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# An Elaborative Study on the “Social Impact Assessment” under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

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## ABSTRACT

*The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act or RFCTLARR Act, 2013 can be considered as a silver lining in the dark cloud as it replaces the colonial Land Acquisition Act, 1894. It has sought to address the long standing popular discontent over perceived arbitrariness of state action in land acquisition matters by making arrangements to strike a deal with affected communities or engaging them in the process to meet the provision of social impact assessment (SIA). It was the need of the hour to make the process of land acquisition more humane and transparent. The new Act if implemented in true letter and spirit will certainly put an end to forcible acquisitions. It will reaffirm the faith of landowners that they would not be displaced haphazardly and their right to compensation and rehabilitation will be taken care of RFCTLARR Act is a step in the right direction as it reduces the arbitrary power of the government and suggests setting up of independent expert panels as well as conducting social impact assessment for projects serving public purpose. The paper aims to examine the Social Impact Assessment study under the new Act along with the loopholes and suggest remedial measures.*

**Keywords:** Acquisition, Compensation, Landowners

## I. INTRODUCTION

The Right to Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013. Article 21 of the Constitution of India states that, “No person shall be deprived of his life or personal liberty, except, according to procedure established by law.”

The Supreme Court of India has asserted in the case of *Olga Tellis & Ors. vs Bombay Municipal*

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<sup>1</sup> International Accredited Civil-Commercial Mediator from ADR-ODR International, London.

*Corporation & Ors.* in 1985, that the Fundamental Right to Life includes the right to livelihood as well. It is an agreed principle of law that there should be reasonable restrictions on fundamental rights thus necessitating government agencies to disclose information about the intended action and offer an opportunity of being heard before the deprivation of the right.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, or RFCTLARR Act, 2013 can be considered as a silver lining in the dark cloud as it replaces the colonial Land Acquisition Act, 1894. It is an Act to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and open process for land acquisition to start industries, to set up essential infrastructural facilities, to speeden up urbanisation with the least disturbance to the owners of the land and provide just and fair compensation to the affected families whose land has been acquired or planned to be acquired or are affected by such acquisition and make adequate provisions for such displaced persons for their rehabilitation and for ensuring that the overall impact of compulsory acquisition should be that affected persons become partners in development process so that their social and economic status is elevated.<sup>2</sup>

The Act deprived the government of its powers and gave them to landowners. Soon after it was enforced on the first day of January 2014, the National Democratic Alliance government at the Centre diluted the Act through an Ordinance. It also tried to bring about amendment to the Act. One can argue that the new Act was time-consuming and cost-escalating, making its implementation all the more difficult. Nonetheless, the Ordinance has simplified the acquisition process.

The Act rests on five pillars viz:

- social impact assessment (SIA)
- people's consent
- compensation
- resettlement and rehabilitation (R&R)
- narrows down the eminent domain, the government's power to take private property for public use

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<sup>2</sup> Legislative.gov.in

Main objectives of the Act are as follows:

- i. To ensure landowners and other affected families face least disturbance, the process to make land available in consultation with the local self-government bodies.
- ii. To ensure that adequate compensation is offered to the affected families.

## **II. SOCIAL IMPACT ASSESSMENT STUDY**

The Social Impact Assessment study enshrined in sub-section (1) of the Act shall include all the following viz:

- (a) to assess whether the acquisition is in public interest;
- (b) to estimate the number of families that are affected or likely to be displaced;
- (c) to measure the extent of lands, public and private properties that are likely to be affected on account of acquisition;
- (d) to assess whether the extent of land meant for acquisition is the absolute minimum needed for the project;
- (e) to find out whether land acquisition at an alternate place has been found unfeasible;
- (f) to study the social impacts and costs of the project, and the impact of these costs on the overall costs of the project vis-a-vis the advantages of the project.<sup>3</sup>

## **III. RFCTLARR ACT - SILVER LINING OR STUMBLING BLOCK?**

After the Act was introduced a non-profit Centre for Science and Environment (CSE) situated in Delhi filed Right To Information (RTI) queries with certain states. Questions asked were:

- i) Under which law was land being acquired?
- ii) Were social impact assessments conducted?
- iii) Were people's consent obtained prior to acquisition?
- iv) How much land was acquired under RFCTLARR Act for further proposed projects?

State governments took months to send their disappointing replies Gujarat, Madhya Pradesh, Bihar, Karnataka, West Bengal and Uttar Pradesh failed to respond.

CSE investigation reveals that seven states: Tamil Nadu, Telangana, Gujarat, Haryana,

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<sup>3</sup> Regarding Social Impact Assessment Authority to carry out Social Impact Assessment study under Section 4(6) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013) | Official Website of Department Revenue, Rehabilitation and Disaster Management, Government of Punjab, India

Maharashtra, Jharkhand and Andhra Pradesh- have overlooked the law and enforced their own Acts by replicating the Ordinance.

