

**The Right to Fair Compensation and
Transparency in Land Acquisition,
Rehabilitation and Resettlement Act, 2013
(RFCTLARR Act, 2013) and other Land
Acquisition Acts: Issues in implementation,
Divergence and Convergence**

Edited by

N. K. Sudhansu

Dr. Varunendra Vikram Singh

Snehasis Mishra





**B.N. Yugandhar Centre for Rural Studies (BNYCRS)
Lal Bahadur Shastri National Academy of Administration,
Mussoorie-248 179**

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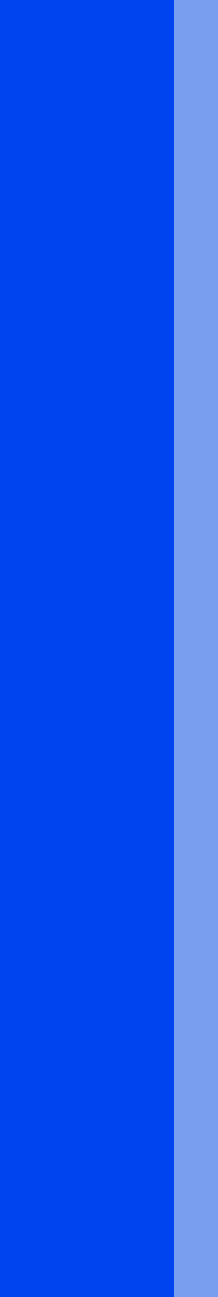
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Land acquisition refers to the process by which government compulsorily acquires private property for public purpose. There is a heightened public concern on land acquisition issues in India. Despite many amendments, over the years, to India's Land Acquisition Act of 1894, there was an absence of a cohesive national law that may address fair compensation when private land is acquired for public use, and fair rehabilitation of land owners and those directly affected from loss of livelihoods.

Land acquisition in India is currently governed by The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act, 2013) which came into force from 1 January 2014 after the replacement of Land Acquisition Act of 1894. Additionally, there are 16 Acts with provisions for acquisition of land in specific sectors such as Railways, Special economic zones (SEZs), National highways, etc. The provisions under Schedule II and III have also been applied to some of the special acts.

RFCTLARR Act, 2013 intended to shelter a legal guarantee for the civil rights of project affected, and authorization of larger transparency in the land acquisition process. It also maintain the role of local institutions and Gram Sabha, established under the Constitution. The objective of the Act is to ensure balance of aspirations and needs of those whose livelihoods are directly and indirectly dependent on the acquired land and also see the side of development and smooth facilitation of land acquisition for various public purposes.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013 has shaped a distinguished land acquisition management categorized by market-linked reimbursement, socio- economic appraisal and proper rehabilitation and resettlement ways for affected people. Since five years of its enactment, it is found to be

vital, in the interest of the sustainable land procurement framework for manufacturing and infrastructural projects.

Objectives

The objective of the two-day National workshop is to put forward a common platform for the Ministries, Public Sector Undertakings, Corporates, Revenue Departments of state governments, practitioners, academicians and stakeholders of society to discuss the issues, challenges and solutions in implementation of the RFCTLARR Act, 2013 and the divergence, convergence of the Act with other Special Acts.

Two-day session plan and sub-themes:

Session 1

The RFCTLARR Act, 2013: Provisions, legal framework, implementation – Issues and Challenges

Session 2

Other Acts on Land Acquisition and R&R policies: Lessons to be learnt from best practices at the state level on R&R. – Divergence and Convergence.

Session 3

Social- Economic Appraisal under **RFCTLARR**: From plan to practice

Session 4

Rehabilitation and livelihood restoration: Challenges, Solutions and future prospects.

Session 5

Group Discussion and framing of Recommendations

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Welcome Address –Shri N.K. Sudhansu, IAS¹



Addressing everyone he welcomed the participants to Mussoorie as well as the Academy hoping their journey to Mussoorie was pleasant. He said for the next two days they would deliberate on a very important topic of land acquisition and the related aspects of compensation, SIA, rehabilitation, etc.

This being a very new Act, not many full-fledged research and studies are conducted in the area. In fact, not many cases related to LA are taken up by the State also. However, things are now picking up and one thing has happened that issues that are new to this Act, as compared to the old Act, a lot of discussion has started to take place and this Workshop is supposed to be a part of that discussion. For example, issues of consent, rehabilitation, compensation, SIA have all become the hot talks of this discussion.

He was glad that representatives from large number of organizations had come together for the Workshop and hoped that during the workshop all could have a very meaningful discussion on various aspects of land acquisition. Stating that the idea behind the Workshop is to deliberate on the existing provisions of the new Act and to compare those provisions with other similar land acquisition Acts and try to find issues of divergence and convergence with them, he said that the major theme of new land acquisition Act has been divided into four sub-themes and those themes will be taken up in four sessions and the fifth session will be a group exercise where participants will deliberate on each of the topic to make recommendations. He once again welcomed all to the Workshop and wished them a fruitful and an interactive participation.

¹Centre Director, B. N. Yugandhar Centre for Rural Studies, LBSNAA, Mussoorie

Address – Dr. Sanjeev Chopra, IAS²



Welcoming everyone to the cool climate of Mussoorie, which he thinks is quite conducive to creative thinking and to discussing any issue which is incredibly hot, he said that this is the best setting for a workshop of this sort. He thanked everyone for accepting

the invitation and for being here to contribute to the debate of land and management system of this country. He especially thanked Mr. Hukum Singh Meena, the person who supported and funded the Workshop.

He said that 34 participants from 27 institutions, creating a wide range of diversity, will present 19 papers which will give a broad overview of all the things of how the Acts have evolved from 1984 to 2013 and the very fact that now it's not just about the Acquisition, then the perceptions from Tata, Coal India, NHAI, Metro, the impact of all this Acquisition Acts on Tribals, paper the Bihar Act, Singur paper with two points of views – for and against, paper on the Dal Lake which will give a new point of view, as whenever there is a talk of acquisition it is always thought in terms of acquisition of Land, not many really thought that acquisition is not only of land but it could be of water bodies or other ecosystems.

He recalled that earlier it was believed that it was the sovereign power of the State to acquire anything but over the last 30 years the biggest thing that happened is the change in the mindsets and a greater sensitivity was seen amongst officers, the civil society and even the political system has also recognized the fact that 'you just cannot write rough shots over people's opinion'. The fact that we are used to thinking in binaries is one of the big problems, that's the problem that we here at the Academy are trying to consciously

²Director, LBSNAA, Mussoorie

point out that there are more than 50 shades of anything and it is about understanding the different perceptions and understanding different points of view that actually make an administrative responsible and careful, which is very important.

He was very proud that B. N. Yugandhar Centre for Rural Studies at the LBSNAA was breaking new ground. He said that although he appreciate the fact that even within the Govt. the views on LA and R&R are not the same, the same Govt. of Bengal or Bihar or UP or the Depts. of Agriculture/Industry/Finance would all have the different view point but the way we look at land has to change, the way we look what is possible over land has to change. Closing his opening remarks he wished everyone to have a splendid stay with and hoped to learn from them in the next two days.

Inaugural Address –Dr. Nivedita P. Haran,³ IAS (Retd.)



She welcomed everyone to the Academy and complemented the respective Directors of LBSNAA and BNYCRS for gathering all the possible stakeholders, related to the LA and R&R, under one roof. She said that the 1894 Act was the Act invoked in the earlier days of her service and she remembers it to be a truly traumatic one. Acquisition, she said, is a process which demands not only balance on the part of the officer, but it also demands understanding and empathy which no training can really teach, it is the time spent at the Academy that gives them some kind of an understanding of it, who after leaving here may directly have to manage land related issues. With the 1894 Act things were truly traumatic, so the new Act was called for and the reasons were fair compensation, sustainable rehabilitation – the old Act had nothing on rehabilitation leave alone sustainable, improved quality of life – the person who was being rehabilitated should have a better quality of life where he goes than he had where he was staying, ensure that the trauma is reduced – which is not just socio-economic but also the psychological part, counseling needed in some cases, make the process more humane, reduced litigation – the earlier Act actually forced people to go in for litigation, etc.

The issues related to compensation and the compensation process were many. Was it fair? From when will the interest be applicable? If somebody got it then will others also be eligible? A huge lot of issues were involved and then the parties had to go and pay the lawyer's fee which usually is very high. So the question was, what were they left with?

She cited an example of one family, in Greater Noida region that she came across got 3 crores in 2010-11 after LA, has now almost

³ Villa 23, IFS Villas Pocket 6, Builders Area, Greater Noida U. P.

pauperized. And that is the kind of case the Academy needs to study. Also cases from Kerala where the acquisition started for an irrigation process before 1977 and the process is still not complete. The PAFs were asked to go in for litigation and that was all that could be done at the time. Unfortunately, it was also a system which in some ways encouraged back door dealings, which certainly is not a good thing, why should such a thing come into place.

The 1894 Act, was a very one sided Act. It was always a tussle between the un-equals, the party whose land is being acquired and the Govt., they cannot be put on the same level and therefore the need came for the new Act. It's just not enough to give the financial compensation, there has to be more to do with it. To make the compensation fair we had to ensure that the alternate dwelling is given to the party or the capacity to construct a new dwelling unit. There is also a livelihood loss. Do we ensure that wherever they go, do they get a livelihood? We have to understand that many of the farmers whose lands we are taking are 50 years plus. Can we think of a livelihood, if so, what kind? Skill training of the new generation, is it happening? The place where they are being rehabilitated, are basic civil service requirements, such as power, road, sewerage, schools, healthcare centres, PDS, etc., available? These basic requirements that are needed to ensure the movement less traumatic for the party.

In 2009-10, the Govt. of Kerala had issued a set of guidelines and she was the Revenue Secretary among the conditions they incorporated the need for social impact assessment which she feels is much more important than environment impact assessment. The rights of the tenants have to be accepted.

IIM Kozhikode gave an idea of having LA bonds, they did an Impact Assessment for one of the Lands and they had said that the way the financial compensation was being given to the party by putting in the bank account was not working and it becomes

convincing after seeing the case of Greater Noida where 3 crores, God knows where it had gone.

In the case of the Jewer Airport which is coming up in Delhi, a proposal was made to the authorities that instead of getting people from elsewhere we can have educated, trained persons in and around the surrounding villages and they could be employed, because they have after all lost their lands, they are unemployed and they cannot go back to agriculture because their land is fragmented and they don't have enough lands now. It seems that the authority is working on this and is very positive about it.

For LAOs it's a tight rope walk as they have to maintain the perfect balance between Public interest and Govt. interest. They have to be very practical as these are lands required for projects, time bound projects, they can't go around indefinitely negotiating, arguing, trying to bring them around because there is a time limit. Therefore there is a need for SIA. She said that it is a wonderful idea but unfortunately we're going in the right direction, SIA should be done by agencies or persons who understand both sides, but that is not happening. SIA study needs to take care of the facts that the new generation children are going to school, there is a school nearby, the women in the family are being given some amount of training or skill development training to go into some kind of employment, livelihood

The people should be taught or counseled on how to manage the finances, because instead of putting the money in the bank accounts for the education of their children or for their old age, they go and buy cars. We can have banks, local NGOs talking to them, making them understand that this money that has come to their bank account is for their future which is not meant for them to spend it right away.

We also have to use this occasion to bring about social transformation in these societies as I mentioned we are talking

about building back better, and not only the houses but these societies and they would benefit from the LA and the projects that are coming up if we ensure that these societies are hand-held to move in a direction that would improve the profile of the society, rather than letting them remain where they were.

She concluded by thanking the Director to provide her this opportunity.

Technical Session – I

(The RFCTLARR Act, 2013: provision, legal framework, implementation- issues and challenges)

Chairperson: Shri Hukum Singh Meena, IAS

Speaker 1: Shri Ajit Chaudhuri⁴



The presentation was about certain issues and complications around RFCTLARR Act, 2013. In the beginning an introduction to ‘Private Property’ was given. The evolution of property rights in India especially the 44th amendment was discussed.

Property denotes certain rights (and not material things); most importantly ‘my right to exclude others from interference with my enjoyment of that which the Law recognizes as mine’. Despite its criticality, right to property is not always a fundamental right in India – 44th amendment of the Constitution removed it from fundamental rights. The concept of eminent domain which is the basis for land acquisition by the state in most parts of the world was discussed. The state enforces property rights, places restrictions and duties on property owners and can deprive a person of his/her property with/without compensation. Eminent domain represents a controversial and politically sensitive instrument of state power which – can enable economic and technical progress, can trample on property rights, economic interests of vulnerable citizens, and fundamental principles of justice. The corresponding rights to compensation losses should be imposed on the community. Then the term ‘Public Purpose’ was discussed. ‘Public purpose’ is an admirably flexible term that affords most users a measure of identification – no agreement as what it constitutes; this flexibility facilitates room for maneuver

⁴Assistant Vice President – Community Services, Tata Sustainability Group, Army and Navy Building, 2nd Floor, Mahatma Gandhi Road, Mumbai, Maharashtra

for policy makers. A comparison of the definition of ‘public purpose’ in 1894 Act and 2013 Act was discussed. The presentation was concluded by outlining the major differences in the 1894 Act and RFCTLARR Act, 2013.

Speaker 2: Dr. Namita Wahi⁵



Land is not only an economic resource and source of livelihood it is also a central element to community identity, history and culture. In that way, it makes for a very different kind of resource. The rule of law says that all land acquisitions must only be pursuant

to valid enacted law, for a public purpose and upon payment of just compensation. The Land Acquisition Act of 1984 itself was a Law which was enacted following a series of colonial laws that the British tried; outstating with the Bengal Regulation Act of 1894. Issues associated with the Land Acquisition Act, 1894 were the following. The Act only recognized title holders of land and not livelihood holders who depended on land but had no title. The definition of public purpose was broad and inclusive which in turn resulted in not having a clear definition of public purpose. The procedure for acquisition for land was completely non participatory, there was widespread misuse of the urgency clause and there were multiple Laws of Land Acquisition in different states with differential procedures. This led to the enactment of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 and RFCTLARR Rules, 2015. The Act came about to redress the issues associated with 120 years of the functioning of the 1894 Act which have led to widespread public outrage and to create culture of justification. Essentially the Land Acquisition Act of 1984 was a colonial Law and there are many colonial Laws which are applicable to us because the constitution has actually grandfathered the colonial Laws. The philosophy behind the introduction of RFCTLARR Act, 2013 and the important changes brought about by the Act were discussed in detail. The RFCTLARR Act recognised a legal right to rehabilitation and resettlement as opposed to ad hoc policies. Contentious issues

⁵Director, Centre for Policy Research, Land Rights Initiative, Dharma Marg, Chanakyapuri, New Delhi.

associated with the Land Acquisition Act of 1894 were discussed in detail by reviewing the Supreme Court cases from 1950-2016. Similarly, litigations under the RFCTLARR Act, especially Section 24 of the Act, were discussed in detail. Comparing these two it was concluded that RFCTLARR Act only partially redresses the imbalance of power between the state and private individuals.

Speaker 3: Shri Charanjit Singh⁶, IFS



The discussion was on sustainable land procurement. A definition by HUGO GROTIUS in 1625 about the principle of eminent domain says that “The property of subject is under the eminent domain of the state, so the state or he who acts for it may use and even alienate and

destroy such property, not only in cases of extreme necessity but for ends of public utility to which ends those who found civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done the state is bound to make good the loss to those who lose their property”. The components of eminent domain are right to acquire private property, acquisition for public purpose and the payment of compensation. The important stakeholders in land acquisition and their roles were discussed. The first stakeholder is the state and its role is infrastructure development, housing and industrialization. The state itself is the second stakeholder through its role in food, ecological security and fair distribution of resources. The third stakeholder is the industry/service providers and its role to ensure easier availability at reasonable costs. The other stakeholders are pressure groups, judiciary and media. The few key milestones of the RFCTLARR Act, 2013 were discussed. In order to make land acquisition sustainable following things are necessary. There should be a clear cut definition of public purpose. Payment of Compensation should be scientific & reflect ground realities. Land records need to be updated real time. Innovative Models of land procurement such as Land Leasing, Land Pooling, and Land Purchase by Mutual Consent Policy etc. need to be looked into.

⁶Joint Secretary, Rural Skills Division, Ministry of Rural Development, New Delhi

Speaker 4: Shri Jaideep Singh Kochher⁷



The presentation was regarding the issues related to RFCTLARR Act, 2013, specific to the Scheduled Tribes. The scheduled tribes, as per 2011 census, are 8.6% of total population and are present as over 700 communities, the highest in Madhya Pradesh. The North east accounts for 10% of ST population. 82 % of population is within 10 states. They are the most marginalized, isolated and deprived population. They have suffered land tenure insecurity right from the centuries and this is sought to be rectified by the government. Forest is an important source of livelihood and means of survival for forest dwelling scheduled tribes. The report shows 40% of the total displaced people in the country are tribals. Only 25% of the displaced tribal people are provided resettlement avenues. The other studies points to lesser percentage. Basically it leads to loss of rights, displacement leads to loss of livelihood, identity and resources and this in turn leads to unrest and conflicts in forest areas. To take care of the historical injustice to the forest dwelling communities of tribal communities the Forest Rights Act, 2006 was enacted. and basically the tribal communities have been living in the forests for lot many years but they have faced insecurity of forcible evictions to give recognition to their state, their habitat this important legislation was enacted in 2006. Rights of forest dwelling communities could not be recognized in colonial period and in the first half in the 50 years of after independence so then this legislation was brought into. The sustainable use of biodiversity this is important objective of the Act also. Section 2, Section 3, Section 4 (5) and Section 16 (4) of the FRA, 2006 were discussed in detail. Then PESA Act, 1996 was also discussed in detail. Section 31 of the Act, Section 41 which deals with special provisions to SCs and STs and Section 42 of the Act were discussed in detail.

⁷Economic Advisor, Ministry of Tribal Affairs, Shastri bhawan, New Delhi

Speaker 5: Dr. C. Ashokvardhan⁸, IAS (Retd.)



The presentation was about the salient features of the Bihar Land Lease Policy. This policy was formed in the year 2014 and this policy is with reference to public purposes only. Instead of going into land acquisition, the government is now going into perpetual land leasing. For lease of land also there is a need for public purpose. This is the first condition and the second is that there needs to have a registered agreement and the land users will be paid four times the market value in the rural areas and two times in urban areas plus the value of assets. Departments of the government, PSUs, private companies etc. can avail the benefits of these policies and it is seen that they are availing these policies. They will be following transparent procedures because while the drafting of the policy was carried out, it was made sure that transparency is not sacrificed, quality is not sacrificed and grievance redressal procedure is not sacrificed. The policy was formulated by keeping intact these three pillars of public policy. The competent authority is the collector of the district and he will prepare a proposal for land lease. The proposal will include all the details of the land like the name of the village, how many people are going to be affected, what lands are going to be affected and the public purpose which is going to be served, what is the possible value/approximate value of land which is going to be acquired and the collector will form the site selection committee which will be headed by the next man in the hierarchy. Since the entire process of land lease is done after following a transparent and accountable process, the Bihar Land Lease Policy can be considered as a model policy which can be replicated by other states in India.

⁸Member, Bihar Land Tribunal, II off. Polo Road, Patna, Bihar

Session – II

(Other Acts and Land Acquisition and R&R policies: Lessons to be learnt from best practices at the state level on R&R –Divergence and convergence)

Chairperson: Shri Yudhvir Singh Malik, IAS (Retd.)

Speaker1: Shri Ajay Nandan Goswami⁹



Coal mining is a site specific industry where depending on the location of the coal reserve Open Cast Mining or Underground Mining method is adopted. For coal mining operation, two Rights are required i.e. Surface Rights and Mining Rights. Surface Rights are

acquired, where mining lease exists, under different modes of acquisition by virtue of various Acts through State Code, Direct Purchase through execution of Sale Deed and long term transfer/lease of Govt. land.

He said that the subsidiaries of CIL always maintained good relationship with the people affected by the Coal Mining Projects and took responsibilities for their R&R which also evolved over time. The compensation and benefits offered to the affected people were in line with the provisions of applicable Laws & Guidelines prescribed by the Central and the State Govt. In 2000 Coal India formulated R&R policy and subsequently reviewed it in 2008 and 2012 according to the changing conditions over the years.

He cited the example of ECL for going beyond the provisions for providing low-cost housing to poor Tribal PAPs even after the compensation was paid, also since 2011 they have practiced transparency in processing employment proposals against land and uploaded relevant details on the company's website of each

⁹ Chief Manager (Min.), Coal India Limited, Coal Bhawan, New Town, Kolkata, West Bengal

claim. Similarly, WCL has undertaken different programmes, like Chaupals, Sampark, Nishkarsh and Utsav to build a strong relationship with the local villagers, all these helped in addressing the complaints and taking suggestions which in return helped in maximizing the impact of resettlements and smoothening the process of acquisition. He said Geospatial technology is also being used to resolve disputes related to R&R.

Speaker 2: Shri Aibanshngain Swer¹⁰



He started his presentation stating that the Meghalaya Institute of Governance (MIG), one of the institutional support mechanisms of the Integrated Basin Development and Livelihood Promotion Programme (IBDLP), has a vision to explore, share and promote good governance in Meghalaya by assisting the government, the private sector, the voluntary sector and the communities in putting good governance into practice for the well-being of citizens and society with special emphasis on traditional institutions, cultural organizations and village-heads. The focus areas of MIG are in the field of management of human resource, finance, performance and change. The process interventions are by simplifying procedure of service delivery and creating new core competencies in government service by improving governance environment in administration and designing governance mechanisms to match the needs and aspirations of the public.

Meghalaya, being an ST area, has very small percentage of land with the State Government and the Autonomous District Councils hence land acquisition and R& of Project Affected families (PAF) is a concern for the government. With the implementation of RFCTLARR Act, 2013 the need for appropriate changes in the process of implementation mechanisms to improve the situation on equity and social acceptability by providing greater transparency and benefits for the affected families has emerged.

The state government has already complied with the requirements like the appointment of a Commissioner for R&R, creation of an R&R cell, formation of State monitoring committee for evaluation and monitoring of SIA implementation and setting up of the

¹⁰Director, Meghalaya Institute of Governance, Bishop cotton Road Shillong, Meghalaya

LARR authority for dispute settlement and all this has given confidence for implementation of SIA in the state. With the implementation of the Act and the transparency that is brought about through the SIA, many issues could be addressed locally and resolved within the village and community level. This has earned the Government enormous goodwill and even NGOs and pressure groups have acknowledged and toned down their dissent. The active participation of the indigenous traditional institutions across the state has paved the way for ease in implementing the various components of the Act though the challenges faced by the Project Affected Families and Project Implementing Agency for R&R is how to move from the policy provisions to actual implementation. This will require a better understanding of the dynamics of R&R options, taking into account the social, cultural and economic constraints and the opportunities in the new micro economic situation and political environment in which the affected persons are living.

Speaker 3: Dr. Reshmy Nair¹¹



After giving an overview of the progressive provisions of the RFCTLARR Act, 2013 she said that there are mandatory R&R in statute but the implementation practices are varied in different projects and states throughout the country. Similarly, there are uniform applicability standards for Central legislation but the interpretations and the practices involved are varied. Many provisions of the law are yet to be implemented in spirit and require effective monitoring & capacity building. Amendments are also required for typos and errors in the Act. There are certain terms, applicability of some sections and legality of certain actions which are needed to be interpreted unambiguously by the judiciary.

She said there are other alternatives to land acquisition like Land Lease, Land Pooling, Land Purchase and Negotiated Settlement could be used for various Infrastructure Projects in India. And that we could learn from the experiences of some states where these alternatives were implemented. She also discussed the advantages and the challenges while implementing these methods and that the improvement of the policies through effective planning is required for sustainability.

¹¹ Professor and Director, Administrative Staff College of India, Bella Vista, Raj Bhavan Road, Khairatabad, Hyderabad, Telangana

Speaker 4: Shri Gaurav Kumar¹²



He mentioned that the hydroelectric power plants in our country, by and large, are situated in remote areas where people are living marginally and deprived of basic civic amenities and infrastructure facilities, and hydropower projects for such areas act as vehicles of development. For these projects mainly Government, Forest and Private lands are acquired, sometimes Defence, Panchayat and Community land may be involved and proper clearances and permissions are taken accordingly. Private land is acquired through negotiation or RFCTLARR Act, 2013 but it is found that for some people it is not easy to part with their land.

The project proponent faces certain challenges while acquiring land – either there are no or outdated or inaccessible land records, inadequate institutional capacity, dependency on State Govt. for implementation, no standard criteria to assess the land value, lack of uniformity in providing the replacement cost. All these factors complicate the land acquisition process, cause delay in project and R&R Plan implementation, which may develop mistrust among the PAFs towards the project proponent. Once the land is acquired they engage with the affected communities. He spoke about the steps they took for the proper implementation of R&R of the PAFs and gave suggestions for an effective R&R like -

- Transparency and peoples' participation
- Up-gradation of skills and creating new livelihood avenues.
- Confidence building measures
- Adopt a responsible and cautious decision-making attitude.
- R&R should be taken up as an opportunity rather than an obligation.
- Holistic approach

¹² Dy. General Manager (Env.), NHPS Limited, NHPC Office Complex. Sector – 33, Faridabad, Haryana

Speaker 5: Shri Avaya Kumar Nayak¹³



He presented the salient features of RFCTLARR Act, 2013 and the differences between the old land acquisition Act of 1894 and this new Act and then the timelines for different activities which come under different sections of different provisions.

He said that the process of acquisition for Govt., Private, Forest and Deity land is different for every category and mainly gave an overview of the current process of land acquisition that is being followed in Odisha for private land. He mentioned the issues of convergence and divergence, like there is no timeline under CBA Act for acquisition as in RFCTLAR&R Act, 2013 and there is varied amount of compensation under PMP Act, Electricity Act and under RFCTLAR&R Act. There is also no provision under RFCTRLAR&R Act for underground pipelines for sewerage or water supply.

He said the completion of SIA study, conducting Gram Sabha and taking people's consent (especially in Scheduled area) is not an easy task. Updation of land record, calculation of market value of land and identification the affected families are some challenges that are being faced while implementation of the Act. However the use of technology has proved to be advantageous, Revenue & DM Department have prepared a blue print for development of an online Work Flow based MIS for Land Acquisition and R&R for all LA Projects in sync with RFCTLAR&R Act, 2013 and it will automate the LA process with less paper work, provide an immediate access to any Letter/Notification/Report and real-time Physical and Financial Monitoring of LA in the state for various projects like NHAI, Railways, Irrigation and Others.

¹³ PAdditional Secretary, Revenue & Disaster Management, Department, Government of Odisha, Odisha Secretariat, Bhubaneswar, Odissa

Session – III

(Social – Economic appraisal under RFCTLAAR Act: from plan to practice)

Chairperson: Shri V.K. Agrawal, IAS (Retd.)¹⁴

Speaker 1: Shri V. K. Agrawal, IAS (Retd.)



The discussion was on certain issues related to the RFCTLARR Act. There are factors which are wrong with this Act. It was treating Land as a property it was not treating Land as a source of livelihood. So when it was acquired the property value was paid as compensation. The land though provided the discretionary powers to the directors the bureaucrats group failed this particular responsibility because when he has to issue a notification he is supposed to go into the necessity of the acquisition of land whether the public purpose was served or not served and we failed to do the exercise because we could not promote the government or because of our inability to withstand the political master who wanted the land to be acquired quickly but we failed. The term public purpose was misused by political executives to promote the crony capitalism in many places. Tens or thousands of acres of land was acquired on behalf of some industrialists under this Act and when it will be used and when it will be put to use nobody can guess. Many a times government officials colluded with land grabbers and fake land acquisition notifications were issued to people to force them to sell their land. Another issue with respect to LARR Act is that it does not prescribe a way to draw the line between government's interests and people's interests. Also there is a need for creating separate authorities for land acquisition and for deciding compensation. The present scenario, wherein there is only single authority for both can be considered as a case of conflict of interest. He concluded the discussion by suggesting that there is a need to create an independent agency to assess the affected population and create a rehabilitation plan.

¹⁴ 139, Road No. 17, Prashashan Nagar, Jubilee Hills, Hyderabad, Telangana

Speaker 2: Dr. Sanjay K. Pradhan¹⁵



The presentation was based on a case study. It was on the Application of Social Impact Assessment (SIA) under RFCTLARR Act, 2013 in Urban Transport Projects: Insights from Metro Rail Project in India. The metro rail project is between

Ahmedabad and Gandhinagar which are 32km from each other. The population of both the cities in 2014 when the SIA was done was 6 million and by 2020 it is expected to reach 8.5 million. Due to the increasing pressure of growing population the need for transportation system to accommodate them, the government identified different modes of transport. One of the important components of the public transport system that they identified was metro rail system. Metro rail system is an eco-friendly and eco-viable and comfortable mode of transportation to meet the future transportation requirement and in 2014 the government identified two corridors for implementation of metro and that was approved by the cabinet in 2015. The first corridor is the east west corridor and its total length is 20.7 km and north south corridor whose total length is 18.5 km. The need of social impact assessment is that the project requires 90 ha land and requirement of RFCT LARR Act 2013, and JICA policy. The objectives of SIA to quantify land and properties to be acquired for the project, to present adverse impacts associated with land acquisition and loss of other assets, to quantify number of impacted population due to the project, to create socio-economic demographic and family profile of project affected people, to enlist and quantify socio-economic impacts of the project. The positive impact of the project were - Increase in business and employment opportunities, increase in social well being, increase in mobility, better access to markets, workplace, higher education, health facilities and job opportunities, increase in property value, reduced road traffic and road stress, air

¹⁵ Professor and Director, Administrative Staff College of India, Bella Vista, Raj Bhavan Road, Khairatabad, Hyderabad, Telangana

pollution, travel time, fuel consumption, road accidents and improved aesthetics and image of the city. Social mitigation measures were taken keeping in mind the following: Adequate compensation for loss of property and R&R Assistance, Resettlement by Social Relationship, Provision of Income & Livelihood Restoration Assistance, addressing gender issues, Provision for Schedule Caste and Scheduled Tribe, Provision for mobility of Disabled people, Provision of training for skill development, Provision for institutional strengthening and capacity building and a robust Monitoring and Evaluation Programme.

Speaker 3: Dr. Sandip Mitra¹⁶



The presentation was based on the Land Acquisition for Singur project. Land is owned by governments. Initially, a few issues related to land acquisition was discussed. In Singur the large corporate TATA was resisted by a political party even though the leading party in power supported land acquisition for industrialisation. The study tried to figure out the nature of Singur uprising: whether it is a less compensation story or it is a political movement. The large scale sample survey had six villages where land was acquired and six villages where land was not acquired. The objective was to find out who are primarily affected; agricultural households or non – agricultural households. Also attempt was made to compare the compensation status. In 5,056 households 90 % were landless and marginal landowners. It shows that 72 % of land acquired are plots and those unwilling to accept compensation the average proportion of land acquired was higher and proportion was somewhat higher for household and we also taken the occupational characteristics of the people who have directly or indirectly from the land acquisition. The majority of plots acquired were non-negligible in size, compared to the average in Singur. Most of the land was acquired from marginal landowners, and from those engaged in cultivation on the acquired plots. For most affected owners, more than half the land they owned in 2005 was acquired. Did the government offer compensations at the market value of the lands acquired? While the government offered compensations at the market value of the lands acquired on average, a significant fraction of landowners were under-compensated owing to mis-classification of their plots as sali rather than sona in the official land records, besides inability of the latter to incorporate other sources of plot heterogeneity. Owners with under-compensated types of plot were significantly

¹⁶ Associate Professor, Indian Statistical Institute, C.D. Deshmukh Bhavan, 203 Barrackpore Trunk Road, Kolkata

more likely to reject the compensation offer. Those whose livelihoods were more tied up with cultivation and those with possible speculative motives (absentee landlords or those who purchased the plots rather than inheriting them) were more inclined to reject. Acquisition of land resulted in 40% lower income growth for owners and half that for tenants. Consumer durables grew more slowly for undercompensated affected owners, compared to others in the same village. Agricultural workers that were directly affected experienced significant reductions in employment earnings compared with unaffected agricultural workers, who in turn, experienced smaller earnings growth compared with non-agricultural workers. Hence, land acquisition in Singur imposed significant economic hardships on a large fraction of affected owners, tenants and workers. A large fraction of owners were undercompensated relative to market values. Tenants were undercompensated and agricultural workers were not compensated at all. While it is difficult for us to say how much local reactions were politically motivated, these economic hardships provide a plausible explanation for some of the observed refusals and protests.

Speaker 4: Dr. Shashi Ratnaker Singh¹⁷



The presentation was a review of the five years of implementation of RFCTLARR Act, 2013 and the way forward. Though the Act is an ambitious Act the institutions that are responsible for implementing the same in the right manner are weak. There is a need to work on

our institutions. The country has coal, we have generated power but can't establish one resettlement and rehabilitation department at the district level and we expect that we are able to transform lives in the post displacement period. There are two agencies that are actively involved in mapping the land conflict across the world. The conflict has been defined between company and the state government, company and the community so there are different layers of conflicts and all over the world India is on rank one when it comes to land conflict it means we have a vibrant functional democracy where the civil society has been the space to demonstrate, participate and record. Some of the findings of the 289 ongoing projects which are the part of the pragati at the PMO office is going to acquire 12 lakhs ha of land affecting 32 lakhs people across the country. Infrastructure projects accounts half of the land related projects. Three quarters of lands involve common land either forest or revenue. 40 % land conflicts involve forest lands. It is becoming very important for the SIA agency to be capable of determining and recording whose sources of primary hood is being affected. In the implementation of land acquisition, the following were identified as major challenges:

- Determination of Compensation & Application of Multiplier (Case of M.P. Multiplier factor of 1 can't be uniform for the entire state)
- Entitlements & Eligibility (Inclusion & Exclusion)
- Determining 'Primary Source of Livelihood' where rural

¹⁷Fellow, Department of Geography, University of Cambridge, Downing Place, Cambridge CB2 3EN

households have ‘diversified livelihood portfolio’ who is ‘affected’ and who is NOT?

- Identification of share croppers and dependents
- Land records updation and determining eligibility- Social reality vs Tehsil Land Records (GIS & Super imposing data, assessing the deviations)
- Challenges in Land records Updation; Geo spatial data vs Actual Tehsil Records; Super imposing data sets- possible option ?; Establishing Parameters for Entitlements; Land Claims and Rights Recognition Framework
- Utility of SIA in designing successful RAP
- SIA: Timing, Process and Obtaining Consent
- International Standards & Framework- World Bank, ADB, IFC
- Capacity of Institutions Conducting SIA’s
- Approach towards Collecting Qualitative and Quantitative Data
- Data Collation and Making ‘Sense’ of Data before Presenting Reports
- Utility of SIA in Designing Compensation Framework

Session – IV

(Rehabilitation and livelihood restoration: challenges, solutions and future prospects)

Chairperson: Dr. Nivedita P. Haran, IAS (Retd.)

Speaker 1: Dr. Nivedita P. Haran, IAS (Retd.)



