Section 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government, hereby, notifies that in the case of rural areas, the factor by which the market value is to be multiplied shall be 2.00 (two).”

- 6.3 Soon after the aforesaid Notification was issued by the Department of Land Resources, certain states like Andhra Pradesh, Maharashtra, Punjab, Jharkhand, Chhattisgarh and Bihar started using a Multiplication Factor of 2.00 in respect of land acquired/ to be acquired for the NH Projects (read Central Government Projects) on the basis of 9th February Notification of the Department of Land Resources whereas the Multiplication Factor applicable to the jurisdiction of the state was to be notified by the appropriate government. The MoRTH also issued two OM's dated 12.08.2015 and 08.08.2016 on the subject. A reference was made in this behalf by the then Chairman, NHAI to the Secretary, Department of Land Resources. Certain references were also made by the states. The reference specifically mentioned the issue of two different sets of MFs being adopted by certain states for the Central Projects and the State Projects. The State of Chhattisgarh continues with such classification even on date.
- 6.4 Some of these confusions have been set at rest and clarified by the DoLR vide its letter F. No. 13013/ 02/ 2016-LRD dated 8th May, 2017, more specifically the issue of differential MFs for the State and the Central Projects. The DoLR has further clarified vide its F. No. 13013/02/2016-LRD dated 14th December 2017 that the DoLR

Notification of 9th February 2016 was applicable only to the UTs, except Puducherry, as the DoLR is the appropriate Government only in respect of the UTs, except Puducherry.

6.5 The DoLR Notification of 9th February 2016 prima facie appears to be inconsistent with the provisions contained in the First Schedule, especially in respect of the following three points:

- (i) Firstly, it gave an impression (though erroneous) as if the Central Government was the 'appropriate government' to notify the Multiplication Factor (MF) in respect of all Central Government projects across all the states;
- (ii) Secondly, it did not clearly state that the Notification was applicable only in relation to the Union Territories, except Puducherry;
- (iii) Thirdly, the prescription of a MF of 2.00 without co-relating the distance of the project from the urban area is prima facie inconsistent with the contents of the First Schedule. The said entry reads as under:

Serial Number	Component of Compensation package in respect of land acquired under the Act	Manner of determination of value	Date of determination of value
(1)	(2)	(3)	(4)
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 the urban area , as may be notified by the appropriate Government.	

6.6 The DoLR, however, has clarified the position with regard to the points mentioned at (i) and (ii) of para 6.5 above, as mentioned under para 6.4 above. The DoLR has clarified vide its OM of 8th May 2017 that there cannot be two sets of Multiplication Factors, one for the state projects and the other for the Central projects. Since the issue regarding sub para (iii) of para 6.5 above still remained unsettled, the matter was referred to the Ld. Attorney General, who has opined as under:

"The MoRTH has sought my opinion on whether it is open to the appropriate Government to fix a uniform multiplication factor of 2 for all rural lands. The query is a result of notifications issued by the Department of Land Resources and certain states like ... which have stated a multiplication factor of 2 in respect of land acquired/ to be acquired for all National Highway Projects whereas a different multiplication factor has been prescribed for land acquired by the State Government.

In my opinion, the appropriate government must have a graded approach to fixing the multiplication factor. This is evident from the words in the schedule "*1.00 (one) to 2.00 (two) based on the distance of project from the urban area*". For this purpose, the appropriate government has to apply its mind and take into consideration the distance of lands from urban areas."

6.7 A number of states like West Bengal, Rajasthan, Maharashtra and others have already notified the graded scale of Multiplication Factor as applicable in their respective jurisdiction. The position in this behalf, as available with MoRTH on the date of issue of these guidelines, is enclosed as **Annexure - 3**. While the matter is being taken up with the DoLR again to revisit its Notification of 9th February 2017 with regard to a single Multiplication Factor of 2.00 for the rural areas *qua* the UTs (except the state of Puducherry), the concerned officers of MoRTH and NHAI/ NHIDCL are advised to take up the matter with the states where a uniform MF of 2.0 has been notified for the Rural Areas without using a scale/ graded MF linking the distance of the project area from the urban limits.

