

RELEVANCE AND PROCESS OF 'SIA' STUDY UNDER THE RFCTLAR&R ACT, 2013

Submitted by:

Swarup Nandan Behera

Land Officer, O/o The Addl. Asst. Commissioner of Endowments,
Cuttack

REVENUE OFFICERS' TRAINING INSTITUTE, GOTHAPATNA

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ABSTRACT:

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013 has brought about a paradigm shift in land acquisition process in India. Acquisition of land in a developing economy like India is essential for infrastructure development, urbanization and industrialization which have a multiplier effect on economic development. Development projects though important in the long run, create significant changes in the daily lives of local population. Land acquisition for such projects displaces many and causes loss of livelihoods in the short run, which also creates resistance. The imperfect nature of land market also creates additional bottlenecks for efficient land transfer. The RFCTLARR Act 2013 proposes for Social Impact Assessment (SIA) study to map and estimate costs and benefits to the people affected through the acquisition. While discussing the specific issues in land acquisition and identifying challenges in carrying out SIA study in Odisha, the present paper proposes conducting SIA in a comprehensive and participatory way to assess the impact, make people aware and minimize resistance.

INTRODUCTION:

In 21st century land has emerged as a critical resource with respect to managing economic development, rapid urban expansion and industrialization; ensure food security as well as addressing the issue of sustainable development and climate change. Apart from economic considerations, people attach significant social and cultural values to it. Further, accessibility to land is not only economically important to the people; it also leads to a host of other benefits.

For a developing state like Odisha, the problem has multiple impacts on implementation of development projects and attracting industrial investment. The unique characteristics of land, which is physically limited, immovable and cannot be produced and reproduced, has made pricing of land a critical exercise, especially in an imperfect land market like India. On the other hand, any development project brings with itself promise of prosperity, employment opportunities and better connectivity which have multiplier effects on economic development of the region. But alongside these positives, the displacement of vulnerable groups, loss of livelihoods for a certain section of society and disruption in daily socio-cultural activities also take place. Most of these negative consequences emerge from land being acquired from local population to set up plants, construct roads and bridges etc.

Post The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013, there has been a change in paradigm of land acquisition especially in the context of compensation, rehabilitation and resettlement issues. Social Impact

Assessment of projects has become critically important and determining factor for land acquisition. The RFCTLARR Act has created avenues to minimize conflicts related to land acquisition through the provision of Social Impact Assessment (SIA) study of each project before acquisition for public purpose. The SIA study can question the justification provided for public purpose, suggest alternative mechanism and can even recommend dropping the whole acquisition process. Given the importance of SIA study for land acquisition, the present paper attempts to explore the conceptual background, issues and challenges involved in conducting such a study in India in adherence to the RFCTLARR Act, 2013.

Social impact assessment for Land Acquisition: The Legal Framework

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013 came into force since 1 January, 2014 to ensure, in consultation with institutions of local self-government and *Gram Sabhas* established under the Constitution, a humane, 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 to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post-acquisition social and economic status and for matters connected therewith or incidental thereto.

As per the Section 4 of the said Act, it has become mandatory to conduct SIA before acquisition of land. As per the Act, the Social Impact Assessment study shall include all the following, namely

- a. Assessment as to whether the proposed acquisition serves public purpose
- b. Estimation of affected families and the number of families among them likely to be displaced
- c. Extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition
- d. Whether the extent of land proposed for acquisition is the absolute bare minimum extent needed for the project
- e. Whether land acquisition at an alternate place has been considered and found not feasible
- f. Study of social impacts of the project, and the nature and cost of addressing them and the impact of these costs on the overall costs of the project vis-a-vis benefits of the project

Provided that Environmental Impact Assessment study, if any, shall be carried out simultaneously and shall not be contingent upon the completion of the Social Impact Assessment study.

The SIA should take into consideration the impact that the project is likely to have on various components such as livelihood of affected families, public and community properties, assets and infrastructure particularly roads, public transport drainage, sanitation, sources of drinking water, sources of water for cattle, community ponds, grazing land, plantations, public utilities such as post offices, fair price shops, food storage godowns, electricity supply, health care facilities, schools and educational or training facilities, anganwadis, children parks, places of worship, land for traditional tribal institutions and burial and cremation grounds. The said Act also proposes a Social Impact Management Plan, listing the ameliorative measures required to be undertaken for addressing the impact for a specific component referred above.