She started her presentations by showing some photos of Dal Lake, she said that between 1850 and 1900 tracks of lakes were assigned to individuals for creating “floating gardens”, lotus plants were grown by those people for commercial use. After 1960-70

large areas which were meant to be water lands was filled up and vegetables are cultivated there and many of these areas are now been constructed with houses starting with small shacks to pakka houses, thus reducing the size of the lake by 30%. She stated that the night soil and solid waste from the people living beside the lake is now settled within the lake, she showed photographs of sewer pipes opening in the lake. She mentioned that in 1990s the state government started the process of acquiring these lands but the acquisition did not move forward much because the lake dwellers had records of these lands and petitions, court cases, etc. were also responsible. The land acquisition act does not apply to the Dal lake as it has a separate J&K land acquisition act which has no provisions for resettlement & rehabilitation which was an issue, she said that they were in process of finding methods for proper rehabilitation of the lake dwellers. She said that the court had said that as the lake dwellers are the legal holders of the land, compensation must be given and they have to be moved out through a regular acquisition process, she pointed out that a committee, that she is a part of has insisted the court for rehabilitation of the lake dwellers because the families of the land dwellers are from the economically weaker section of the society. She then raised some questions for the members present in the room:

- 1) Should there be an R&R in such a case?
- 2) The court has control over the lake, so does the state government has no responsibility for conservation of the lake?
- 3) Is this the fate of other water bodies in India? She said that most water bodies are suffering the same fate and the time has come to find out some solutions in order to protect them.

Speaker 2: Dr. Preeti Jain Das¹⁸



She started her presentation by saying that it was based on a field research conducted by her and two other researchers in March 2019. She stated that they went to many villages in Gurgaon to find the alternatives that they can come out with while paying compensation to the project affected families. She then mentioned that they all were aware of the fact that rehabilitation of the project affected families is a major issue and it leads to impoverishment of the people. She said that findings has shown that the compensation money that is given to the people is mostly spent on unproductive things, livelihood regeneration is also an issue as employment opportunities are limited and skill training provided to people does not result in longtime economic returns. She said that they took a look at the KMP Expressway project to find out and understand the components of compensation package, she said that the project was initiated in 2006 and in November 2018 it was declared open to public. She said that they focused their study to Gurgaon because a large amount of compensation package was given to Gurgaon and two villages namely Sultanpur village and Kasil village both of them are dominated by Rajputs. She said that the objective of the study was to understand the utilization pattern of the cash compensation, long term economic outcomes, role played by women in decision making, she said that they wanted to obtain the perception of the recipients, that what should be the components of compensations other than cash to come out with policy suggestions.

She said that they conducted detailed interviews with 45 households, focused group discussion with men and women and also interviews of key informers like members of panchayat, sarpanch, etc. She then showed the details of the payment

¹⁸ Senior Fellow TERI, Darbari Seth Block, India Habitat Centre, Lodhi Road, New Delhi

schedule and explained its various components, she stated that in 2012, 25% of the compensation was paid in cash, 25% was placed in fixed deposits of 555 days and the remaining 50% was dispersed in 2014-15. She also mentioned that many people were not able to encash the FDs because they had to obtain court orders and they are not able to do that, some of the respondents added that they did not get the second portion of the enhanced compensation. She mentioned that an annuity of Rs 15,000 per acre was agreed upon for a period of thirty years and that it would go up by Rs 500 per year but many respondents did not receive the annuity, some said that they only received it for a couple of years. She then showed the utilization of the money that was compensation in that she pointed out 19% was spent on marriages, 17% was spent on reconstruction, she stated that about 50% of the amount was spent in productive activities. She then said that the recipients wanted to receive the cash of the compensation in one go and that the amount should be credited directly to their bank account and none of them were interested in payment by installments, because the small amount of money which came was spent in household expenses but if entire money comes then they can invest it in land. She also said that some people agreed to get land in place of land on some conditions like the land that they get should not have a value less than they lost and it should be close to where they live and it should come as a single plot, she said that the people wanted that the project affected families should be placed in the same locality and not distributed over different districts and villages. The findings of the study were that they preferred one time compensation which should be credited directly to their bank accounts, they were fine with the compensation being dispersed in the joint accounts of husband and wife only if their wives did not go to offices and courts as they were not allowed to go out in public, they did not want the intervention of the government body but financial counseling can be provided to them so that they can decide how to spend their money, all people were satisfied by the compensation and said that it enhanced their lives and improved their status. She mentioned that she has worked with Gujjar community and Yadav community and both communities have a distinctive approach

which needs to be understood, this information can be useful for R&R projects in improving outcomes.

She provided some policy suggestions:

- Constituents of compensation package to be tailored in consultation with PAFs, assured ease of accrual.
- Financial counseling camps prior to disbursement of compensation
- Long term income earning opportunities for PAFs in projects—allotment of shops, local procurement of goods and services etc.
- Building trust and creating communication channels for early redressal of compensation-related grievances. Social impact assessment provides a valuable entry point to communities
- Induction of Sociologists on R&R teams
- Utilization of existing land in Land Banks, unutilized land with Government agencies, PSUs etc.
- Exploring the feasibility of alternate procurement options—pooling, leasing, direct purchase

Speaker 3: Shri Tapas Roy¹⁹



He started his presentation by saying that the implementation of reforms and also the interpretation that leads to land disputes. He said that averaging of land for compensation is a problem, he also mentioned that the state government and the supreme court has also identified the averaging problem of the land. “The concept of averaging of the sale price of the similar lands unless they fall in a narrow bandwidth is not acceptable”. This clearly stated the inadequacy of the process in Indian conditions. He mentioned that it is argued that the amount of compensation should be in consonance with the degree of public interest to make it just. In cases there were lower public interest, the compensation should be higher (Epstein, 1985). He mentioned that land prices, like any other commodity are determined by their qualitative and quantitative attributes. In the Western world with the large plots, many of the attributes get averaged. In Indian condition such holdings are few. Plots here are generally small and attributes vary. Unless suitable adjustments in the sale value of the small plots (in India) are made for the attributes, averaging does not meet the statistical rigor. Compensation based on such averages fails to meet the robustness demands and conflicts arise. He also highlighted how LARR 2013 has tried to address the inadequacy. He mentioned that he act has tried to make the landowners ‘willing’ by increasing the compensation through more solatium. This ignores the fact that land prices are determined more by comparison, not typically on absolute terms. Use of same solatium as multiplier makes the landowners feel cheated even more, especially when her land can fetch higher price in the open market. He mentioned that LARR 2013 has further compounded confusion by introducing sliding rule for rural lands. It has

¹⁹ Professor & HOD, Department of Management and Mechanical Science, ST. Thomas College of Engineering and Technology, 4 DH Road, Kolkata, West Bengal

assumed that people in remote rural areas are less prepared for non-agricultural livelihood. He also mentioned that distance from the urban centers does affect land prices, but not alone. Urban influence varies depending on population, affluence and growth of the nearby urban center/s, apart from its distance and connectivity. Sliding rule considers only one of the many to derive the computational basis. This has made the assumption weak. Stuck in this inadequacy, many of the States and Central Government agencies have switched over to flat 4 times the average market value for compensation, thereby defeating the spirit and rationality of the Act to pay compensation based on a sliding rule. As a result agricultural lands bordering urban centers have become gainers by twice as high as on the urban side. “This is not only absurd but also violates a basic principle of land markets- that land closer to urban centers is more expensive than land further away” (Chakravorty S. , The Price of Land- Acquisition, Conflict, Consequence, Page 181, 2013).

As a result the new act has only increased the compensation amount but has failed to meet the test of rationality. He mentioned that this paper attempts to identify the attributes and to build a suitable model to estimate the change in price of the acquired land with time. This when added to the past sales price, can provide a more realistic estimate of the current price of the acquired land. He then mentioned some steps

Step-1: Identification of factors

Variables that influence land price to change individually and collaboratively need to be identified to determine the factors as attributes. Variables have been identified in Indian context based on literature reviews and discussions with the subject experts. These can broadly be classified into internal and external variables. Internal variables are agricultural production and government subsidy, if any. External variables include variables describing the market, macroeconomic factors and urban pressure indicators (current population density, population growth, rurality etc.)

He then showed a Land Valuation Model and explained regression equation and price change per year as percentage. He then came to a conclusion that in India the plot sizes are small and the attributes vary. This makes the price also to vary even in adjacent lands. Hence averaging should not be a straight average of the sale figures. It should be rather for 'comparable' land sales to keep them in "narrow bandwidth". To make the plots 'comparable' it is necessary to adjust the local sale prices for the differences in their attributes with the acquired land. In the conclusion it is argued that an arbitrary addition of 'solatium' is not logical. The present system of multiplying with solatium only multiplies the inequity. This adds discontent. What is needed is a computation basis to convert the local area land sales data into comparable land sales data, which then can be used for averaging to get the fair value of the acquired land. The value so derived can be rationally defended to arrive at a 'just' compensation metric with or without solatium.

Speaker 4: Shri Sujit Kumar Mishra²⁰



He started his presentation by acknowledging two people Mr. Thibu and Mr. Thakur who were affected by Ultra Mega Power Plant in Odisha located in the district of Sundargarh which provided him motivation for his field work. He mentioned that the

potential of the mining sector to generate huge revenue has been linked with a large number of negative externalities. He then mentioned that Sundargarh is the district with highest mineral deposit in Odisha and also the poorest district in Odisha. He said that the argument of his present work was distributed into two aspects, “push for mining” and “push against it’s impact”, during his study he came across a lot of problems at the community level. He mentioned that he took the Mahanadi Coal Field as his case study, concerning the issue of livelihood he highlighted three issues, firstly the land loser who got a job, secondly this job allocation to one member reduces the others to dependents since they do not possess agricultural land and nor do they have a job and the third category of people were the ones whose patches of land were taken and they were indulged into illegal mining. He mentioned that on 10 August 2013, at least 14 labourers were killed and some others injured when a portion of the coal overburden suddenly collapsed at the Kulda Opencast coal mine in the Basundhara-Garjanbahal area of Sundargarh district, Odisha. This area comes under the Mahanadi Coalfields Limited (MCL). The victims were locals from the nearby villages. For the residents of the area, scavenging coal is a source of livelihood. The management claimed that they had been warning people about not getting closer to the dump. He mentioned that the people used to scavenge coal and take the less productive coal for about 8-10 km in their bicycles and sell them as this was the only source of their livelihood. He mentioned that the women working in the coal

²⁰ Processor, Council for Social Development (An Institute of ICSSR), 5-6-151, Rajendranagar, Hyderabad, Telangana

fields were affected if their workplace was at a distant place, as she could not efficiently contribute in her work and her household. He also highlighted the impact of health hazards on water sources, diseases like eye Allergy, skin diseases, malaria, GSI, arthritis, fever, asthma affected 61.04% of the people.

He mentioned that extensive field surveys, in depth interviews and interactions were conducted, the study involved a three-pronged approach to collection of information: (a) conducting a field survey; (b) collection of data from secondary sources like reports, awards of Land Acquisition Officers, various investigative reports and magazines from time to time; and (c) discussions with officials and local leaders in the area. Apart from this, focus group discussion was also conducted among different categories of people. He mentioned that the focus group provided insightful information on specific vulnerabilities of those sections of the people, who experienced greater vulnerabilities due to construction of the project. He stated that petitions related to Mines and Dams are very less with High Courts and Supreme Courts. He said that he asked one of the petitioners of the Rengali Multi-purpose Dam Project, that how he got enhanced compensation to which the petitioner said that he used to get irrigation facilities from the village sources and now it is not available so he went to the court and got enhancement. He further stated that when he asked the people who lived next to the people who got enhanced that why didn't they go to the court for enhanced compensation provided that the irrigation facilities were not available to them now, they said that they didn't knew about the legal procedure. He also mentioned that the people from the rural areas do not have trust on the legal system. He mentioned that the RFCTLARR Act, 2013 Law is very ambitious and identification of some of the very important indicators must be done to make it more robust.

Speaker 5: Dr. Renu Modi²¹



She started her presentation by saying that she was a social development consultant with the information panel of the World Bank on issues of accountability and other issues. She said that they were focusing on the issues of resettlement and rehabilitation and

livelihood restoration project. She said that the project was a builder driven and rehousing project, the focus of the project was technical and it had two components a rail component and a road component, she said that it happened in 2001-2010 and things have changed considerably over the last decade. She mentioned that in this project they saw joblessness, marginalization and social discontent; she showed some photos of the people who came out and protested as their grievances were not addressed by the government. She said that the PAD of the World Bank 1995 made with the government of Maharashtra told that 99% of the people affected were squatters, which was not the case and there was heterogeneity in the people who were to be displaced and there was no transparency, disclosure or public information centre and the MMRDA website only displayed some random information. She mentioned that when she went to the field to find out why that why people were not aware, she realised that the two NGOs that had been working had employed young girls and boys of 18-21 years of age who were graduate and could speak Marathi, so they were unable to read the documents which were made before 1960 as they were in Gujarati and they had put the people with the Gujarati documents in the list of squatters. She mentioned about the problems of the padgi land holders that they were not accounted for in the rehabilitation scheme. She mentioned that when people travel in rail in Mumbai, a lot of poor people live beside the rail track and when they got a free housing worth Rs 4

²¹ Professor, Centre for African Studies, Behind Marathi Bhasha Bhawan, University of Mumbai, vidyanagai, Santacruz (E), Mumbai, Maharashtra

lakh they were very happy, she said that the rail component project was a success.

She mentioned that the problem of the road component project was that there were middle income shop keepers and they lost business, she mentioned that people had not disclosed their income during the survey thinking that it was an income tax survey, while some thought that the surveyors were polio-drops volunteers. She showed an image showing big shops and hotel owners and said that those people could not be relocated as per the slum policy, she mentioned that the place where the people were being relocated did not had a good environment for the businessmen and shop keepers. She mentioned that the Times of India had highlighted the news that hen coops had also been given the identity of a house, she also said that it was an exaggeration, but there were allegations of corruptions and people were unaware about their displacement. She mentioned that livelihood restoration did not take place in a good way and many women lost jobs as their distance from work place was increased due to displacement, the distance was 4km which was against the norms of the World Bank as it allows the distance to be a maximum of 2km. She said that livelihood of the people was not an issue for the officials and the people had to fend off for themselves.

Technical Session –V
(Group Discussion and Framing of Recommendation)
Chairperson: Dr. C.Ashokvardhan, IAS (Retd.)

Group I: The RFCTLARR Act, 2013: Provisions, Legal Framework, Implementation – Issues and Challenges

1. Land records in each state must be updated in accordance with reality on the ground, and respecting existing tenure systems of each state;
2. Overlap between revenue land and forest land on the one hand, and coastal land within CRZ line and ambiguities on the ground w.r.t implementation of RFCTLARR Act in such cases should be removed;
3. Biggest need of the hour is regular training & capacity building of government officials, civil society and media in order to resolve ambiguities w.r.t RFCTLARR Act including particularly the application of forest laws (FCA, FRA), CRZ Notification, and the Land Acquisition Acts

They also provided some Reforms - Legal Framework recommendations:

1. The provision of SIA and consent should be applicable to all enactments listed in section 105 (2), Schedule 4
2. Delete proviso to Section 6 (2) – Exemption from SIA to irrigation projects

6 (2). Wherever EIA is carried out, a copy of the SIA report shall be made available to the Impact Assessment Agency authorized by the Central Government to carry out impact assessment.

Provided that, in respect of irrigation projects where the process of EIA is required under the provisions of any other law for the time being in force, the provisions of this Act relating to SIA shall not apply.

3. Harmonize SIA under this Act with EIA to be conducted pursuant to the EIA notification w.r.t to all projects.
4. The amendments suggested by state government which are against the spirit of the RFCTLARR Act, 2013,

particularly relating to consent, SIA, compensation and resettlement & rehabilitation should not receive the concurrence of the central government. Already existing amendments of seven states should be reviewed by central government, if possible.

5. J & K Land Acquisition Act should be brought in line with RFCTLARR
6. Pursuant to section 104, Department of Land Resources should circulate a model land lease policy for public purposes, as an alternative to Land Acquisition (Ref: Bihar Land Lease Policy, 2014)

They also provided some other recommendations which are as follows:

1. Department of Land Resources should commission research studies on challenges being experienced w.r.t implementation of RFCTLARR Act, 2013 in each state with engagement of diverse stakeholders including government departments and ministries involved in land acquisition, civil society, researchers from diverse academic backgrounds. Suggested issues
 - Compensation – computation/disbursal
 - SIA and EIA
 - R&R and similar issues

Group II: Other Acts on Land Acquisition and R&R policies: Lessons to be learnt from best practices at the state level on R&R.- Divergence and Convergence

They provided some suggestions as follows:

- Deletion of some important words of sub section (3) of section 105 of the RFCTLARR Act 2013 through the Removal of Difficulties Order 2015 is legally not tenable as it amounts to making a change which only parliament can do.
- Whether the benefit under section 30 (3) is part of compensation or not – need to made a part of the First Schedule.

- The Multiplication factor for rural areas has to be 1 to 2 as notified by the appropriate government. It has to be on a graded scale like 1.2, 1.3, 1.4, etc. linked with the distance of the project from the urban area:
- There is no confusion about the definition of urban area as is being made out. Urban area means the notified municipal limit. The distance measurement in a linear/aerial fashion can always be prescribed/specified.
- Fourth schedule Acts have their own respective provisions regarding *competent authority*. The *RFCTLARR Act 2013* needs to recognize the same :
- Applicability of section 96 of the RFCTLARR Act, including the fourth schedule Acts – to all forms of Acquisition, including consent procurement
- The central rules notified under the Act do not cover all aspects covered under the parent Act. There is need for exhaustive rules to be notified covering all provisions of the Act.
- The STs and OTFDs who have lost any of their forest rights under the Forest Rights Act 2006 due to acquisition of land are the Affected families as defined under the Act. There should be clarificatory Rules/ Guidelines on the compensation for the rights taken away as a result of acquisition/displacement.
- PESA need consultation where as RFCTLARR Act needs consent for acquisition of land in scheduled area – needs clarification.

Group III: Social-Economic Appraisal Under RFCTLARR: From plan to practice

They recommended some policy matters:

- SIA must be mandatory for all projects, with strict adherence to law.
- No evidentiary literature to show that SIA delays land acquisition.

- There should be room to incorporate SIA mitigation measures in project designs.
- Cut-off date should be from the date of notification of Section(4).
- Videography and GIS recording of year marked land should be conducted immediately after notification of Section(4).
- A standing SIA expert committee should be formed with provision to induct project specific personnel
- SIA agency after preparation of draft SIA report should be shared through district collector to the people and community.
- Preparation of broad Terms of Reference (ToRs) for key sectors.
- Capacity building of SIA Units, SIA agencies, district administration.
- R&R plan should be linked to the national skill development mission for new sets of livelihood options.
- Updation of land records.
- Section 13 of the RFCTLARR rules, 2014 regarding dedicated website for SIA related reporting should be strictly adhered to.
- Empirical research to assess the validity of SIA report must be supported.
- Social audit should be conducted after implementation of SIMP.
- Establishment of dedicated R&R Department in every District Head Quarter
- Due diligence should be done before empanelment of SIA agency
- Entitlement Matrix & Categorization (Title & Non Title Holders)
- Challenges in Land records Updation; Geo spatial data vs Actual Tehsil Records;
- Super imposing data sets- possible option ?; Establishing Parameters for Entitlements;

- Land Claims and Rights Recognition Framework
- Entitlements & Eligibility (Inclusion & Exclusion)

Determining 'Primary Source of Livelihood' where rural households have 'diversified livelihood portfolio' who is 'affected' and who is NOT?

Group-IV: Rehabilitation and livelihood restoration: challenges, solutions and future aspect

They had come up with the following points:

1. Overarching principles

- Social license to operate
- Go beyond compliance
- Making better what they were before – Social lives, livelihood, future.
- Data needs to validate the impact by a third party.

2. Suggestions

- Consultation with the host community
- There should be no gap b/w acquiring body and affected people. Direct interactions.
- Institutionalization of created infrastructure. The government bodies- local or district/ state level.
- Task force – Groups of PAPs hamlet-wise (with local community) for negotiations including political representatives
- Rehab - moholla-wise/hamlet-wise – giving them the option / choices of their groupings
- Open public meeting for transparency
- Women – Child Care, Signatory literacy
- Financial literacy (before compensation is released)- a must (Kudumbashi Kerala – Banking Sakhi in Bihar)
- Maintenance of the infrastructure, should remain with the acquiring body for sustainability

3. Safety and security

- Proper demarcation and fencing of project area, e.g mining.
- The activity which involve displacement should start after an infrastructure for rehabilitation is established

4. Skilling

- Market based
- Multiple categories – age, gender, education level
- Site specific/ local context specific gainful employment options
- Mandatory task force to take care of skilling – counselling
- Evaluation (M& E) framework- R&R
- Evaluation done by third party
- Positive reinforcement, e.g., scholarships, mid days meal schemes for children, group health insurance for the senior citizens
- All the award should be disbursed in one instalment and not staggered.

Valedictory: Dr. Nivedita P. Haran, IAS (Retd.)



After greetings, she said she was really happy that they had some very good discussions over the last two days with probably all the stakeholders, more or less, who are involved in LA, dispute redressal etc. the representatives of Govt., the NGOs, the activists, corporate, institutions, the entire gamut of all the stakeholders were covered. She wanted a lot of things which were discussed to be taken forward and lackings needed to be removed, how from ecology and environment we have now moved to social impact, socio-economic impact, the need for livelihood, infrastructure etc., the need for considering the senior citizen's requirement, people who are 50-60 plus now totally feeling lost and unwanted. The youth could turn to criminality in places where LA has been done without taking care of all the requirements. Unless the land records are modernized we are putting all the issues on the back burner, modernization mean proper updated land records and unless we do that we cannot move towards a conclusive titling. It is time to take the first step that we're yet to take for so many years. Inventory of public land, water bodies and the inventory of unused acquired land is extremely important. There are thousands of acres of acquired unused land which is lying in different places and not being utilized. There are thousands of acres of unused land lying, causing of lot of criminality to happen in our country because such land become the source of encroachment, winning favors, etc. Acquired land for a particular purpose cannot be used for another purpose. That is why it is needed to get all those present and not present agencies together in one place recorded making LA balanced and the balance can only come when we see both sides, and that ability to see both sides has to be taught to us and that starts from the Academy. BNYCRS has a crucial role to play and SIA that is being done now is not up to the standards and it needs to be improved. Unless somebody takes the responsibility to teach and coach the people who are doing it, it will not improve

and then have an empanel group of these agencies who are doing SIAs, because otherwise what had happened, and to some extent it is better now, for EIAs will happen for SIAs, they will be agencies, fly-by-night operators who will come and do these EIAs and SIAs, and nobody would know what is contained in it but it would be totally vacuous. We don't want that to happen to SIAs, SIAs are much too important to us, for our society to be left, if we do not do our SIAs truthfully, we're actually destroying the society and therefore we just cannot take chances and therefore BNYCRS will have to take the responsibility. This is one of the reasons why BNYCRS was set up, they'd be a lead in this, they'll be able to take forward the entire country and build a set of organizations that would understand the meaning of SIAs and ensure that the SIAs that are done are genuine, honest and really help in the LA process. She said that she learnt a lot from here and that they all have a lot to learn from each other.

LAND ACQUISITION, GOVERNANCE AND THE STATE: Some Issues and Complications around the LARR 2013

Ajit Chaudhuri

I. Introduction

Land acquisition by the state is a topic fraught with complications, strong opinions, and diverse and conflicting viewpoints, anywhere in the world. It is a contemporary topic given the focus upon economic growth as a means of development and poverty eradication, and the consequent pressures upon land for industrialisation, infrastructure development, urban expansion, raw materials and energy. In India, there has been increasing public awareness on the issue of land acquisition, especially because of widespread protests and agitations against such exercises that have been highlighted by the media and because of its negative consequences in the form of social unrest, Maoist violence, and a general climate of suspicion regarding the state using its powers to enhance the well-being of a well-connected few to the detriment of the majority. Weaknesses in the laws relating to land acquisition, especially around public purpose and just compensation, and the exploitation of these weaknesses by the state, has played up these consequences, leading to discussions for a new and contemporary law that walked the line between the needs of economic growth, equitable distribution, and human rights. The outcome of these discussions, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (the LARR), came into force in India on 1st January 2014.

This paper is about land acquisition by the state from a governance perspective. It begins by enquiring into the concept of 'eminent domain' (Section II) that provides a basis for the state to appropriate private property, delving into its philosophical

²² Assistant Vice President- Community Services, Tata Sustainability Group, Army and navy Building, Mumbai

underpinnings and relating it to the Indian situation, specifically to the LARR and its differences with its predecessor, the Land Acquisition Act of 1894. It expounds on the state's power to acquire private land, the source of this power, and the justice of its use of this power. It examines the matter of public purpose around land acquisition, and the issue of just and fair compensation. Section III describes the shifts in thinking from government to governance and asks whether the change from the Land Acquisition Act to LARR epitomises these shifts. It also addresses broad questions such as whether the LARR could be an enabler towards better governance, whether it requires the state to relinquish or devolve some of its powers, and whether the administration retains the ability to manipulate land acquisition outcomes under LARR. In the process, this essay seeks to discuss the complications around land acquisition and the complex interdependencies within them.

The paper does not go into a description of the LARR– the author prefers to assume, in the interest of brevity, that the reader is already familiar with it. For those who are not, and in order to preclude a reading of the Act itself, a brief description has been included in Appendix I. Appendix II contains a list of the 16 other laws by which land is acquired in India.

II. Eminent Domain

The basis for the LARR, its predecessor the Land Acquisition Act of 1894, and for land acquisition by the state in most parts of the world, lies in a concept called 'eminent domain' or the power of the state to acquire private property for a public purpose with reasonable compensation. This is a controversial and politically sensitive instrument of state power because it can enable economic and technical progress and inclusive growth, and it can also trample on property rights, the economic interests of vulnerable groups of citizens, and fundamental principles of

²³ While the US Constitution rejects confiscation without compensation as a measure of justice, it contains no rules and standards regarding compensation – these are left to the courts.

justice (Ghatak and Ghosh, 2011). The right to private property is, after all, basic to liberal democracy, market principles, and economic growth. This section of the paper examines the origins and philosophical underpinnings of eminent domain, questions it from a justice and fairness viewpoint, and explores whether a law based upon it, such as the LARR, has a place in modern society.

At the outset, and especially for those who believe that a state taking away the property of its citizens is an act of robbery and also treachery and therefore the act of a weak, kleptocratic or less evolved state because the state exists to protect property rights, let me clarify that the state can acquire, confiscate and appropriate private property with or without compensation and frequently does so, even in advanced countries with sophisticated legal systems. Eminent domain is as old as political society itself and is deemed necessary because 'public projects cannot be blocked by the recalcitrance of persons who happen to own property in the path of improvement' (Kratovil and Harrison, 1954). When it is exercised, a corresponding right to compensation arises. A civilised society tends to believe that the losses inflicted as a result of the state's acquisition of private property should be imposed, as far as is practical, on the community rather than on adversely affected individual property owners, and tends to place limitations, therefore, on the state's power to evade the payment of compensation. In the US, for example, the 5th Amendment prohibits the government from taking private property without compensation, and the 14th Amendment says that no person shall be deprived of life, liberty or property 'without due process of law', which has come to mean 'without just compensation' in cases of eminent domain²³.

II.A. Property, Sovereignty and Power

To explore eminent domain one would need to delve into the history of property and its relationship with sovereignty. As a legal term, property denotes certain rights (and not material things),

²⁴ The TV serial 'Downton Abbey' brilliantly captures the social effects of changes in land taxes in the UK leading up to the Law of Property Act of 1925.

most importantly 'my right to exclude others from interference with my enjoyment of that which the law recognises as mine' (Cohen, 1927). This right is not a relationship between an owner and a thing, it is one between an owner and other individuals with reference to things. The distinction between property and sovereignty goes back in history to Roman law and its discrimination between *dominium* or the rule over things by the individual, and *imperium*, or the rule over individuals by the king or state. Yet, most other earlier laws did not make this distinction and feudal law, which was widely prevalent in much of the world until relatively recently, saw ownership of land and political sovereignty as one. *Dominium* over things was also *imperium* over fellow human beings; land was power and the landlord was, to the tenant, an agent of the state. The modern world changed this by seeing land as a mere factor of production and seeking to simplify and modernise laws in order to commoditise it, make it marketable, and take it out of the hands of the landed aristocracy signalling, thereby, the end of their political power and control. Today's laws around property and the rights to it have a basis in this modernisation process.

Cohen (1927) observes that no individual rights can be exercised in a community without public regulation and, in the case of property rights, the state enforces an owner's right to exclude others and places restrictions and duties upon owners on matters such as usage of the land and what will be done with it upon the owner's death. The state can also deprive a person of his/her property, justly so when done in public interest, and there is no absolute principle of justice that requires the payment of compensation for this (although Cohen says that it is generally advisable to do so). In fact, history is full of examples of valuable property privileges being abolished without compensation and it is absurd to suggest that all such acts have been unjust.

What is the source of the state's power in eminent domain? Traditional thinking on this was divided between two answers- the first being God, as He set up the state and it therefore derives

²⁵ The privy purses of erstwhile Indian royal families come to mind here.

authority from His sanction, and the second being might, because might is right and the state is powerful and has the authority to govern. It was left to the philosopher Hugo Grotius who, in his 'On the Law of War and Peace' in the 17th century, set out a rational foundation for state power in his recognition of the transferability of rights. Rights, according to Grotius, are powers and faculties that humans possess and are, therefore, commodities that may be traded away like all other possessions. People may transfer rights to a ruler and receive a peaceful and stable society in return. Rights come to the state from private individuals through collective agreement- innumerable, separate, and sequential decisions that occur over a protracted period of time during which individuals agree to form the institutions that govern society by imbuing them with some of the power that they naturally possess (Miller, 2011). These institutions gel into a single coherent entity, the state. The state's power is thus the product of wilful transference of individuals' powers or rights to it. Once a state has acquired this power, and because its actions are not subject to the legal control of another, it is praiseworthy but not imperative that it take the needs of its subjects into account in its actions. It can, in fact, override them if and when it so wishes. Grotius's willingness to allow people to transfer their rights is not entirely uncontroversial. Rousseau is quoted as saying that 'Grotius spares no pains to rob the people of all their rights and invest kings with them' (in *The Social Contract*, Book II, Chapter 2) while others contend that certain basic rights should be inviolable and not subject to political bargaining or the calculus of social interests (such as John Rawls, 1971). However, Grotius's analysis does provide adequate foundation for the existence of eminent domain.

Eminent domain is particularly controversial because it overrides individuals' right to property which, in liberal democracies, translates to wealth, income and a means to livelihood, and is thus a base upon which other rights are built and also a foundation for democracy, market principles, and economic growth. Yet, despite its criticality to the system, the right to property is not always recognised as a fundamental right. In India, for example, the constitution had designated the right to property as a fundamental

right (along with freedom of speech, freedom of religion, the right to equality, minority rights, and the right to constitutional remedies). The 44th Constitutional Amendment of 1978 changed this, reducing the right to acquire, hold and dispose of property from a fundamental right under Article 19 to a constitutional one under Article 300-A, for which legal remedies and protection moved from the powerful Article 32 to Article 226. Even in the US (via the 5th and 14th Amendments) and the EU, the right to property may be overridden by the state using due process of law and by providing just compensation.

The move from the Land Acquisition Act of 1894 to the LARR does not change the fundamentals of the power of the state to acquire private land for a public purpose with reasonable compensation, i.e. of eminent domain. The state continues to have the power to acquire land from private owners if it so wishes. The key changes with respect to eminent domain between the two laws lie in the clearer definitions of public purpose and compensation (both of which are delved into in subsequent sub-sections), in restrictions around the acquisition of multi-cropped land (which, according to several commentators including Ghatak and Ghosh, reflect a concern for aggregate food production and prices and not the property rights of land owners), in procedural safeguards (in the form of adequate notification, social impact assessments, use of *Gram Sabhas* in obtaining consent, etc.), and in narrowing the urgency clause to national defence, security, and natural calamities. Some of the inadequacies of the previous law around eminent domain continue into the LARR, especially the obfuscation around the scope of LARR when land has been acquired under the 16 other laws that are also used to acquire land (Appendix II). This issue is particularly pertinent because the state acquires a bulk of its land using the Land Acquisition (Mines) Act of 1885, the National Highways Act of 1956, the Coal Bearing Areas Acquisition and Development Act of 1957, the Railways Act of 1989 and, more recently, the Special Economic Zones Act of 2005.

II.B. The Issue of Public Interest

The power of the state to forcibly acquire land from private individuals is generally widely (albeit grudgingly) accepted when carried out in public interest, for a public purpose. The public purpose or public interest (and I use these terms as synonyms) objective is critical to the justification of the use of eminent domain, at least for a democratic government and at least in the public eye. This begs the question- what is public interest?

An examination of the literature on public interest suggests that this is one of those admirably flexible terms that affords most users a measure of identification; that there is no clear agreement as to what it constitutes and that this flexibility around the term facilitates considerable room for manoeuvre for decision takers and policy makers. Dahl and Lindblom (1963, cited in Fagence 1977) suggest that 'often, a precise examination shows that it is nothing but the speaker's own view as to desirable public policy'. Schubert (1960, cited in Fagence 1977) says that 'the concept of public interest makes no operational sense' while others consider the term as among those on a list of ambiguous words and phrases that would never be missed.

Fagence (1977) suggests that flexibility is not a desirable attribute in a concept such as public interest that is central to civilised polity and is cited as justification whenever the state lacks a democratic basis or popular support for an action. Among those who do attempt to define it are those who equate it with private interests and others who eschew the association. Bentham (1823, cited in Fagence 1977) has a utilitarian viewpoint, suggesting that 'public interest is the arithmetically derived total of individual interests' and that 'the purpose of government is to maximise satisfaction of individual self interests'. Bentley and Truman (1951, cited in Fagence 1977) say that it is the outcome of an exchange between competing interests and that the principle benefit of democracy is the multiplicity of points of access for the many conflicting interests that inevitably and necessarily arise in pluralistic societies. Friedrich (1950, cited in Fagence 1977) warns that

public interest should be conceived as the genuine interest of the whole community and not the camouflaged interest of an elite or minority. Others suggest that public policy cannot be based upon the sum of demands of organised special interests because public interests are vital common interests that cannot be organised by pressure groups. Appleby (1950:34-35)) says that 'public interest is never merely the sum of all private interests, nor the sum remaining after cancelling out their various pluses and minuses. It is not wholly separate from private interests, and it derives from citizens with many private interests, focusing in government some of the most elevated aspiration and deepest devotion of which human beings are capable.' Redford (1954) sees public interest defined as 'the best response to a situation in terms of all the interests and of the concepts of value which are generally accepted in society'.

Fagence himself laments the vagueness and immeasurability of these definitions of public interest and suggests four reasons for the difficulty in articulating the term more precisely; that individuals have interests that they may not be fully aware of, that the interests of generations yet to be born need consideration, that interests are only maximised in and through society, and that private and public interests need to be coincided. In the real world, he says, public interest is identified with organised minority interests or with organised majority expressions through the ballot box. Its genius lies not in its clarity but 'in its perverse and persistent moral intrusion upon the internal and external discourse of ruler and ruled alike'.