6.8 The Chief Secretaries of the concerned states like Bihar, Chhatisgarh, Gujarat, Jharkhand, Uttarakhand and Uttar Pradesh are requested to take necessary corrective measures in this matter in order to ensure that the 'multiplication factor' notified in their respective states is in conformity with the legal provisions in the First Schedule to the RFCTLARR Act, 2013, as also advised by the Attorney General of India.

6.9 Keeping the aforesaid in view, it is clarified as under:

- (i) The multiplication factor by which the 'market value' is to be multiplied in case of urban areas shall be 1.00 (One) as specified in the First Schedule. The 'Urban Area' shall mean the area situated within and up to the boundary of the Urban Local Body as notified by the concerned State Government (i.e. a Municipal Corporation/ Council/ Committee, by whatever name it may be called).
- (ii) The multiplication factor by which the market value is to be multiplied in case of rural areas (from the end-point of the urban limit) shall be the one as notified by the concerned State Government, being the appropriate government for such state. It may be noted that the Multiplication Factor notified by the State shall remain the same for the state government and the central government projects. There cannot be two different sets of multiplication factors in the same state, as already clarified by the Department of Land Resources, Ministry of Rural Development, vide its OM dated 8th May, 2017.
- (iii) As regards the Multiplication Factor in the case of rural areas in the Union Territories (other than Puducherry), the Multiplication Factor shall be 2 (Two) in terms of the DoLR Notification No. S.O.425 (E) dated 09.02.2016 till the same is reviewed by the Department of Land Resources.
- (iv) The Multiplication Factor by which the market value is to be multiplied in case of rural areas situated in the Union Territory of Puducherry shall be the same as notified by the Government of Union Territory of Puducherry.

7. Bulk Acquisitions/ Purchase of Land through Consent of Landowners

7.1 Various state governments have come out with their respective guidelines/ policies/ rules/ statutes for acquisition of land on consent basis. Proposals have been received

in MoRTH from such state governments for acquisition of land for the National Highways within their jurisdiction under their respective consent acquisition policies/ guidelines/ statutes. MoRTH has agreed to the proposals of the following states and issued OMs in this connection subject to the condition that the compensation amount paid in such cases is in consonance with the provisions of the RFCTLARR Act 2013, as applicable to the NH Act, 1956 for the purpose:

Sr. No.	Subject	Date of Issue
(i)	Kerala, Chhattisgarh	02.08.2016
(ii)	West Bengal, Uttar Pradesh, Telangana, Punjab,	03.08.2016
(iii)	Rajasthan, Goa, Odisha,	24.08.2016
(iv)	Bihar,	29.08.2016
(v)	Maharashtra, Himachal Pradesh	26.09.2016
(vi)	Karnataka	16.11.2016
(vii)	Madhya Pradesh	06.09.2017

7.2 In supersession of the above OMs, it has been decided by the Competent Authority that following guidelines shall be followed henceforth with immediate effect and until further orders regarding Bulk acquisition/ Purchase of Land through Consent of landowners:-

- (i) There is a specific Central statute for acquisition of land for the National Highways i.e. **National Highways Act, 1956**. As such, legally, the Central Government and its authorised project executing agencies are competent to acquire land for the construction/ development of National Highways under the NH Act, 1956 and the States do not have a case to insist that the land for the NHs in their jurisdiction should be acquired under the statutes/ policies framed by the State Governments/ UT Administrations.
- (ii) However, considering the urgent need for minimizing litigation and ensuring early availability of land for completion of the NH projects, land for NH projects can be procured through direct purchase with the consent of the landowners in accordance with the existing Acts/ Rules/ Policies of the concerned State Governments subject to the condition that the total amount of compensation so worked out **will be no more than what is payable when the land is acquired under the NH Act, 1956, which in any case is in conformity with the compensation payable in accordance with the provisions of RFCTLARR Act, 2013.**
- (iii) Further, MoRTH/ NHAI/ NHIDCL would also be agreeable to acquisition of land for the NH Projects in accordance with such consent mechanism of the state subject to the condition that the concerned State Government/ UT Administration agrees to bear the incremental cost, if any, from its own resources. To illustrate, if the amount of total compensation payable for one

hectare land in terms of the First Schedule to the RFCTLARR Act, 2013 [including the amount calculated @ 12% in terms of Section 30 (3) of RFCTLARR Act, 2013] is Rs. 1.50 crore/ hectare and the amount determined under the consent mechanism of the state government works out to Rs. 1.75 crore/ hectare, the State Government/ UT Administration would have to bear the differential compensation amount of Rs. 25.00 Lakh/ hectare from its own sources.