The Government shall take adequate measures to conduct 'public hearing' before SIA to include opinion of all stakeholders and shall ensure wide dissemination and publication of SIA report especially in the affected area. The process is definitely a time consuming affair and there are counter arguments regarding the dropping of provision of SIA in the recent ordinance to save time and expedite the project implementation. Alternatively it is also argued that the SIA process involves local community in information sharing and decision making which includes affected parties in deciding on the indicators and measures of social effects, evaluating their relative importance and monitoring the effects during implementation. However, lack of these exercises may lead to acrimonious confrontation between developers and indigenous populations. Keeping in mind the importance of land for economic development through infrastructure enhancement, urbanization or industrialization, the legal provision of SIA for land acquisition in the said Act is to minimize resistance through more participative approach. The SIA is also a novel effort to minimize the crisis of development-induced displacement through involvement of local people in decision making and has provision for preparation of rehabilitation and resettlement plan.

Social Impact Assessment: The Conceptual Framework

Social Impact Assessment (SIA) is analyzing, monitoring and managing the social consequences of development. The goal of impact assessment is to bring about a more ecologically, socio- culturally and economically sustainable and equitable environment. Impact assessment, therefore, promotes community development and empowerment, builds capacity and develops social capital. Moreover, SIA not just identifies and analyzes negative and harmful outcomes, but also focuses on maximizing the positive outcomes.

The purview of social impact extends beyond livelihood and financial security. It encompasses people's way of life – the way they live, work, play and interact with community; their cultural and religious beliefs; their interaction with political systems; their health and wellbeing; their interactions with environment; their personal and property rights; their fears

and aspirations. Projects that cause involuntary resettlement, impact the daily lives of local communities as in the case of large scale dams and power projects as well as road and bridge projects. Most adversely impacted groups are the vulnerable sections like landless labourers, daily wage earners, socially backward communities, elderly persons and the ultra-poor.

Core Values of Social Impact Assessment

- There are fundamental human rights that are shared equally across cultures, and by males and females alike
- There is a right to have those fundamental human rights protected by the rule of law, with justice applied equally and fairly to all, and available to all
- People have a right to live and work in an environment which is conducive to good health and to a good quality of life and which enables the development of human and social potential
- Social dimensions of the environment – specifically but not exclusively peace, the quality of social relationships, freedom from fear, and belongingness – are important aspects of people's health and quality of life
- People have a right to be involved in the decision making about the planned interventions that will affect their lives
- Local knowledge and experience are valuable and can be used to enhance planned interventions

SIA seeks to assess, in advance, the social repercussions that are likely to follow from projects undertaken to promote development, such as dams, mines, industries, highways, ports, airports, urban development and power projects. Identifying potential impacts is an important part of the planning process. SIA is a key component to successful policy development and project implementation. SIA process uses local knowledge in the decision process hence is more robust and reliable. The Public Involvement component of SIA makes it possible to enrich the knowledge based on local realities, which in turn helps in decision making.

SIA in the era of RFCTLARR Act 2013: Process, challenges and way forward

Land acquisition and Environmental issues are one of the largest sources of delay in most infrastructure projects in India. A number of Airport, SEZ, IT Park, Chemical plant and other projects are stalled in the country due to issues in land acquisition. In most such cases, the local community and land owners lead the protest due to unfair compensation and large scale displacement without any alternative for rehabilitation and resettlement. The RFCTLARR Act 2013 has mandated that an SIA be carried out whenever either a new project or expansion of an existing project is undertaken. The Act clearly states that the SIA should be done by not just consulting *Gram Sabha* or representatives from the affected area but by reaching a consensus or getting the consent by majority of *Gram Sabha* members. For Public Private Partnership (PPP) projects, the level of consent of land owners required is 70% while it is 80% in the case of Private projects. At least 50% of the total members of *Gram Sabha* and one third of

the total women members of *Gram Sabha* must be present in consent meetings.

The various aspects that can be studied in an SIA study for projects involving land acquisition, comprise, but not limited to:

- Attitude of local community towards the proposed project
- Unavoidable adverse effects like disruption in living and movement patterns, alteration in family structures, disruption of social networks, changes in public safety & health and changes in leisure activities
- Impact on Land, Livelihood and Income
- Anticipated changes in living costs, occupational choices and wage / income patterns
- Impact on physical resources – natural resources and common property resources
- Impact on private assets, public services and utilities – health, education, housing, electricity, water supply, roads, sanitation, waste management
- Impact on health-migration, vulnerable sections
- Effects on known cultural, historical, sacred and archaeological resources
- Impact on culture and social cohesion

In order to examine the above aspects, in-depth research needs to be done on the following variables in the affected area:

- Demographic profile – age, sex, caste, religion, literacy, health and nutritional status
- Poverty levels – Income, Expenditure, MPI
- Identification of vulnerable groups - Elderly, Women headed households, Differently abled persons
- Kinship pattern and women's role in family
- Social and cultural organisation
- Administrative organisation
- Political organisation
- Civil society organisations and movements
- Land-use and livelihood
- Local economic activities
- Factors that contribute to local livelihood
- Quality of Living Environment: Perceptions, Safety Issues

Also, the following information needs to be collected in order to estimate the magnitude of the impact by land acquisition:

- Current nature / classification of land units
- Size of holdings, ownership patterns, land distribution, number of residential houses, and public and private infrastructure and assets
- Number of families and persons directly or indirectly affected by land acquisition through:
 - Loss of Residential facility
 - Loss of Livelihood
 - Loss of Agricultural opportunity

There are a number of challenges in conducting an SIA study. One of them is the

involvement of multiple stakeholders, sometimes having conflicting interests. As land is a limited and mostly inherited resource, people attach a lot of economic and emotional significance to it. In the situation of their land being acquired, many people fail to see the future benefits of the industrial projects and oppose the land acquisition process. Many a times, there is also an uncertainty about receiving proper compensation for the land being acquired, which leads to confusion and protests. Unavailability of updated land records is another major hurdle in conducting an SIA study. Most of the written records are decades old and have become obsolete in present times. Deciding title holder for the land in these cases appears to be a major hurdle and invites disputes. Another hurdle is to cater to the sharecroppers dependent upon the land to be acquired. They are mostly oral share croppers which makes it difficult to identify them properly and establish their rights for compensation.

The landless agricultural labourers working on the land or as petty businessmen, artisans etc. are another set of people whose livelihood would be at stake due to the acquisition. These people need to be identified carefully to protect their rights. As the new Act has created provision for compensation for all the people affected directly or indirectly, identification of these sets of people under SIA study and estimates of their loss from the acquisition as well as expected gain from the acquisition are two of the most challenging areas. In such a scenario, multiple focus group discussion with all the affected people, ensuring their participation and accounting for their concern along with a census survey approach to map vulnerability, loss and gain from the project are suggested in order to document the concerns of the people, accommodate them in decision making process, as well as identify legitimate claimants dependent on the land to be acquired. This process requires extensive awareness of the people through sharing information, which might reduce resistance in the acquisition process.

PROCESS OF SIA STUDY

Nabakrushna Choudhury Institute of Developmental Studies (NCDS), Bhubaneswar is the State Nodal Agency for conducting SIA Study. NCDS has identified 32 independent agencies to conduct the study in different parts of the State on its behalf.

Preparation of Social Impact Assessment study

According to Section 4 of the RFCTLARR Act, 2013

1. Whenever the appropriate Government intends to acquire land for a public purpose, it shall consult the concerned Panchayat, Municipality or Municipal Corporation, as the case may be, at village level or ward level, in the affected area and carry out a Social Impact Assessment study in consultation with them, in such manner and from such date as may be specified by such Government by notification.

2. The notification issued by the appropriate Government for commencement of consultation and of the Social Impact Assessment study under sub-section (1) of section 4 of the RFCTLARR Act, 2013 shall be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed, and uploaded on the website of the appropriate Government:

Provided that the appropriate Government shall ensure that adequate representation has been given to the representatives of Panchayat, Gram Sabha, Municipality or Municipal Corporation, as the case may be, at the stage of carrying out the Social Impact Assessment study:

Provided further that the appropriate Government shall ensure the completion of the Social Impact Assessment study within a period of six months from the date of its commencement.

3. The Social Impact Assessment study report referred to in sub-section (1) of section 4 of the RFCTLARR Act, 2013 shall be made available to the public in the manner prescribed under section 6 of the RFCTLARR Act, 2013.

4. The Social Impact Assessment study referred to in sub-section (1) of section 4 of the RFCTLARR Act, 2013 shall, amongst other matters, include all the following, namely:—

- Assessment as to whether the proposed acquisition serves public purpose;
- Estimation of affected families and the number of families among them likely to be displaced;
- Extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition;
- Whether the extent of land proposed for acquisition is the absolute bare-

minimum extent needed for the project;

- whether land acquisition at an alternate place has been considered and found not feasible;
- Study of social impacts of the project, and the nature and cost of addressing them and the impact of these costs on the overall costs of the project *vis-a-vis* the benefits of the project:

Provided that Environmental Impact Assessment study, if any, shall be carried out simultaneously and shall not be contingent upon the completion of the Social Impact Assessment study.