Schubert (1957) takes the onus of discerning public interest away from the legislature and places it firmly upon the executive. He says that, while textbooks posit an array of external (from legislatures, courts, political parties, popular sovereigns, and non-political groups) and internal (through patterns of organisation and rules of procedure) constraints upon administrative decision-making, 'administrative decisions are the mosaics of the particularistic choices of discrete human beings'. He identifies three groups of theories on how administrative officials recognise public interest when making choices.

He terms the first group as 'administrative rationalism' wherein the goals of the administration are given, the decision-making process is value neutral, and the authority of the administrator is the authority of expertise. Here, public interest is found in the rationalisation of the decision-making process so that it will automatically result in carrying out the public will. Human discretion is minimised or eliminated by defining it out of the decisional situation. This group of theories sees a robotic "administrative man" taking his place alongside the classical (and equally mythical?) "economic man".

The second group is termed as 'administrative platonism' and consists of idealists who view the legislature as an inadequate and incompetent source of public policy because it defines public interest incompletely and unsatisfactorily, and who look to expanding administrative autonomy and discretion by placing the executive at the heart of decision-making. This group recognises some interests as more public than others, especially those of the unorganised, inarticulate, underprivileged and other underdogs; and adapts, manipulates, fuses and directs group pressures towards such recognition. It sees administration as a political function- 'the weighing of forces, the subjective identification of the narrow area within which these forces may be balanced, and the exercising of discretion concerning the point within that area at which acceptability and public interest may be effectively and properly maximised' (Appleby, 1950:163). It sees the moral satisfaction of responsible administrators as dependent upon the degree to which they inject consideration of public interest in the face of the natural inclination of private interests to project themselves as the undiluted public interest. Opponents of this viewpoint insist upon official subservience to the public will as expressed by political parties and legislators. Finer (1941) expresses this by saying 'who would define the public interest? Who could define it? Only the public, I believe, or their deputies. I shall insist upon the subservience of the permanent civil service for I am of the belief, with Rousseau, that the public can be unwise but not wrong.'

The third group constitutes the 'administrative realism' category composed of sceptics and realists who dismiss notions of public will and public interest as childish myths and who see the administrator as a catalyst who transmits the conflict among multiple special interests into public interest which, in turn, is found in the satisfactory peaceful adjustment of these conflicting interests. Public interest is served by the self-awareness of the administrator who plays his/her role self-consciously and recognises the full implications of his/her choices. A sub-category in this group includes the process theorists who find public interest in the proper structuring of the decision process but, unlike the rationalists of the first group, do not exclude non-rational elements from the process. Among the realists is Bentley (1949), who considers public interest as a chimera because 'the political interests and activities of a group are always directed against other activities of men. Political life will always divide society along lines that are real, though of varying degrees of definiteness. Society itself is nothing except the complex of composite groups.'

Despite being vague, flexible, un-measurable and difficult to define, public interest is the standard that guides the execution of law and introduces objectivity, order, and unity into an administration. It is to bureaucracy what 'due process' is to the judiciary- its abstract meaning may be vague but its application has far-reaching effects. The task of government in a democracy is to adjust competing and conflicting economic and social forces. The public interest is the standard that should determine the degree to which the government lends its forces to one side or another. Without this standard, the scales would simply be weighted in favour of victory for the strongest.

Relating public interest and public purpose back to the original topic of land acquisition, they feature in most eminent domain acquisitions worldwide and are the cause of considerable controversy because governments tend to take interpretive liberties while using them and courts generally refuse to second-guess executive judgement on these matters. In India, for

example, much of the recent conflict around land acquisition has been centred on the issue of whether the government can forcibly acquire land on behalf of private companies, corporate interests, and other private profit-making entities while claiming that this has a public purpose. It is worth delving into this debate.

The Land Acquisition Act of 1894 stipulated public purpose behind land acquisition and left the interpretation of public purpose to the state, thus allowing for the use of eminent domain on behalf of private entities. There is a sense that this developed into a means by which powerful industrialists, bureaucrats, and politicians used their leverage with the state to grab land arbitrarily, unfairly, and without paying just compensation. The heightened public concern around this has been a factor in the formation of the new LARR. The LARR defines a set of activities as coming within the realm of public purpose and this includes activities for strategic purposes, infrastructure, and housing. And, while it continues to permit the use of eminent domain for private entities, it requires the consent of 80 percent of the affected families in these cases (and 75 percent for public-private partnerships) through a prior informed process before eminent domain can be exercised for the remaining land. The prior informed process includes a social impact assessment that determines the public purpose in a particular land acquisition exercise and the LARR specifies that this assessment is to be undertaken by an independent entity (i.e. other than the state, the sellers and the buyers). The social impact assessment uses participatory mechanisms and elicits opinions from a wider cross-section of people than those directly affected (for example, the social impact process recognises the role of *Gram Sabhas* in Schedule V and VI areas and involves the indirectly affected, such as agricultural labourers, as well). The LARR is thereby also compliant with the Panchayats (Extension to Scheduled Areas) and the Forest Rights Acts of 1996 and 2006 respectively.

The moral question of whether the definition of public purpose could include private gain and, therefore, whether the state is justified in using its powers to acquire land for industry, was the

subject of considerable debate in the formulation of the LARR. Ms. Mamta Banerjee, Chief Minister of West Bengal and the force behind the Singur and Nandigram agitations, was of the view that the government should have no role in land transfers between private parties, as was the head of India's largest private land development company, the DLF Group. NC Saxena of the NAC Advisory Group was of the opposite view, suggesting that reliance on open markets would leave small farmers at the mercy of the land mafia, prevent industry from locating in tribal areas, and cause delays in acquisition due to incomplete land records. The LARR ultimately takes the view that while the market works well in bilateral transactions its effectiveness drops exponentially as the number of parties to a transaction increase, especially where property rights are poorly defined, land records are fuzzy and courts work at a glacial pace, and the likely outcome of large-scale land acquisition through the market would be a legal quagmire (Ghatak and Ghosh, 2011). The LARR sees state participation as necessary in such cases because of the reduced transaction costs and expedited processes that occur, because of the value the state attaches to equity and justice, and because the state has an interest in enabling socially useful projects to succeed.

Ghatak and Ghosh (2011) raise the issue of whether the focus on public purpose in land acquisition is misplaced. If land is acquired for a golf course or a Formula One racetrack and the acquiring entity pays the affected landowners sufficiently, why should anyone object to such a transaction? Alternatively, if the state cannot muster up sufficient tax revenue to adequately compensate landowners where land is acquired for a proposed defence facility or to resettle victims of an earthquake then, despite the clear-cut case of public interest, can such an act be considered just? Ultimately, they suggest that if the state is to violate property rights, for whatever reason, it 'should put its money where its mouth is'. Such a viewpoint effectively bypasses the controversy around the public purpose element of eminent domain and shifts the onus of justice on to the issue of just compensation.

II.C. The Issue of Compensation

To many, the entire brouhaha around land acquisition is not about the role of the state and the source of its power, nor about the adequacy of definition of public interest. It instead, boils down to a single and rather more mundane issue to that of whether the owner is adequately compensated for the loss of his/her land. Kratovil and Harrison (1954) identify two irreconcilable theories of compensation. The first is 'owner's loss' – that compensation should aim for the owner to be in as good a pecuniary position as s/he would have been in if his/her property had not been acquired. The second is 'taker's gain'- that the state should pay for only what it gets, not the larger losses suffered by the owner as that would impose an inordinate drain on the public exchequer.

In India, the old Land Acquisition Act of 1894 was aligned with the second theory- it laid down the principle that compensation should be equal to the local market price for land and that the market price should be calculated based upon the average price of all land transactions completed in the area in the previous three years. This was grossly unfair to those whose land was being acquired for various reasons (Ghatak and Ghosh 2011) including that, in many regions, land transactions are few and not very well documented and leave room for officials to manipulate figures through selective sampling or fake deals, that the full value in land deals is often concealed in order to evade stamp duties, and that distress sales often constitute a bulk of previous transactions. Moreover, given that land acquisition often leads to appreciation in local land prices, the dispossessed landowner is usually unable to buy back land with compensation money, leading to land alienation.

The LARR changes this situation by aligning itself with the first theory. It combines acquisition, compensation, rehabilitation and resettlement into a single Act, specifies the compensation amounts and the basis for their calculation clearly (LARR Schedule I), recognises the claim for compensation of those who have not lost land but whose livelihoods have nevertheless been affected,

outlines rehabilitation and resettlement entitlements of land and livelihood losers (LARR Schedules II to VI), and prescribes mandatory procedures for these to mitigate the negative impact of displacement. It also includes all private purchases of land above a threshold level within its ambit while requiring prior consent and evidence of public purpose in these transactions. In the process, it aligns itself with the loser of the land. Involuntary land transactions are now much more difficult, compensation is much higher, and procedures around rehabilitation and resettlement are clearer and cover more people within their ambit. By doing so, it makes land acquisition much more expensive, burdening the taxpayer and possibly placing a brake on the industrialisation process. LARR's critics suggest that it has sought to make up for historical injustices perpetrated through the weaknesses of its predecessor by coming down too far on the side of the land owner. They also cite weaknesses in the form of unclear rules and multiplicity of laws (Appendix II lists these) and authorities in land acquisition, and the continued scope for exploitation of the land rights of tribal populations outside scheduled areas.

Ghatak and Ghosh (2011) raise an entirely different question on one point of continuity between the LARR and its predecessor; the use of market price as a basis for determining compensation amount. They suggest that the use of a market price for a voluntary transaction as a proxy for owner's value in forced acquisitions of land is fundamentally flawed. It is worth recounting their arguments in support of this proposition. The value of a plot of land to its owner, they say, is not tangible or subject to objective measurement- it is subjective and whatever the owner deems it to be. There is substantial heterogeneity in owners' valuation of land and many potential sources of the land's value; crop output, collateral for loans, assured source of employment for family labour, insurance against food price fluctuations via self-consumption, social prestige, inter alia. A market transaction arises when the owner of an asset meets a person who values the asset more and together they negotiate a price in between their respective evaluations. In a perfect asset market (which the market for agricultural land is not; it is thin, fragmented, and

riddled with friction) all current owners value their asset more than the prevailing market price, otherwise they would sell and not hold. Market price is, thereby, a lower bound on valuation and not a good estimate of compensation in case of assets that are forcibly seized. At the other extreme, any system of compensation involving a negotiated price provides incentives for landowners to make exaggerated claims. Any acquisition process, therefore, must feature a formula for determining compensation amounts that reflect the dispossessed owner's own valuation of the asset in the absence of well-functioning land markets. The stipulated compensation formula in LARR is weak in this aspect because it uses no inputs from landowners with respect to their own valuations

There are merits to this argument from the perspective of market failure in the form of inefficiencies from transaction costs, agency problems, and informational asymmetries in incomplete markets. Yet, alternatives to market price in some form or other as a basis for just compensation are not clear. The LARR does reasonably well in providing a set of transparent and fixed rules regarding compensation (though this is based upon market price) and in leaving less scope for the discretion of officials and experts in this matter.

III. Government, Governance and the LARR

The LARR is significantly different from its predecessor, the Land Acquisition Act of 1894. It combines acquisition, compensation, rehabilitation and resettlement into a single Act and includes procedural safeguards (such as adequate notification, transparency provisions, social impact assessments to ascertain public purpose, social impact management plans to mitigate negative effects of displacement, and the use of Gram Sabhas for obtaining consent, inter alia) to enable the integrity of the acquisition process. It recognises the claims of those who have not lost land but are nevertheless affected by the acquisition, specifies compensation amounts and their basis clearly, and outlines rehabilitation and resettlement entitlements of affected

populations. It defines a set of activities as constituting public purpose and has a narrow urgency clause in place. In the process, it makes involuntary land transactions much more difficult and the compensation for loss considerably higher. It also uses local people's institutions in the acquisition process and brings more people within its ambit.

Are the differences between the two Acts, and the changes that the LARR is likely to bring about, reflective of the shift in thinking within administrative circles from 'government' to 'governance'? This section examines the question by outlining the theoretical differences between 'government' and 'governance' and looking again at the LARR and its changes from its predecessor that have been described above using this lens.

III.A. 'Government' to 'Governance'

According to Anglo-American political theory the term 'government' is associated with formal institutions of the state and their monopoly of legitimate coercive power. It is characterised by an ability to make decisions, a capacity to enforce them, and the formal and institutional processes that operate at the level of the nation-state to maintain public order and facilitate collective action. It seeks to enable the state to cope with external challenges, to prevent conflict among its members, to procure resources, and to frame goals and policies to achieve goals (Stoker, 1998).

The term 'governance' is related to, but is not a synonym of, government. It originally referred to the action or manner of governing, guiding or steering conduct, and its usage was limited to constitutional and legal issues concerning the conduct of 'affairs of the state' (Jessop, 1998). Interest in governance enjoyed a revival in the mid-1970s, coinciding with the rejection of simplistic dichotomies informing the social sciences such as market versus hierarchy in economics, market versus planning in policy studies, private versus public in politics, and anarchy versus sovereignty in international relations; it is now a buzzword that can mean anything (or nothing).

According to Jessop (1998), governance has two (closely related but nested) meanings. In the first, governance can refer to any mode of co-ordination of interdependent activities, of which the three most relevant modes are the anarchy of exchange (or markets), the organisational hierarchy (in this context, traditional government), and self-organising 'heterarchy'. The second meaning is heterarchy itself, which involves the self-organised steering of multiple agencies, institutions and systems, each of which are operationally autonomous from one another (and cannot rely on a single hierarchy as a mode of co-ordination) and yet are structurally coupled due to their mutual inter-dependence (and are, therefore, ill-suited to simple co-evolution based on the invisible hand of the market).

Each functional system within the state (for example, the economic, political, legal, scientific, or educational systems, the private and non-profit sectors and civil society organisations, *inter alia*) has its own complex operational logic and cannot be effectively co-ordinated and controlled from outside the system (for example, the political and legal systems cannot control overall economic development through coercion, taxation, legislation, judicial decisions, etc.). There are better prospects for 'steering' such systems- taking account of a system's own internal codes and logics, modifying the structural and strategic contexts in which the system operates, and co-ordinating these contexts across different systems in the light of their substantive social and spacio-temporal inter-dependencies. Such steering is mediated through the symbolic media of communication such as money, law or knowledge, and direct communication oriented to inter-systemic 'noise reduction' (i.e. reducing mutual incomprehension in the communication between different institutional orders through enhanced understanding of and sensitivity to their distinctive rationalities, identities and interests), negotiation, positive and negative co-ordination (i.e. taking account of the possible adverse repercussions of one's actions on third parties and other systems and exercising appropriate self-restraint), and co-operation in shared projects.

The rise of heterarchic governance points to fundamental shifts in state-market-society relations and the emergence of new economic and social conditions and attendant problems that cannot be managed or resolved through top-down state planning or market-mediated anarchy. These shifts reflect the intensification of societal complexity, which in turn flows from growing functional differentiation of institutional orders in a globalising society, which leads to greater systemic interdependencies across various social, spatial, and temporal horizons of action. Heterarchic governance has an advantage as a mode of co-ordination in its capacity to innovate and adapt in a changing environment, especially in circumstances involving multiple institutions and functions (each with operational autonomy, but with reciprocal inter-dependence) with shared interests and complex spacio-temporal horizons, and in its ability to realise joint products (such as a city plan, a strategy for collective action, or a problem solution in public policy).

Governance, therefore, includes other actors (in addition to government, such as civil society organisations and the private sector) that do things such as providing voice and accountability, enabling political stability and containing violence, promoting government effectiveness, ensuring regulatory quality and rule of law, and controlling corruption. Governance is associated with the modern state; a state that has welfare and developmental functions as well as administrative responsibilities, a state that is responsive and accountable, that provides for public goods; a state that meets the quest for a good life and justice for its citizens. It seeks outcomes that are similar to those of government but with processes that blur the boundaries between public, private and voluntary sectors, and with mechanisms that are without the authority and sanctions of traditional institutions of government.

III. B. The LARR and Governance

The conflicts and controversies around land acquisition under the earlier Land Acquisition Act, and its consequent social unrest, extreme left violence and widespread climate of suspicion, may be

seen as failures of both market mechanisms and hierarchical command and control structures - failures that multiple amendments to the Act were unable to address. A new Act, as opposed to further amendments to the existing Act, was seen as necessary because the fundamental principles underlying the law on land acquisition needed to change in keeping with the requirements of the times. The objectives of the LARR reflect these changed requirements; in addition to providing just and fair compensation to affected families and making adequate provisions for rehabilitation and resettlement, the LARR also looks to enabling, in consultation with institutions of local self-government, a humane, participative, informed and transparent process for land acquisition and to ensuring that the cumulative outcome of compulsory acquisition is for affected persons to become partners in the development process. These objectives are in keeping with heterarchic governance rather than anarchic exchange or hierarchic government.

The actors and institutions involved in the land acquisition process under the LARR include state SIA units, independent practitioners, social activists, academics, technical experts, public functionaries, requiring bodies, CBOs, CSOs, NGOs, the media, political representatives at different tiers of government, environmental agencies, institutions of local self-government, Gram Sabhas, governments at district and sub-district levels, and various other public forums- each operating with its own internal code and logic, in its own strategic and structural context, having its own values, visions, and missions. This too is reflective of heterarchic governance. The steering of these actors and institutions towards common agendas that heterarchic governance necessitates is envisioned through processes outlined in the LARR including notifications, social impact assessment, public hearings, and appraisals by expert groups. The attached table (Table 1) contains a summary of the actors, institutions, and processes as outlined under the LARR.

Table 1: Actors, Institutions and Processes under LARR

| Actors/Institutions | Processes |
|---|---|
| <ul style="list-style-type: none"> • State SIA Unit • Qualified SIA resource partners <ul style="list-style-type: none"> • Independent practitioners • Social activists • Academics • Technical experts • Public functionaries • Requiring body • CBOs, CSOs and NGOs • Media • Political representatives at different tiers of government • Environmental agencies • Expert groups • Panchayats and equivalents • Gram Sabhas • Government <ul style="list-style-type: none"> • State • District • Sub-district • Line departments | <ul style="list-style-type: none"> • Notification <ul style="list-style-type: none"> • In local languages • Within outlined time frames • Use of public places, Internet and government offices • Social Impact Assessment <ul style="list-style-type: none"> • Collecting and analysing qualitative and quantitative information • Undertaking field visits • Using participatory methods • To ensure adherence to public purpose as outlined in LARR • To do a detailed land assessment <ul style="list-style-type: none"> • Area of impact • Land prices and recent changes in ownership • Total land requirement <ul style="list-style-type: none"> • Is it minimum? • Is it demonstrable last resort? • No. of affected families • To ascertain consent • To assess nature, extent and intensity of positive and negative social impacts • To prepare an SIMP with ameliorative measures to address identified social impacts |
| | <ul style="list-style-type: none"> • Public Hearings <ul style="list-style-type: none"> • To pre sent SIA findings, seek feedback, incorporate omissions and additional information |

| | |
|--|---|
| | <ul style="list-style-type: none"> • Facilitated by a member of the SIA team, held in local language • In at least all villages/towns where 25 percent residents are directly affected • Appraisal by Expert Group |
|--|---|

III. C. Three Questions

Looking at the LARR under a 'government to governance' lens raises several basic questions. The author identifies the important ones in this subsection before attempting to address them with the support of subjective assessment.

Would the LARR enable better governance? The LARR involves a large swathe of society in decisions regarding land acquisition including NGOs, CBOs, CSOs, and institutions of local self-government. Would this result in better governance or in more chaos?

It is the author's considered opinion that, by virtue of devolution of decision-making processes, the involvement of more stakeholders within the processes, the creation of decentralised forums for debate and discussion that are accessible to a larger number of affected people and the transparency provisions as envisaged in the Act, the conflicts around land acquisition stand a higher chance of being played out in open spaces and resolved through democratic means. There will be less recourse to violence, to underground anti-state movements, and to other unconstitutional disruptive mechanisms. The LARR can be seen, therefore, as a move towards better governance.

Does the LARR require the state to relinquish power or to devolve power to decentralised entities? This is dependent upon the way power is defined- whether it is 'ego' or 'other' oriented, and whether it permanently exists or exists only in relation to specific

acts. The use of the political scientist Robert Dahl's (Dahl, 1957) intuitive idea of 'A having power over B to the extent that A can get B to do something B would not otherwise do', i.e. power as 'other' oriented and related to a specific act, would lead to the possibility of the LARR devolving power on land acquisition from the state to various decentralised forums and institutions. It is, however, the author's considered opinion that the state's power under eminent domain is of an 'ego' oriented and permanent nature and that this has not been relinquished or decentralised in any way under the LARR despite its provisions of transparency and participation.

This may be seen in the manner in which the LARR envisages the participation of stakeholders and affected communities; in the use of 'invited' participatory spaces wherein the preliminary agenda is controlled by planners and policy-makers, which can preclude alternate perspectives, re-enforce existing privileges, and lead to the de-politicisation of participation and the possibility of co-optation of the agenda. While the LARR legislates the use of participatory spaces (and this is a positive step) it does not guarantee the empowerment of affected communities at the cost of the power of the state.

Does the administration retain its ability to manipulate land acquisition outcomes under LARR? The rules regarding LARR processes (listed in Table 1) are remarkably detailed and they make involuntary land acquisitions considerably more difficult compared to the earlier Land Acquisition Act. Despite this, in the author's opinion, there is scope for manipulation of LARR outcomes even in cases where the urgency clause is not invoked. Land acquired under hydroelectric and irrigation projects, for example, bypass the SIA process under the rules- an environmental impact assessment conducted by a state agency is deemed sufficient to meet the objective of assessing social impact. The SIA process too contains possibilities of manipulation owing to the fact that the requiring body pays for it and acquires the power, thereby, to influence who is on the SIA team, what its terms of reference are, and which of the SIA processes have adequate

financial provisions. This ability is not necessarily negative-an administration requires flexibility to function effectively and this includes the ability to influence land acquisition outcomes where a clear sense of public purpose is discernible.

IV. Conclusions

While opinions around eminent domain may be varied, eminent domain itself is a fact. The state will always have the power to acquire private land for any purpose it sees fit and societal, governmental and constitutional checks and balances on this power will never be sufficient to entirely prevent it. Nor should they! The needs of society as a whole will always require a delicate balance with the rights and requirements of individuals within it and eminent domain, though fraught with the complications described above, ultimately enables this. The LARR reflects these complications and attempts to maintain this delicate balance. The 'government to governance' line of thought is seen as applicable to the differences between the LARR and its predecessor, especially in its wider objectives and clearer definitions of public purpose requirements and compensation amounts, and in the involvement of a larger section of society in decisions and processes around land acquisition.

Is the LARR a 'good' Act? The very fact that no commentator is entirely happy with the Act – it is either too generous to dispossessed landowners or tramples on their rights, defines public purpose too vaguely or does not give the state necessary flexibility in this matter, brings too many people within its ambit or leaves out some categories of affected populations, inter alia – can be seen as a point in its favour. After all, to quote Pranab Bardhan, the greatest challenge facing Indian democracy is that of finding a way to balance the needs of economic growth, equitable distribution and human rights, and this requires rescuing these complex and sometimes conflicting objectives from the demagoguery of single issue advocates (Bardhan, 2011).

Acronyms:

| | |
|------|---|
| CBO | Community Based Organization |
| CSO | Civil Society Organization |
| EU | European Union |
| LARR | Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 |
| NAC | National Advisory Council |
| NGO | Non Governmental Organization |
| SIA | Social Impact Assessment |
| SIMP | Social Impact Management Plan |
| USA | United States of America |

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The National Workshop on the RFCTLARR Act 2013: Provisions, legal framework, implementation – Issues and Challenges

Aibanshngain Swer

The State of Meghalaya is situated on the north east of India. It extends for about 300 kilometres in length and about 100 kilometres in breadth. It is bounded on the north and on the east by Assam, and on the south and west by Bangladesh. It is blessed with abundant rainfall, sun-shine, virgin forests, high plateaus, tumbling waterfalls, crystal clear rivers, meandering streamlets and above all with sturdy, intelligent and hospitable people. Emergence of Meghalaya as a full-fledged State on 21st January 1972 marked the beginning of a new era of the geo-political history and the triumph of peaceful democratic negotiations, mutual understanding and victory over violence and intrigue. It is subjected to the vagaries of the monsoon and the climate varies with altitude. The climate of Khasi and Jaintia Hills is uniquely pleasant and bracing. It is neither too warm in summer nor too cold in winter, but over the plains of Garo Hills, the climate is warm and humid, except in winter. The Meghalayan sky seldom remains free of clouds. The average annual rainfall is about 2600 mm over western Meghalaya, between 2500 to 3000 mm over northern Meghalaya and about 4000 mm over south-eastern Meghalaya with Sohra (Cherrapunjee), having as high as 12000 millimetres. Shillong, the capital, at an altitude of 1496 metres above sea level was made Assam's capital in 1874 and remained so till January 1972, following the formation of Meghalaya. Meghalaya is the homeland mainly of the Khasis, the Jaintias and the Garos. The Garos inhabit western Meghalaya, the Khasis in central Meghalaya, and the Jaintias in eastern Meghalaya. The Khasi and Jaintia collectively known as the Hynniewtrep people are known to be one of the earliest ethnic group of settlers in the Indian sub-continent, belonging to the Proto Austroloid Monkhmer race. The

²⁶ Director, Meghalaya Institute of Governance, Bishop cotton Road, Shillong, Meghalaya

Garos belong to the Bodo family of the Tibeto-Burman race and are said to have migrated from Tibet. The Khasis, the Jaintias and the Garos have a matrilineal society where descent is traced through the mother while the father plays an important role in the material and mental life of the family.

The Meghalaya Institute of Governance (MIG), notified by the Government of Meghalaya as the State Social Impact Assessment Unit on the 24th June 2015, was created in 2011 as one of the institutional support mechanisms of the Integrated Basin Development and Livelihood Promotion Programme (IBDLP) with a vision to explore, share and promote good governance in Meghalaya by assisting the government, the private sector, the voluntary sector and the communities in putting good governance into practice for the well-being of citizens and society with special emphasis on traditional institutions, cultural organisations and village heads. Its goals and objectives are

- To act as a think tank and facilitate translate government goals, objectives and policy priorities into tangible reform actions for good governance
- To work with government departments and other stakeholders to analyse key issues in governance and identify solutions, help develop action plans and support implementation of the plans
- To undertake capacity building of stakeholders, including local governance institutions and community based organisations
- To provide technical support and advisory services to the state in the areas of action research, change management, design and implementation of governance reforms, including governance reforms
- To identify those areas of change that can impact in improving performance and enable in responding better to the needs of the people
- To create a repository of best practices, methodologies and tools in governance, including successful e-governance applications

The focus areas of MIG are in the field of human resource management, financial management, performance management, change management. The process interventions are by simplifying procedure of service delivery and creating new core competencies in government service by improving governance environment in administration and designing governance mechanisms to match the needs and aspirations of the public.

The Meghalaya Institute of Governance (MIG) has now completed 40 Social Impact Assessment studies till date on land acquisition for setting up the Integrated Facilitation Centre- (Entry & Exit Points) along the Meghalaya-Assam border, International Border Outpost for BSF along the Indo-Bangladesh border, Compensatory Afforestation, widening of National Highways, setting up of Fire Service Station, Integrated Check Post for international border trade and Industrial Training Institute. (Annexure A) The state government has already complied with the requirements for appointment of a Commissioner for R&R , creation of an R&R cell, formation of State monitoring committee for evaluation and monitoring of SIA implementation and setting up of the LARR authority for dispute settlement which has given confidence for implementation of SIA in the state.

The issues and challenges that emerged during the SIA studies can be summarised as follows:

- i) Meghalaya is fully a Scheduled Tribes area where majority of the lands belongs to community and individual land owners with only a small percentage of land belonging to the State Government and the Autonomous District Councils. Hence land acquisition, rehabilitation and resettlement of Project Affected families (PAF) is a concern for the government.

Large scale rehabilitation of local population has not yet happened so far as most of the projects are circular projects with only a few linear projects. With the implementation of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR)

Act, 2013, the first legislation that links Land Acquisition with Resettlement and Rehabilitation in planning and implementation for both land and livelihood losers, appropriate changes in the process/implementation mechanisms to improve the situation on equity and social acceptability by providing greater transparency and benefits for the affected families has emerged.

- ii) The local land tenure system with multiple authorities in the state makes land governance a complicated process. The people of Meghalaya have their own traditional socio political system since their earliest days. The self-governing institution in a particular village at the grass roots, functions in a democratic manner. All the three major tribes of Meghalaya follow their own customary laws, traditions and practices to govern their land resources.
- iii) The absence of proper land records where majority of the landowners do not have proper documents as proof that the lands belongs to them. The state of Meghalaya does not possess a set of Land records, though it has forged ahead of most other hill states of India in other spheres of development. To some extent, even development efforts have been hampered due to absence of land records. For, without land records, financial institutions and even government organisations find it extremely difficult to accept claims to title over and to advance development loans on the security of such land.
- iv) The legislative, executive and judicial functions and local administration of the State are vested in three elected Autonomous District Councils set up under the provisions of the Sixth Schedule to the Constitution of India viz.,

The Khasi Hills Autonomous District Council :- East Khasi Hills, West Khasi Hills, South West Khasi Hills and Ri- Bhoi Districts fall under their jurisdiction. Its headquarters is at Shillong.

The Garo Hills Autonomous District Council :- North Garo Hills, East Garo Hills, West Garo Hills, South West Garo Hills and South Garo Hills Districts fall under their jurisdiction. Its headquarters is at Tura. The Jaintia Hills Autonomous District Council :- East Jaintia Hills and West Jaintia Hills District fall under their jurisdiction. Its headquarters is at Jowai. The three separate Autonomous District Councils are responsible for framing the rules of procedures to how these lands would be occupied or used. District council is the authority to dispose of land on behalf of people. It is on the above consideration that under the Sixth Schedule, the District Council have been invested with the powers of allotment, occupation, used or setting a part of land for purposes of agriculture and certain other matters. It's still remain true that the lands belong to the people as a whole, but it is the District Council which is responsible for framing the rules of procedures to how these lands would be occupied or used, and not according to the individual wish or capacity.

- v) There are restrictions on the transfer of land by the tribals to the non-tribals or non-tribal to non-tribals in Meghalaya which is of crucial importance as it relates to the very survival of the tribes. In 1948, after independence, the new government of Assam, framed a set of rules for protecting the interest of indigenous inhabitant of Shillong and Khasi states which stated that “No land belonging to a Khasi shall be sold, bartered, mortgaged, leased, given, or otherwise transferred or caused to be sold, bartered, mortgaged, leased, given, or otherwise transferred to a non Khasi except with the previous sanction of the Provincial Government.” The Meghalaya Assembly passed the Meghalaya Transfer of Land (Regulation) Act 1971, which states that “No land in Meghalaya shall be transferred by a tribal to a non tribal or by a non tribal to another non tribal except with the previous sanction of the competent authority.” This had emerged from the fact that it is the land which keeps the people rooted to the territory of their habitation. If there is even a shadow of insecurity to this basic factor, then the entire fabric of the

society is shaken. The history and experience of tribal society everywhere shows that if there is a free right of transfer of land, the tribals gradually lose their lands and shifts to more and more interior regions, and the fruits of development are enjoyed by other people.

- vi) Lack of registered land documents as majority of the landowners does not have their proper patta or any supported documents for registering their own lands in the office of the Syiem or ADC's or in the office of the Deputy Commissioner. Inheritance customs in Khasi Hills, Jaintia Hills and Garo Hills areas while similar has no uniform system in place leading to complications.
- vii) The right of permanent sale or mortgage of community land is not permitted by the traditional institutions but nowadays, even this right is assorted. Transfer does takes place in a little round about way on payment of what is known as development cost of a plot of land.

So from the stand points of land rights, the difference between permanent cultivation land and jhum land is losing its sharpness rapidly. Both are permanently occupied and both are becoming heritable and transferable according to custom. Jhum cultivation and permanent cultivation are only two different modes of use of land but are not different tenures.

Issues faced by the State of Meghalaya while implementing the (RFCTLARR) Act, 2013:

1. The Commissioner for R&R in the state works closely with the State Revenue Department.
2. Since all the land acquisition projects have not yet been fully completed, the State Monitoring Committee for evaluation and monitoring the SIA implementation of projects
3. Absence of LARR Authority for Dispute Settlement: inheritance of land is a common practice in the State of

Meghalaya. As such there are cases of conflicts on claims of ownership among family members. Another practice is most of the land is a community land so cases over conflicts in village administrative jurisdiction has frequently been identified by the SIA team.

4. The challenges faced for the resettlement of people in the projects was how to move from the policy provisions to actual implementation. In the state of Meghalaya the project affected families relocate themselves on their own convenient and needs. As most of the project affected villages are small cluster villages, usually relocation happens within the village itself. This is particularly important since R&R measures need to be appropriately planned in relation to not only the type and extent of losses but should also correspond to the ability of those affected to accept and adapt to the alternate livelihood opportunities. Further, this requires a better understanding of the dynamics of R&R options, taking into account the social, cultural and economic constraints and the opportunities in the new micro economic situation and political environment in which the affected persons are living. Therefore, to improve effectiveness of the R&R policy and enhance planning and implementation of resettlement programs, one needs to learn more from the experiences in implementing resettlement plans to help evolve strategies to improve its management.

Conclusion:

With the implementation of the Act and the transparency that is brought about through the SIA, many of the above issues could be addressed locally and resolved within the village and community level. This has earned the Government enormous goodwill and even NGOs and pressure groups have acknowledged and toned down their dissent. The active participation of the indigenous traditional institutions across the state has paved the way for ease in implementing the various components of the Act though the challenges faced

by the Project Affected Families and Project Implementing Agency for R&R is how to move from the policy provisions to actual implementation. This will require a better understanding of the dynamics of R&R options, taking into account the social, cultural and economic constraints and the opportunities in the new micro economic situation and political environment in which the affected persons are living.

**“The Right to Fair Compensation and Transparency in
Land Acquisition, Rehabilitation and Resettlement Act, 2013
and other Acquisition Acts: Issues in Implementation,
Divergence and Convergence”.**

Binay Dayal, Devendra Prasad & Ajay Nandan Goswami

Abstract

Coal Mining is a sites specific industry. Mines / Projects of CIL & its subsidiaries are situated across eight states. Land is a major resource for mining projects. Taking physical possession of land and rehabilitation & Resettlement of villages have been identified as a major challenge for any coal mining project. Coal India and its subsidiaries, by virtue of its humane approach in dealing with project affected persons & progressive rehabilitation policies, have earned the confidence and goodwill of the project affected people. This has been the enabling factor for CIL to be able to meet energy needs of the country by producing planned quantity of coal. This paper highlights the other Acts, CBA (A&D) Act 1957 in particular, on land acquisition and R&R policies: Lessons to be learnt from best practices at the state level on R&R.