- (iv) Henceforth, with the above principles having been laid down, there will be no need to issue any state specific guidelines on the subject.

8. Acquisition of land for Missing Plots

The Ministry has issued detailed guidelines vide its letter dated 15.03.2016 for acquisition of land through consent of landowners, preferably limited to 10% of total quantum of land acquisition in a construction package in the cases of (i) Missing plots which are inadvertently left out from the bulk acquisition, and/ or (ii) additional land required due to alteration of alignment at implementation stage. These guidelines shall continue to remain in force until further orders.

9. Notification of a stretch as a NH under Section 2 of the NH Act, 1956 before initiating the process of Land Acquisition under Section 3 of the NH Act?

- (i) The issue as to whether it is necessary to notify a certain stretch as a National Highway under Section 2 of the NH Act before initiating the process of acquisition of land for building a National Highway under Section 3 of the NH Act has come up for consideration. The Ministry was of the view that Section 2 and Section 3 of the NH Act are independent of each other. This issue was also referred to the Ld. Attorney General for his opinion. The Attorney General has advised vide his supplementary reference dated 24.12.2017 as under:

“Section 3A deals with the power to acquire land and Section 3A(1) provides as follows:

3A Power to acquire land, etc. - (1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.

Under Section 3A(1), the Central Government may acquire land for the purpose of building a National Highway. The term ‘**building**’ is not defined in the National Highways Act. The New Webster’s Dictionary of the English Language (Deluxe Encyclopedic Edn) defines ‘building’ as ‘*the act of one who builds*’. The term ‘build’ is defined as ‘*to construct or erect, as a house; to form by uniting materials into a regular structure; to make; to establish by gradual means; to raise as on a support or foundation*’. When the Central Government notifies land for acquisition, the nature of these lands may be paddy fields or waste lands or vacant lands. These lands cannot be called a

Highway. What is acquired is only land without a Highway existing at the time. The very concept of a Highway is defined in common law as ‘a way over which there exists a public right or passage... at all seasons of the year freely... to pass and re-pass without let or hindrance (*Halsbury’s Laws of England, 4th Edn. Vol 21 Page 9*). Vacant lands and paddy fields can never be termed as Highways. It is only when the road is built/ constructed and established, and is able to take traffic, and when a passage comes into existence for persons to pass and re-pass, that it can be notified.

In view of the above, my answer to the query is that it is not necessary to notify a road project as a National Highway in terms of Section 2 of the National Highways Act, 1956 for initiating the process of land acquisition under Section 3A of the Act.

I advise accordingly.”

- (ii) Accordingly, it is clarified that it is not necessary that a stretch must be notified as a National Highway under Section 2 of the NH Act, 1956 before initiating the process of land acquisition under Section 3 for building a National Highway.

10. Competent Authority for Land Acquisition (CALA) and due diligence at the time of determination of compensation amount by the Competent Authority.

- (i) The Central Government (i.e. the Ministry of Road Transport & Highways) appoints the Competent Authority for Land Acquisition (CALA) in exercise of its powers under Section 3(a) of the NH Act, 1956. As such, the CALA appointed by the Central Government, is obliged to take all action for acquisition of land under the NH Act, 1956 and the guidelines issued by the Central Government on the subject.
- (ii) It may be noted that the provisions contained in the RFCTLARR Act, 2013 from Section 26 to Section 30 are in seriatum i.e. sequential. Para 5.8 of these guidelines may be referred in this behalf. As such, an illustration on how the total compensation amount is to be calculated is given in **Annexure-4**. This has to be strictly followed by all CALAs appointed by the Central Government.
- (iii) Certain undesirable practices have come to notice of the Central Government. These include change in the nature of land or adoption of incorrect classification of land for determination of market value of land. It may be noted that the nature of land has to be taken as recorded in the revenue records on the day of publication of Section 3A notification. For instance, if some landowner/ interested person has raised a factory building or a commercial building upon the land under acquisition without obtaining the “Change in Land Use” from the competent authority prescribed by the state government, he/ she cannot take the benefit of treatment of such land as “Industrial” or “Commercial”. Therefore, due diligence has to be exercised by the CALA while determining the land use/ nature of land and working out the market value of land.

