

Participation and Perception of Project Affected People in SIA process under RFCTLARR Act 2013

ABSTRACT

Undoubtedly, growing urbanisation, increasing of infrastructure requirement and rapid economic development has imposed high pressure on land in India. Private land is regularly acquired for both State-sponsored development and private projects, which is increasingly become contentious. Compulsory acquisition of land till the end of December 2013 is primarily governed by the Land Acquisition Act, 1894, which is century-old legislation enacted in the very different social, economic and political milieu. Post-independence period Indian Government has not fundamentally changed the acquisition policy to reflect the values and needs of our times, which has resulted in legal, social, cultural, economic and political fallouts. Land Acquisition Act, 1894 is needed for public purpose and economic development, but it is deficient in many respects. In this background the colonial Land Acquisition Act, 1894 was repealed and replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act.2013. It is now settled that whatever State or Government acquires land from its citizens for public purpose, it has power to do so. The jurisprudence that has developed around colonial Land Acquisition Act, 1894 over the years on this subject has made the citizen, a subject. The colonial mind-set is that all pervasive under the Act was reflected in practice and even the judiciary in some cases has inadvertently furthered this notion. Thus, it becomes imperative to scrutinize the law and test it, against the contemporary democratic values. However, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 made an attempt to balance within the larger political context of land acquisition in India. Through the land acquisition how people be affected to be estimated by SIA study suggested in The RFCTLARR Act 2013. But the entire SIA process can be succeed when all the stakeholders in general and the project affected people or families in particular to be participated fully during the implementation of the project. The current paper have studied the participation and perception of project affected families in different projects implemented by Government of Odisha.

Keywords: RFCTLARR Act 2013, Social Impact Assessment, Land Acquisition, Project Affected People, public hearing.

INTRODUCTION

Land is a valuable asset and a cushion against economic insecurity, basically in majority of the cases – in the rural areas. People also have emotional attachment to land; more so to ancestral land and it is a symbol of socio-economic status in the village community. The value of land is augmented when some improvements are made on it by putting an extra effort in terms of levelling, preserving and enhancing soil health and fertility and constructing water management sources and structures, as is the case with farm land and making it habitable in the case of homestead land. Most often land records are not updated and / or traceable leading to suspicion among the holders as to the receipt of due compensation in the event of acquisition. There are two major causes of people's unwillingness and (sometimes) resistance against land acquisition. First, there is a wide fear of slow processing with regard to the compensation dispensation. Second, land-losers are worried whether the compensation will be adequate for their losses.

The acquisition of land is primarily have impacts on the income and livelihoods of those who are dependent on it. Hence the Land Owners-cum-Owner Farmers and the Agricultural Labour households are the two groups who suffer due to the problem that will arise from land acquisition. The Land owners or the farmers have invested in several immovable assets in their fields that will be affected due to land acquisition. Some of the assets may be linked to direct income (like fruit bearing trees) and others are productivity-enhancing assets to increase farm outputs (like tube wells, water harvesting structures etc.). Some trees are also having great religious significance for the farming community. Another community those are depending on land they are agricultural labourers, who

work on others' farm in exchange of wages. Hence, land acquisition will impact on the land owners and agricultural workers. Since agricultural labourers belong to the lower socio-economic strata, they will be worst affected by the land acquisition.

Assessment of social impact of an infrastructure development project needs to be done in line with the law of the land and in compliance with the government guidelines. Since land acquisition is a necessary concomitant of a public infrastructure project, the land losing households who bear the brunt of loss of property, including dwellings and livelihood in many cases, have to be reasonably compensated.

“The Constitution of India originally provided the right to property under Articles 19 and 31; Article 19 guaranteed that all citizens have right to acquire, hold and dispose of property while Article 31 stated that “no person shall be deprived of his property save by authority of law”. It also provided that compensation would be paid to the person whose property has been acquired for public purpose”. [1]

“The Land Acquisition Act, 1894 was repealed and replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013”. [2]“The Act came into force on 1st January 2014 and is designed to regulate acquisition of land by Central and State Governments, except Jammu and Kashmir, for purposes of industrialization, infrastructural development and urbanization. The Act has taken into account the essence of Panchayat Extension to Scheduled Areas (PESA) Act, 1996. This Act ensures consultation with the institutions of Local Self Government and Grama Sabha established under the Constitution”. [3] The Act ensures, “a human, participative, informed and transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization with the least disturbance to the owners of the land and other affected families and provide just and fair compensation”[3]. “It has made adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that affected persons become partners in the development leading to an improvement in their post-acquisition social and economic status. The provisions of this Act shall apply to land acquisition by government for strategic purposes and infrastructural development”[4].