²⁷Chief Manager (Min.), Coal India Limited, Coal Bhawan, New Town, Kolkata, West Bengal

Sustainable Land Procurement

Abstract

Land acquisition by the Government is based on the concept of “**Eminent Domain**”. Oxford dictionary defines it as “The right of a government or its agent to expropriate private property for public use, with payment of compensation”. Constitution of India has provisions on the similar lines only. However, the struggle for a long time has been to strike a delicate balance between the right of State to acquire land and the individual's prerogative to own & enjoy land/property. This struggle has intensified in the recent years as the value of land has increased appreciably and the people have become more aware of their rights. The enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement (RFCTLARR) Act, 2013 by replacing 'The Land Acquisition (LA) Act, 1894' was a historical step in this struggle. However, acquiring land for “public purpose” has different connotations in various stages of development of a country. India also faces renewed challenge on this issue as it enters an era of vigorous growth. The challenge is to determine extent of Government intervention in land procurement for any development project & the process has to be transparent and participatory. In nutshell, the objective is best possible land use with win – win situation for all the stakeholders.

Key Words: Land Acquisition, Compensation, Government, Market, Property, Public Purpose

Introduction

Eminent Domain is defined by the Oxford Dictionary as “the right of a government or its agent to expropriate private property for public use, with payment of compensation”. Historically, the term "eminent domain" has been taken from the legal treatise *De Jure Belli et Pacis*, written by the Dutch jurist Hugo Grotius in 1625, which used the term *dominium eminens* (Latin for *supreme lordship*) and described the power as follows:

"... The property of subjects is under the eminent domain of the state, so that the state or he who acts for it may use and even alienate and destroy such property, not only in the case of extreme necessity, in which even private persons have a right over the property of others, but for ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done the state is bound to make good the loss to those who lose their property."

However, it is to be noted that the following are three important components of "Eminent Domain":

- Right to acquire private property
- Acquisition for Public Purpose
- Payment of Compensation

As the above components have come to be accepted as the core of "Eminent Domain", this paper discusses these issues in Indian context.

Constitutional Provisions

There are several provisions related to the concept of eminent domain in the Constitution. "**Land and its management**" is Entry 18 in List II (State List) of Seventh Schedule. "**Acquisition and Requisitioning of property**" is Entry 42 in List III (Concurrent List) of Seventh Schedule. So, land and its management is in the domain of the States but the issues concerning its acquisition are in the domain of both the States and the Union government. There have been debates at various fora on this issue that when the land is in the domain of the States then the Union Government should not have any role in its acquisition. However, at the moment the aforesaid provisions stand intact and the enactment of the new land acquisition law by the Union Government, i.e., "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013" was due to these provisions only.

The crucial provision related to concept of eminent domain can be found in Article 31A. It states "*Any land can be acquired by the State by paying compensation at market rate*". Another related provision is in Article 300A which makes property a Legal right. It states "*No person shall be deprived of his property save by authority of law*". There is interesting history behind the development of these provisions. As the Constitution was originally adopted in the year 1950, the right to property was enshrined as a fundamental right. This was a threefold right. Article 19 (1) (f) guaranteed citizens the right to "acquire, hold & dispose of property". Article 31(1) provided that no person shall be deprived of his right to property save by the authority of law. Article 31(2) provided that if the State wants to acquire the private property of an individual or to requisition (that is to take over the property for a temporary period), it could do so only if such acquisition or requisition is for a public purpose and that compensation would be payable to the owner.

A series of amendments to the Constitution, e.g., First, Fourth, Seventeenth, Twenty Fifth and the Forty Second Amendments consistently diluted the aforesaid provisions (Basu, 2013). However, the 44th Amendment to the Constitution rang the death knell for the right to property. Article 19(1)(f) was repealed. Article 31 (1) was taken out of Part III, i.e. Fundamental Rights and made a separate Article 300A. Clauses 2A to 6 of Article 31 were omitted. The result is right to property has been removed as a fundamental right, so there is no remedy available directly under Article 32 from the Supreme Court. It is pertinent to mention here that the Fundamental Rights especially the Right to Property have been a source of long tussle between the Supreme Court and the Legislature. The basic issue has been interpretation of power to amend the Constitution including Fundamental Rights. In the celebrated decision of Keshavanand Bharati vs State of Kerala (AIR 1973 SC 146), the extent to which Parliament could restrict property right in pursuit of land reforms and the distribution of large landholdings to cultivators was decided. It over ruled previous decisions that suggested that the right to property could not be restricted. However, it laid the "Doctrine of Basic

Structure” which was strengthened by the decision of Minerva Mills Ltd. and others vs Union of India and others (AIR 1980 SC1789)

It is pertinent to mention Article 21 and 39 of the Constitution also here. These are powerful Articles and their interpretation in coming time will certainly hold significant value on the whole paradigm of land acquisition and rehabilitation & resettlement. Article 21 is related to protection of life and personal liberty. It states "*No person shall be deprived of his life or personal liberty except according to procedure established by law*". Various Courts have become very liberal in recent times in interpretation of this Article. Right to life does not mean living in vegetative state only; it includes right to health, right to environment and enjoyment of certain means of livelihood also. So, the issue of providing livelihood security and comprehensive compensation to the families affected due to land acquisition becomes important in view of the interpretation of this Article also. Supreme Court of India in Narmada Bachao Andolan vs Union of India [2000] and N.D. Jayal and Anr vs Union Of India and Ors (1 September, 2003) has observed that the Rehabilitation is not only about providing just food, clothes or shelter, it is also about extending support to rebuild livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is a logical corollary of Article 21. The oustees should be in a better position to lead a decent life and earn livelihood in the rehabilitated locations. In another case of Narmada Bachao Andolan vs The State of Madhya Pradesh (2008), Madhya Pradesh High Court has observed that the Rehabilitation and resettlement of the displaced persons being part of the fundamental right of the displaced persons guaranteed under Article 21 of the Constitution are thus constitutional obligations of the State. The State Government has to rehabilitate and resettle the persons displaced on account of the construction of a dam in such a manner as to place them in a better position to lead a decent life as part of its constitutional duty.

There are certain Articles related to Directive Principles in the Constitution. The provisions contained in the directive principles

are not enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. One such Article related to the topic under discussion is Article 39. It states that "the State shall, in particular, direct its policy towards securing— (a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment". The land acquisition entails taking land/property from one person and giving it to others. So, in view of the aforesaid policy directive, it has to be ensured that the Policy/law with regard to land acquisition lead to common good of the society and the resources are not usurped by the powerful few.

Interventions of the Government

A purview of various Policies/Laws promulgated down the years in the field of land acquisition gives the real perspective of the developments in this field. The first piece of legislation in India in respect of acquisition of property was the Bengal Resolution I of 1824. It provided rules for enabling officers of Government to obtain, at a fair valuation, land or other immovable property for roads, canals or other public purposes. Then followed a series of Acts, e.g., Act I of 1850, Act VI of 1857, Act X of 1870 and XVIII of 1885 etc. However, the major Act in this regard is 'The Land Acquisition (LA) Act, 1894' which was promulgated on the first day of March, 1894 and stayed in operation for around 119 years. It has been amended 17 times by the central government. The major amendments in the Act were made in the year 1962 & 1984. These changes were made in part due to expanding role of the private enterprises in the economic development of the country. As "land acquisition" is a concurrent subject under the Constitution, different State governments have also amended various sections of this Act as per their specific requirements. Further, several Central Acts, e.g., The Metro Railways

(Construction of Works) Act, 1978, The National Highways Act, 1956, The Coal Bearing Areas (Acquisition and Development) Act, 1957, and the Railways Act, 1989 etc. were promulgated by various Ministries of the Union Government, on land acquisition as per their specific requirements. Furthermore, various States have put in place various State Acts, e.g., The Maharashtra Regional and Town Planning Act, 1966, The Odisha Municipal Corporation Act, 1954, The Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 and The West Bengal Estates Acquisition Act, 1953 etc. to deal with specific land acquisition issues in their States. There are a variety of provisions relating to acquisition process and land compensation in these Acts. However, the main provisions in these Acts are broadly in line with provisions of the LA Act, 1894. For the sake of convenience of this paper, various ramifications of land acquisition are restricted with respect to the LA Act, 1894 only which may be considered as the umbrella Act. One major lacuna to be observed is that none of the aforesaid Acts has provisions for Rehabilitation & Resettlement (R&R) of the affected families.

The consistent effort in the above mentioned developments has been to balance the right of State to acquire land for development purposes and the individual's prerogative to own & enjoy land/property. However, the balance seems to have been disturbed somehow as protests against indiscriminate land acquisition, poor compensation and rehabilitation increased a lot in the past few years. The agitations/demonstrations related to land acquisition at Singur in West Bengal, Niyamagiri in Odisha and Noida in Uttar Pradesh in the past few years are just a few instances of these. Further, as per *Working Group on Human Rights in India & the UN Report, 2012* there has been displacement of 60 to 65 million people since the year 1947 due to “developmental” projects. The disturbing thing here is that of all the displaced people, 40 % are tribal's, 40 % are dalits and other rural poor.

The issue has been occupying mind space of the Policy makers for a long time. The first major initiative in this direction was the

National Policy on Resettlement & Rehabilitation for Project Affected Families-2003 notified by the Ministry of Rural Development (MoRD), Government of India. This Policy for the first time recognized that the R & R were integral part of the land acquisition process and the Requiring Body was required to properly rehabilitate the land losers. This Policy was revised by the MoRD in the year 2007 with the National Rehabilitation and Resettlement Policy (NRRP), 2007. It was approved by Cabinet on 11th October, 2007 and notified in the official Gazette on 31st October, 2007. It covers cases of families affected due to land acquisition or involuntary displacement due to any other reason. It provides for the basic minimum requirements that all projects leading to involuntary displacement must address. However, Requiring Bodies are free to provide benefits higher than those prescribed under this Policy.

Policies are in the form of guidelines only and not enforceable by law, but the aforesaid Policies had a positive impact on various developments in the field of land acquisition, land compensation and R & R. The first major impact was formulation of Policies by various Public Sector Undertakings of the Central Government, e.g., the National Thermal Power Corporation Ltd., National Hydroelectric Power Corporation Ltd. etc. These Policies are broadly on the lines of the NRRP 2007. Various States have also notified Policies or executive instructions to ensure adequate R & R of the affected families. Odisha Resettlement and Rehabilitation Policy, 2006; Haryana Government notification of the year 2010 regarding Floor Rates for acquisition of land under the Land Acquisition Act, 1894; Rehabilitation and Resettlement Policy 2010 of Uttar Pradesh and instructions dated 2nd June, 2011; and Rehabilitation and Resettlement Policy of Government of Kerala, 2011 are just few examples of these. Further, these Policies/executive instructions helped guide the discourse on land acquisition and R & R in the country and laid ground for the future legal enactments. These were also frequently quoted in various petitions presented to courts demanding better land compensation and R & R.

However, landmark milestone was the enactment of “The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement (RFCTLARR) Act, 2013”. It was published in the Gazette of India on 27th September, 2013. The notification for commencement of the Act was published in the Gazette on 19th December, 2013 and it has come into force from 1st January, 2014. In the LA Act, 1894, R & R was not part of the compensation, public purpose was not defined properly, there was no provision of Social Impact Assessment (SIA) and consent of the affected families. The RFCTLARR Act, 2013 has addressed all the aforesaid issues to a considerable degree.

However, in a developing country like India, the issue of land acquisition throws up new challenges as the country progresses. To address these new developments, attempt was made to amend the aforesaid Act. On 31st December, 2014, the RFCTLARR (Amendment) Ordinance, 2014 was issued. In this regard, the RFCTLARR (Second Amendment) Bill, 2015 has been passed by Lok Sabha on 10.03.2015 and sent to Rajya Sabha. However, due to disagreement between different political parties over the Bill, it has been referred to the Joint Committee of Parliament for examination. The major changes proposed in the above mentioned Bill are: - exemption from SIA, "Special Provisions for Safeguarding Food Security" and exemption from the "Consent" provisions of the Act for specific projects; and time period of return of the unutilized land etc. In the meanwhile on 3rd April, 2015, The RFCTLARR (Amendment) Ordinance, 2015 and on 30th May, 2015 the RFCTLARR (Amendment) Second Ordinance, 2015 have been issued. However, after lapse of the last ordinance on 31st August, 2015, no new ordinance was issued. Even after more than three years, the abovementioned Bill, is still pending with the Joint Committee.

Eminent Domain & Sustainable Land Procurement

The whole concept of 'Eminent Domain' boils down to three issues: *Right to acquire private property, Acquisition for Public*

Purpose and Payment of Compensation. The lacunae concerning these core issues in the LA Act, 1894 were addressed to a large extent in “RFCTLARR Act, 2013” which replaced the LA Act, 1894. However, the recent controversy over the amendments to the RFCTLARR Act, 2013 has reopened the debate on the fundamental issues of eminent domain. The basic objective of the usage of principle of eminent domain has to be acquisition of land in such a way that it leads to a win-win situation for both the land owners & the agency for whom the land is being acquired. The solution to this intricate & delicate problem of land acquisition lies in the concept of eminent domain itself. Accordingly, the above mentioned three fundamental issues of eminent domain are discussed below in detail.

Right of Acquisition

The right to acquire private property is being exercised by various Governments since the year 1824 as discussed earlier. The LA Act, 1894 was inherited by us from the colonial period at the time of independence in the year 1947. It had provisions mainly for acquisition of land for various governmental purposes. The acquisition for companies was facilitated through the amendments in the year 1962 and 1984 to the abovementioned Act. At that time a need was felt to leverage private sector for industrialization of the country. There has been substantial acquisition for companies through these provisions down the years. In fact, the opposition to land acquisition in recent years has been particularly against land acquisition for various private companies. This exercise of right of the Government to acquire private property for private companies has become a contentious issue nowadays. On one hand there is a persistent demand that the Government should facilitate investments in the country by providing land to entrepreneurs. However, there is contrary view point that in a free market economy, why should government favor certain companies? This provides scope of corruption also as discretion is with Government to favor a specific company or not. There have been many instances in recent times where charges have been flung regarding nepotism, favoritism, corruption with regard to this discretion only.

The other pertinent issue in the land acquisition process is that the Government is deciding that “A” is not competent to utilize his property, so it should be taken away from him and given to a more competent person “B”. In a free market, the market forces should decide, who is the right person to own and use a particular piece of property? In a developing economy, such government interventions are alright in the beginning, so that economy is given a push and moves in the desired direction. However, as India overtakes China in growth rate, such policies appear to be anachronistic. It is prudent that the market forces are given full freedom to play out. This will ensure that the valuable resource of land is put to its most efficient use by the most competent person. Further, the related corollary is that only the "minimum quantity of land" required for establishing the project will be used. The emphasis on 'minimum land' in recent times has started showing results. A panel set up by the Ministry of Human Resource Development, Government of India, to determine the area of land required to set up centrally funded institutes has concluded that an IIT could be set up within 260 acre of land, which is 50 per cent less than the existing requirement. Likewise, the land required to set up a central university could be brought down to 250 acre as against the present requirement of 500 acre and the optimum land required for setting up an NIT would be 150 acre as against the present requirement of 300 acre. In case of IIMs, the committee has proposed that such institutes could be set up in five to 10 acres in urban areas and within 60 acres in non-urban areas instead of present requirement of about 200 acres. This discourse will certainly give a push to vertical expansion instead of the horizontal as is being already seen in most of the metro cities. In an era of competing demands with value of lands shooting up, it is prudent that the right to acquire land is used judiciously & cautiously by the government.

The issue of “Fundamental Right to Property” has also not been given its due importance. The right to own, enjoy and dispose of property is vital to any society. Constitution of India adopted in the year 1950 had provisions in this regard but after many amendments to dilute it, 44th amendment in the year 1978

completely omitted it from the Fundamental Rights. Paradox is that even Constitution of China and USSR have provisions in this regard. In a burgeoning economy, it is very important that individuals invest in land/property and exchange it frequently. This will certainly contribute significantly to the economy. If this right is not enshrined properly in the statute and the sword of land acquisition is left hanging, the message to the investors in the global market is indeed confusing.

Public Purpose

Second issue is “Public Purpose” for which the land is to be acquired. The eminent domain is based on the fact that the interest of the public at large is more important than the interest of the individual. Two maxims are often used in this regard: *salus populi est suprema lex* (regard for the public welfare is the highest law) and *necessitas public major est quam private* (public necessity is greater than private necessity). Theoretically, these concepts are solid but the problem arises when everything under the sun is given the color of “Public Purpose”. Then there are concerns that in a densely populated country like India, continuous diversion of agricultural land may lead to insecurity on food security front. In fact, the Parliamentary Standing Committee on Rural Development in its 39th Report on the Land Acquisition (Amendment) Bill, 2007 in its Recommendation number 3.28 inter alia recommends to the Government to bring some legislation on the lines of the Forest Conservation Act, 1980, so that the prime agricultural land can be protected like forest land.

Therefore, who is going to decide the activity for which land is sought to be acquired serves the “Public Purpose” or not is equally important. Further, this concept should not only be crystal clear but people at large should accept it. In every project, it should be tested in a transparent and participatory manner that there is a valid “Public Purpose” for which land is proposed to be acquired. Furthermore, it should also be scrutinized how much land is legitimately required for a specific project and the land proposed for acquisition is most suitable for this purpose. In fact, to

encourage vertical expansion instead of horizontal expansion, standard limits may be prescribed for various types of projects after thorough studies. There are concerns that these interventions may delay the land acquisition process. To address these concerns, strict time lines should be prescribed and be adhered to strictly. Further, to ensure faster & smother implementation, training & capacity building of all the stakeholders should be taken up. Appropriate Institutes may be strengthened & leveraged in this regard. Further, India being an Information Technology (IT) powerhouse, use of IT in various aspects, e.g., mapping of wastelands, water availability, agricultural productivity & unutilized acquired land etc. will help facilitate decision makers in taking appropriate decisions in various land acquisition cases.

Compensation

The last ingredient of “Eminent Domain”, i.e., Payment of Compensation is critically important to the families who are affected by land acquisition. Ideally, the compensation should be such that it places the affected families effectively in the same position in which they were before displacement or better. Further, it should be kept in mind, it's tough for a person who is uprooted from a locality to shift to a new place and start life afresh with a new vocation and house to reside in. So, the community which gets benefitted from a project has a moral duty to ensure that just compensation is awarded to the affected families.

The subject of adequate compensation has been a constant source of heartburning/agitations/court cases among the affected families. They feel that they are paid pea nuts while a large share of the benefit is cornered by the entity who acquires the land. One of the reasons for inadequate compensation is that the market rate for the land to be acquired is calculated on the basis of registrations of property in that area in a particular period. These registrations are usually around the circle rate/floor rate/jantri rate etc. of that area fixed by the appropriate government. These rates are usually below the actual market price of the land/property. Further, the rates of stamp duty are still high in most of the States/Union

Territories (UTs) and the parties to a deal want to save on this, so the deal is shown around circle/floor rates only. Rest of the money is exchanged in black. This is a serious malaise and needs to be addressed as it leads to loss of revenue to Government and encourages illegal activities. India has progressed a great deal in the IT sector. So, besides lowering the stamp duty rates, the IT sector needs to be leveraged to capture the exact land/property prices of the area.

The aforesaid issue has been tried to be addressed in some way in the RFCTLARR Act, 2013. Several provisions, e.g., scientific formula for calculation of market value of land/property, factor of 1 to 2 to multiply the market value, increase in *Solatium* to 100 per centum etc. have been incorporated in the new Act to ensure comprehensive land compensation to the land losers. However, determination of the right price of the land being acquired is a knotty issue & if this is resolved well, it will lead to a win-win situation for all. Slightly large land compensation may increase the monetary burden on the Requiring Body in short term but will benefit it in the long run. Improper compensation usually lead to agitations, court cases which usually result in inordinately long delay in the completion of projects consequentially hiking the project cost. Thus paying some extra upfront will be a win-win situation for both the land owners as well as the project authorities.

Up-to Date & Real Time Land Records

A pertinent question to ponder here is why Requiring Body comes to Government for land acquisition. It has been observed that the major reason for this is poor land records data base in most of the States & UTs. Requiring Bodies are skeptical to deal with a large number of land owners where the titles to land are not sure. The land purchase from dubious owners may lead to disputes & court cases etc. Further, the land acquired and provided by the Government is clean of such disputes and all the headaches are handled by the Government. So, a system of up-to date and real time land records is not only a necessity for the ordinary land owners but will also facilitate better land procurement.

Conclusion

The RFCTLARR Act, 2013 has been a major leap forward in the settlement of the three core issues of “Eminent Domain”, i.e., Right to acquire private property, Acquisition for Public Purpose and Payment of Compensation. However, there are still some loopholes left to be plugged before finality is reached on these core issues. As we mull over the changes in the amendment Bill to the aforesaid Act, there should be thorough and unbiased public discourse on the matter. In a vibrant democracy like ours, such issues which touch lives of millions of people, not a single issue can be left unresolved. Considering land is a limited resource, the objective has to be most appropriate usage of land with the transparent & active participation of all the stakeholders. This will ensure sustainable land procurement with a win-win situation for all. There is also a need to have a fresh look into the issue of “Fundamental Right to Property” and providing it appropriate place in the Constitution as per the aspirations of a young & ambitious India. Further, the system to usher in up-to date & real time land records database needs to be put in place on top priority. In nutshell, as country moves into the higher growth trajectory, it is our bounden duty to settle all the aforesaid issues amicably, so that the economic growth story is not impacted in anyway.

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Displacement and Rehabilitation in Mahanadi Coal Field of Odisha

Sujit Kumar Mishra²⁸ & Prajna Paramita Mishra²⁹

Abstract

The rehabilitation policy adopted by the state in the Mahanadi Coal Field project, Jharsuguda cannot be condemned blindly. All the households are allotted with the provision of shelter (either in rehabilitation colonies or homestead land or money in lieu of homestead land). There was no trace of equity in the entire process of regulatory mechanism with the issue of compensation; the same practice has been noticed across all the issues, i.e., health, livelihood, structure of a family, social disarticulation and awareness of the institutional mechanisms; The major hindrance found in this study is lack of proper consultation of the state with the communities. This article is an empirical study of the socio-economic changes that have resulted from the policy hitherto followed by the state Odisha.

Introduction

The Indian State has undertaken a large number of development projects - in irrigation, power, industries, mining, forest and wildlife after the planned development programmes were launched in 1950-51. Most of the development projects however have been set up in rural areas and on the lands owned or inhabited by rural and tribal communities. The intergenerational uprooting of millions of people consequent on this programme thrust has resulted in profound socio-economic and cultural disruption for the people directly affected as well as the disturbance of social fabric of local communities that have been torn apart (Cernea,

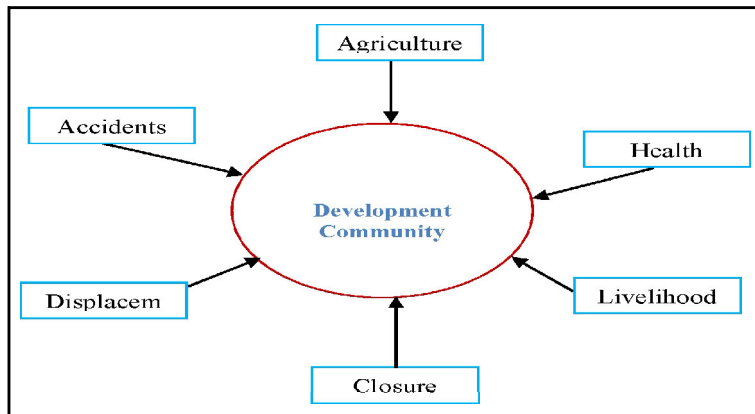
²⁸Associate Professor, Council for Social Development, Rajendra Nagar, Hyderabad. Email: sujitkumar72@gmail.com

²⁹Prajna Paramita Mishra, Assistant Professor, School of Economics, Gachibowli, Hyderabad. Email: prajnasujit@gmail.com

1988). Against this backdrop, this paper describes the path taken by these actors in different stages (described through different issues) of the development process and points to the regulatory mechanisms available to safeguard their interest.

Much has been said and written about the impact of so called “development” on local communities in India. “Mining communities” around the world – a subset of the development–displaced–share several common characteristics. The vulnerabilities of the communities given the externalities in terms of displacement, loss of agriculture, ill-health, livelihood, accident and closure are somewhat the same. The practice of resettling the development communities “alone” continues to be a reality in India despite strong institutional interventions to prevent such measures. Figure 1 offers a diagrammatic presentation of the inter-linkage different issues faced by mining communities.

Figure 1: Issues that Confront Mining Communities



It can scarcely be forgotten that the cost of development is borne entirely by the mining communities. Our study has made a review of both positive and negative impacts of development. Positive impacts include livelihood, whereas negative impacts include like health, agriculture, displacement, mining accidents and death. In addition to this, an important issue is the homogeneity in the character observed among the mining communities that leads to

mining closure and the concerned socio-economic impact. Within this backdrop the research questions raised in this paper are: (i) what went wrong in translating the resettlement policies of Odisha into practice? And (ii) what are the key factors (policies, institutions and information) that determine differences in outcome of Rehabilitation?

Data, Sample and Methodology

The study has been carried out in Odisha (Map 1). The primary motivation for the choice of geographical areas was that Odisha exemplified the displacement scenario of the country. Therefore a proper analysis of the situation and an effective consultation with the affected communities as well as with project authorities may provide a better understanding of good and adaptive rehabilitation package, focussed on restoring the equity of the people.

Map 1: Location Map of MCL, Jharsuguda, Odisha



There are two coalfields in Odisha-Talcher and Ib Valley. MCL, a subsidiary of Coal India Limited regulates the coalfields in Odisha. When the MCL was started in the year 1992-93, the production of coal was 23.14 million tons, which increased to 100.28 million tons by 2010-11. Profit before tax of the company increased from Rs. 193.97 crores in 1992-93 to Rs. 4039.30 crores in the financial year 2010-11 because of constant growth in

production and sales. Ib Valley coal field (MCL, Jharsuguda) is one of the two coalfields found in Odisha. As on 01.01.2004, coal reserve of this valley amounted to 22.34 billion tons which constitute 36.63 percent of the total coal reserve of the state. The Ib Valley is an amalgamation of different areas such as, Ib valley area, Orient area, Lakhanpur area, Basundhara area and Garjanbahal area. This project, in this way, acquired a total of 1456.90 acres of private land (agriculture), 431.66 acres private land (homestead), 671.23 acres of forest land and 2234.67 acres of government land (other than forest). The sample households from the present study have drawn from 07 villages affected by MCL, Jharsuguda, namely (i) Charla, (ii) Ghanamal, (iii) Kairkuni, (iv) Khunta Mahul, (v) Kudalai, (vi) Ladanga and (vii) Tingismal. Finally 153 households were selected from these 07. The report pointed at a set of multi-faceted issues through various methods, which are lucidly discussed below:

Data Collection

Extensive field surveys, in depth interviews and interactions with sample constituted the core of the study methodology. The study involved a three-pronged approach to collection of information: (a) conducting a field survey; (b) collection of data from secondary sources like reports, awards of Land Acquisition Officers, various investigative reports and magazines from time to time; and (c) discussions with officials and local leaders in the area. Apart from this, focus group discussion was also conducted among different categories of people. The focus group provided insightful information on specific vulnerabilities of those sections of the people, who experienced greater vulnerabilities due to construction of the project.

Hence the data collected for this study consists of (i) household for both displaced as well as affected; (ii) data on village profiles of sample villages; (iii) secondary data; (iv) reports on FGDs on

³⁰ Infraline Energy (2008)

³¹ MCL (2011)

different themes and issues. The interview aimed to capture the effects of construction of the project on the studied community, the strategies adopted by local displaced and the affected people to deal with the situation as well as the direct and indirect effects of the projects on their social economic lives. The qualitative data were condensed and analyzed thematically.

The household schedule is designed to collect a detailed information regarding the socio-economic condition of the project affected households, details regarding their landholding status, asset status, compensation received and the way of spending, structure of house, health, agriculture and etc. The village level information regarding the number of landless household, BPL, infrastructural facilities, health facilities and the distance of these facilities from their villages, the changes occurred in cropping pattern due to construction of the site was collected through the village schedule. The instruments were piloted and sharpened subsequently before the data collection procedure.

Interview Schedule

Three sets of instruments were used to collate information for this study. The interviews aimed to capture the effects of mining on the studied community, strategies employed by the people to deal with the situation. For this analysis, the qualitative answers were coded into a set of defining variables. For example, answers to questions concerning the household's current income, the number of working days, the wage rate, the different sources of livelihood for each household was set e.g. a household may earn income from agriculture, agricultural wage labour, petty business, daily wage labour and etc. All variables were cross-checked against each other to search for potential trends in the material. Having done that, another layer of analysis was added, where the defining variables were grouped into a few broader categories. Given that

³² According to the major themes of the present study- impoverishment, landlessness, homelessness, joblessness and loss of livelihood security, social disarticulation, gender, vulnerability, health hazard, loss of biodiversity, psychological trauma, dropout and child labour.

this type of analysis is sensitive to the coding, results have to be interpreted carefully. In this study, it is primarily used as a complement to the qualitative data (Table 1).

Table 1: Examples of variables and categories used

| Category | Defining Variables | Original Questions |
|------------------|--------------------------------------|---|
| Land Acquisition | Landholding Particulars | Based on questions on land owned, leased in and out land, net area sown |
| | Amount acquired | Details of land acquired, possessed, types of land acquired |
| | Land Acquisition details | Dates of 4 (1)notification, date of award, date of possession, year of shifting |
| Compensation | Amount | Based on questions about amount received, year, amount due, amount not received, reasons of not receiving compensation |
| | Use of compensation amount | Based on questions regarding type of use (on utility and non-utility assets), amount spent, year |
| | Other issues related to compensation | Information about valuation method, consultation with the communities, negotiation, satisfaction level on compensation received |
| | Grievance | Types of grievances, nature of grievance, mechanisms |
| | Type of rehabilitation | Job in the project, Job in other associated units/ vendors, Provided vocational training & assistance for self-employment, Allotted shops in market complex , Agricultural land, Cash in lieu |
| Rehabilitation | Eligibility | Qualification at the time of applying for the job, skill, training programme, problem faced in pursuing the economic rehabilitation |

| | | |
|--------------------------|-----------------------|--|
| Livelihood | Status of Employment | Nature of employment - primary and secondary for both before and after project period, average wage rate, duration of work per day |
| | Annual Income | Income calculation from different sources for both the period |
| | Ownership of asset | Different types of asset for both the period |
| Institutional Mechanisms | Policy Environment | Information about land acquisition act, rehabilitation policies, social impact assessment |
| | Access to information | Idea about the valuation, legal procedures, workshop on using money, bargaining process and negotiation |

3. Results and Discussions

Demographic Details

A population of 153 households which were badly affected because of the project were taken as the sample of this study. The sample was distributed on various attributes and the results were presented (see Table 2), in order to discern the composition of the sample. According to religions, 99.3 percent of the sample stood for Hindus and only one was Muslim. The importance of caste as an attribute in Indian studies is undeniable because of its pervasive nature which can be experienced across the society, particularly in the rural scene. From the given data, 43.8 percent households represented Scheduled Tribe, whereas 13.7 percent, 30.1 percent and 12.4 percent represented Scheduled Caste, Other Backward Classes and General category respectively. The Scheduled Tribes and Scheduled Castes, the most socially vulnerable groups together constitute the majority of those badly affected 56 percent.

Another significant and explanatory factor is Education. Our data indicate that while 11.8 percent are illiterate, just a marginal 9.8 percent are literate. In particular, 24.2 percent, 33.3 percent, 13.1 percent and 3.9 percent have received primary, middle, matriculate and intermediate level of education respectively. Only

a marginal 3.9 percent of the samples are educated up to degree level.

Table 2: Distribution of Sample on Various Attributes of the Displaced Households- MCL, Jharsuguda

| Sl. No. | Variable | Category/ Group | Total (n=153) |
|---------|----------|--------------------|----------------|
| 1 | Religion | Hindu | 152 (99.3) |
| | | Muslim | 01 (0.7) |
| 2 | Caste | ST | 67 (43.8) |
| | | SC | 21 (13.7) |
| | | OBC | 46 (30.1) |
| | | General | 19 (12.4) |
| 3 | Literacy | Illiterate | 18 (11.8) |
| | | Just literate | 15 (9.8) |
| | | Primary | 37 (24.2) |
| | | Middle | 51 (33.3) |
| | | Matriculate | 20 (13.1) |
| | | Intermediate | 06 (3.9) |
| | | Graduate and above | 06 (3.9) |

Source: Field Work

Occupational Pattern

Before being displaced, 61.4 percent of the households were depending upon cultivation and other allied activities such as horticulture, dairy farming, and pisciculture. But after displacement, 62.1 per cent of the displaced households were employed in the MCL. The decline in the number of agricultural laborers is noticeable from before to after situation. A serious issue comes to the fore from this data that as a result of MCL's employment to nearly 62.1 per cent of the households, cultivation in all categories has been ruined. However, rest of the land categories have seen a drastic fall in numbers. Moreover, the households belonging to artisan, dairy, goatery, fishery and cottage industry are not observed in the after situation (Table 3).

Table 3: Primary Occupation of the Displaced Households

| Occupations | ST | | SC | | OBC | | General | | Total | |
|-----------------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|----------------|----------------|
| | Pre | Post | Pre | Post | Pre | Post | Pre | Post | Pre | Post |
| Cultivation and allied activities | 40 (59.7) | 2 (3.0) | 13 (6.2) | - | 30 (65.2) | - | 11 (5.8) | - | 94 (61.4) | 2 (1.3) |
| Business | 5 (7.5) | 1 (1.5) | - | - | 2 (4.3) | - | - | - | 7 (4.6) | 1 (0.7) |
| Service (Government) | 4 (6.0) | 38 (56.7) | - | 13 (16.2) | 1 (2.2) | 29 (63.0) | - | 15 (78.9) | 5 (3.3) | 95 (62.1) |
| Service (Private) | 3 (4.5) | 6 (9.0) | - | 2 (9.5) | 2 (4.3) | 5 (10.9) | 2 (10.5) | - | 7 (4.6) | 13 (8.5) |
| Farm wages | 2 (3.0) | - | 3 (14.3) | 1 (4.8) | 7 (15.2) | - | 6 (31.6) | - | 18 (11.8) | 1 (0.7) |
| Non- farm wages | 11 (16.4) | 20 (29.9) | 4 (19.0) | 5 (23.8) | 3 (6.5) | 8 (17.4) | - | 4 (21.1) | 18 (11.8) | 37 (24.2) |
| Others | 2 (3.0) | - | 1 (4.8) | - | - | 1 (2.2) | - | - | 3 (2.0) | 1 (0.7) |
| Total | 67 (100.0) | 67 (100.0) | 21 (100.0) | 21 (100.0) | 46 (100.0) | 46 (100.0) | 19 (100.0) | 19 (100.0) | 153 (100.0) | 153 (100.0) |

Source: Field Work

79 percent land of the study households are acquired by the govt. at different levels. But surprisingly, only 62.1 percent of them reported to be employed by MCL. It means, in brief, almost 20 percent of the households have not been offered a job and therefore they fell in the self-employment category.

