Land Acquisition Law - Central’s attempt to dilute

Why in news?

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The centre encouraged States to draft and pass their own laws for land acquisition and get them approved.

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What is the issue?

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- The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015 was introduced in the Lok Sabha February, 2015 amends LARR Act, 2013. It was passed only in Lok Sabha but not in Rajya Sabha.
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- Therefore Finance Minister, in an attempt to bypass Parliament, encouraged States to draft and pass their own laws for land acquisition and get them approved by the Centre.
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- Following this, Tamil Nadu and Gujarat have moved ahead with their amendments, Rajasthan has a Bill ready and Telangana is working on its version.
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What is its legality?

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- Though land is a state subject, "**acquisition and requisitioning of property**" is in the concurrent list.
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- Article 254(1) of the Constitution states that if there exists a Central law on a concurrent subject, then a State law cannot override it.
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- However, Article 254(2) provides that if a State law receives presidential assent after due consideration, then it can apply in contravention to the Central law in that particular State.
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What are the concerns?

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These laws now passed by states allow for the acquisition of land in the States **without having to satisfy any of the crucial safeguards** built into the 2013 Central law, such as the right to consent, social impact assessment and, in the case of Tamil Nadu, even rehabilitation and resettlement. Apart from the obvious setback in provisions, there are also grave jurisprudential concerns.

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- **Undermining Parliament** - Parliament passed the law in the exercise of its sovereign power bestowed on it by the Constitution. A hard-fought consensus was achieved that was widely held to be in the larger public interest. It cannot be diluted by misuse of a constitutional provision cannot and should not go unchecked.
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- **Wrong precedence** - Wherever a Central government lacks the numbers to pass a law (on a concurrent subject) in Parliament or is faced with public opposition, it will concede the authority to States to pass the laws as they see fit and get the President to approve them.
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- **Wrong interpretation** - Article 254(2) was never intended, even in its broadest interpretation, to weaken Central laws merely because they were found to be inconvenient. It was intended to bring in changes to Central laws if there was a genuine hurdle in implementing them in a particular State due to challenges peculiar to that region.
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- The move to amend LARR Act 2013 was followed by a massive nationwide backlash which unified opposition parties across the ideological spectrum and the Supreme Court refused to entertain challenges to various provisions of the 2013 law. Thus it clearly suggests that the law was constitutionally sound and the public mandate was overwhelmingly against such amendments.
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- **Legality** - Also Supreme Court of India had earlier struck down the attempts

of the government to pass off what is known as **“colourable legislation”** i.e laws the government is not qualified to pass, that is disguised as other laws. It clearly states that **what the government cannot do directly, it cannot do indirectly**. Therefore an attempt to weaken a state law against the larger public interest is nothing short of such an abuse.
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- **President’s assent** - The Supreme Court in Kaiser-I-Hind Pvt. Ltd. v. National Textile Corporation (2002) held that the words “**reserved for consideration**” in Article 254(2) would “definitely indicate that there should be the active application of mind by the President to the repugnancy… and the necessity of having such a law, in facts and circumstances of the matter… The word assent is used purposefully indicating the affirmative action of the proposal made by the State for having law repugnant to the earlier law made by the Parliament. This cannot be done without consideration of the relevant material.”
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- Therefore it is clear that the **President must act deliberately and consciously and not merely on the advice of the Council of Ministers.** The newly enacted State laws on acquisition curtail and suspend the statutory right to give consent to an acquisition and the need to carry out a social impact assessment. The President is required to examine if compelling reasons to sanction such a significant deviation exist.
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- Also the Supreme Court in the Kaiser-i-Hind case held that granting of assent under Article 254(2) is not exercise of legislative power of President as under Article 123 (Ordinance Power) but is part of the legislative procedure. Whether procedure prescribed by the Constitution before enacting the law is followed or not can always be looked into by the Court.” Therefore if the procedure which requires thorough reflection and conscious application of mind by the President was observed is subjected to judicial review.
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