- (iv) It may be further noted that the market value of land is to be determined as on the date of publication of the preliminary Notification under Section 3A of the NH Act, 1956. It is for this reason that in addition to the market value of land and solatium, the landowner is also paid an amount calculated @ 12% per annum from the date of initial notification under Section 3A till the announcement of Award or possession of land, whichever is earlier. Instances have come to notice where the landowners/ interested persons have undertaken certain improvements over the land notified under Section 3A after the publication of notification in order to enhance the quantum of compensation. This would include plantation of trees on such land to add value. As such, the CALAs are duty bound to ignore any improvement done over the notified land after the date of notification while determining the compensation amount and announcing the Award under Section 3G of the NH Act, 1956.
- (v) The CALA, while announcing the Award under Section 3G, shall append a certificate at the end of his Award that he/ she has strictly followed the legal provisions and these guidelines in determination of the compensation amount.

11. Disbursement of Compensation amount and possession of land

- (i) It has been observed that the process of disbursement of compensation amount to the landowners or the persons interested therein goes on for a long period for a variety of reasons, which leads to delays in taking possession of the land acquired and required for construction of the highway. Some of the most common reasons are mentioned as under:
 - (a) There are certain landowners who do not maintain their usual residence where the land is situated and can be called as absentee landowners;
 - (b) The land records are not updated and the successors-in-interest are not clearly identified with their respective shares.
- (ii) It is, therefore, important that the CALAs adopt the following procedure in order to ensure that the possession of acquired land is not delayed for any reasons:
 - (a) Apart from issue of notice to the landowner/ person interested therein in terms of sub-section (1) of Section 3E of the NH Act, 1956, a public notice may also be published in the same set of two newspapers in which the Notification under Section 3A (3) was published informing the landowners/ persons interested in the acquired land about the announcement of the Award by the CALA in respect of subject land, calling upon them to collect the compensation amount from the office of the CALA within a period of sixty days.
 - (b) As soon as the period of 60 days is over, another public notice may

be caused to be published in the same set of newspapers, calling upon such landowners to surrender or deliver possession thereof to the competent authority forthwith, failing which the possession shall be taken with the assistance of the local police in accordance with sub-section (2) of Section 3E of the NH Act, 1956.

- (iii) A typical sample/ format of the two sets of Public Notices are enclosed as **Annexure - 5**.

12. Appointment of Arbitrator under Section 3G(5) of the NH Act, 1956

- (i) Reference is made to Section 3G(5) of the NH Act, 1956 which stipulates that *“If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government”*.
- (ii) Further, attention is also drawn to sub-section (4) of Section 3H of the NH Act, 1956 which stipulates that *“If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.”*
- (iii) A perusal of the above provisions makes it clear that the jurisdiction of the ‘Arbitrator’ appointed by the Central Government and that of the ‘Principal Civil Court of original jurisdiction’ have been clearly demarcated.
- (iv) The CALAs may, while making a reference to the ‘Principal Civil Court of original jurisdiction’ wherever required, may also seek leave of such Court to deposit the undisbursed amount of compensation in respect of such landowners/ interested persons with the Court so that the possession of such land is not held-up on this account, leading to delays in taking up the highway development works.

13. Administrative charges for Land Acquisition for NH Projects

A total of 13 states levy administrative charges for acquisition of land for the National Highways. Demi-official communications have been sent at the level of Secretary, MoRTH to Chief Secretaries of these states in this behalf. A copy of the said letter, which is self contained, is enclosed as **Annexure-6**. Action may be taken by all concerned accordingly.

14. Supersession of previous guidelines:

With the issue of these comprehensively revised guidelines, the guidelines mentioned at **Part A** of **Annexure-1** continue to remain in operation for the time being till these are also comprehensively revised, whereas those mentioned under **Part B** of

Annexure-1 are superseded. These guidelines shall take effect from the date of issue.

15. Savings:

The Ministry has been issuing guidelines on the subject of Land Acquisition from time to time based on clarifications/ developments as these came along, which may have resulted in higher outgo on account of amounts of compensation paid to the landowners. Since it is practically not feasible to recover any such excess paid amount from the landowners/ interested persons, it is clarified that any compensation amount paid in the past in terms of guidelines issued by the Ministry from time to time, and which may not be payable in terms of these revised guidelines, shall be deemed to have been paid as per the extant guidelines and shall not be called into question on account of these revised guidelines.