An adverse impact is found on the livestock population such as cows and buffaloes, goats and poultry because of the pollution caused by mining activities. This situation is more precarious for those who possess goats and poultry. Basically, two factors are responsible for these impacts: (i) coal dust on all the green vegetation because of which they are suffering from toxicity; and (ii) these livestock are forced to drink contaminated water from sources like river, ponds and bore-well. As a result of these factors, a large number of livestock succumb prematurely to diseases.

Land and Politics of Compensation

Land is the base on which the productive systems, commercial activities and livelihoods are constructed. Expropriation of land

means a severe jolt for all these activities to take place. This is the principal form of recapitalization and pauperization of displaced people, through the loss of both physical and man-made capital (Cernea, 1997). To analyze the nature of landholding in both pre- and post-displacement stages, in terms of economic class and caste, legal landholding has been taken as the sole variable. The sample population of MCL, Jharsuguda has a mixed population, so far as social composition is concerned, of which ST population constitute more than 40 percent.

From Table 4, it can be seen that 20.9 percent of the total number of households did not own any land before displacement. Out of the total number of 32 landless households, 19 belonged to ST, 07 to SC, 05 to OBC only one belonged to the General Category. These people neither own a piece of land, nor make their living by selling their labor. Of the total households surveyed, 12.4 percent belonged to large farmers (5 ST, 5 OBC and 5 OC) category. The large farmers usually cultivate their lands by employing permanent and casual laborers who directly participate in the production process. As if having signed a contract, they do not sell their labor to other peasants. Before displacement, most of the ST, SC households were landless and marginal farmers (except 5 large farmers), while the OC households were economically better-off in comparison to the former communities. Thus, it is apparent that there was economic disparity between the OC and the other two groups (SC and ST).

There can be seen a decrease in the average legal landholding of the displaced households from 2.17 acres to 0.14 acre in total, whereas 2.31 acres to 0.62 in the case of ST; 1.89 acres to nil in the case of SC; 1.86 acres to 0.20 acre in the case of OBC and 2.71 acres to nil in the case of general households. Similarly, the average legal landholding of the displaced people has been squeezed in this case. The percentage of such households has increased from 52.1 to 91.7 (Table 5).

Rs. 20,000 per acre has been fixed as the market value of the lost agricultural land. Apart from that, a shifting allowance worth Rs.

2000 has been given to each affected household. The survey reveals that only 25 households (i. e. 16.3 percent) had the knowledge of the valuation process and the rest were ignorant. Just a 9.4 percent of the households questioned the concerned authority, whereas 3.3 percent of the households were complacent with the received compensation. This study tries to find out the grievances of the people who were unhappy with the compensation amount. All the three chief grievances found in the present study are: (i) inadequate compensation; (ii) ignorance about the land valuation process; and (iii) employment in MCL. Apart from this, there was a gap noticed between the date of 4(1) acquisition and the date of final payment. Basically, the data were collected from seven villages namely, Charla, Ghanamal, Kairakuni, Khunta Mahul, Kudalai, Ladanga and Tingismal. Most of the respondents, however, belonged to the villages namely, Charla, Ghanamal and Kairakuni. The details of land acquisition procedure in the above three villages are presented in Table 4.

Table 4: Land Acquisition Process in the Study Villages

| Sl. No. | Name of the villages | Date of 4 (1) Notification | Date of Payment |
|---------|----------------------|----------------------------|------------------|
| 1 | Charla | 1983 | 1991, 1992, 1995 |
| 2 | Ghanamal | 1983 | 1991, 1994 |
| 3 | Kairakuni | 1985 | 1986, 1995, 2005 |

Source: Informal discussions with village leaders

Only a marginal 12.9 percent households complained against injustice met by them to the land acquisition officer (LAO) or collector. The chief reason for this was their poor knowledge about the land acquisition procedure. A gap of at least 8 years had been observed in all the above cases (except few cases of the village Kairakuni). It was the toughest time for the victims to survive since they were not supposed to do any productive activities once they had received the 4(1) notice.

Table 5: Land Holding Pattern MCL Jharsuguda

| Household Category | Caste | | | | | | | | | | | | | | | |
|-------------------------|---------------|--------|---------------|------|---------------|-------|-------|------|---------------|-------|---------------|------|---------------|-------|-------|------|
| | ST | | | | SC | | | | OBC | | | | GENERAL | | | |
| | Before | | After | | Before | | After | | Before | | After | | Before | | After | |
| | No | Area | No | Area | No | Area | No | Area | No | Area | No | Area | No | Area | No | Area |
| (i) Landless | 19 | - | 62 | - | 7 | - | 21 | - | 5 | - | 39 | - | 1 | - | 19 | - |
| (ii) Marginal | 26 (54.2) | 8.32 | 4 (80.0) | 0.31 | 7 (50.0) | 0.86 | - | - | 23 (56.1) | 2.33 | 7 (100.0) | 1.45 | 7 (38.9) | 0.58 | - | - |
| (iii) Small | 6 (12.5) | 10.14 | 1 (20.0) | - | 1 (7.1) | 1.70 | - | - | 9 (22.0) | 11.30 | - | - | 2 (11.1) | 3.58 | - | - |
| (iv) Medium | 11 (22.9) | 34.39 | - | - | 6 (42.9) | 24.02 | - | - | 4 (9.8) | 14.68 | - | - | 4 (22.2) | 11.82 | - | - |
| (v) Large | 5 (10.4) | 58.49 | - | - | - | - | - | - | 5 (12.2) | 48.00 | - | - | 5 (27.8) | 32.86 | - | - |
| Total HH with land | 48 (100.0) | 111.35 | 05 (100.0) | 0.31 | 14 (100.0) | 26.58 | - | - | 41 (100.0) | 76.32 | 07 (100.0) | 1.45 | 18 (100.0) | 48.84 | - | - |
| Total Sample HH | 67 | --- | 67 | --- | 21 | --- | --- | --- | 46 | --- | 46 | --- | 25 | --- | --- | --- |
| Average size of Holding | 2.32 | | 0.06 | | 1.90 | | - | | 1.86 | | 0.21 | | 2.71 | | 2.17 | 0.15 |

Source: Field Work

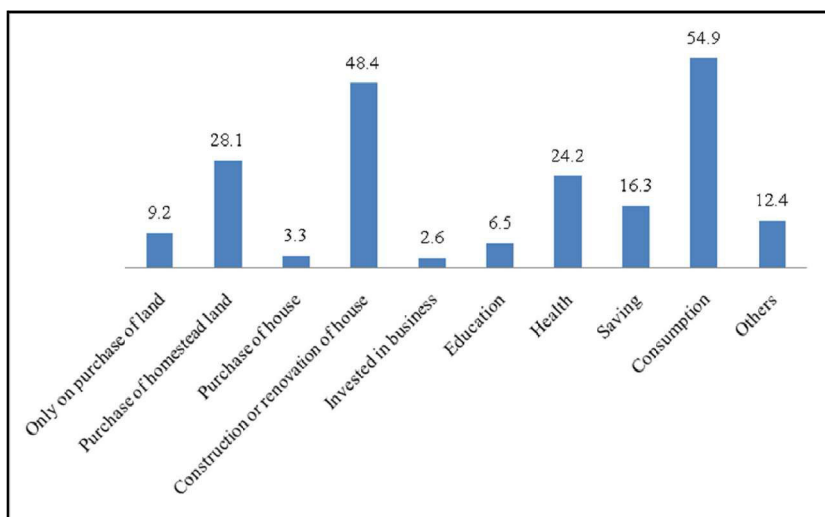
Compensation and Pattern of Utilization

An arbitrary amount of Rs 2,30,000 was paid as house building assistance to the affected people to construct their houses in the rehabilitation colonies as well as in the self-resettlement colonies by the MCL. This money was paid in addition to the compensation for land acquisition. Some people got addicted to drinking and died, being ignorant of how to invest their money. Our study tried to enquire whether any financial planning workshop was organized to train them how to invest their money in a fruitful way, and 96 percent of them denied that anything of this sort to have taken place. However, some others were duped by banks by false promises of handsome interest on their deposits and eventually decamped with all the money leaving the people penniless and as

such they have now taken to daily wage earnings. Their sudden exposure to a monetary economy where the entire medium of exchange was in-terms of money was the cause of their misery. Furthermore, lack of experience in financial matters was another reason for their failure.

The displaced people used the compensation money for a number of different purposes namely, (i) purchase of agriculture land; (ii) purchase of homestead land; (iii) purchase of house; (iv) construction or renovation of house; (v) invested in business; (vi) education; (vii) health; (viii) saving; (ix) consumption; and (x) others. It is apparent from Figure 2 that a large number of households (54.9 percent) spent the entire money on consumption.

Figure 2: Spending of the Compensation Money



Source: Field Work

It was not only the MCL, Jharsuguda victims who spent a major portion of their compensation money to purchase daily necessities, but also almost all the people across other development projects did the same thing. The studies like

Economic and Political Weekly Report (1968), Gajarajan (1970), Muthayya and Mathur (1975), and Reddy and Chattopadhyay (1986) informed that the compensation amount was mostly spent on domestic and living expenses, clearing of debts, performance of religious and marriage ceremonies. About 28.1% of the people invested the compensation money on their homestead land since they did not like to live in the rehabilitation colonies. Apart from that, compensation money was not enough for getting a piece of homestead land on par with the previous land in terms of quality and productivity and nearly 50 percent people spent a lot for the construction of their houses. Mining pollution badly affected the health of the people living in the surroundings. Hence, 24.2 percent people spent a large share of their compensation money on health purposes.

By and large, from the above analysis, it becomes evident that a substantial portion of the compensation money was spent for consumption, purchase of household goods, marriage, and other social functions. In addition to it, they purchased a number of valuables such as bicycles, wrist watches, scooters and motorcycles which were likely to be unnecessary at that time.

Resettlement Issue

According to the policy, 0.10 acres of homestead land to every oustee was provided in the respective rehabilitation colonies to each member of all the affected households to build their houses themselves. But, some did not like this. So, they chose self-resettlement. Kairakuni is a self-resettlement colony which comes under the study village of MCL, Jharsuguda. The people of this colony negotiated with the *gountia* (head of a village with land) to be provided land and he was ready for it. However, they were forced to buy only on an average of 7.6 cent of land in the village (Table 6) owing to crunch of resources. To stay together, to keep the cultural ethos intact, they were forced to buy small pieces of land with limited resources.

Table 6:Unequal Distribution of Homestead Land

| Sl. No. | Type of resettlement | Caste | Averagehomestead land (cent) |
|---------|-------------------------|-------|------------------------------|
| 1 | Self-resettlement | ST | 7.6 |
| | | SC | 9.2 |
| | | OBC | 7.4 |
| | | OC | 6.4 |
| | | Total | 7.6 |
| 2 | Rehabilitation colonies | ST | 10.0 |
| | | SC | 10.0 |
| | | OBC | 9.7 |
| | | OC | 10.0 |
| | | Total | 9.9 |
| 3 | Total | ST | 8.5 |
| | | SC | 9.7 |
| | | OBC | 8.6 |
| | | OC | 8.8 |
| | | Total | 8.8 |

Source: Field Work

In we look at other colonies, only a few basic amenities like drainage, electricity and water supply have been provided by the MCL. Unfortunately, some of the important basic amenities like school and primary health centers were not available. The people, who got a job in MCL, shifted their parents to MCL quarters renting out their houses for a good amount every month. There is a rise in underemployment in this area and it is all due to land acquisition. Earlier, the families derived their livelihood from agriculture and allied activities like horticulture, goatery and diary activities. Lack of good maintenance and proper monitoring has resulted in dilapidated condition of drainage system, water supply and electricity. However, in the absence of employment opportunities, the youth are forced to involve in antisocial activities like stealing of coal and diesel. In the present economic scenario, a sense of inequality is created out of the situation as there are all sorts of benefits available for the one who is directly

associated with the MCL on behalf of the whole family. In this way, the whole family becomes dependent on the member who is employed. This is also to be noted that all the allied activities are completely stopped in the new environment.

4. The Issue of Employment in Policy

According to the Uniform guidelines, the rehabilitation of the displaced people / families because of S.E.C.L. Projects at Sambalpur and Dhenkanal districts, clause 4 contains the following provision of employment:

Employment:

- a) One member from each family sustaining loss of dwelling houses, homestead land and agricultural land not less than 1/3rd of the total holding shall be provided with employment on a priority basis.
- b) One member of each family having sustained loss of 3 acres of non-irrigated land or 2 acres of irrigated land shall be provided with employment on second priority.
- c) In case of families having lost only homestead land or the total agricultural holding, one member from each family shall be provided with employment according to availability.
- d) In case of families who have lost 1/3rd of the total agricultural holding, one member from each family shall be provided with employment according to availability.
- e) Rehabilitation of other displaced families shall be made through self-employment schemes.

Source: Government of Orissa (1988).

³³ In the mining sector, uniform guidelines for rehabilitation of the displaced persons/families due to SECL (South Eastern Coalfield Ltd.), presently Mahanadi Coalfields Limited, 1989, popularly known as R&R Policy of MCL, 1989.

Out of the five conditions, the first four are applicable for those people who lose their land during the process of acquisition. However, only component (e) mentions about “self-employment scheme”. And it is only the livelihood losers who can take benefits under this category. Ironically, though MCL provided a job to one of the family members, the other members were rendered jobless. There is a discrimination observed against the landless laborers, artisans, sharecroppers, and encroachers in the policy documents.

The definition of a “family” is given in the clause 3 of the policy.

“A family in the aforesaid context shall include the husband and wife as the case may be and their un-married children but does not include a major son who has been separated from the family on or before the date of notification under section 4(1) of the Land Acquisition Act, 1894 in respect of area / village. He shall be treated as a separate family”.

There is a clear male-female discrimination in the policy. It talks only about the major sons. There is no mention of dependent sisters, widows and divorcees in the policy document.

5. Impact Assessment

5.1 Inequality among the displaced people

An apparent difference between the displaced people in accordance with the annual income can be seen in (Table 7). Before displacement, differentiation among the people on the basis of the possession of land (as they belonged to different land strata) was clearly defined. There was a great homogeneity existing within the same strata. However, after displacement, 94 households were employed in the mines which resulted in the tremendous rise in the earning of the concerned person. In addition to this, he and his immediate family members (spouse, kids and parents) qualified to take benefits of the medical facilities of the MCL. This distinction made the rest of the family members

more vulnerable. These people are gradually losing their social position within the family since being financially weak and all attention shift to the bread winner in the family thus leading to a hegemonic change even within a family itself. Before displacement, there was an equal right of all the family members over the joint property of the family they inherited from their forefathers. The study used the statistical tool coefficient of variation to test the variability of income of different categories of people.

5.1.1 Coefficient of Variation

As mentioned earlier, Coefficient of Variation (CV) is a measure of inequality. It is used here to identify income differential of different categories of households before and after displacement. The income of different categories of households has been taken into account to find out the CV. The income of a household depends upon certain factors like, the structure of land holding, resource position, size of the household, ratio of earners and dependent and, wage rates. However, a precise calculation of income and earnings is difficult because of the diversified nature of income.

The average annual income of the different households before and after displacement is shown in Table 7. It is clear from the table that the annual average income of the OC households was much higher than the other categories of people. The SC were the least earning members in the study area. There were disparities among different castes as they belonged to different land categories. But, due to land acquisition, all were rendered landless and 61 percent got permanent employment in the MCL with a regular salary. A considerable increase can be noticed in the income of the people across all categories in the post-displacement period. One of the chief reasons being the major share of the income coming from the salaries of the people employed in MCL. Almost no income was derived from agriculture and allied activities.

**Table 7: Income Differential of Different
Categories of Households**

| Sl. No. | Caste | Number of Households | Mean Annual Average Income | | Coefficient of Variation | |
|---------|-------|----------------------|----------------------------|----------|--------------------------|-------|
| | | | Before | After | Before | After |
| 1 | ST | 67 | 1,41,182 | 2,24,636 | 123 | 159 |
| 2 | SC | 21 | 44,095 | 79,840 | 59 | 80 |
| 3 | OBC | 46 | 1,48,434 | 2,03,810 | 132 | 253 |
| 4 | OC | 19 | 1,50,210 | 2,55,833 | 74 | 201 |
| Total | | 153 | 1,31,157 | 1,99,500 | 124 | 201 |

Income is Estimated at 2004-05 Constant Prices

It can be clearly seen from Table 3.6 that CV of all the households (irrespective of caste) has increased considerably. The OC people have been the greatest beneficiaries of it followed by the OBC. Since there was the provision in the rehabilitation policy of the MCL to employ only one member of every family, the rest of the members started exploring different earning sources, gradually became financially independent and started living separate. This issue of separation is more prominent in OC households than SC and STs because the latter categories were largely nuclear by nature since the beginning. But, OC households used to be more joint family type. The financial stability of the family is the sole responsibility of the employed person in the post-displacement situation. There is a huge gap in income seen between the people who have a permanent source of income and the people with no-permanent income.

However, it can be concluded from all the evidences that a structural change has taken place within the communities, i.e. the previous system was more equal for everyone irrespective of caste and community, whereas the present system is favorable only for the people directly associated with the MCL.

5.2 Joblessness

One of the major factors is joblessness which is highly responsible for the impoverishment of the displaced people

caused due to land acquisition which resulted in immense loss of employment opportunities (Ota, 1996; Cernea, 1997). This study has taken four indicators to assess to what extent joblessness has been overcome and how much the displaced people at the relocated sites have been benefited out of the development schemes. Table 8 has the details.

Table 8: Status of Livelihood

| Sl. No. | Parameters | Status | |
|---------|---|----------|----------|
| | | Before | After |
| 1 | Average Number of Days a man gets work | 300 days | 300 days |
| 2 | Per cent of households cultivating their own land | 61.4 | 1.3 |
| 3 | Per cent of households engaged in unskilled wage work | 11.8 | 24.2 |
| 4 | Farm wage earners | 11.8 | 0.7 |

Source: Field Work

The same exercise has been tried out alternatively with a reference to a gender. The reduction in the number of days of work from more than 180 days to 120 days has brought a great change in the lives of women. Similarly, the distance of workplace has also increased on an average from 2 km. to 6 km. Even though wage is paid in time, it never matches with their male counterparts (Table 9).

Table 9: Status of Livelihood with a Gender Glance

| Sl. No. | Parameters | Status | |
|---------|--|------------|----------|
| | | Before | After |
| 1 | Average Number of Days a woman gets work | > 180 days | 120 days |
| 2 | Average distance of Work Place in Km | 02 | 06 |
| 3 | Women are paid on Time | Yes | Yes |
| 4 | Women get wage rate equal with male | No | No |

Source: Field Work

5.3 Homelessness

A great change can be observed in the size of the homestead plot after displacement, with more than 30 percent rise in homesteads measuring over 1,500 sq.ft. The percentage of plots measuring less than 500 sq.ft, 500-1000 sq. ft and 1001 to 1,500 sq.ft fell from 24.8 to 11.1 percent, 15.7 to none and 5.9 percent to none, respectively.

There is, however, a significant change in the size of the constructed area, with the percentage of houses measuring between 500-1000 sq.ft rising from 17.6 percent before displacement to 53.6 percent post-displacement. At the same time, the percentage of houses measuring less than 500 sq.ft and 1001 to 1,500 sq.ft fell from 48.4 percent to 28.1 percent and from 26.8 percent to 9.2 percent.

A minor change can be observed in the number of rooms. The decrease in the percentage of houses with two-rooms from 30.1 percent to 9.2 percent is remarkably great. On the other hand, the percentage of houses with more than two-rooms has risen considerably from 67.9 percent to 90.1 percent.

Basically, before displacement, most of the houses had earthen floor, whereas only 11.1 percent households have earthen floors, the remaining have cement floor. There is a huge rise of the percentage of houses with cement flooring from 7.2 percent to 81.0 percent. However, the percentage of earthen floor houses has seen a huge fall from 90.8 percent to 11.1 percent.

There is a great change in the percentage of thatch- and tile-roofed houses. While thatch-roofed houses have fallen from 52.9 percent to 3.9 percent, tile-roofed houses from 11.1 percent to 9.8 percent. Moreover, the RCC roofing houses percentage has gone up from 6.5 percent to 61.4 percent. In the pre-displacement period, people used either asbestos or tin for roofing, but after displacement, things have changed. While 17.0 percent have asbestos roofs, 7.8 percent have roofs of other materials (Table 10).

Table 10: Dwelling Conditions among the Displaced Households-MCL, Jharsuguda

| Sl. No. | Indicators | Status | |
|---------|--|--------|------|
| | | Pre | Post |
| 1 | Area of Homestead plot (sq.ft) | | |
| | < 500 sq ft | 24.8 | 11.1 |
| | 500- 1000 sq ft | 15.7 | - |
| | 1001-1500 sq ft | 5.9 | - |
| | > 1500 sq ft | 53.6 | 88.2 |
| 2 | Construction area (sq. ft) | | |
| | < 500 sq ft | 48.4 | 28.1 |
| | 500- 1000 sq ft | 17.6 | 53.6 |
| | 1001-1500 sq ft | 26.8 | 9.2 |
| | > 1500 sq ft | 7.2 | 9.2 |
| 3 | Per cent of hh having one room house | 2.0 | 0.7 |
| 4 | Per cent of hh having two room house | 30.1 | 9.2 |
| 5 | Per cent of hh having more than two room house | 67.9 | 90.1 |
| 6 | Per cent of hh having | | |
| | Earthen floor | 90.8 | 11.1 |
| | Cement floor | 7.2 | 81.0 |
| | Tile floor | 2.0 | 4.6 |
| | Marble floor | - | 2.6 |
| | Other floor | - | 0.7 |
| 7 | Per cent of hh having | | |
| | Thatched roof | 52.9 | 3.9 |
| | RCC roof | 6.5 | 61.4 |
| | Tile roof | 11.1 | 9.8 |
| | Asbestos roof | 3.9 | 17.0 |
| | Tin roof | 3.3 | - |
| | Other | 22.2 | 7.8 |
| 8 | Per cent of households having electricity | | |
| | ST | 41.8 | 86.6 |
| | SC | 61.9 | 66.7 |
| | OBC | 60.9 | 84.8 |
| | OC | 63.2 | 84.2 |
| | Total | 52.9 | 83.0 |

Source: Field Work

In comparison to the pre-displacement situation, the housing condition of all the ST, SC, OBC and OC have improved as they have pucca houses and it containing more rooms. t indicates that less number of people are rendered homeless. 83 percent households have electricity in the new location. Housing determines one's position in the society (Nath, 1998).

5.4 Social Disarticulation among the people

The displaced people used to follow several social practices and marriage within a less distance was one of them. Now, after the displacement the distance was increased to more than 25 km., though earlier it was within 10 km. And sometimes, the distance increase to 60 km also. The reason being the displaced people generally get their children married within the same community, and when they were displaced, they were isolated from their communities. But, the distance of the place of worship remains almost the same. People, at times, go out of the village for worship. Kartika Purnima and Janmastami used to be two major festivals for the displaced people. Now, they are not celebrated anymore in the new colonies. But, Nuakhai, Makara Purnima and Dola Purnima are still celebrated with the same religious fervour. Apart from that, people seem to be uninterested in certain folk practices like drama, pala, and daskathia (Table 11).

Table 11: Social Disarticulation among the Displaced Households

| Sl. No. | Parameters | Cultural Practices | |
|---------|---------------------------|---|---|
| | | Before Displacement | After Displacement |
| 1 | Average Marriage Distance | Within 10 km | 25-60 km. |
| 2 | Worship/ Prayer | Within village | Within village, sometimes outside the village |
| 3 | Celebration of Function | Nuakhai, Makara Dolapurnima, Kartikapurnima, Janmastami | Nuakhai, Makara, Dolapurnima |
| 4 | Any folk practices | Drama, Ritual, Pala, Daskathia | Ritual |

1.5 Structure of the Family

Forcible displacement heavily damages the existing social fabric by disturbing the patterns of social organization and interpersonal ties (Cernea, 1997). The most serious aspect of displacement is the eviction of the people from their original habitats and resettling them in a new environment. Being deprived of these natural settings in the new settlement colonies, the physical and social bonding tend to weaken. Nayak's (1986) study on Rengali Dam discovered a lot of changes in the lifestyle of people after displacement. The effect could be seen on manifestations of social disarticulation within the kinship system such as the loosening of intimate bonds, growing alienation and anomie, the weakening of control on interpersonal behavior, and lower cohesion in family structures. The nature of families in the study village before and after displacement has been presented in Table 12.

Table 12: Structure of the Family

| Sl. No. | Caste | Total HH | Nuclear Families | | Joint Families | | Per cent of Joint families | |
|---------|-------|----------|------------------|-------|----------------|-------|----------------------------|-------|
| | | | Before | After | Before | After | Before | After |
| 1 | ST | 67 | 35 | 64 | 32 | 03 | 48 | 04 |
| 2 | SC | 21 | 8 | 18 | 13 | 03 | 59 | 13 |
| 3 | OBC | 46 | 12 | 19 | 34 | 27 | 73 | 58 |
| 4 | OC | 19 | 01 | 07 | 18 | 12 | 94 | 62 |
| Total | | 153 | 56 | 108 | 97 | 45 | 63.4 | 29.4 |

Source: Field Work

It is clear from Table 3.11 that in the pre-displacement situation, people had joint families. The percentage of ST, SC, OBC and OC having joint families were 48, 59, 73 and 94 respectively. However, after displacement, it has fallen. While 62 percent OC and 58 percent OBC have joint families, it is quite negligible in case of SC and ST, i.e., 13 percent SC and 4 percent ST families are joint in the new settlement. Thus, it becomes apparent that the social cohesion between the members of the families has been heavily damaged because of displacement.

1.6 Loss of Access to Common Property Resources

For the poor people, particularly for the landless and otherwise asset-less, loss of access to non-individual, common property assets belonging to communities that are relocated represents a cause of income and livelihood deterioration and usually overlooked and not properly compensated in government projects (Cernea, 1997). Table 3.12 is indicative of a substantial loss of common property in the post-displacement situation in comparison to the pre-displacement situation. In the pre-displacement situation, every household had free access to the common grazing land. But in the post displacement situation, the access is limited having granted access to 14.2 percent of ST, 16.9 percent of SC, 34.0 percent of OBC families to grazing land. It is noteworthy that OC families do not have any access to grazing land. Before displacement, there were a specific places meant for burial grounds, but, in the new colonies, there is no such specific place. Cremation is now done in their own lands. Even more, earlier forest was a free for the movements of people, but now it is highly restricted in the relocated sites.

Table 13: Common Property Resources

| HH category | No of HH | per cent of HH having access to grazing land | | HH having access to forest | | Families having access to burial ground | |
|-------------|----------|--|-------|----------------------------|-----------------------------------|---|---|
| | | Before | After | Before | After | Before | After |
| ST | 67 | 100 | 14.2 | Easily accessible | Accessibility has been restricted | There was common burial ground | There is not a specific place for this. |
| SC | 21 | 100 | 16.9 | | | | |
| OBC | 46 | 100 | 34.0 | | | | |
| OC | 19 | 100 | --- | | | | |
| Total | 153 | 100 | 19.0 | | | | |

Source: Field Work

Rainfall has been scanty during the last few years. Its cumulative effect can be seen in the form of absence of grass and pasture and failure of crop. That is why, paddy stalk, which is a staple food for the cattle are no more available in the rehabilitated villages (Table 14).

Table 14: Fodder Sources and Terms of Access

| Sl. No. | Fodder Sources | Terms of access | | |
|---------|----------------|-----------------|------------|----------------|
| | | Before | After | Drought period |
| 1 | Field/Waste | Free | Restricted | Failed |
| 2 | Grass | Free | Controlled | Failed |
| 3 | Paddy stalk | Free | Controlled | Failed |
| 4 | Harvest field | Free | Restricted | Failed |

Source: Field Work

5.7 Health Hazard

Out of the total 153 households surveyed in the study, about 90 **percent** reported some or other health issues during the last one year. Several villages situated adjacent to the mining sites, register a complaint about the air and water pollution caused during loading and unloading of coal in dumpers. Dust particles blow away in the air and mix with the air and water to make them polluted. In consequence, the nearby villages are badly affected by the polluted air and water. It leads to the villagers suffering from diseases like sin diseases, arthritis and joint pain. On the contrary, most of the people are suffering from air-borne diseases like eyes infection, malaria, cold, and fever. Eyes infection, skin diseases, malaria, gastro-intestinal disease, arthritis, fever, and asthma are the commonly found diseases in the mining villages (Table 15).

Table 15: Health Hazard

| Sl. No. | Indicators | | Responses |
|---------|---|-------------------------------|---|
| 1 | Major type of diseases among the people | Among old people | Fever, Jaundice, Malaria, BP, Eye allergies, Skin disease, Arthritis, Asthma, Gastro Intestinal disease, TB, Dengue |
| | | Among people (1-15 age group) | Cold, Fever, Malaria |

| | | | |
|---|--------------------------------|---------------------|---------------------------------|
| 3 | People getting treatment from: | Facilities | Percentage of Households |
| | | Govt. doctor | 26.9 |
| | | Private doctor | 73.1 |
| | | Quacks | - |
| | | Household treatment | - |
| 4 | Toilet Habit | Places | Percentage of Households |
| | | Open defecation | Before: 77.8 After: 49.7 |
| | | Community Toilet | Before: 11.1 After: 26.8 |
| | | Own toilet | Before: 11.1 After: 23.5 |
| | | | |
| 5 | Source of Drinking Water | Sources | Percentage of Households |
| | | Community Tube Well | Before: 26.1 After: 17.6 |
| | | Own Well | Before: 35.3 After: 45.1 |
| | | Community Well | Before: 26.8 After: 17.0 |
| | | Others | Before: 11.8 After: 20.3 |

Source: Field Work

The table shows that a huge percentage of households depend upon the private doctors. It has two chief reasons, namely, (i) none of the family members of the employee, except his/her parents, is allowed medical facilities in the hospitals; (ii) most of the times, the staffs are not efficient enough to diagnose the proper disease. Therefore, people are highly dependent upon private hospitals which incur a large amount of their spending. Moreover, the sources of drinking water and the toilet habit are two other major determinants of the health status of the people.

At the rehabilitation colonies of MCL, Jharsuguda, the chief source of water is well. 45.1 percent households have their own wells. On the other hand, households dependent upon tube-wells have decreased from 26.1 percent to 17.6 percent. Open defecation was a great issue earlier. The earlier percentage of open-defecation has gradually declined from 77.8 percent to 49.7 percent. However, the percentage of people using the community toilets and own toilets have remained 26.8 percent and 23.5 percent respectively (Table 15).

5.8 Food Insecurity

It was easily predictable that there would be a sudden decline in food crop availability for the victim households in the relocated site (Cernea 2000). It may be a time-consuming process to reconstruct the food production capacity at the new relocated site. People used to cultivate rice both in Kharif and Rabi seasons before they were displaced. But, all of them are left landless now on account of the land acquisition for the development project. The vegetables grown in their kitchen gardens were adequate for their families. And the surplus vegetables were sold in the market. But, now all the families have to depend upon the vegetable market for their necessity.

6. Awareness about Institutional Mechanisms

Creation of awareness about institutional mechanisms is the most significant aspect of any development process. The growth of institutional mechanisms has been outstanding over a period of time. Indian government also hugely spends in this regard. The receiving end awareness is the most important indicator to support an effective institutional framework for a national programme that guarantees sustainable outcome. A sound policy of a government always ensures the pledge of the government for sustainable resettlement. It is always the development communities who fall victims to the entire process since being ignorant of the policies and mechanisms to follow to get a compensation or expect what from whom in lieu of their livelihood, lands and home (Mathur, 2011). This study too tried hard to find out the level of awareness of the displaced people about the institutional mechanisms. Surprisingly, it found that none of the displaced people was aware of the rehabilitation policy of the MCL. However, some of the victims discussed this issue with the village leaders and it was all in vain since they did not have any idea about it. They were just speculating how to meet the project authorities in the village and discuss the matters like the determination of compensation amount for different varieties of land. Another most important element of a resettlement plan is socio-economic survey. It was

sad enough, none of the people involved in this study had knowledge of it. While enquiring, they asserted that they were at the receiving end. They simply accepted whatever was offered to them by the authorities. “Negotiation” with the affected people almost never existed throughout the process, and it can be attributed to the asymmetry of information at various levels. How surprising it sounds that the entire community was ignorant of the rehabilitation policy and its various components, the socio-economic survey and the various issues associated with it and lastly the gram sabha.

7. Factors influencing the Resettlement Outcome

Proper implementation of rehabilitation policy, coverage of all socio-economic indicators through SIA and awareness are the most important perceived factors, influencing the resettlement outcomes. As discussed earlier in this chapter, nobody was aware about the policy and hence benefit sharing mechanisms. According to 84.2 percent of the households, achieving of education is one of the important indicators, which will raise the awareness among them. Community organizations were one of the least perceived factors by the people because they were also not clear about the technicalities of the rehabilitation policy and the SIA. Resettlement outcome largely depends upon the leadership quality (the perceived rate is 89.3 percent). However in the present case study, asymmetry of information between the two agents (between the state and the communities) led to moral hazard problem. As a result people were very much ignorant about the benefit sharing mechanism. Hence as per 95.3 percent of the people knowledge about the benefit sharing mechanism is not only a necessary but also a sufficient condition for sound resettlement procedure. 71.8 percent of the households perceived that notification for acquisition was very sudden and hence they could not take proper decision. Lastly caste and socio-cultural aspects also emerged as two major indicators determining resettlement outcome (Table 16).

Table 16: Factors influencing Resettlement Outcomes

| Sl. No. | Factors | Perception of the Households (%) |
|----------------|---|---|
| 1 | Proper implementation of rehabilitation policy | 100.0 |
| 2 | Coverage of all socio-economic indicators through SIA | 100.0 |
| 3 | Socio-cultural aspect | 72.0 |
| 4 | Caste | 64.5 |
| 5 | Poverty level | 96.1 |
| 6 | Leadership quality | 89.3 |
| 7 | Benefit sharing mechanisms | 95.3 |
| 8 | Awareness | 100.0 |
| 9 | Early and proper notification | 71.8 |
| 10 | Education | 84.2 |
| 11 | Land ownership | 28.4 |
| 12 | Community organization | 19.1 |

Source: Field Work

8. Conclusion

This study has attempted to draw attention to a multiplicity of issues related to the side effects of development projects, though in fact, development is intended for growth of a nation. These issues have been addressed through the help of various literatures such as, land acquisition, political economy of compensation, agitation, livelihood, externalities in the form of agriculture and health and accident and closure. Development community is the only thread that connects all the issues as they feature in the entire discussion. In this context, a pertinent question immediately comes into mind, i.e., what is a sustainable development community? In this connection, the concept of “equity” and “intergenerational equity” can be thought of to turn a simple development community into a sustainable development community. While Equity refers to equality in terms of quality of life and standard of living, Intergenerational Equity is sustaining equality in the future in a changed situation, which means nobody will have to suffer any sort of misery for the cause of development or change. Let us discuss the development community which is

predominantly featured in the discussion above and their status of sustainability as well.