STUDY OBJECTIVES

The objectives are spelt out as given below:

- 1) The primary objective of this study is to understand the processes follows for Social Impact Assessment (SIA) under RFCTLARR Act 2013
- 2) To critically examine the significance of the participation of the affected people in the process of SIA under RFCTLARR Act 2013
- 3) To explore the perception of the Project Affected People in SIA process under RFCTLARR Act 2013

METHODOLOGY

The information/data for the study was collected from primary and secondary sources. The secondary sources included; Publications, web resources and other secondary sources. A survey instrument was developed for collecting the opinions of project affected people. In addition, field visits were undertaken to selected districts to collect data. The field visits involved semi-structured interviews with representatives of key stakeholders and along with FGDs (the author was involved for the SIA study of five projects in four districts of Odisha state).

SOCIAL IMPACT ASSESSMENT AND ITS' NEED

The loss of private assets resulting in loss of income and displacement makes social impact assessment an important input in project design while initiating and implementing developmental interventions. An understanding of the issues related to social, economic and cultural factors of the affected people is critical in the formulation of an appropriate rehabilitation plan. For project design to be sensitive to social development issues, a thorough social impact assessment (SIA) must be

conducted. SIA further helps in increasing the project's advantages to the underprivileged and vulnerable while reducing or mitigating concerns, risks and adverse impacts.

SIA PROCESS UNDER RFCTLARR ACT 2013

Preliminary procedure before SIA study

- Upon receiving the application in "form A," which must be completed in all respects, the district collector will review it quickly and, if satisfied, forward it to the authority conducting the SIA study, along with a copy to the department that deals with land acquisition and the department that the project is related to.
- The Tahsildar will get the land details from the district collector in order to update the Record of Rights for the proposed project area.
- Before conducting SIA study a notification under section 4 (1) is issued by the appropriate government prescribing the manner in which the study shall be conducted and the date of commencement. [5]

Preparation of SIA study

- Following acceptance of the District Collector's proposal, the State SIA unit will draft a comprehensive set of project-specific Terms of Reference (TOR) (*Nabakrushna Choudhury Centre for Development Studies (NCDS)* in Odishais the State Nodal Agency for conducting SIA Study. NCDS has identified 38 independent agencies to conduct the study in different parts of the State on its behalf.). [6]
- The state government shall issue notification under sec.4 (1) on receipt of intimation from the authority conducting SIA study.

Mandatory Public Hearing

- A public hearing will be conducted in the impacted region to gather the opinions of the impacted families, which will be documented and incorporated into the Social Impact Assessment Report (Under Sec 5).
- "Under sec 6, the appropriate government must see to it that the Social Impact Management Plan (SIMP) and the study report for the Social Impact Assessment are created and made available in the local language". [7]

APPRAISAL OF SOCIAL IMPACT ASSESSMENT REPORT BY AN EXPERT GROUP.

A self-governing multidisciplinary expert group comprising (i) two non-official social scientists, (ii) two representatives of local bodies, such as a panchayat, gram Sabha, municipality, or municipal corporation, as applicable, (iii) two experts on rehabilitation, and (iv) a technical expert in the project-related field, is tasked with evaluating the SIA Report under section 7. A member of the Expert Group may be proposed by the appropriate Government to serve as the Group's Chairperson.

EXAMINATION OF PROPOSALS FOR LAND ACQUISITION AND SOCIAL IMPACT ASSESSMENT REPORT BY APPROPRIATE GOVERNMENT.

(1) The appropriate Government shall ensure that—

- a) There is a legitimate and bona fide public purpose for the proposed acquisition which necessitates the acquisition of the land identified;
- b) The potential benefits and the public purpose referred to in clause (a) shall outweigh the social costs and adverse social impact as determined by the Social Impact Assessment that has been carried out;
- c) Only the minimum area of land required for the project is proposed to be acquired;
- d) There is no unutilised land which has been previously acquired in the area;
- e) "The land, if any, acquired earlier and remained unutilised, is used for such public purpose and make recommendations in respect thereof". [8]

(2) The appropriate government will review the reports from the Expert Group and the Collector, if any, on the Social Impact Assessment study. After weighing all of the information, it will suggest an acquisition area that will minimize adverse effects on the affected families as well as infrastructure and ecological disruption and minimum relocation of people.

(3) The decision of the appropriate government will be published in the affected areas in the prescribed manner and uploaded on the relevant government's website. It will also be made available in the local language to the Panchayat, Municipality, or Municipal Corporation, as applicable, as well as the offices of the District Collector, Sub-Divisional Magistrate, and Tehsil.

With the caveat that the appropriate Government must also determine whether the affected families' prior consent, which is required by the proviso to sub-section (2) of section 2, has been obtained in the manner that may be prescribed when land is sought to be acquired for the purposes listed in that subsection's (2).