16. These guidelines, which issue with the approval of the Hon'ble Minister, Road Transport & Highways, may be brought to the notice of all concerned for further necessary action and strict compliance.

Yours faithfully,
sd/-
(Amit Kumar Ghosh)
Joint Secretary to the Government of India
Tel No. 011-23718527

Enclosures - As Above

Copy for necessary action to:-

1. Director General (Roads Development) & Special Secretary, MoRT&H
2. All the Addl. Director Generals of MoRTH;
3. CE (P-1)/ CE (P-2)/ CE (P-3)/ CE (P-4)/ CE (P-5)/ CE (P-6)/ CE (P-7)/ CE (P-8)/ CE (LWE)/ CE (SARDP- NE)/ CE (NHDP- IVA)/ CE (Mon.)/ CE (Planning)
4. All ROs/ ELOs/ PIUs of the MoRT&H/ NHAI/ NHIDCL

Copy for information to:

1. PS to Minister (RTH&S)
2. PS to MoS (RTH&S)
3. Sr. PPS to Secretary (RT&H)
4. PPS to AS & FA.

Annexure- 1		
Guidelines/ Instructions issued by the Ministry of Road Transport & Highways from time to time		
Sr. No.	Subject	Date of Issue
A.	Previous Guidelines that continue to operate	
(i)	RFCTLARR (Amendment) Ordinance, 2015	03.04.2015
(ii)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – First Schedule reg.	29.04.2015
(iii)	RFCTLARR (Amendment) Second Ordinance, 2015	30.05.2015
(iv)	RFCTLARR (Removal of Difficulties) Order, 2015	28.08.2015
(v)	Acquisition of missing plots through consent reg.	15.03.2016
(vi)	Guidelines for monitoring of Land Acquisition for NH Projects – engagement of consultant reg.	19.04.2016
(vii)	Facilities to CALA and TILR reg.	16.06.2016
(viii)	Guidelines for monitoring of Land Acquisition for NH Projects – appointment of additional CALA reg.	20.07.2016
(ix)	Facilities to arbitrator reg.	04.10.2016
B.	Previous Guidelines which stand superseded	
(i)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – Multiplication factor reg.	12.08.2015
(ii)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – Second and Third Schedule reg.	11.09.2015
(iii)	Acquisition of land for NH Projects – Return of unutilized land reg.	09.12.2015
(iv)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – Section 24 reg.	13.01.2016
(v)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – Multiplication factor reg.	31.03.2016
(vi)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – Multiplication factor reg.	08.08.2016
(vii)	Administrative charges and other charges payable to State Government reg.	17.10.2016
(viii)	Applicability of Interest in determination of amount payable as compensation	07.09.2017
C.	Acquisition of land through consent as per concerned State Government - reg.	
(a)	Kerala, Chhattisgarh	02.08.2016
(b)	West Bengal, Uttar Pradesh, Telangana, Punjab	03.08.2016
(c)	Rajasthan, Goa, Odisha	24.08.2016
(d)	Bihar	29.08.2016
(e)	Maharashtra, Himachal Pradesh	26.09.2016
(f)	Karnataka	16.11.2016
(g)	Madhya Pradesh	06.09.2017

Annexure – 2		
Guidelines/ Instructions issued by the Department of Land Resources, Ministry of Rural Development, Government of India on the subject of land acquisition from time to time		
Sr. No.	Subject	Date of Issue
(i)	Applicability of RFCTLARR Act 2013 to Land acquisition under the NH Act, 1956 – First Schedule - reg.	29.04.2015
(ii)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – Second and Third Schedule - reg.	11.09.2015
(iii)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – First Schedule - reg.	13.01.2016
(iv)	Applicability of the Multiplying factor provided in the First Schedule to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013	F. No. 13013/02/2016-LRD dated 8 th May 2017
(v)	Notification of the multiplying factor provided in the First Schedule to the RFCTLARR Act, 2013	F. No. 13013/02/2016-LRD dated 14 th December 2017



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Ministry of Road Transport and Highways
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