To begin with the issue of compensation and land, a great number of people were devoid of compensation as they did not possess any land. At this critical point of time, compensation was the only base of the resettlement process. But, our study discovered that there was no trace of equity in the entire process of regulatory mechanism. The same practice has been noticed across all the issues, i.e., health, livelihood, structure of a family, social disarticulation and awareness of the institutional mechanisms. However, in the post-constitution period, the practices in terms of policies, acts, rules and schemes have been increased. The investment of material and intellectual properties is also found to have increased manifold. Notwithstanding increased policies and acts, the outcome is not up to the expectation mark and the reason being the status of the development communities not have changed as expected. Still they are in the same condition in which they were 60 years ago. Throughout the course of the study, we find that there is a weaker link between the community and the state in terms of participation in the development process, the capacity to negotiate with the state to determine the level of acceptance and so on. Furthermore, the term “consultation” used in the policy document is nothing but arbitrarily passing the information to the people about the project. Even the communities do not have any right to say “no” to the project. It means that the “consent” of the people does not have any role to play in the process of “consultation”. As per the views of the mining communities, consultation is a composite term which possesses the cumulative impact of two important factors: (i) right to consent about the project; and (ii) possession of bargaining power over their economy (both for land-owning and landless people). Apart from this, there were two other issues came out from the discussions with the communities: (i) proper implementation of the policy keeping equity as the major objective; and (ii) effective monitoring and evaluation of the process. Needless to mention that the present monitoring system is highly outdated. And also, it is not an inbuilt process within the

process. Therefore a need for creating a system arises which will negotiate with the state after exploring how community perception and concerns reflect in the development policy in India and what mechanisms are required to be evolved to make the current policies sustainable with special focus on social justice and equity.

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REHABILITATION & RESETTLEMENT SCHEME OF COAL MINING PROJECT – A CASE STUDY

G.Kumar³⁴

Abstract

This is absolutely true that the prosperity of the nation can be measured by means of per capita use of minerals. However, minerals are non renewable resources and their exploitation is necessary for the growth and sustainable development. This is also true that the exploitation of minerals has certain untold issues which are required to be settled before adopting the scheme and as such the Rehabilitation and Resettlement aspect therefore becomes obviously the most important issue because it involves not only the sentiment of the people but also involves their life style, culture as per the changed scenario.

Mining in India deserves due credit as it has supported the industrial growth in India but fact also remains that it has led to impacting the environment and social life of the community located nearby. The corporate social responsibility of mining industries has not been satisfactory. Although there are laws and regulations, amended time to time, effectively they have failed to protect from manipulation and exploitation of environment and social laws by mining industries. Enforcement of laws has of course led to compliance in certain areas but Corporate Social Responsibility is beyond compliance and seeks mining industries to undertake voluntary endeavours in order to minimize the adverse impacts on the environment and society. The biggest issue in the mining including the coal mining is the Rehabilitation programme for the displaced persons. Displaced people are required to be resettled and rehabilitated in a participative manner keeping in view their requirements, customs and life style.

For framing the rehabilitation and resettlement programme, two important factors such as (1) Human value with their socio

³⁴ Professor, Department of Geology, BIT Sindri, P.O. Sindri, Dhanbad, Jharkhand

economic considerations & (2) the project economics) must be taken into consideration.

In the present paper the case of Tasra Coal Block (Chasnalla, Dhanbad) owned by SAIL has been discussed.

Introduction

Between 1950 and 1991, mining displaced about 2.6 million people -- not even 25 per cent of these displaced have been rehabilitated. About 52 per cent of these displaced were tribals. For every 1 per cent that mining contributes to India's GDP, it displaces 3-4 times more people than all the development projects put together [1]; [2].

Displacement of people in the development projects, like dams, irrigation projects, thermal power plants, railway lines, highways, mines are unavoidable [3]. Laying of railway lines, construction of highways, irrigation projects, etc generally require a narrow long stretch of land, whereas a thermal power plant or national park, etc need a limited area. There is scope of selecting suitable site for implementation of these developmental activities. Further requirement of land for these activities is for an unlimited time span. But construction of a mine is site specific i.e. based on occurrence of the mineral deposit. This is also true in the case of coal mining. However, the systematic mine planning involves a proper Rehabilitation & Resettlement (R & R) package for the Project Affected People (PAP). Displaced people are required to be resettled and rehabilitated in a particular manner keeping in view their requirements, habits, customs and life style which altogether constitute their socio economic considerations.

The Tasra Coal Block was allocated to SAIL in Oct. 1995, and mining lease of 4.5 Sq km area was transferred from BCCL to ISP-SAIL (erstwhile IISCO), in 2002 for the development of captive mine. The total proved geological reserve of this block is estimated as 251.8 Million tones. In wake of the huge reserves, this

block has been proposed for the development of open cast mine of 4.0 Million Tones Per Annum capacity.

Study Area:

The study area commonly known as Tasra Block consists of seven Mouzas in the Dhanbad district of Jharkhand. The area lies in the eastern extremity of Jharia Coalfield (JCF) in the Dhanbad district of Jharkhand state. It was previously under BCCL. Steel Authority of India Ltd. (SAIL) proposed to exploit Tasra Block as captive mine by opencast working method to meet the demand of coking coal to different steel plants of the SAIL.

It covers an area of 4.5 km². The area is roughly defined by latitudes 23° 39' 53.06" N to 23° 40' 7.33" N and longitudes 86° 27' 00.74" E to 86° 27' 20.65" E. It is included in the survey of India Topo sheet no.73 I/6 and in Sheet No.8 of the geological map of Jharia Coal Field (JCF) . Similarly the Chasnala block, part of which has been included in this Mining Plan also form part of India Topo sheet No 73I/6. **Figure 1.1** shows the regional location of the Study area..

The area is located about 15 km from Jharia town and about 23 km from Dhanbad town. Dhanbad - Sindri Road passes through its northern boundary. The nearest Railway station of Eastern Railway is at Sindri at about 5 km. The nearest airstrip is at Dhanbad. There is also a landing strip at Burnpur about 80 km away owned by the ISP-SAIL.

Total area of these mouzas being 5442.90 acre while the area falling under the project is 2066.43 acre. Nearly 3455 families including 2959 private house holds while 496 Govt. / Semi Govt. house holds along with infrastructure facilities such as Power station, HT / LT cables and underground lines for water supply, sewage telecommunications, etc. would be affected because of mining activity.

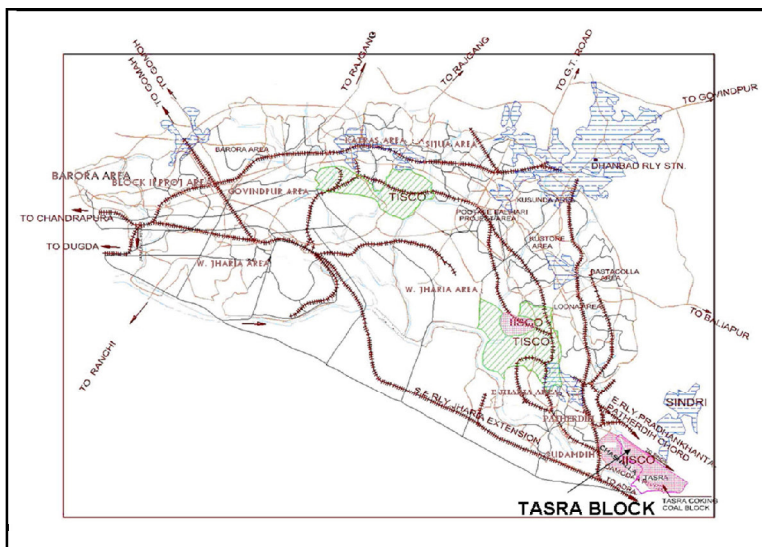


Fig. 1.1: Location Map of the Area

Social Impact Assessment Study:

Detailed project specific R&R plan with data on the existing socio-economic status of the population in the study area and broad plan for resettlement of the displaced population, site for the resettlement colony, alternate livelihood concerns/employment for the displaced people, civic and housing amenities being offered, etc and costs along with the schedule of the implementation of the R&R plan. The main occupation of the people of leasehold and adjoining area is cultivation and collection of coal. Besides this, peoples are engaged in coal mines and coal based industries. There are many coal based industry, workshop, garage etc. in adjoining area like Bhojudih, Chamalla, Bhowra, Jharia and Dhanbad which provide job at different level. It is supposed that opening of the coal mine will create good job prospects for the local people future.

Present study has been conducted to understand the Social Impact Assessment (SIA) due to the project and formulation of a suitable and acceptable Resettlement & Rehabilitation (R & R) policy

based on the valuation of the property of the entire Project Affected Persons (PAPs). The main objective of this study is :

1. To prepare demographic profile of all the areas under the project.
2. To assess socio – economic characteristics of the people.
3. To assess the nature of existing resources and means of livelihood.
4. To examine possible impact of the project on local population due to their displacement.
5. To evaluate the property of the Project Affected People (PAP)&
6. To formulate guidelines for the effective R & R scheme

Basic data pertaining to population, SC, ST, education facilities, literacy, basic amenities and main workers, marginal workers, non-workers by sex etc., has been collected from the census book, for all the villages and the urban area. Field survey has also been carried out on different aspects of socio-economic dimensions indicators to know the people's perception on the Tasra Mining operations and to determine the quality of life of the people living in the area

Rehabilitation & Resettlement Scheme:

This scheme has been followed as per the Coal India Ltd. Policy and therefore after examining several possibilities, the following schemes have been considered:

Persons from Whom Land is Acquired:

- a. Provision for monitory compensation (as per the prevailing legal norms) against the land acquired from such persons.
- b. In addition to above, employment against land would be considered for entitled looser meeting the eligibility criteria.
- c. In case, if it is not possible to offer employment, one time

grant in cash in lieu of employment against acquisition of land. However, the quantum of grant would be on the basis of pro – rata basis.

Persons whose homestead is acquired:

- a. Alternate house site (plot) per family would be allotted.
- b. Family displaced with their cattle would be given financial assistance for construction of cattle shed.
- c. Each displaced would be given one time financial assistance for shifting of family, their belongings and cattle.
- d. Each displaced trader or self employed person, rural artisan would be given one time financial assistance for construction of working shed / shop.
- e. Each affected family would get subsistence allowance for a period of one year
- f. The organization would take care of peripheral development under the Corporate Social Responsibility (CSR).

Sharecroppers Land Lessee, Tenants, Daily Wage labourers:

- a. The organization would assist project affected persons to establish self employment through the provision of infrastructure, petty contracts or formation of cooperative Or Jobs with contractor would be persuaded to eligible project affected persons on preferential basis wherever feasible.

Land Less Tribal:

- a. The organization would assist project affected persons to establish self employment through the provision of infrastructure, petty contracts or formation of cooperatives Or Jobs with contractor would be persuaded to eligible affected persons on preferential basis where ever feasible.

- b. In addition to above, each landless tribal dependent on forest produce would be given one time financial assistance as per norm for loss of customary rights or usage of forest produce.

Vulnerable People:

As a social obligation the organization would look into the vulnerable people for affected area. The relevant programme for women and vulnerable persons would be made under CSR (Corporate Social Responsibility) and efforts would be made to provide opportunities for earning their livelihood [4], [5].

In the case of entire population of the Mouza / Village / area inhabited by a particular community, the organization would try to resettle them en-mass in a compact area to the best possible extent, so that the cultural relation (social harmony) amongst the shifted families remain intact.

Community Facilities:

Community consist of living beings, men, women, children etc. In order to have proper care of the persons living in the community, certain basic facilities and infrastructure are required to be taken due care in order to provide the local inhabitants some comforts and social harmony. Keeping this important aspect in mind, the organization would provide the following to the resettlement site:

- Schools
- Roads with street lights
- Pucca Drains
- Tube Well for Drinking Water
- Community Centre
- Worship Place
- Dispensary
- Club
- Playground

Cost Analysis:

One time cost analysis for the R & R programme seems to be a very difficult task, however efforts can be made to cover the maximum possible aspects at a given point of time. Therefore, at this juncture, cost towards the entire scheme including Infrastructure Development such as Residential Building, Community Building, Colony Road, Sewage System and water supply, Relocation cost including Rehabilitation and Resettlement scheme would be around Rs. 250 – 300 crores. This cost does not include the cost of the land acquisition.

Changes In Socio Economic Status:

The following changes in socio-economic status are expected to take place with opening of mining activities:

- i) The project would have a strong positive employment and income effect, both direct as well as indirect. Migrant – non-migrant ratio shall shift towards migrant side because a number of people shall migrate towards the central region of study circle in the years to come. This would happen because of better employment opportunities due to this project. But this effect has not been expected to be so strong because of the proximity of Jharia, Dhanbad and Bokaro city with its massive employment opportunities.
- ii) The project would have positive impact on consumption behaviour by way of raising average consumption and income through multiplier effect.
- iii) The project would bring about changes in the pattern of demand from food to non-food items as sufficient income is generated.
- iv) With increase in migration level there would be a chance of dilution of culture in the region whereas the people located in the project area and in close vicinity, might enjoy positive changes in life style and better quality of life.

- v) People perceive that the project would help in the development of various social infrastructures.
- vi) People also believe that the Project will have well planned structure & infrastructure facilities along with community care.

Conclusions:

Development in India has been based on the principle of the welfare state [6]. Resettlement & Rehabilitation (R & R) issues are very sensitive as these involve human sentiments. Success of an R & R programme, therefore, depends on active participation of three agencies / stakeholders – the Government, the Project Implementation Authority (PIA) and the Project Affected Persons (PAPs). In the process the PAPs are the most important stakeholders and their participation goes a long way in successful implementation of the Rehabilitation Action Plan (RAP). It is believed that they need to be informed and also be consulted on matters of importance to the project, and their entitlement of compensation and choice for resettlement options. Accordingly, along with improving the economic efficiency of the country, priority is given to the well being of the people affected during implementation of the project. Many novel activities have been taken up in this project and the outcome till date are reasonably satisfactory. The lessons learnt in have to go a long way in enhancing the capability of the Organisation to manage the social and environmental impacts of an opencast coal mining project. This scheme has been followed as per the Coal India Ltd. Policy and seems to be quite satisfactory.

Hence, the impact of the project on the pattern of demand can be reasonably predicted as a shift from food to non-food items i.e., a consumer behaviour which may closely follow the Engel law. This is not a bad indication provided considerable income is earned by them; otherwise, if the shift is a substitution of necessary food requirements then it is not desirable in true socio-economic sense.

Acknowledgement:

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| | | |
|--|-------|-----------------|
| Distance of the nearest town connecting road | 0.663 | Connectivity |
| Traffic density on the Road | 0.656 | |
| Ease of road or Rail connection to Important town or city | 0.637 | |
| Land near port area | 0.627 | |
| Tribal land with transaction and legal issues | 0.588 | |
| Local population is semi-urban or primarily rural | 0.575 | |
| Distance from the nearest Airport | 0.573 | |
| Neighborhood local habitats as a factor | 0.553 | |
| Distance from Highway | 0.824 | Plot location |
| Distance from the nearest city | 0.65 | |
| Distance from the local market | 0.608 | |
| Investment in construction of new or expansion of Highway | 0.595 | |
| Distance from railway station | 0.588 | |
| Distance of the nearest metropolitan city | 0.577 | |
| Proximity to school & college | 0.813 | Local Affluence |
| Proximity to hospital | 0.733 | |
| Proximity to bus stand | 0.592 | |
| Investment in construction of new urbanization residential | 0.534 | |
| Land near or within municipal area | 0.371 | |
| Time difference by cpi | 0.838 | Time difference |
| Time difference measured by year gap | 0.837 | |

RFCTLAR&R ACT 2013

A Note on Certain Critical Aspects

Dr. C. Ashokvardhan, IAS (Retd.)³⁵

| SECTION | GIST | CRITICAL ASPECTS |
|------------------|---|--|
| Section 7 | <ul style="list-style-type: none"> Appraisal of SIA by expert group If expert group finds- no public purpose/costs more than benefits – will recommend abandonment. Positive or negative recommendation within 2 months of its constitution. | <p>Terms of reference of expert group not given Govt. can over-rule negative recommendation and go ahead.</p> <ul style="list-style-type: none"> No over-riding force in SIA. <p>No provision for part-positive/ part- negative recommendation by expert group Like 90 acres not 100 acres Less displacive optional sites What will happen if no recomm. In 2 months?</p> |
| Section 8 – 8(1) | Examination of SIA report by Govt. | SIA report to Govt. not via Collector – even though section 8(1) talks about Collector's report 'if any' |
| 8(2) | Govt. will recommend | Recommend to whom? Govt. Approves |
| Section 10 | <ul style="list-style-type: none"> LA within LA- ceiling fixed against aggregate of all irrigated/ multi-cropped lands Develop equivalent area of waste lands into agri-land | Is it being followed in practice? |

| | | |
|----------------|---|--|
| Section 11(5) | Updation of land records within 2 months of 11(1) | Will it be feasible in large projects? Quasi judicial/ No adjudication machinery No provisions for claims and objections No appeals |
| Section 14 | Date of SIA appraisal -> 12 months -> 11(1) – otherwise SIA will lapse/ Fresh SIA, but the Govt. can extend the 12 months bar | How long? |
| Section 15 (1) | Objections by interested persons to Collector within 60 days of 11(1) | Collector will report to Govt. Govt. decision will be final Decision on what? Collector is not authorized to dispose off objections as part of adjudicating hierarchy under 11(5). |
| | <p>Suggestion</p> <p>11(5) Updation -> 15(1) objections (within 2 months of updation)</p> <p>Presently :</p> <ul style="list-style-type: none"> ➤ 15(1) Objection → within 60 days of 11(1) ➤ 11(5) Updation -> within 60 days of 11(1) <p>(both running parallel , independently)</p> <p>Putting the cart before the horse</p> <p>Objection stage comes after updation.</p> <p>No interface in their parallel movements.</p> | |
| Section 19(2) | 11 (1) -> 19(1) -> Declaration (12 months) RB will deposit costs | <ul style="list-style-type: none"> • How much in part deposits? • If no deposit - what will happen? |
| Section 19 (7) | 11 (1) -> 19(1)-> (Declaration) (12 months) Or else 11(1)notification will lapse, but Govt. can extend | <ul style="list-style-type: none"> • How long? |
| Section 25 | 19(1) Declaration -> Section 23 -> Awards (12 months) or else, entire LA proceedings will lapse but Govt. can extend | <ul style="list-style-type: none"> • How long? |

| | Special provisions for SCs/STs | |
|----------------|---|--|
| Section 41 (4) | <ul style="list-style-type: none"> • Unsettled land rights will have to be settled. • Restoration of titles to SCs/ STs of alienated lands/ special drive | <ul style="list-style-type: none"> • No time limit • Who will settle? <ul style="list-style-type: none"> ➤ Regularisation clause ➤ Permission Clause ➤ Chhapar -bandi clause ➤ Adverse possession clause • Will state reopen/ file appeals in cases where transferees succeeded? • Will there be amendments in tenancy laws removing obnoxious clauses? |
| Section 41(5) | <ul style="list-style-type: none"> • Non forest land – develop into forest in 5 years – for fuel, fodder, non timber forest produce | <ul style="list-style-type: none"> • Where to get non-forest land (adjacent to relocated area- not far-away? |
| Section 41(6) | 1/3 rd of compensation due will be paid initially. Rest after possession | <ul style="list-style-type: none"> • At what stage 1/3rd advance payment? |
| Section 41(7) | R&R benefits to original SC/ST land owner. Illegal alienation will be null and void | <ul style="list-style-type: none"> • No time limit • Will remain a platitude if alienated land not restored to original/ genuine land owners or heirs. |

Section 101

Return of Un-utilized land

2 options:

1. Return to original land owners
2. To land bank of Govt.

1. Return to original land owners/ legal heirs

Compensation paid to them excluding solatium shall be returned to Govt. (Rule 20(3))-> Govt. will use it to develop waste lands.

Reference– RFCTLAR&R (COMPENSATION, REHABILITATION & RESETTLEMENT AND DEVELOPMENT PLAN) RULES, 2015

Questions

- In case of minor/major efflux of time, the compensation money might have been consumed by PAF
- Whether there was a legal agreement to that effect (in course of LA proceedings) that if collector opts to return 'unutilised' acquired land, compensation money paid/ payable to the landowners (minus solatium) will have to be returned by land owners to the Govt.? The quantum of efflux of time ought to have been made a part of the agreement.
- Any agreement, to that effect, ought to have been provided for in the RFCTLARR Act itself.
- What will happen if PAF refuses to refund compensation amount to the Collector or to take back land?

**The RFCTLARR, 2013: Issues in Implementation,
Divergence and Convergence and other Acquisition Acts**
Vikas Raj

The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation & Resettlement Act, 2013, came into force by an Act of the Parliament and is being implemented since 1.1.2014.

The main features of the Act are as follows:

- Rehabilitation and Resettlement and acquisition of land shall be taken up simultaneously.
- R&R is restoration of rights in case of displacement.
- R&R scheme to be approved alongside the Project approvals.
- Stakeholders engagement is essential
- R&R should be completed before submergence and full Land Acquisition to be completed as per Plan.

The Act, introduced the following aspects into the field of LA and R&R.

- Elaborate Processes including Pre-Notification procedures such as Social Impact Assessment (SIA), Social Impact Assessment Plan (SIMP), etc.
- Award for R&R in addition to Land compensation
- No Advance Possession (Except Strategic National purposes and Natural calamities).
- Entitlements are enhanced (Market value has to factor in Multiplier and, Solatium enhanced to 100%).
- Provision of Job/Cash in lieu of Job/Annuity to all Land losers
- Provision for Land for Land to Affected families, where ever feasible.
- New Organizational Set up is necessary to operationalise the Act.

CATEGORIES OF PAFS/ PDFS AND THEIR ENTITLEMENTS

| Sl. No. | Scenario | Category | Eligible Benefits |
|---------|---------------------------------------|----------|---|
| 1 | Loss of Land Loss of House | PDF | 1. Housing Unit 2. Annuity/ Job 3. Subsistence Allowance 4. Transport Grant 5. Resettlement Allowance |
| 2 | Only Loss of House | PDF | 1. Housing Unit 2. Annuity/ Job 3. Subsistence Allowance 4. Transport Grant 5. Resettlement Allowance |
| 3 | Only Loss of Land | PAF | 1. Annuity/ Job 2. Resettlement Allowance |
| 4 | No Loss of Land No Loss of House | PAF | 1. Annuity/ Job 2. Resettlement Allowance |

However certain issues in implementation of The Act were encountered and from the experiences under LAAct, 1894 and the RFCTLARR Act, 2013, the following challenges were identified:

- In the absence of provision for Consent Award, undue delay in waiting out the mandatory period.
- Lengthy process with regard to conduct of SIA.
- LA was being completed and there was a delay in launching R&R initiatives.
- The extent of land lost for the PAF to be entitled for R&R benefits not spelled out.
- Preparation of R&R scheme without consultations leading to dissatisfaction among the PDFs.

- Politically motivated groups causing hindrance to progress of works in the name of stake holder consultation.
- Indefinite and unclear timelines in implementation of R&R leading to PDFs being suspicious about the entire process.
- Delayed R&R implementation leading to new claims from PDFs with respect to cut off date and enhanced package rates.
- No clear cut procedure and entitlements for R&R, if the PDFs chose to settle at a place of their choice.

To circumvent the issues faced in the implementation of RFCTLARR Act, 2013, the following critical points were identified for the smooth implementation of LA and R&R process:

- Consent award preferred.
- Stakeholders consultations necessary before grounding of project and for preparation of R&R Plan.
- Integrated R&R Plan should be prepared at very early stages of Land Acquisition.
- LA and R&R should happen simultaneously. Large gaps between the two leads to dissatisfaction and complications in addition to, delays in the project implementation for which land was acquired. Hence, time bound implementation of LA Plan and R&R Plan is essential.
- LA for submergence area is completed but not for canals, etc. This gets badly delayed and leads to sub-optimal use of water impounded.

LA under GOMs.No.123.

Key Features – Procurement through Negotiation

For expeditious procurement of land for public projects, the Government framed guidelines to allow land owners to willingly sell their lands and properties for a consideration on the basis of an

agreement approved by the District Level Land Procurement Committee (DLLPC) after negotiation with the land owners.

The consideration agreed by the land owners and Procuring Agency before the DLLPC shall include the value of land/property, perceived loss of livelihood, equivalent cost required for R&R of willing land owners.

GO.123, aimed to procure land from willing land owners through negotiation for a lump sum consideration inclusive of value of property and R&R. However no provisions were provided for R&R of other than land owners which was included through GOMs.No.190, Dt:10.08.2016.

An area of Ac53,746.22 cents was procured under this process before it was challenged before the Hon'ble High Court and the Govt. was directed not to procure further lands using the said provisions of the GO vide interim judgment Dt:5.1.2017.

Why the amendment?

With the issues being faced during implementation of LA and R&R and the Government taking a strong initiative to pioneer and complete various Irrigation and Industrial projects to drive forth the economy and to provide irrigated land to the parched farmers, an amendment was felt needed to the existing RFCTLARR Act, 2013 for the following reasons:

- to reduce time needed and the procedures involved
- to exempt projects from Social Impact Assessment where ever required.
- Exemption of Chapter-III, for Irrigation projects, regarding safeguard of food security as irrigation increases food security.
- The LA Act of 1894 featured consent award. But there is no

provision of consent award in RFCTLARR Act 2013. Hence consent provisions are brought in through Section 23A.

- Telangana has procured land through negotiations under G.O.Ms.No.123. This provision has been incorporated in the shape of Section 30A of the Amendment Act 2016.
- R&R entitlements as per the Schedule II and III, although extremely generous, are time consuming and most displaced families expressed their opinion to take lumpsum compensation in cash and settle at a place of their choice as per provisions of Section 31A.

Features of RFCTLARR (Telangana Amendment) Act 2016

The Act shall be deemed to have come into effect on 1st January,2014.

1. Insertion of Chapter III A – Provisions of Chapter II (Determination of Social Impact and Public Purpose) and Chapter III (Special Provision to Safeguard Food Security) not to apply to certain projects as notified by the State Government.

Such Projects include the following:

- Projects of national security.
 - Infrastructure including electrification, irrigation projects.
 - Affordable housing and housing for poor.
 - Industrial Corridors.
 - Public private partnership projects.
2. The Collector may make an award without further enquiry, if satisfied that all interested persons have agreed in writing for such award.
 3. **Voluntary Acquisition of land:** Insertion of Sec 30A – Acquisition of land by State Government by entering into agreement.

Main Features:

- The State Government or its Authorized Officer to enter into an agreement with the willing land owner to sell the land in favour of the state, for any public purpose.
 - The State Government to pay a lumpsum amount towards Rehabilitation and Resettlement to any family, other than land owners, who are affected by acquisition.
 - Such amount paid in lump sum in lieu of Rehabilitation and Resettlement, not to be abnormally at variance to the disadvantage of land owners.
4. If any family is affected by land acquisition, the State Government to pay a lumpsum amount towards Rehabilitation and Resettlement.
 5. Amount wrongfully paid to any person under this Act, shall be recovered as arrears of land revenue.
 6. Return of unutilized land to original owners/ heirs after the period specified for setting up of the project or five years whichever is later.

Entitlements under RFCTLARR (Telangana Amendment) Act 2016

| Sl. No. | Elements of R&R entitlements | Rehabilitation and Resettlement lump sum package under the RFCTLARR (Telangana Amendment) Act, 2016 |
|----------------|---|--|
| 1. | Provision of housing units | Rs.5.04 lakhs (equivalent to a house as per the two -bed room housing policy of the State Government) will be paid in case of displacement of a family living together. OR Rs. 1.25 lakhs will be paid to single family (equivalent to Indira Awas Yojana , IAY) |

| | | |
|-----|---|---|
| 2. | Choice of Annuity or Employment | (a) Onetime payment of Rs. 5.00 lakhs for the affected family; OR (b) Rs.3,000/- per month as annuity will be paid for an affected family in case of SC and ST for a period of 20 years. OR (c) Rs.2,500/- per month as annuity will be paid for an affected family in case of other than SC and ST for a period of 20 years. |
| 3. | Subsistence grant for displaced families for a period of one year | A total of Rs.40,000/- will be paid per family as a subsistence grant for one year. In addition to above, an amount of Rs.60,000/- as a one-time grant will be paid for the affected family belonging to SC and ST in the scheduled Areas. |
| 4. | Transportation cost | Rs.60,000/- as a one-time transport grant |
| 5. | Cattle shed/petty shops | Rs.25,000/- as a onetime financial assistance |
| 6. | One time grant to artisan, small traders and certain others | Rs.30,000/- as a onetime grant will be paid to artisans, small trader or self-employed person |
| 7. | One-time Resettlement Allowance | Rs.60,000/- will be paid to each affected family as one time resettlement assistance. |
| 10. | Financial assistance in lieu of specified benefits | Rs.7,50,000/-. An option will be given in case a joint family with all members living together decides to set up a self-financed scheme or an enterprise based on their own choice or for any other income generating activity. in lieu of the specified benefits listed in Items 2-7 above. |

TYPES OF AWARD

General Award:

Land can be acquired through General award for land, structures and solatium, as per Sec 23, 26, 29 & 30, duly following the

prescribed timeline of 60 days between PN and PD publication and 30days from the date of issue of notice u/s 21 to the date of award enquiry. The awardees may approach the Authority for enhancement after receiving the amount under protest as per Sec 64 of the Act.

Consent Award u/s 23A:

Telangana Amendment Act, 2016, provides for Consent Award duly following the timelines of General Award. Where land owners, express willingness compensation can be finalised in DLLPC through negotiation and agreement in Form GI & GII for land owners/ other than land owners respectively and award can be pronounced. The option for the awardees to approach any civil forum/ court/ Authority is preempted.

Voluntary Acquisition u/s 30A:

After PN, if the land owner/ other than land owners expresses their willingness in Form EI & EII. The compensation can be finalised in the DLLPC by negotiation and agreement in Form GIII & GIV and orders issued. Such orders are published in the District Gazette for vesting the title and ownership in the State. The prescribed timelines of 60days & 30days need not be adhered to. No option for the awardees to approach any civil forum/ court/ Authority.

RULES NOTIFIED UNDER THE AMENDMENT ACT, 2016

Telangana State Land Acquisition (Consent Award, Voluntary Acquisition and Lump-sum Payment towards Rehabilitation and Resettlement) Rules, 2017, *notified by the Government vide* GO.Ms.No.120 Revenue(JA&LA) Dept, Dt: 30.06.2017. The salient features of these rules are:

- Power of State Government under Sec-10A of the Act to exempt a project for provisions of Chapter II & III of the Act, 2013.
- Consent Award under Sec-23A.

- Voluntary Acquisition (Sale) of land under Sec 30A.
- Lumpsum payment towards Rehabilitation and Resettlement under Sec 31A.

The forms notified under these rules are:

- **FORM – A** – Notification of Exemption of Project from application of provisions of Chapter- II and Chapter – III of the Act
- **FORM – B** – Requisition for Land Acquisition to be submitted by the Requisitioning Agency
- **FORM–C** –Notification under Section 11 of the Act where 10A exemption is given
- **FORM–D** –Notice calling for claims for settlement through Negotiation Committee
- **FORM–EI** –Affidavit to be executed by Land owners
- **FORM–EII** –Affidavit to be executed by persons other than Land owners
- **FORM–F** –Notification by the District Collector
- **FORM–GI** –Agreement with land owners – Consent Award u/s 23A
- **FORM–GII** –Agreement with persons other than land owners – Consent Award u/s 23A
- **FORM–GIII** –Agreement with land owners - Voluntary Acquisition (Sale) of Land
- **FORM–GIV** –Agreement with persons other than land owners -Voluntary Acquisition (Sale) of Land

ADDITIONAL GUIDELINES

The following guidelines have been issued for common problems at the field level.

- 1. Payment of compensation to purchasers of assigned lands:**
Purchasers of assigned lands are eligible for compensation subject to provisions of Sec 4(1) (b) of POT Act, 2008.
- 2. Waiting for expiry of 60 days period after publication of PN:**

As Form C and Form D are intended for calling the person interested for settlement by negotiation, further process can be taken up without the completion of mandatory 60 days.

3. R&R benefits to land owners and other than land owners where there is no displacement.

As per R&R entitlements specified under Telangana Amendment Act, 2016.

4. Procedure for estimation of dwelling homes cattlesheds in land under acquisition.

For land occupied by homestead, the compensation shall be paid upto 10 Guntas land on yardage basis and balance on acreage basis.

5. Payment of compensation to patta lands situated in tank beds.

The compensations to the patta lands within the FTL shall be paid on par with other patta lands.

1. Payment of compensation to non-tribals for Government land encroached.

The exgratia to be paid to the maximum of 5 acres as determined by the District Collector.

7. Payment of compensation for crop damage.

The compensation for crop damage shall be paid for 1 crop as per the estimate prepaid by the Agriculture/Horticulture dept., as one time settlement to land owners.

8. Issue of Preliminary Notification under Act, 2013 and Telangana Amendment Act, 2016.

Only one Preliminary Notification as per Sec-11(1) in sufficient either in Form- VI (as per Act, 2013) or in Form-C (as per Telangana Amendment Act, 2016) for passing orders for voluntary purchase, consent award and general award..

9. Modification of approved R&R Scheme.

After approval of Draft R&R Scheme by Comm. R&R, the District Collector may modify the approved R&R Scheme (except no.of PDFs) subject to conformity to the overall approved scheme and availability of budget.

Comparative Per PDF cost of R&R under Act, 2013 and Telanganan Amendment Act, 2016

| Sl. No. | Particulars | As per RFCTLARR Act, 2013 | As per RFCTLARR (Telangana Amendment) Act, 2013 |
|---------|---------------------------------|---------------------------|---|
| 1 | House-site | 60000 | 504000 |
| 2 | House as per I specification AY | 125000 | |
| 3 | Infrastructure | 240000 | |
| 4 | Annuity/ OTP in lieu of Job | 500000 | 500000 |
| 5 | Subsistence Grant | 36000 | 40000 |
| 6 | Transportation | 50000 | 60000 |
| 7 | Cattle shed * | 25000 | 25000 |
| 8 | Artisan Grant * | 25000 | 30000 |
| 9 | Re-settlement Allowance | 50000 | 60000 |
| | TOTAL | 1110000 | 1219000 |

- Housing as per existing PMAY norms
- Where applicable

STATUS OF LAND ACQUISITION FOR IRRIGATION PROJECT IN TELANGANA (From 2004 to 2018)

| | |
|-----------------------------------|--------------------|
| Requisition received cents | Ac.4,29,847.12 |
| Total land acquired cent | Ac.3,70,685.96 |
| LA under LAAct, 1894 & 2013 cents | Ac.2,77,333.14 |
| LA under GOMs.No.123 | Ac.53,680.17 cents |
| LA under Telangana Amndt Act,2016 | Ac.39,672.65 cents |
| Balance to be acquired | Ac.59,161.16 cents |

POST LA ACTIVITIES:

1. UPDATION OF DATA IN LA WEBSITE

The Land Acquisition data related to 82 Irrigation Projects is being uploaded in the Irrigation Portal. The details of individual lands acquired, compensation paid, details of structure compensation are captured in the website. The project wise, District/village wise individual PDF/PAF data to be uploaded in the Website.