EXEMPTION FROM SOCIAL IMPACT ASSESSMENT

When it is suggested that land be purchased under section 40's urgency provisions, the appropriate government may decide to waive the need that a Social Impact Assessment be conducted.

TIMELINE OF THE LAND ACQUISITION PROCESS UNDER RFCTLAR&R ACT, 2013. [9]

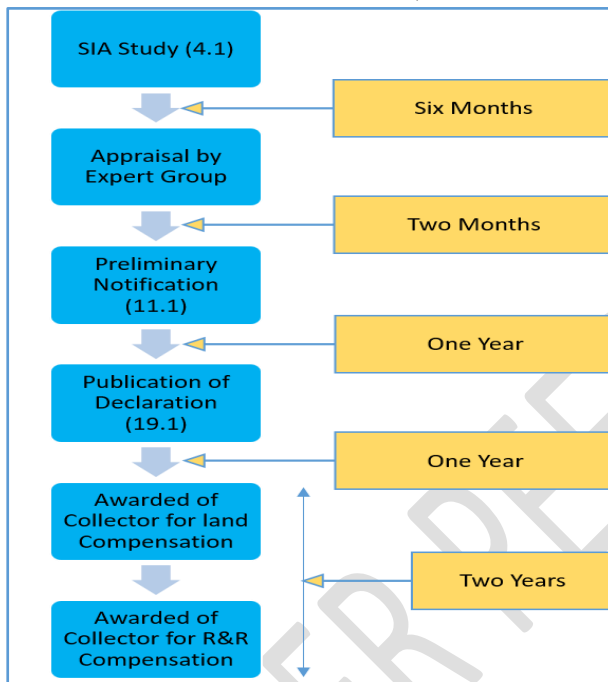


Fig . 1 Study protocol

Ref: relevance and process of SIA study under RFCTLAR&R act, 2013, Project report, (Submission for completion of Induction Training) S.N. Tandi, AddITahasildar, Komna.

PARTICIPATION OF PROJECT AFFECTED PEOPLE IN SIA PROCESS

- **Who is Project Affected People?**

For purposes of the Social Impact Assessment, to assess the project impact household/ family is considered as a unit. Households listed in the land schedule to be acquired categorized as Project Affected Families (PAF) according to RFCTLA R&R Act 2013. PAF is defined as "Families who are losing their income, partially or fully, due to loss of land in the acquisition are considered as PAFs. The severity of the effect can be further categorized based on the extent of loss of land under cultivation (either partial or full). If a family is losing their total land under cultivation, then it is considered as fully affected else partially affected" whereas PDF (Project Displaced Families) is defined as "Families losing their dwelling and livelihood due to land acquisition and are displaced from their habitation are considered as Project Displaced Families".

- **Participation of Project Affected Families (PAF)**

The need of participation of Project Affected Families (PAF) in SIA under RFCTLA R&R Act, 2013 is probably most widely recognized, for several reasons. First, PAF involvement process provides an opportunity to them to identify and understand the economic, environmental and social impacts of a proposed project. Comprehensive PAF participation can help identify potential negative impacts of the proposed projects. Therefore, decision-making need to follow the basic environmental observation of the proposed sight and cultural heritage to be considered a basic input which influences the decisions.

An effective SIA seeks to identify both the indirect and direct effects of the project to ensure accuracy in cost benefit analysis. PAF participation can reduce and compromise the key conflict issues with the project executor. It also increases their awareness of the project and identifies opportunities for community ownership such as citizen monitoring of the project. PAF participation can foster a more effective integration of economic, social and environmental [10] concerns regarding infrastructure development.

SIA AND PUBLIC PARTICIPATION

“Land acquisition remains at the centre of many controversies and public policy paralysis in India. There are very few public policy issues in India that rival land acquisition in terms of its complexity, challenges and significance to country’s growth and transition to more urbanised and industrialised status. RFCTLA R&R Act, 2013 has many provisions in which public involvement is made Compulsory. The entire process of socio- economic and Social Impact Assessment and formulation of R & R Plan entails regular engagement with the affected communities. As a matter of fact, community engagement is now an integral and the most important part of SIA as per RFCTLA R&R Act, 2013”. [10]

“Public participation is a process that enables the project or policy outputs proposed through social impact assessment to be supported by large communities, and this process continues throughout the life of the project. Public participation serves as a tool to educate the community about the potential benefits and damages of the proposed project. Public participation creates increased community awareness of the current situation for the future for the affected population before a final decision is made. In addition, the public participation process can serve as a valuable data collection tool on specific social impact assessment variables”. [10]

“Social impact assessment is a systematic process that tries to determine the day-to-day effects on the quality of life of people affected by the environment by physical development and policy change. Social impact assessment identifies the current situation and predicts potential impacts on the community after the project is implemented. Impact assessment is important in monitoring and measuring against actual and predicted social impacts”. [10]

Participation of project affected families during SIA study under RFCTLA R&R Act, 2013 is an integral part of the study. PAF are participating during household survey, general infrastructure survey, focused group discussion (FGD) and Public Hearing meetings. These are the platforms and opportunities given by the RFCTLA R&R Act, 2013 to elucidate the opinions of both direct and indirect stakeholders of the projects.