5. While undertaking a Social Impact Assessment study under sub-section (1) of section 4 of the RFCTLARR Act, 2013, the appropriate Government shall, amongst other things, take into consideration the impact that the project is likely to have on various components such as livelihood of affected families, public and community properties, assets and infrastructure particularly roads, public transport, drainage, sanitation, sources of drinking water, sources of water for cattle, community ponds, grazing land, plantations, public utilities such as post offices, fair price shops, food storage godowns, electricity supply, health care facilities, schools and educational or training facilities, anganwadis, children parks, places of worship, land for traditional tribal institutions and burial and cremation grounds.

6. The appropriate Government shall require the authority conducting the Social Impact Assessment study to prepare a Social Impact Management Plan, listing the ameliorative measures required to be undertaken for addressing the impact for a specific component referred to in sub-section (5) of section 4 of the RFCTLARR Act, 2013 and such measures shall not be less than what is provided under a scheme or programme, in operation in that area, of the Central Government or, as the case may be, the State Government, in operation in the affected area.

Public hearing for Social Impact Assessment

According to Section 5 of the RFCTLARR Act, 2013, Whenever a Social Impact Assessment is required to be prepared under section 4 of the RFCTLARR Act, 2013, the appropriate Government shall ensure that a public hearing is held at the affected area, after giving adequate publicity about the date, time and venue for the public hearing, to ascertain the views of the affected families to be recorded and included in the Social Impact Assessment Report.

Publication of Social Impact Assessment study

According to section 6 of the RFCTLARR Act, 2013, The appropriate Government shall ensure that the Social Impact Assessment study report and the Social Impact Management Plan referred to in sub-section (6) of section 4 of the RFCTLARR Act, 2013 are prepared and made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-

Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed, and uploaded on the website of the appropriate Government. Further wherever Environment Impact Assessment is carried out, a copy of the Social Impact Assessment report shall be made available to the Impact Assessment Agency authorised by the Central Government to carry out environmental impact assessment: Provided that, in respect of irrigation projects where the process of Environment Impact Assessment is required under the provisions of any other law for the time being in force, the provisions of this Act relating to Social Impact Assessment shall not apply.

Appraisal of Social Impact Assessment report by an Expert Group

According to section 7 of the RFCTLARR Act, 2013, the appropriate Government shall ensure that the Social Impact Assessment report is evaluated by an independent multi-disciplinary Expert Group, as may be constituted by it. The Expert Group constituted under sub-section (1) of section 7 of the RFCTLARR Act, 2013 shall include the following, namely:—

- (i) two non-official social scientists;
- (ii) two representatives of Panchayat, Gram Sabha, Municipality or Municipal Corporation, as the case may be;
- (iii) two experts on rehabilitation; and
- (iv) a technical expert in the subject relating to the project.

Further the appropriate Government may nominate a person from amongst the members of the Expert Group as the Chairperson of the Group.

If the Expert Group constituted under sub-section (1) of section 7 of the RFCTLARR Act, 2013, is of the opinion that,—

- (a) the project does not serve any public purpose; or
- (b) the social costs and adverse social impacts of the project outweigh the potential benefits, it shall make a recommendation within two months from the date of its constitution to the effect that the project shall be abandoned forthwith and no further steps to acquire the land will be initiated in respect of the same:

Provided that the grounds for such recommendation shall be recorded in writing by the Expert Group giving the details and reasons for such decision:

Provided further that where the appropriate Government, inspite of such recommendations, proceeds with the acquisition, then, it shall ensure that its reasons for doing so are recorded in writing.

If the Expert Group constituted under sub-section (1) of section 7 of the RFCTLARR Act, 2013, is of the opinion that,—

- (a) the project will serve any public purpose; and
- (b) the potential benefits outweigh the social costs and adverse social impacts, it

shall make specific recommendations within two months from the date of its constitution whether the extent of land proposed to be acquired is the absolute bare- minimum extent needed for the project and whether there are no other less displacing options available: provided that the grounds for such recommendation shall be recorded in writing by the Expert Group giving the details and reasons for such decision.

The recommendations of the Expert Group referred to in sub-sections (4) and (5) of section 7 of the RFCTLARR Act, 2013 shall be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed and uploaded on the website of the appropriate Government.

CONCLUSION:

After going through the relevance and process of Social Impact Assessment study it is clearly evident that the RFCTLARR Act, 2013 is a historic legislation. The colonial era Land Acquisition Act, 1894 had the land losers and displaced masses at a great disadvantage. Its repeal and subsequent enactment of the new act helped bridge the power imbalance that existed between the state and the public. This people centric and revolutionary legislation brought about greater democracy in the land acquisition procedure and ensured that the people affected by it are adequately compensated for all the sufferings they would endure because of it. If provisions of this act are properly implemented without any subsequent dilution, it will keep on championing the cause of the people.

Flow Chart of the Process of SIA study