Objectives of Land Acquisition Module:

- Real time Data Entry on Land Acquisition for each project to accelerate and accurate decision making.
- Data synchronisation and avoid duplicity.
- To automate the LA requisition proposals for acquisition and regulate payment processes.
- Provide integration with other modules like BMS etc.

Site Address: <http://irrigationpms.cgg.gov.in/pms/>

2. UPDATION OF DATA INTO R&R WEBSITE

R&R website captures all the PAF/ PDF wise particulars of a particular habitation affected under a project and presents the R&R benefits to be paid to the PAF/ PDF along with the amenities to be provided to them in Resettlement areas.

Objectives of R&R website:

- Real time entry data entry of R&R particulars of each PAF/PDF for each project
- To facilitate timely decision making and speedy completion of the R&R process.
- Data authenticity and integration with LA website to avoid duplication.
- To create a digital platform for entry and scrutiny of data at various levels.

- Transparency in R&R process and to regulate the disbursement of entitlements in a systematic manner.

Site Address: <http://test.cgg.gov.in/randr>

**बाँध प्रभावितों के पुनर्वास में असंवेदनशीलता
(मध्यप्रदेश के सरदार सरोवर परियोजना प्रभावितों के पुनर्वास के अनुभव)**

रेहमत मंसूरी³⁶

पेपर सारांश

पर्यावरणीय प्रभावों और प्रभावितों के पुनर्वास संबंधी मुद्दों पर विवाद के कारण नर्मदा नदी पर गुजरात में निर्मित सरदार सरोवर बाँध परियोजना पिछले 3 दशकों से चर्चा में हैं। इस परियोजना के जलाशय से मध्यप्रदेश के 193, महाराष्ट्र के 33 और गुजरात के 19 गाँव (कुल 245 गाँव) प्रभावित हैं। परियोजना का सर्वाधिक प्रभाव मध्यप्रदेश में है और ज्यादातर परियोजना प्रभावित आदिवासी और अन्य कमजोर समुदायों से हैं।

अपनी आजीविका खो जाने के डर से प्रभावित "नर्मदा बचाओ आंदोलन" के तहत संगठित हुए और हर मुमकिन फोरम तक अपने साथ हो रहे अन्याय की आवाज़ बुलंद की। प्रभावितों के संघर्ष के कारण विश्व बैंक को सरदार सरोवर परियोजना से हटना पड़ा और सर्वोच्च न्यायालय को भी हस्तक्षेप करना पड़ा। परियोजना प्रभावितों की भू-अर्जन अधिनियम के तहत अर्जित संपत्तियों का मुआवजा तथा अन्य पुनर्वास लाभों के लिए स्पष्ट पुनर्वास नीति बनी हुई है लेकिन, इसका पालन नहीं किए जाने के कारण प्रभावितों का लंबा मैदानी और कानूनी संघर्ष जारी रहा है। 8 फरवरी 2017 को सर्वोच्च न्यायालय ने अंतिम

³⁶ Researcher, manthan Adhyayan Kendra, Sneh Nagar, Barwani, Madhya Pradesh

फैसला (वास्तव में संविधान के अनुच्छेद 142 के तहत समझौता) सुनाते हुए प्रभावितों का पुनर्वास 31 जुलाई 2017 तक करने का आदेश दिया था। इस आदेश के बाद सरकार ने बाँध के गेट बंद कर दिए हैं। प्रभावित गाँवों में सार्वजनिक परिवहन, स्कूल, अस्पताल आदि बंद कर दिए गए हैं। लेकिन, सरकार द्वारा पुनर्वास नीति और सर्वोच्च न्यायालय के आदेश का पालन नहीं करने से बड़ी संख्या में प्रभावित बुनियादी सुविधाओं के बिना अपने मूल गाँवों में ही रहने को मजबूर हैं।

बाँध प्रभावितों के पुनर्वास में असंवेदनशीलता

(मध्यप्रदेश के सरदार सरोवर परियोजना प्रभावितों के पुनर्वास के अनुभव)

मध्यभारत की एक बड़ी नदी नर्मदा पर गुजरात के नर्मदा जिले में निर्मित सरदार सरोवर परियोजना का शिलान्यास 5 अप्रैल 1961 को तत्कालीन प्रधानमंत्री श्री जवाहरलाल नेहरू ने किया था। लेकिन, तटवर्ती (राईपेरियन) राज्यों मध्यप्रदेश, महाराष्ट्र और गुजरात के बीच नर्मदा जल के बँटवारे को लेकर विवाद थे। इस कारण मई 1969 में नर्मदा जलविवाद न्यायाधिकरण का गठन किया गया जिसने अपना आदेश 7 दिसंबर 1979 में जारी किया।

सरदार सरोवर एक बहुउद्देशीय बाँध परियोजना है जिससे 1450 मेगावाट बिजली के अलावा गुजरात में 17.92 लाख हेक्टर और राजस्थान में 2.46 लाख हेक्टर में सिंचाई प्रस्तावित है। इससे गुजरात में पेयजल तथा औद्योगिक उपयोग के लिए पानी उपलब्ध करवाया जाना है। इस परियोजना से गैर तटवर्ती राज्य राजस्थान को भी लाभान्वित किया गया है।

**नर्मदा जल विवाद न्यायाधिकरण द्वारा नर्मदा जल का बँटवारा
मिलियन एकड़ फूट (एमएएफ)**

| | |
|------------|--------------|
| मध्यप्रदेश | 18.00 |
| गुजरात | 9.25 |
| राजस्थान | 0.50 |
| महाराष्ट्र | 0.25 |
| योग | 28.00 |

परियोजना के जलाशय से मध्यप्रदेश के 193, महाराष्ट्र के 33 और गुजरात के 19 गाँव (कुल 245 गाँव) प्रभावित हैं। परियोजना का सर्वाधिक प्रभाव मध्यप्रदेश में है और ज्यादातर परियोजना प्रभावित आदिवासी और अन्य कमजोर समुदायों से है।

सरदार सरोवर बाँध वृहत नर्मदा घाटी विकास परियोजना का हिस्सा है जिसके तहत 30 बड़े, 135 मध्यम और 3000 से अधिक छोटे बाँधों का निर्माण प्रस्तावित है। सरदार सरोवर के अलावा सारे बाँध मध्यप्रदेश में हैं।

प्रभावितों की संख्या

नर्मदा न्यायाधिकरण के निर्णय को 4 दशक बीत चुके हैं। इस दौरान सरदार सरोवर परियोजना के प्रभावितों की संख्या में बड़ा इजाफा हुआ है। नर्मदा न्यायाधिकरण ने मध्यप्रदेश के कुल प्रभावित परिवारों की संख्या 6,147 बताई थी।³⁷ इसके बाद 1994 में पूर्व जल संसाधन सचिव की अध्यक्षता वाली भारत सरकार की एक समिति³⁸ ने यही संख्या 40,245 (मध्यप्रदेश के 33014

³⁷ NWDT award, Clause II, Sub - Clause IV (1)

³⁸ Report of the Five Member Group Set-up by the Ministry of Water Resources to Discuss Various Issues Relating to the Sardar Sarovar Project, April 1994

परिवार) बताई थी। इसके पूर्व 1991 में **नर्मदा बचाओ आंदोलन** द्वारा करवाए गए एक जनमत संग्रह (लोक निवाड़ा) में मध्यप्रदेश के प्रभावित परिवारों की संख्या 32,436 आई थी जो 2017 में लगभग 45 हजार परिवार हो चुकी थी। मध्यप्रदेश के सरदार सरोवर प्रभावितों के पुनर्वास की जिम्मेदारी **नर्मदा घाटी विकास प्राधिकरण** (एनवीडीए) की है। चूँकि यह एक अंतर्राज्यीय परियोजना है इसलिए राज्यों में पुनर्वास पर निगरानी रखने का काम एक केन्द्रीय एजेंसी **नर्मदा नियंत्रण प्राधिकरण** (एनसीए) करती है। यह केन्द्रीय निगरानी एजेंसी प्रभावितों के पुनर्वास को कितने हल्के से लेती है इसका उदाहरण इसके द्वारा प्रस्तुत आँकड़ों से लगाया जा सकता है। एनसीए की वेबसाइट के अंग्रेजी खण्ड में प्रदेश के प्रभावितों परिवारों की संख्या 23,614 दर्शाई गई है जबकि हिन्दी खण्ड में अद्यतन संख्या 24,436 परिवार दी गई है।³⁹ वेबसाइट के अनुसार यह अद्यतन आँकड़ा भी 9 वर्ष पुराना यानी 11 मार्च 2010 का है। केवल इतना ही नहीं एनसीए की वेबसाइट तो 2004 से ही पुनर्वास का "ज़ीरो बेलेंस" दिखा रही है यानी सभी प्रभावितों का पुनर्वास कर दिया गया है और किसी भी प्रभावित का पुनर्वास शेष नहीं है।

गलत तरीकों से कम की प्रभावितों की संख्या

नर्मदा नियंत्रण प्राधिकरण द्वारा प्रभावित परिवारों की संख्या वास्तविक से कम दिखाना तथा सभी को पुनर्वसित दिखाना चिंता का विषय रहा है। इसके माध्यम से प्रभावितों को उनके अधिकारों से वंचित करने तथा देश को गुमराह करने का प्रयास किया गया। पुनर्वास के मोर्चे पर असफल सरकार ने अपनी

³⁹ NCA website http://nca.gov.in/hindi_web/sardar_punarthapan_position.asp Site visited on March 23rd, 2019

जिम्मेदारियों से बचने के लिए प्रभावितों की संख्या कम करने के लिए जो तरीके अपनाए हैं वे बिल्कुल भी स्वीकार्य नहीं हैं -

1. **बैकवाटर स्तर में कमी** - बिना पुनर्वास किए ही प्रभावितों की संख्या कम करने का पहला बड़ा प्रयास एनसीए ने वर्ष 2008 में जलाशय का बैक वाटर स्तर कम कर किया।⁴⁰ बारिश के दिनों में जलाशय का स्तर उसके अधिकतम स्तर से अधिक होता है जिसे बैक वाटर स्तर कहा जाता है। बैक वाटर स्तर हमेशा पूर्ण जलाशय स्तर से अधिक होता है। बैक वाटर साल के कुछ ही दिनों/महीनों तक संपत्तियों को प्रभावित करता है इसलिए नर्मदा न्यायाधिकरण कण्डिका-II (2) के अनुसार⁴¹ बैक वाटर से प्रभावित आबादी का ही अधिग्रहण करने का प्रावधान है। बैक वाटर से प्रभावित खेती की जमीनों का अधिग्रहण नहीं किया गया है।

बैकवाटर स्तर के बहाने डूब से बाहर बताई गई संपत्तियाँ

| जिले का नाम | गाँवों की संख्या | कुल मकानों की संख्या | अप्रभावित मकानों की संख्या |
|-------------|------------------|----------------------|----------------------------|
| अलिराजपुर | 20 | 797 | 15 |
| बड़वानी | 55 | 7851 | 3768 |

⁴⁰ Review of Back Water Levels for Sardar Sarovar Project, Final Report, June 2008

⁴¹ Sub-Clause - II(2) : Madhya Pradesh and Maharashtra shall also acquire for Sardar Sarovar Project under the provisions of the Land Acquisition Act, 1894, all buildings with their appurtenant land situated between FRL + 138.68 m (455') and MWL + 141.21 m (460') as also those affected by the backwater effect resulting from MWL + 141.21 m (460').

| | | | |
|------------|------------|--------------|-------------|
| धार | 64 | 10433 | 5145 |
| खरगोन | 12 | 477 | 442 |
| योग | 151 | 19558 | 9370 |

स्रोत - नर्मदा घाटी नवनिर्माण प्राधिकरण द्वारा सूचना का अधिकार अधिनियम के तहत उपलब्ध करवाई गई जानकारी

सरदार सरोवर परियोजना का बैकवाटर स्तर कम करने की प्रक्रिया निहित कारणों से बहुत ही जल्दबाजी में संपादित की गई।⁴² आश्चर्यजनक है कि इस संबंध में आयोजित तकनीकी समिति की बैठकों में गुजरात और राजस्थान के प्रतिनिधियों ने भी बैक वाटर स्तर कम करने का समर्थन किया। जबकि इन्हीं राज्यों ने केन्द्रीय जल संसाधन मंत्रालय द्वारा 1993 में गठित समिति⁴³ के समक्ष प्रस्तुत होने से इस आधार पर इंकार कर दिया था कि वे निर्धारित 45 वर्षों के पूर्व नर्मदा न्यायाधिकरण पर पुनर्विचार का समर्थन नहीं करते हैं। हालांकि बैक वाटर स्तर भी नर्मदा न्यायाधिकरण द्वारा ही निर्धारित किया गया है। लेकिन, बैक वाटर स्तर में कमी उनके लिए सुविधाजनक थी इसलिए यहाँ इन राज्यों ने यहाँ अपना मत बदल लिया। इस कवायद की सबसे अनूठा और अविश्वसनीय तथ्य यह है

⁴² तकनीकी समिति की तीसरी मीटिंग दिनांक 5 दिसंबर 2007 को आयोजित थी। उस तारीख को मध्यप्रदेश के प्रतिनिधि निर्वाचन झूटी पर थे इसलिए मीटिंग की तारीख आगे बढ़ाने का निवेदन किया गया लेकिन, मध्यप्रदेश के प्रतिनिधित्व के बिना ही मीटिंग कर ली गई। उल्लेखनीय है कि मध्यप्रदेश वह राज्य है जिस पर इस निर्णय का सर्वाधिक प्रभाव पड़ा है।

⁴³ Five Member Group Set-up by the Ministry of Water Resources to Discuss Various Issues Relating to the Sardar Sarovar Project, constituted by Water Resources Ministry, August 1993

कि कुछ गाँवों में नए (संशोधित) बैक वाटर का स्तर पूर्ण जलाशय स्तर से भी कम कर दिया गया है।

बैक वाटर स्तर कम कर देने से अधिकांश गाँवों की बड़ी आबादी को अप्रभावित घोषित कर दिया गया है। बैक वाटर स्तर के कारण जिन परिवारों को अप्रभावित घोषित किया गया है उनका पुनर्वास करने से इंकार कर दिया है⁴⁴ तथा इन परिवारों को प्रभावित परिवारों की संख्या से कम कर दिया गया है। जिन गाँवों को जलाशय के बैक वाटर से बाहर किया गया है उनमें से कुछ तो बाँध की अनुपस्थिति में साधारण बाढ़ में ही डूब चुके हैं। नर्मदा घाटी विकास प्राधिकरण ने नए बैकवाटर स्तर के कारण मध्यप्रदेश की डूब से अप्रभावित संपत्तियों (घरों) की संख्या 9,370 बताई है। अप्रभावित घोषित परिवारों की संख्या इससे लगभग तीन होगा होगी। संक्षेप में आधी संपत्तियों और उनके निवासियों को डूब से बाहर दिखाकर उनके पुनर्वास की जिम्मेदारी से पल्ला झाड़ लिया गया है।

2. **जीआरए को शिकायतें सुनने से रोका जाना** - प्रभावितों की संख्या कम किए जाने की दूसरी कवायद जून 2018 में की गई। मध्यप्रदेश सरकार ने एक आदेश जारी कर निर्णय ले लिया कि **शिकायत निवारण आयोग** (जीआरए) केवल उन लोगों की शिकायतें सुनेगा जो पहले से प्रभावित घोषित है। सर्वोच्च न्यायालय के आदेश (प्रकरण WP (C) 319/1994) से वर्ष 2000 में नर्मदा घाटी विकास प्राधिकरण के इतर एक स्वतंत्र

⁴⁴ डूब से बाहर किए गए ऐसे कुछेक परिवारों पूर्व में आवासीय भूखण्ड आदि आंशिक लाभ प्रदान कर दिए गए हैं। लेकिन, अब उन्हें शेष पुनर्वास लाभ प्रदान करने से इंकार कर दिया गया है।

अर्ध न्यायिक संस्था के रूप में जीआरए का गठन किया गया था। जीआरए के गठन का उद्देश्य उन लोगों को न्याय दिलवाना था जिन्हें सरकार/नर्मदा घाटी विकास प्राधिकरण से न्याय नहीं मिल रहा था। सर्वश्री जीजी सोहनी, एनजी करम्बेलकर और एसपी खरे जैसे विद्वान न्यायाधीशगण इसके अध्यक्ष रहे हैं। उन्होंने हर शिकायतकर्ता की शिकायतें सुनी हैं और पात्र लोगों को पुनर्वास नीति के तहत लाभ दिलवाया है। हालांकि बाद में नियुक्त न्यायाधीश अपनी छाप नहीं छोड़ पाए हैं।

सर्वोच्च न्यायालय के 8 फरवरी 2017 के आदेश (Writ Petition(C) No. 328/2002) के तहत शिकायत का अंतिम मौका होने के कारण बड़ी संख्या में प्रभावितों ने अपनी शिकायतें जीआरए में दर्ज करवाई।⁴⁵ इनमें से कई शिकायतकर्ता पात्र घोषित होते तथा सरकार को उनका पुनर्वास करना पड़ता। इन शिकायतकर्ताओं को अर्ध न्यायिक संस्था के समक्ष सुनवाई के अधिकार से वंचित करने हेतु सरकार ने 1 जून 2018 को एक सर्कुलर जारी कर जीआरए को निर्देश दिया कि वे उन प्रभावितों की शिकायतें न सुने जो "विस्थापित व्यक्ति" घोषित नहीं हैं।⁴⁶ जीआरए ने बिना कोई विचार किए सरकारी बाबु की तरह इस आदेश का पालन किया और करीब 7000 शिकायतें⁴⁷

⁴⁵ मध्यप्रदेश सरकार के सर्कुलर एफ 31-8/2018 सताईस एक, दिनांक 1 जून 2018 के अनुसार शिकायतों की संख्या लगभग 9 हजार है जबकि प्रभावितों के संगठन नर्मदा बचाओ आंदोलन के अनुसार 14 हजार से अधिक शिकायतें जीआरए के समक्ष लंबित थी।

⁴⁶ पुनर्वास नीति की कण्डिका 1.1 (अ) के तहत

⁴⁷ यह विभिन्न स्रोतों जैसे नर्मदा बचाओ आंदोलन, जीआरए में प्रेक्टिस करने वाले वकीलों और जीआरए के कर्मचारियों से अनौपचारिक बातचीत पर आधारित है। जीआरए से सूचना का अधिकार कानून के तहत जानकारी प्राप्त करना भी लगभग असंभव है।

बिना सुनावाई के खारिज कर दी तथा प्रभावितों को आदेश दिया कि वे पुनर्वास अधिकारी या जिला कलेक्टर के समक्ष शिकायत प्रस्तुत करें। यदि पुनर्वास अधिकारी और कलेक्टर जैसे सरकारी कर्मचारी ही प्रभावितों को न्याय दे देते तो सर्वोच्च न्यायालय को जीआरए के गठन का आदेश देने की जरूरत ही क्यों पड़ती?

सबसे दुःखद यह है कि आवेदन-पत्र खारिज करते समय न तो प्रभावितों का पक्ष सुना गया और न ही उनके शिकायती आवेदन-पत्रों में उल्लेखित तथ्यों को पढ़ा गया। ग्राम धरमराय तहसील कुक्षी, जिला धार (मध्यप्रदेश) निवासी श्री कृष्णपालसिंह पिता निर्मलसिंह का मकान और संयुक्त खाते की संपूर्ण कृषि भूमि परियोजना हेतु अधिग्रहित की गई है। जीआरए ने पहले से तैयार फार्मेट में आदेश जारी कर उनका आवेदन-पत्र इस आधार पर खारिज कर दिया कि वे प्रभावित घोषित नहीं हैं। जबकि शिकायतकर्ता ने अपने आवेदन-पत्र में अपनी पात्रता संबंधी तथ्यों का लेख कर संबंधित दस्तावेज भी संलग्न किए थे।⁴⁸

एक तरफ तो एनसीए की वेबसाइट पर 2004 से ही पुनर्वास की स्थिति में "ज़ीरो बेलेंस" दिखाया जा रहा था। लेकिन, इसके बावजूद फरवरी 2017 में सर्वोच्च न्यायालय ने पुनर्वास से शेष परिवारों को विशेष

⁴⁸ नर्मदा घाटी विकास प्राधिकरण द्वारा बाँध की 121 मीटर की ऊँचाई से प्रभावित परिवारों के लिए बनाए गए धरमराय के ए.टी.आर. में सरल क्रमांक 20 पर कृष्णपालसिंह का नाम उनकी माता तथा बहनों के साथ अंकित है। गाँव की परियोजना प्रभावित सूची में सरल क्रमांक 230) उनका नाम है।

पैकेज देकर पुनर्वास करने का आदेश दिया।⁴⁹ सर्वोच्च न्यायालय के आदेश के बाद जून 2017 में मध्यप्रदेश सरकार ने भी प्रभावितों के पुनर्वास के लिए 900 करोड़ के पैकेज की कथित घोषणा की थी। अब सवाल उठता है कि यदि सबका पुनर्वास हो चुका था तो ये आदेश और पैकेज किनके लिए जारी किए गए थे?

जीआरए द्वारा सरकारी आदेश के तहत बहुत ही जल्दबाजी में करीब 7,000 प्रभावितों की शिकायतें खारिज किए जाने की घटना ने प्रभावितों की न्यायिक संस्थाओं में आस्था कम की है क्योंकि न तो सरकार का आदेश विधिसम्मत था और न ही जीआरए द्वारा उसका पालन। सरकार ने अपने आदेश में 1992 की जिस प्रक्रिया के हवाले से जीआरए को शिकायतें खारिज करने का आदेश दिया है वह प्रक्रिया करीब 2 दशक पहले तब शून्य हो चुकी थी जब सर्वोच्च न्यायालय ने नर्मदा बचाओ आंदोलन विरुद्ध भारत सरकार एवं अन्य प्रकरण (WP-C 319/1994) में पुनर्वास नीति पर गंभीरता से विचार करने के बाद शिकायत निवारण की वैकल्पिक व्यवस्था के रूप में जीआरए के गठन का आदेश दिया था। यदि सर्वोच्च न्यायालय पुनर्वास नीति में उल्लेखित शिकायत निवारण की प्रक्रिया को उचित और प्रभावी समझती तो किसी अन्य वैकल्पिक संस्था के गठन को मंजूरी क्यों देती? उल्लेखनीय है कि जीआरए के अध्यक्ष उच्च न्यायालय के

⁴⁹ चूंकि प्रभावितों के पुनर्वास हेतु जिम्मेदार विभाग और उसकी पुनर्वास की निगरानी करने वाली केन्द्रीय संस्था को ही पुनर्वास से शेष रहे प्रभावितों की संख्या पता नहीं थी इसलिए वे सर्वोच्च न्यायालय में यह संख्या नहीं बता पाए। इसलिए सर्वोच्च न्यायालय के फैसले में भी प्रभावित परिवारों की की अंतिम संख्या का उल्लेख नहीं है।

निवृत्तमान न्यायाधीश होते हैं और उनकी कानूनी समझ आम आदमी से निःसंदेह अधिक होती है। साथ ही, इस फोरम का काम सरकार के आदेश मानना नहीं बल्कि सर्वोच्च न्यायालय के आदेशानुसार उपेक्षित, वंचित लोगों को न्याय देना है। लेकिन, वंचितों को न्याय देने वाला यह फोरम दुर्भाग्य से उनके अधिकारों का हनन करने का उपकरण साबित हुआ है।

प्रभावितों के पुनर्वास से इंकार

नर्मदा जलविवाद न्यायाधिकरण में राज्यों के बीच नदी के जल बँटवारे में अन्य बातों के अलावा पुनर्वास का खाका भी शामिल है, जिसमें प्रभावित किसानों को खेती की जमीन का आवंटन उल्लेखनीय है। नर्मदा जल विवाद न्यायाधिकरण की शर्तों के आधार पर मध्यप्रदेश सरकार द्वारा 5 सितंबर 1989 में प्रभावितों हेतु पुनर्वास नीति घोषित की गई।⁵⁰ इस पुनर्वास नीति की कण्डिका 3.2 (अ) के अनुसार अपनी मालिकी की 25 प्रतिशत से अधिक जमीन खोने वाले प्रभावितों को कम से कम 5 एकड़ खेतीलायक सिंचित जमीन दी जाएगी। कण्डिका 1.1 (ब) 2 में भू-अर्जन अधिनियम की धारा-4 के प्रकाशन के समय 18 वर्ष तक के वयस्क पुत्र और पुत्रियों को पृथक परिवार माना गया है। कण्डिका 1.1 (अ) के तहत उन सभी व्यक्तियों को **परियोजना प्रभावित** माना गया है जो भू-अर्जन अधिनियम की धारा-4 के प्रकाशन से कम से कम एक वर्ष पूर्व से प्रभावित क्षेत्र में निवास कर रहे हों। भूमिहीन परिवारों के लिए भी पुनर्वास स्थल पर आवासीय भूखण्ड, पुनर्वास अनुदान तथा बुनियादी सुविधा युक्त पुनर्वास स्थलों का प्रावधान किया गया है। देखने में तो यह पुनर्वास

⁵⁰ इसमें समय समय पर अनेक संशोधन हुए हैं।

नीति आदर्श दिखाई देती है लेकिन, इसके क्रियांवयन के अभाव में यह भी एक कागज का पुलिंदा भर साबित हुई है। सरकार ने इस नीति के पालन में बिल्कुल रुचि नहीं दिखाई है, उच्च न्यायालय और सर्वोच्च न्यायालय के आदेशों के बावजूद भी।

1988 में योजना आयोग से मंजूरी के मिलने के बाद जब सरदार सरोवर बाँध का निर्माण कार्य शुरू हुआ और प्रभावित क्षेत्र में सर्वेक्षण शुरू हुआ लगभग तभी से इससे प्रभावित होने वाले आदिवासी-किसानों ने अपने संगठन **नर्मदा बचाओ आंदोलन** के तहत संगठित तरीके अन्य मामलों के साथ अपने पुनर्वास की माँग भी प्रारंभ कर दी थी। लेकिन, सरकार ने उनकी न्यायपूर्ण माँगों पर विचार करने के बजाय उल्टे उन्हीं पर आरोप लगाकर उनका दमन शुरू कर दिया था।⁵¹

चूँकि सरदार सरोवर से सिंचाई का लाभ मुख्य रूप से गुजरात को मिलना है इसलिए नर्मदा न्यायाधिकरण ने पुनर्वास का खर्च गुजरात को वहन करने का आदेश दिया है।⁵² मध्यप्रदेश और महाराष्ट्र के प्रभावितों को गुजरात राज्य में भी पुनर्वास लाभ प्रदान किए गए हैं। लेकिन, जो प्रभावित गुजरात नहीं जाना चाहते उनका पुनर्वास अपने राज्यों में किए जाने का प्रावधान है और इसका खर्च भी गुजरात सरकार को ही वहन करना होगा। कौन प्रभावित किस राज्य में पुनर्वास चाहता है यह तय करना प्रभावित का काम है।⁵³ लेकिन, मध्यप्रदेश सरकार ने पहले ही तय कर लिया कि अलिराजपुर जिले के सारे आदिवासी प्रभावितों को गुजरात भेजा जाएगा। इसलिए जिले के इन 26 प्रभावित गाँवों के लिए एक भी पुनर्वास स्थल नहीं बनाया गया है।

⁵¹ उन दिनों बाँध प्रभावितों को विकास विरोधी या राष्ट्रविरोधी कहे जाने का फैशन चल पड़ा था।

⁵² NWDT award, Clause II, Sub - Clause III (5)

⁵³ NWDT award, Clause II, Sub - Clause IV (1)

धार, बड़वानी और खरगोन जिले के जिन प्रभावितों का विभाग द्वारा बनाए गए 88 पुनर्वास स्थलों में बसाया है वहाँ आज तक बुनियादी सुविधाएँ पर्याप्त नहीं हैं। सर्वोच्च न्यायालय ने अपने आदेश दिनांक 8 फरवरी 2017 में सभी पुनर्वास स्थलों में निर्धारित बुनियादी सुविधाएँ 31 मार्च 2017 तक उपलब्ध करवाने का आदेश दिया था। इस आदेश का पालन नहीं किया गया। सर्वोच्च न्यायालय के इस आदेश के प्रकाश में जीआरए ने फिर से यही आदेश दोहराया था। लेकिन, सरकार द्वारा सर्वोच्च न्यायालय के आदेश का ही पालन नहीं किया जा रहा है तो जीआरए के आदेश की क्या हैसियत?

अलिराजपुर जिले के गाँवों में भू-अर्जन की प्रक्रिया 1991 से प्रारंभ हुई है। लेकिन, मध्यप्रदेश में पुनर्वास चाहने वाले प्रभावितों को आज भी पुनर्वास लाभों से वंचित रखा गया है। अधिकृत आँकड़ों के अनुसार अब तक जमीन देकर सिर्फ 52 प्रभावितों का पुनर्वास किया गया है। जबकि जमीन के पात्र परिवारों की अब तक घोषित संख्या 5 हजार से अधिक हो चुकी है। इस परियोजना से सबसे अधिक किसान वर्ग ही प्रभावित हुआ है। उसकी आजीविका का साधन खत्म हो गया है। सर्वोच्च न्यायालय के आदेश के बाद जिन्हें 60 लाख रुपए का पैकेज प्राप्त हुआ है वे भी निर्धारित जमीन नहीं खरीद पा रहे हैं। क्योंकि जमीनों के भाव इससे भी अधिक है। कौशल के अभाव में आदिवासी इलाके के किसानों के लिए अन्य व्यवसाय करने में सक्षम नहीं है।

सर्वोच्च न्यायालय के आदेशों का खुलेआम उल्लंघन

बाँध प्रभावित संपत्तियों का अधिग्रहण प्रारंभ करने के बावजूद मध्यप्रदेश सरकार ने जब पुनर्वास की कोई व्यवस्था नहीं की तो प्रभावितों ने अपने संगठन **नर्मदा बचाओ आंदोलन** के माध्यम से सर्वप्रथम 1994 में सर्वोच्च न्यायालय के समक्ष एक याचिका (Writ Petition (C) No. 319 of 1994) दायर की जिसमें सरकार द्वारा पर्यावरणीय शर्तों का उल्लंघन तथा प्रभावितों के पुनर्वास में असफलता⁵⁴ के आधार पर इस परियोजना के पुनर्विचार की माँग की गई थी। सुनवाई के दौरान सर्वोच्च न्यायालय ने बाँध काम स्थगित रखने का आदेश दिया। इस याचिका का 18 अक्टूबर 2000 को निराकरण करते हुए सर्वोच्च न्यायालय ने सभी प्रभावितों को पुनर्वास नीति में वर्णित लाभ प्रदान करने का आदेश दिया था।

सरदार सरोवर प्रभावितों के पुनर्वास में **“जमीन के बदले जमीन”** का प्रावधान विशेष है। पुनर्वास नीति के अनुसार जिन प्रभावितों की 25 प्रतिशत से अधिक कृषि जमीनें परियोजना हेतु अधिग्रहित की गई हैं उन्हें तथा उनके वयस्क पुत्र/पुत्रियों को कम से कम 5 एकड़ खेतीलायक और सिंचित खेती की जमीन प्रदान की जानी थी।

⁵⁴ विश्व बैंक ने अपनी पुनर्विचार रिपोर्ट (मोर्स कमिटी रिपोर्ट, 1991) परियोजना से हटने की वजह प्रभावितों के पुनर्वास में सरकार की असफलता को प्रमुख कारण बताया था। पुनर्वास में असफलता के कारण ही सर्वोच्च न्यायालय ने भी 1996 में बाँध निर्माण पर स्थगन आदेश जारी किया था जो अक्टूबर 2000 तक जारी रहा। न्यायालय ने बाद में भी पुनर्वास की प्रगति की शर्त पर ही चरणबद्ध निर्माण की अनुमति दी थी।

जिस दौर में अपनी आजीविका खोने वाले किसान-आदिवासी अपने नीतिगत लाभों के लिए संघर्ष कर रहे थे तभी प्रदेश के तत्कालीन मुख्यमंत्री श्री शिवराजसिंह चौहान उद्योगपतियों को आमंत्रण दे रहे थे कि वे प्रदेश में आएँ उन्हें जमीन, बिजली और पानी सब उपलब्ध करवाया जाएगा। इस काम के लिए मुख्यमंत्री ने खुद को ही सिंगल विण्डो भी बताया था।⁵⁵ लेकिन, इन्हीं मुख्यमंत्री ने विकास के लिए अपने घर और आजीविका से बेदखल होने वाले बाँध प्रभावितों को कभी ऐसा कोई आश्वासन नहीं दिया जिससे उनकी प्रभावितों के पुनर्वास के प्रति गंभीरता प्रदर्शित हुई हो। हालांकि उनके इस आश्वासन का खर्च गुजरात को ही उठाना पड़ता लेकिन, इसके बावजूद उन्होंने प्रदेश के आदिवासी-किसानों के अधिकारों का संरक्षण नहीं किया। उद्योगपतियों के लिए तो सरकार के पास 25 हजार हेक्टर का लेण्ड बैंक था लेकिन, प्रभावितों के लिए खेतीलायक जमीन का कोई ऐसा बैंक नहीं बनाया गया था।⁵⁶ हालांकि प्रभावितों के लिए भी एक लेण्ड बैंक होने का सर्वोच्च न्यायालय में दावा किया गया था लेकिन, सरकारी और जीआरए की जाँच में ये जमीनें खेतीलायक नहीं पाई गईं।

इसलिए सरकार ने सर्वोच्च न्यायालय के आदेश के बावजूद खेती की 5 एकड़ जमीन के बदले 5 लाख 58 हजार रुपए का नगद पैकेज भुगतान करना शुरू किया। पैकेज भुगतान के निर्णय से उन दिनों अधिकारी काफी खुश दिखाई देने

⁵⁵ Confederation of India Industry (CII) वेबसाइट

<https://www.cii.in/PressreleasesDetail.aspx?enc=cAUyOKI6Od+piBZsm8aCQbNVcsCm9dtdNcI42MvtPKYALnrJYySEauXKJmKeqxGwJc76pfpGrxSUOjDfbBKn4uelRQj5YxMHIP7I Ga3c=> और Fortune India वेबसाइट <https://www.fortuneindia.com/people/shivraj-singh-chouhan/100834>

⁵⁶ Live Mint वेबसाइट <https://www.livemint.com/Politics/cyNuxdaXgHg2Pb8CgPcL4K/MP-summit-Shivraj-Singh-Chouhan-to-present-investment-repor.html>

लगे थे। और, बहुत जल्द ही पता चल गया था कि इस नगद पैकेज ने एक बहुत बड़े घोटाले को जन्म दे दिया है। अधिकारियों और दलालों के गठजोड़ से करीब 3 हजार प्रभावितों की फर्जी रजिस्ट्रियाँ करवा दी गई थी। इससे प्रभावितों को न तो खेती की जमीन मिल पाई और न ही पैकेज का पूरा पैसा क्योंकि पैकेज राशि का एक बड़ा हिस्सा अधिकारी-दलाल गठजोड़ ने हड़प लिया था। इस घोटाले से सबसे बुरा असर उन अशिक्षित आदिवासी प्रभावितों पर पड़ा जिनके लिए खेती के अलावा अन्य व्यवसाय करना संभव नहीं है।

इतने बड़े घोटाले को भी सरकार ने पहले दबाने का प्रयास किया। लेकिन, मध्यप्रदेश उच्च न्यायालय के हस्तक्षेप से अगस्त 2008 में इसकी जाँच के लिए एक आयोग का गठन करना पड़ा। उच्च न्यायालय की देखरेख में काम करने वाले इस आयोग का अध्यक्ष सेवानिवृत्त न्यायाधीश एसएस झा को बनाया गया। 29 जुलाई 2016 में प्रदेश विधानसभा में प्रस्तुत झा आयोग की रिपोर्ट में खुलासा हुआ कि संगठित रूप से किए गए घोटाले से हजारों परिवारों को उनके जमीन के हक से वंचित किया गया है।⁵⁷ लेकिन, सरकार ने न तो इस घोटाले में शामिल सरकारी अधिकारियों पर कोई कार्रवाई की और न ही सिफारिश के अनुसार आगे कोई जाँच करवाई। सरकार जमीन देकर तो प्रभावितों का पुनर्वास तो नहीं करवा पाई लेकिन, पुनर्वास का जो दावा किया गया था वह दावा भी झा आयोग की रिपोर्ट में फर्जी साबित हो गया। लेकिन,

⁵⁷ एसएस झा आयोग के सिफरिश खण्ड के अंश - "(ii) नघाविप्रा के कार्यालय में प्रभावितों की राशि निकालने हेतु दलालों के बेरोकटोक प्रवेश से अधिकारियों और दलालों की गठजोड़ प्रदर्शित हुई। सभी प्रभावितों ने बयान दिया कि उन्हें नघाविप्रा कार्यालयों के बाहर ही बिठाया गया था और उनका काम दलालों से ही करवाया गया और बगैर बताए उनसे कागजों पर हस्ताक्षर करवाए गए। नघाविप्रा अधिकारियों द्वारा बगैर समझाए प्रभावितों के हस्ताक्षर या अंगूठा निशानी लिया जाना अधिकारियों की अनियमितता प्रदर्शित करता है और वे फर्जी रजिस्ट्रियों के लिए प्रथमदृष्टया दोषी हैं।

इसके बावजूद सरकार ने फर्जीवाड़े के शिकार आदिवासियों को कोई राहत देना जरूरी नहीं समझा और इन प्रभावितों को पुनर्वसित ही मानती रही।

प्रभावितों के पुनर्वास का मामला सर्वोच्च न्यायालय में विचाराधीन होने के कारण सरदार सरोवर बाँध के गेट बंद करना संभव नहीं हो पा रहा था। इसलिए नर्मदा बचाओ आंदोलन की एक याचिका का 8 फरवरी 2017 को निराकरण करते हुए सर्वोच्च न्यायालय ने खेती की जमीन चाहने वाले प्रभावितों को 60 लाख रुपए के नगद पैकेज भुगतान का आदेश दिया। न्यायालय ने फर्जी रजिस्ट्रियों के माध्यम से संगठित ठगी के शिकार प्रभावितों के लिए भी 15 लाख रुपए का पैकेज निर्धारित किया। न्यायालय ने अधिकारियों और दलालों की गठजोड़ के कारण धोखाधड़ी का शिकार प्रभावितों की स्थिति दर्शाने के लिए अपने आदेश में झा आयोग की रिपोर्ट के 29 वे अनुच्छेद का शब्दशः उल्लेख किया -

*"गरीब आदिवासियों को दलालों ने लूट लिया है। उनकी रोजी-रोटी छिन गई है और वे दिहाड़ी मजदूर बन गए हैं। उनके पैसे दलालों ने हजम कर लिए हैं। ये प्रभावित जब आयोग के समक्ष बयान देने के लिए उपस्थित हुए तब उनके पास पहनने के कपड़े तक नहीं थे। वे अपनी कमर पर एक कपड़ा या गमछा लपेट कर उपस्थित हुए।"*⁵⁸

⁵⁸ Section of para 8 of SC judgement in the matter of NBA V/s Govt of India and others (Writ Petition(C) NO. 328/2002) "(29) Poor oustees particularly tribals have been looted by middlemen. They have lost their livelihood and are not daily wagers. Their installments have been siphoned off by the middlemen. When oustees appeared before the Commission were not even having clothes to wear. They have wrapped small cloth or towel round their waist when they appeared before the Commission."