PERCEPTION OF PROJECT AFFECTED PEOPLE

As of discussed in methodology, the researcher was involved in SIA studies at several districts of Odisha for acquisition of land for various developmental projects like; Widening to 2-Lane of Vijayawada-Ranchi Corridor, Construction of Approach Road to HL Bridge over River Mahanadi, Construction of Proposed ROB in lieu of L.C. No. JT-60 at Km 623/11-12 between Bargarh Road and Barpali Station, Construction of Sanamuligaon MI Project, Construction of Chheligarh Irrigation Project etc. and covered 1134 numbers of Project Affected Families from 14 numbers of villages for acquisition of 86.236 Acres of land and gained the experience to know their **perception** on the project. These were the eye opening messages for policy makers as well as the project proponents to make people friendly plans for providing justice to the affected people. The followings are few perceptions listed to know the feelings of the PAF:

The abstract of the feelings of people about the project are given below.

Due to land acquisition the affected families will lose their livelihood and employment and geographically detached with the ancestry secured properties and establishment. Cracks in kinship will be a major impact as loss of land may lead to dispersal of extended families across space and quarrels over share in compensation. Family violence and crime may be an offshoot of this impact. Increase in consumption of alcohol will be a likely impact as perceived by many. This is because compensation receipts may be celebrated and alcohol may be used to settle scores in respect of share in compensation. Most of the land losing households will be in stress because they will be losing land that they cultivated for years, decades and over generations. Another source of stress may be the amount of compensation and uses to which they may be put to. Many perceived a favourable impact on the local economy due to improvement in irrigation of the lands and growth of volume of production due multi-crop by improving the land quality. A general feeling among the affected households is that the compensation amount is low compared to rocketing increase in the price of land in the real-estate market. The perception of non-land losing households in the village is more or less similar to those expressed by the land losing households excepting that they will be directly benefitted by the improvement of irrigation system due to land acquisition. They apprehend undervaluation because land transactions are made at prices that are invariably much higher than that recorded in the sale deeds. This people do to evade registration fees that are to be paid on the amount quoted on the deeds.

CONCLUSION

Even if development projects provide wealth, they also negatively alter the sociocultural practices and patterns of livelihood in the community, disproportionately affecting the weaker sections. In the twenty-first century, displacement brought on by development also poses a serious threat. All of these could lead to acquisition opposition and delay project execution. One attempt to overcome these constraints in a participatory manner is the Social Impact Assessment included in the RFCTLARR Act, 2013. Land acquisition SIAs are difficult to conduct because there are many parties involved, some of whom have competing interests. To reduce opposition and create a win-win situation, SIA should be conducted comprehensively, accounting for all affected families who depend on the land to be acquired. To do this, it is essential to inform the public about the advantages and disadvantages of land acquisition and involve them in the decision-making process by adhering to SIA's correct procedures.

RECOMMENDATION

It is recommended that valuation of the land proposed to be acquired may be made by taking into account the actual market value prevalent in the area which stands higher than the benchmark value documented in the records of the Sub-Registrar Office. In households surveys, in Focused Group Discussions, and in conversations with various eminent persons, certain concerns were raised which need to be addressed in the context of land acquisition as follows:

- a) As opined by the affected people, there should be followed a hassle-free payment procedure.
- b) Payment procedure of compensation should be made as soon as preliminary notification U/s – 11 (1) and completion of RoR authentication process.
- c) During the construction phase the project proponent should ensure that, the executor/ contractor should engage the local people based on their existing skill and knowledge.
- d) Most of the land records are not updated which needs updating before payment of the compensation.
- e) The project affected families should be participate and present during physical survey as per the proposed layout plan prepared by the project proponent.
- f) Any remaining portion of the land which is rendered useless after the proposed acquisition plan should also be acquired along-with.
- g) Grievances redressal mechanism should be prompt and faster so that disputes are quickly settled. It is suggested decentralised grievance redressal system should be made to reduce the time of affected people to run after offices.

- h) The actual owner or their representative should be present or invited by the appropriate authority of the project during the time of measurement of the land and building which is supposed to be acquired.

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