Andhra Pradesh was conducting social impact assessments and taking people's approval until July 23, 2018. Eventually the President gave his assent to the amendment Act. This Act has exempted certain categories like defense, cheap industrial projects from social impact study. The Act allows voluntary acquisition. Private negotiations with landowners is permitted thus reducing the role of Gram Sabha to advisory function Jharkhand's presented the Amendment Bill to the President twice.

The five pillars of RFCTLARR Act were thrown to the winds. It was enacted with minor changes. Jharkhand, too, does not conduct social impact assessment to acquire land for schools, hospitals and housing for the poor; the Gram Sabha's only plays an advisory role.<sup>4</sup>

#### **IV. FARMERS PROTEST IN TIRAVALLUR- A CASE STUDY**

Kovalan Sillapadikaran, a farmer in Tiruvallur district of Tamil Nadu has been protesting along with his ailing parents and children against the proposed 126.5km six-lane green-field expressway from Thatchur in to Chitoor. The responsibility of developing this project lies with the National Highways Authority of India, the project will entail the acquisition of 885.5 hectares of land, 64 per cent of which is under cultivation. Kovalan and the farmers community in Tamil Nadu are unwilling to part with their fertile, irrigated land Agriculture is the means of livelihood for most of the villagers. Government officials are reluctant to provide information about the project and show their indifference for any kind of protests.

Although the RFCTLARR Act defines the public purpose, it exempts a list of areas as discussed earlier. For instance, a tourist resort in the dense forests of Karnataka can be considered to serve public purpose, irrespective of being privately or government owned. The term public purpose has failed to find its true meaning while the farmers still protest to make both ends meet. The provisions of RFCTLARR Act excludes 13 enactments specified within the Act. Social impact assessment and consent are required in the smallest projects, but are not required for projects under these 13 enactments that takes away huge chunks of land.<sup>5</sup>

#### **V. LOOPHOLES IN SOCIAL IMPACT ASSESSMENT STUDY**

1. Written consent of landowners not obtained:

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<sup>4</sup> This article was first published in the 16-31st December issue of Down To Earth under the headline 'Legal Deceit', Ishan Kukreti

<sup>5</sup> www.teri in.org

Social impact assessment was done in Godda, Andhra Pradesh for thermal power plant by Adani. The report states that landowners gave their consent by a show of hands. Can this be digested? RFCTLARR Act mandates a written consent. Landowners crib that they hardly get two to three days' notice for public hearings. On the contrary, three week's time is mandated in the law. Although Land for the Mumbai-Ahmedabad bullet train project is being acquired by the government, it will affect 192 villages in Gujarat. Irrigated agricultural land is being (mis)used for the train project, but has the social assessment being done?

2. Notice period of Public hearings reduced:

UP, AP, Jharkhand, Sikkim, Tamil Nadu and Tripura have cut down the notice period for public hearings. Obviously, there is minimum public participation.

3. Expert groups studying social impact dominated by bureaucrats:

RFCTLARR Act suggests the setting up of independent expert groups so that the arbitrary powers of the Collector are reduced and social impact assessment units can assess if the project serves a public purpose. But in several states government officials involved in the process, are part of such bodies.

4. Advice of Expert group not binding on the government:

The Act does not make binding the recommendations of the expert group. The government can proceed with the acquisition process even if the recommendations suggest otherwise. Government can conveniently shut the people to silence.

5. Increasing direct and Indirect costs:

A foolproof land acquisition law should strike a balance between direct and indirect costs. Direct cost is the compensation package given to land losers. Indirect cost is what developers have to bear in terms of procedural delays and to manage the corrupt bureaucrats. RFCTLARR Act has risen both the costs. The amendment to the law should focus on cutting down indirect costs. The Act fails miserably in the acquisition process. The indirect costs is bothersome for the Developers. So, they have started promoting direct purchase of land.

6. Land pooling- a more lucrative model:

People lines up to give their land for the development of Amaravati, Andhra Pradesh. Against every acre, the landowner will get 1,000 sq. yards of developed residential plot and 450 sq. yards of developed commercial plots. Farmers have offered 13,354 hectares to the AP Region Development Authority.

## VI. CONCLUSION

The Act prohibits the government from indiscriminately acquiring land. It calls for consent from 80 per cent people in private projects and 70 per cent of the people in public-private partnership projects. RFCTLARR Act leads to procedural delays. The acquisition process is a Herculean task involving 4.5 years to complete with multiple steps. Various committees have to be set up to take quick decisions. An independent body should be established to conduct social impact assessment whose report should be appraised by another expert panel.

Third, it is imperative to monitor compliance at every step. A new land acquisition law that strikes a balance between direct and indirect costs should be thought of. Land pooling is a model suggested by NITI Aayog for the nation to emulate. However, the states' methods of acquisition are certainly not in place. The government ought to know where the law can be applied. Ironically social impact assessment and consent are required only on the smallest projects and not for projects under 13 enactments that take away huge chunks of land. The robust RFCTLARR, has to be amended so that landowners and stakeholders can heave a sigh of relief.

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