जब न्यायालय ने यह आदेश दिया तब मध्यप्रदेश सरकार को प्रभावितों की संख्या तक ज्ञात नहीं थी।⁵⁹ इसलिए न्यायालय को अपने आदेश में अस्थाई संख्या का उल्लेख करना पड़ा। सभी पात्र प्रभावितों को पुनर्वास पैकेज भुगतान की अंतिम तारीख 31 मार्च 2017 निर्धारित की गई थी। लेकिन, अब तक सरकार इस आदेश का पालन नहीं कर पाई है। उल्टे जीआरए के माध्यम से करीब 7000 आवेदन-पत्रों को बिना सुनवाई के खारिज करवा दिया गया है।

दशकों बाद पुनर्वास से वंचित : कुछ उदाहरण

खुमान पिता हरिया – अलिराजपुर जिले के ग्राम आंजणवारा के आदिवासी किसान श्री खुमान पिता हरिया की कृषि भूमि का अधिग्रहण 1992 में किया गया था। प्रभावित की मर्जी के खिलाफ तथा उसे जानकारी दिए बिना 1998 में उसका "कागजी" पुनर्वास गुजरात में कर दिया गया था। प्रभावित को न तो वास्तव में कोई पुनर्वास लाभ प्रदान किए गए थे और न ही वह गुजरात में पुनर्वास चाहता था इसलिए उसने जीआरए में आवेदन-पत्र प्रस्तुत कर मध्यप्रदेश में खेती की जमीन माँगी। जीआरए ने 6 सितंबर 2005 को आवेदन-पत्र का निराकरण करते हुए प्रभावित को मध्यप्रदेश में पुनर्वास लाभ प्रदान करने का आदेश दिया। इस आदेश का आज तक पालन नहीं किया गया है।

⁵⁹ सरकार ने न्यायालय में जमीन के बदले जमीन के पात्र प्रभावितों की संख्या 681 बताई थी लेकिन, इससे अधिक प्रभावितों को अभी तक पैकेज का भुगतान किया जा चुका है जबकि हजारों पात्र प्रभावित अभी भी पुनर्वास लाभों की बाट जोह रहे हैं।

सुरभान पिता वेरांगिया – अलिराजपुर जिले के ग्राम भीताड़ा की प्रभावित संपत्तियों का अधिग्रहण 1993 में हुआ। भीताड़ा निवासी श्री सुरभान पिता वेरांगिया को 6 सितंबर 2005 को जीआरए द्वारा प्रभावित घोषित करते हुए आदेश दिया गया कि उसे गुजरात में खेती की जमीन उपलब्ध करवाई जाए। पुनर्वास के इंतजार में श्री सुरभान जीवन से हार गए। उनकी पत्नी बजारी बाई अभी भी उनके पति को मिलने वाले लाभों की प्रतीक्षा कर रही है।

जामसिंह पिता जलाल – बड़वानी जिले के ग्राम अमलाली निवासी श्री जामसिंह पिता जलाल की कृषि भूमि 1994 में अधिग्रहित कर ली गई थी। बाद में 1998 में अमलाली गाँव की आबादी स्थित घरों का भी अधिग्रहण कर लिया गया। जब सरकार ने उन्हें खेती की जमीन नहीं दी तो उन्होंने जीआरए के समक्ष याचिका दायर की। जीआरए ने आवेदन-पत्र स्वीकार करते हुए 20 अप्रैल 2012 को सरकार को आदेश दिया कि वह प्रभावित को खेती की जमीन उपलब्ध करवाएँ। जब सरकार ने इस आदेश का भी पालन नहीं किया तो आवेदक ने सर्वोच्च न्यायालय में याचिका (WP 328/2002, Interim Application No. 147/2014)) दायर की। सर्वोच्च न्यायालय के आदेश दिनांक 28 अक्टूबर 2015 के बाद सरकार ने ग्राम ग्राम रामपुरा बलौदा (जिला धार) में जो जमीन आवंटित की वह अतिक्रमित है। प्रभावित ने अतिक्रमित जमीन लेने से इंकार किया था लेकिन, जीआरए ने अतिक्रमण हटाने का आश्वासन देकर दिनांक 20 मई 2016 को आवंटित करवा दी। लेकिन, जमीन से आज तक अतिक्रमण नहीं हटाया गया है। अतिक्रमित जमीन के

आवंटन के बहाने प्रभावित को अब सर्वोच्च न्यायालय द्वारा घोषित नगद पैकेज का भी भुगतान किया जा रहा है। इसी तरह की समस्या उन 22 प्रभावितों की भी है जो अपने अधिकार के लिए श्री जामसिंह की तरह सर्वोच्च न्यायालय गए थे और निर्णय उनके पक्ष में आया है।

हीरू बाई पिता केरिया – बड़वानी जिले के ग्राम देहदला की भूस्वामी श्रीमती हीरूबाई पिता केरिया की कृषि भूमि के अधिग्रहण की प्रक्रिया 2001 से प्रारंभ हुई थी। भू-अर्जन की प्रक्रिया प्रारंभ होने के पूर्व उनके पिता का देहांत हो चुका था इसलिए भू-अर्जन के समय अपने भाईयों के साथ हीरूबाई भी जमीन की मालकिन थी। लेकिन, महिला होने के कारण उन्हें पुनर्वास लाभों से वंचित कर दिया गया। जीआरए ने दिनांक 16 मार्च 2012 को हीरूबाई के पक्ष निर्णय दिया। लेकिन, सरकार ने इसके खिलाफ उच्च न्यायालय में अपील कर दी। उच्च न्यायालय ने सरकारी याचिका (WP No. 3586/2014) 24 अक्टूबर 2016 को खारिज कर उनकी पात्रता बहाल रखी। इसके बावजूद अब सरकार इस आदिवासी महिला के खिलाफ सर्वोच्च न्यायालय में चली गई है। हालांकि सर्वोच्च न्यायालय अपने आदेश दिनांक 8 फरवरी 2017 में स्पष्ट कर चुकी है कि प्रभावितों के खिलाफ सरकार ऊँची अदालतों में अपील नहीं सकती है। लेकिन, सरकार का मकसद तो सिर्फ प्रभावितों को प्रताड़ित करना ही है।

उपरोक्त वर्णित सारे प्रभावित आदिवासी होकर अशिक्षित हैं। इन्हें दशकों पहले अपने पुनर्वास लाभ प्राप्त हो जाने चाहिए थे और वह भी बिना

न्यायालय की शरण लिए। लेकिन, नीतिगत लाभ प्राप्त करने के 2-3 दशकों से जारी संघर्ष में कई प्रभावित सुरभान की तरह अपने जीवन की लड़ाई भी हार गए हैं। ऐसे प्रभावितों ने अपने वारिसों के लिए विरासत में असंवेदनशील सरकार के समक्ष अधिकारों का संघर्ष छोड़ा है।

दशकों तक प्रभावितों के नीतिगत अधिकारों के सुनियोजित हनन से अब लगता है कि सरकार की मंशा शुरू से ही प्रभावितों का दमन कर उन्हें डूब क्षेत्र से खदेड़ने की ही थी शायद इसीलिए प्रभावितों के पुनर्वास पर ध्यान नहीं दिया। कृषि जमीन देकर पुनर्वास करने के मामले में सरकार का रवैया बहुत ही असंवेदनशील और बेशर्मी भरा रहा है। खेती की जमीन के पात्र 8 हजार से अधिक परिवारों में से अब तक केवल 53 परिवारों जमीन उपलब्ध करवा पाना शक को विश्वास में बदलता है। ये जमीनें भी प्रभावितों को तब उपलब्ध करवाई गई जब वे व्यक्तिगत रूप से सर्वोच्च न्यायालय गए और सर्वोच्च न्यायालय ने व्यक्तिगत प्रकरणों में जमीन उपलब्ध करवाने का आदेश दिया। इन 53 परिवारों में से भी 22 परिवार श्री जामसिंह जैसे हैं जिन्हें केवल कागज पर ही जमीन उपलब्ध करवाई है।

सरकार का रवैया यह रहा है कि यदि कोई आदिवासी या किसान अपना अधिकार माँगने का प्रयास करे तो वह उसके खिलाफ उच्च न्यायालय और सर्वोच्च न्यायालय में चली जाती है। जो अशिक्षित या अल्प शिक्षित प्रभावित अपने प्रकरण की पैरवी तहसीलदार के समक्ष करने में सक्षम नहीं हैं, उनसे कैसी अपेक्षा की जाए कि वे इन ऊँची अदालतों में अपने मामलों की पैरवी कर सकेंगे। यदि कोई प्रभावित उच्च न्यायालय और सर्वोच्च न्यायालय जाना भी चाहे तो वकीलों की फीस कहाँ से जुटाएगा? इस सुनियोजित रणनीति के तहत

सरकार ने न्यायालयों का उपयोग प्रभावितों से अन्याय करने के लिए ही किया है।

सवाल वाजिब अधिकारों के लिए लम्बी प्रतीक्षा का भी है। यदि 3 दशकों तक भी किसी को न्याय नहीं मिले और न्याय के इंतजार में एक पीढ़ी ही गुजर तो इसे क्या कहा जाए? सरकार का यह रवैया समाज के कमजोर वर्गों को संगठित तरीके से और कमजोर करने का प्रयास है।

भले ही राजनैतिक विमर्श में महिला सशक्तिकरण के जुमले खूब उछाले जा रहे हो लेकिन, सच्चाई यह है कि सरकार ने सरोवर परियोजना प्रभावितों में महिलाओं को दायम दर्जे का नागरिक ही माना है। परिवार के पुरुष सदस्यों पर आश्रित मानते हुए महिलाओं के पुनर्वास अधिकार नकार दिए गए हैं। 2500 से अधिक महिला खातेदारों को पुनर्वास लाभ नहीं दिए जा रहे हैं। इनमें कई महिला खातेदार तो श्रीमती हीरबाई की तरह हैं जिनके पक्ष में उच्च न्यायालय ने आदेश भी दिए हैं।

अपनी आजीविका को बचाने के लिए "नर्मदा बचाओ आंदोलन" के तहत संगठित प्रभावितों ने हर मुम्किन फोरम - सरकार, न्यायपालिका और विश्व बैंक तक अपने साथ हो रहे अन्याय की आवाज़ बुलंद की। प्रभावितों के मुद्दों को समझकर न्यायालयों ने राहत प्रदान की और विश्व बैंक ने तो सरदार सरोवर परियोजना से वित्तीय समर्थन ही वापस ले लिया।⁶⁰ लेकिन, सरकार ने हमेशा निराश किया। पहले तो सरकार प्रभावितों के अधिकार देने से इंकार

⁶⁰ किसी जन संगठन कारण सरदार सरोवर परियोजना से विश्व बैंक का हटना एक बड़ी तथा दुनिया में पहली बार हुई घटना थी।

करती है और न्यायालय जाने की चुनौती देती हैं। यदि कोई प्रभावित न्यायालय जाकर जीत भी जाए तब भी कोई फर्क नहीं पड़ता क्योंकि सरकार न तो खुद की बनाई पुनर्वास नीति को मानती है और न ही न्यायालयों के आदेश की परवाह करती है। लोकतांत्रिक व्यवस्था में यह स्थिति बहुत दुःखद है।

वर्तमान स्थिति

8 फरवरी 2017 को सुप्रीम कोर्ट ने एक बार फिर आदेश दिया कि सभी प्रभावितों का पुनर्वास 31 जुलाई 2017 तक कर दिया जाए। इस आदेश के बाद सरकार ने बाँध के गेट बंद कर दिए और कई प्रभावितों की संपत्तियों को बिना पुनर्वास के डुबा दिया। कुछ प्रभावितों का थोड़ा-बहुत पुनर्वास जरूर किया लेकिन, सभी प्रभावितों के पुनर्वास की मंशा अभी भी दिखाई नहीं दे रही है। इस आदेश में सर्वोच्च न्यायालय ने उन प्रभावितों के लिए जमीन खरीदने हेतु 60 लाख रुपए का पैकेज निर्धारित किया था जो नीति अनुसार खेती की जमीन के पात्र थे। इसका लाभ भी बहुत कम प्रभावितों को दिया गया। हजारों परिवार अभी भी इस पैकेज से वंचित हैं।

सरकारी असंवेदनशीलता के कारण नर्मदा परियोजनाओं से प्रभावित हुए आदिवासी और किसान ऐतिहासिक अन्याय के शिकार हुए हैं। वर्ष 2000 से 2004 के बीच बाँध की ऊँचाई कम कर डूब का प्रभाव कम करने का मध्यप्रदेश में एक प्रयास जरूर हुआ। इसी दौरान कुछ पुनर्वास स्थल जरूर बनाए गए लेकिन, अलिराजपुर जिले के आदिवासी गाँवों के लिए कोई पुनर्वास स्थल नहीं बनाया गया। उद्योगपतियों को हजारों हेक्टर जमीन उपलब्ध करवाने के लिए

उतावली मध्यप्रदेश सरकार तो प्रभावितों को जमीन उपलब्ध करवाने से सर्वोच्च न्यायालय में भी पल्ला झाड़ती रही है।

सरकार चाहती तो 2001 में जब सुप्रीम कोर्ट ने शर्तों के साथ बाँध निर्माण को हरी झण्डी देते हुए प्रभावितों के पुनर्वास का आदेश दिया तब पुनर्वास कर सकती थी। फिर से याद कर लें कि इससे मध्यप्रदेश सरकार पर कोई बोझ नहीं पड़ता क्योंकि पुनर्वास में लगने वाला खर्च गुजरात सरकार को भुगतान करना है। लेकिन, इसके बावजूद सरकार प्रभावितों के पुनर्वास का कोई प्रयास नहीं किया। सुप्रीम कोर्ट ने अप्रैल 2005 में खेती की जमीन सहित अन्य पुनर्वास लाभ प्रदान करने का दुबारा आदेश (Writ Petition (civil) 328 of 2002) दिया। इस आदेश के बाद सरकार ने खेती की जमीन के पात्र परिवारों को निर्धारित 5 एकड़ जमीन खरीदने के लिए 5 लाख 58 हजार का नगद पैकेज दिया। सरकार के इस निर्णय ने तो लूट मचा दी। अधिकारियों और दलालों के गठजोड़ ने निरंकुश होकर नया खेल खेला और फर्जी रजिस्ट्रियों के माध्यम से करीब 3 हजार परिवारों को जमीन से वंचित कर दिया।⁶¹ मध्यप्रदेश उच्च न्यायालय के आदेश पर सेवानिवृत्त जज श्री एसएस झा की अध्यक्षता में गठित आयोग ने इसकी जाँच की। लेकिन, प्रभावितों को पुनर्वास लाभ से वंचित करने वाले इस फर्जीवाड़े में शामिल दोषी अधिकारियों और दलालों के खिलाफ कोई कार्रवाई नहीं की गई। हाँ फर्जीवाड़े और धोखाधड़ी के शिकार आदिवासियों को जरूर जेल भिजवाया गया था।

⁶¹ झा आयोग रिपोर्ट, जुलाई 2016

प्रभावितों के पुनर्वास की समस्याओं के समाधान हेतु सर्वोच्च न्यायालय के आदेश से शिकायत निवारण प्राधिकरण (जीआरए) का गठन किया गया है। लेकिन, यह व्यवस्था भी प्रभावितों को न्याय देने में नाकाम रही है। या तो जीआरए ने प्रभावितों को समय पर न्याय नहीं दिया या फिर इस प्राधिकरण के आदेशों को मध्यप्रदेश सरकार ने मानने से इंकार कर दिया।

पिछले तीन दशकों में सरदार सरोवर बाँध प्रभावितों ने महसूस किया कि सरकार खुद अपने बनाए नियम-कायदों का पालन नहीं कर रही है और अपने ही राज्य के वंचित समुदायों से ऐसा छद्म युद्ध लड़ रही है जिसमें जीत हमेशा पढ़े-लिखे, साधन-संपन्न और शक्तिशाली पक्ष की ही संभव है। अलिराजपुर, धार या बड़वानी जिले के ऐसे आदिवासियों को खेती की जमीन से वंचित करने के लिए प्रदेश सरकार हाई कोर्ट और सुप्रीम कोर्ट में चली गई जो अपने मामलों की पैरवी तहसीलदार के सामने भी नहीं कर सकते।

संक्षेप में जिन परिवारों का पुनर्वास 1991 में हो जाना चाहिए था वे तीन दशकों बाद यानी 2019 की शुरुआत तक अपने हक से वंचित हैं। प्रभावितों की एक पूरी पीढ़ी ने अपना जीवन उस हक को माँगने के संघर्ष में गुजार दिया जो उन्हें बगैर माँगे मिल जाना चाहिए था। सरकार ने प्रभावित गाँवों से सार्वजनिक परिवहन, स्कूल, आंगनवाड़ी, अस्पताल, बैंक, बिजली कार्यालय जैसी बुनियादी सुविधाएँ हटा दी हैं। बच्चों का स्कूल जाना कम हो गया है। लड़कियों का तो स्कूल जाना लगभग बंद ही हो गया है। सार्वजनिक परिवहन के अभाव में अस्पताल समय से पहुँचना मुश्किल हो गया है। लेकिन, पुनर्वास के अभाव में बिना सुविधाओं के रहना प्रभावितों की मजबूरी है और आज भी बड़ी संख्या में लोग खतरों का सामना करते हुए डूब क्षेत्र में रहने को मजबूर हैं।

विकास के लिए अपने जीवन और जीविका की बलि देने वाले आदिवासी-किसानों के प्रति सरकार का यह उपेक्षापूर्ण नज़रिया लोकतांत्रिक व्यवस्था में सामाजिक न्याय के समक्ष बड़ा प्रश्न चिन्ह खड़ा करता है।

**Application of Social Impact Assessment under
RFCTLARR Act, 2013 in Urban Transport Projects:
Insights from Metro Rail in India**

Sanjay K.Pradhan⁶²

Abstract

The infrastructure projects are important for faster economic growth and alleviation of poverty in the country. The adequate infrastructure in the form of road, rail, ports, power, airports and their efficient working is also needed for integration of the Indian economy with other economies of the world. However, most of the infrastructure projects come with undesirable results in addition to its advantageous outcomes. These undesirable results are emerged in different themes such as social, cultural, economic and environmental aspects. As a result, it is important to predict and prevent the unwanted results of projects in order to achieve inclusive and sustainable development. Social Impact Assessment and meaningful public consultation in development decisions have received increasing attention from the social scientists, policy makers, Non-Government Organisation, international financial institutions and development practitioners as possible ways to address adverse social impacts of development projects. SIA identifies the consequences of development projects and it aims to notify decision makers to prevent unintended impacts. Urban transportation development is not apart from other infrastructure development projects, so its social impacts should be assessed. Metro rail network as a transportation system plays a critical role in urban transportation and its development has a special importance. In this paper, an attempt has been made to examine the SIA instructions, social impacts, mitigation measures of Ahmadabad metro rail project in India. It argues that identifying and addressing social issues at an early stage of the project and integrating them into resettlement management can increase the possibility of project success.

⁶²Senior Social Safeguard Specialist, Environment Division, RITES LTD, A Govt. of India (Ministry of Railways) Enterprise, Gurgaon-122 001. E-mail: dr.spradhan2010@gmail.com

Introduction

Gandhinagar and Ahmedabad are located 32 km from each other and are well connected through highways and are rapidly becoming a contiguous urban area. Its strategic geographical location, multilingual and cosmopolitan culture, tremendous growth potential and investment-friendly economic policy are all making it an attractive destination for corporates, entrepreneurs, academicians and homemakers alike. The population of the twin cities has touched 65 lakh in 2014 and is expected to reach 8.64 million by 2020. The increasing pressure of the growing population is putting twin city's transportation system under constant pressure. It requires faster transportation to avoid delay in work and to avoid decongestions in the twin cities. The Government of Gujarat has identified metro mode of transport as efficient, economically viable and environmentally friendly mass transport system to meet the future transportation requirement in Ahmedabad and Gandhinagar cities.

Metro link Express for Gandhinagar and Ahmedabad (MEGA), a special purpose vehicle (SPV) of Government of India and Government of Gujarat, was formed in 2009 for development and operation of metro rail facility in the twin cities of Ahmedabad and Gandhinagar. MEGA desires to build the metro rail system by adopting adequate environmental standards to provide for the protection of the people and the environment. It is proposed that the metro project will be taken up in phases. The detailed project report(DPR) for the Phase-I corridor was prepared by Delhi Metro Rail Corporation (DMRC) and approved in March 2015. According to the DPR (2014), the total length of the route is 37.734 km which include 31.399 kms elevated and 6.335kms underground section having 32 metro stations along the route. The proposed metro alignment provides north-south connectivity in Ahmedabad city from APMC to Motera Stadium running along the Ashram road on most of the sections. The other corridor Thaltej to Vastral provides east to west connectivity and passes through important nodes of Kalupur, Ashram road, Thaltej and

Industrial areas on the east of Ahmedabad. The stations shall be accessible from both sides of the road in order to better serve the catchment area.

The proposed metro project will contribute to inclusive growth and environmentally sustainable development in Ahmadabad city by improving the efficiency and sustainability of urban transport. As per the Government of India regulations and Japan International Cooperation Agency (JICA) policy requirements, a Social Impact Assessment (SIA) study was carried out during the design stage of the project. In this paper, an attempt has been made to examine the SIA instructions, social impacts, mitigation measures of Ahmadabad metro rail project in India.

Approach and Methodology

The SIA has been prepared in accordance with the Right to Fair Compensation and Transparency in land acquisition, Rehabilitation and Resettlement Act, 2013(RFCTLARR Act,2013), and JICA guidelines for Environmental and Social Consideration 2011. A participatory approach was adopted for establishing the social baseline and undertaking the SIA study. An attempt was made to integrate local community perspectives into the impact assessment process and identification of the mitigation measures. The methodology used for SIA study was designed based on objective and scope of the study. Accordingly, the exercise was based on both use of secondary information and primary data collection through door to door household surveys and community level information gathering. For primary level information gathering and data collection, pre-tested questionnaires, focus group discussion, key informants interview, stakeholder consultation and public hearing were used. The primary data collection exercise was supported by careful examining of project area map and project details, Government census data, land records, district gazetteers and other administrative records and other official documents to validate the field findings.

The field visits and studies were conducted during September–October 2014. The study team visited the sites to verify the alignment drawings on the ground and identify the affected areas. After identifying the affected areas the study team consulted with different stakeholders at the project area and organized meetings with them to generate awareness about the project. The census and socio-economic survey of the probable project affected persons (PAPs) within the proposed corridor of impact (CoI) was carried out to provide requisite details on the PAPs to further assess the magnitude of likely impacts and to identify measures for mitigation of adverse impacts. The survey included (i) full census of households, other physical units (shops, community units, etc.); (ii) socio-economic survey of the enumerated households; (iii) community based public consultation. The survey identified the households, commercial and business enterprises and common property resources within the project corridor of impact (private and public), and other facilities. The trained investigators collected a wide range of data, for example, demography, age/sex distribution, education, occupation, income/poverty data, types of businesses, types and ownership status of affected structures and other assets, ownership of the assets to be affected, choice of relocation, assistance for rehabilitation, etc. through administering a pre-tested questionnaire. The data were later shared with the communities to cross-check if anyone has been left out due to some reasons or if extra counting has been done. During social survey stakeholder consultations were conducted at different levels namely individual, group, community, and institutional level. A public consultation was conducted at city level after one month of submitting the draft SIA report to share the main findings of the SIA Study and seek views on findings, additional information and views of all stakeholders and affected families. The entire field data collection was guided and supervised by the Social Development Specialist of the project.

Results and Discussion

SIA Background and Instructions

The social sciences have long been interested in the impacts to social and economic systems wrought by large industrial, land-use, and environmental changes. Beginning in the early 1970s, a formalized set of practices and procedures called Social Impact Assessment (SIA) emerged to document and/or predict the socio-economic impacts from such large-scale projects (Jeffrey & Jacquet, 2014). The origins of SIA largely derive from the environmental impact assessment (EIA) model, which was presented by the United State National Environmental Policy Act (NEPA) legislation in 1969. SIA has become standard practice in environment field (Kaul, 1999). By early 1990s, the practice of SIA got firmly established among development agencies as a way to assess the impacts of development projects before their lunch (ADB, 1993). SIA is now part of formal planning processes in most development organizations (Jacob, 1998). SIA has become a legal requirement in some countries. Although SIAs have been carried out for variety of projects like mines, urban transport systems, water, sanitation and health and livelihood support projects, but it is particularly found useful for resettlement projects.

In India, SIA was carried out in the beginning as a part of EIA. As a part of EIA process it has not been given adequate attention by the project developer. SIA was introduced by the multilateral agencies like World Bank and Asian Development Bank for the purpose of processing the loan to the government. SIA as a planning tool was officially mandated for the first time when the Government of India issued a new resettlement and rehabilitation policy in 2007, replacing the earlier policy on Resettlement and Rehabilitation-2004. The new policy made a provision for conducting SIA whenever a new project or expansion of an existing project is undertaken. This was then seen as major development, but no closer examination it turned to be not as promising as it seemed as first sight. The emphasis on SIA was primarily on counting loss of physical assets not social impacts (Mathur, 2016). It was found

that SIA was not integrated into the process of resettlement planning in India.

Due to unanimity of opinion across the social and political spectrum that the current policy suffers from various shortcomings like forced acquisition, low rates of compensation, no compensation for livelihood losers (non-titleholders) and litigation, a new law has now come into effect under the name of “The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013(Pradhan, 2014). This Central Act is to ensure a humane, participative, informed and transparent process for land acquisition for development of essential infrastructural facilities, industrialization and urbanization with least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families. In order to establish a comprehensive, participative and meaningful process of land acquisition in the Land Acquisition Act, 2013, the Government of India issued the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2014 on 8th August. Prior to the acquisition of land Section 4 of the Act mandates conduct of a social impact assessment study of the affected area to study the impacts of the project. To ensure effective SIA, it provides for public consultation, hearing and prior consent of a majority local landowners (80 per cent of land owners in case of private project and 70 per cent for public-private partnership projects).The law addresses serious injustices in the earlier practice, where the State could take away an individual's home, farm or occupational rights by exercising the power of eminent domain. SIA is the only mechanism today to address the impacts of acquisition on the livelihoods of all those who do not own land but are dependent on it. It provides for constitution of expert group for evaluation of SIA report (GoI, 2013).

The Rules require the state or the central government to establish a SIA unit to ensure that SIAs are commissioned and conducted by such person or bodies other than the Requiring Body. This is a

critical provision for maintaining the credibility of the SIA. It allows the SIA team to include independent practitioners, academics, qualified social activists, and mandate the inclusion of at least one woman member. There are several other important provisions including the time period of SIA (six months), recording the views of the affected families in writing, involving local voluntary organizations and media in the public hearings, recording and considering in the SIA every objection raised in the public hearings, the SIA and public hearings to be in local language and a web-based flow management information system of the acquisition process. Where land is acquired, fair compensation shall be paid promptly to all persons affected in accordance with sections 28, 29 and 30 of the Act (GoI, 2014). For the proposed metro rail project social impact assessment has been conducted and mitigation measures have been developed in accordance with the RFCTLARR, Act, 2013.

Identifying Social Impacts of the Project

Information elicited through a multipronged strategy highlighted that the land and structures holders were unanimous in welcoming the development of metro rail in the city and were ready to relinquish the land. At the same time they expressed certain concerns that could affect/impact their social and economic life due to the acquisition of land. The following provides the major anticipated impacts (both positive and negative) of the proposed project:

(i) Negative Impacts

The proposed Metro project shall require land for different purposes. Land is mainly required for stations, running section, depot, staff quarters, office complex, receiving substation (RSS), and mid shaft. Land required for temporary office accommodation, segment casting yard shall be required temporarily. Acquisition of land shall make affected families landless, houseless, and jobless in most of the cases. Therefore, every effort has been made to keep land requirements to the

barest minimum by realigning the alignments away from private property / human habitation. After planning, the land requirement is kept at minimum and particularly, acquisition of private land was avoided.

The project will involve acquisition of 898191 sqm. Out of the total land requirement, 846578 sqm is government land and only 51613 sqm is under private acquisition. However, the project will acquire very less private land (5.75 per cent) of total permanent land acquisition. Total land required for temporary acquisition is 154381 sqm. which assumed that it will be government open land.

Table 1:Overall Social Impacts of Project

| Sl. No. | Social Impacts | Magnitude of Impact | | |
|---------|-----------------------------------|---------------------|----------------------|--------|
| | | East-West Corridor | North-South Corridor | Total |
| 1 | Acquisition of Land (in Ha) | | | |
| 1.1 | Private Land (in Ha) | 31913 | 19700 | 51613 |
| 1.2 | Government Land (in Ha) | 456478 | 390100 | 846578 |
| 2 | Impact on Properties (no) | 783 | 264 | 1047 |
| 2 | Impact on PAFs/PAPs(no) | | | |
| 2.1 | Total PAFs | 783 | 264 | 1047 |
| 2.2 | Total PAPs | 2550 | 1047 | 3597 |
| 2.3 | Total PDFs | 644 | 199 | 843 |
| 4 | Titleholder (no) | 342 | 157 | 499 |
| 5 | Non Titleholder (no) | 441 | 107 | 548 |
| 6 | Loss of Residence(no) | 349 | 153 | 502 |
| 7 | Loss of Business(no) | 292 | 46 | 338 |
| 8 | Vulnerable PAFs(no) | 425 | 116 | 541 |
| 9 | Impact on Community Resources(no) | 30 | 6 | 36 |

*corridor wise PAFs without information of owners who have rented their properties.

Source:RITES Survey, 2014.

Impact on Properties

There are 1047 properties likely to be affected. Out of the total properties, 1043 are residential and commercial structures and remaining four properties are open land and agricultural land. Out of the total properties affected, 548 are residential, 351 are commercial including one industrial unit at Rabari colony, and 144 are residential cum commercial. 545 properties are in government land and 502 properties are in private land. Most of the properties are found in government land. In East-West corridor, 239 properties are in Apparel Park and 81 are in Vastral and these are all squatters have been staying in government land since 20 to 30 years. Similarly in North-South corridor majority of squatters are found in Gyaspur Depot and Ranip. Out of total 1047 structures, 204 are partially affected and 843 are fully affected. Out of the total properties 737 properties are not viable after acquisition and demolition. People need to vacate the total area of these properties. About 351 are *kutcha*, 556 are *pucca*, 114 are *semi-pucca* and 26 are temporary properties. Majority of properties are *pucca* in East-West corridor whereas majority of properties are *kutcha* in North-South corridor.

Impact on Families & Persons

There are 1047 families consisting 3597 persons affected due to the proposed metro rail project. Out of total affected families, 843 families will be displaced in which 502 shall be displaced physically and 338 shall be displaced economically. There are 499 titleholders (480 owners and 19 lease holders) and 548 non-titleholders (402 squatters, 88 tenants, 56 kiosks and two encroachers).

Impact on Vulnerable Group

As per the JICA guidelines vulnerable group is defined as indigenous people, ethnic minorities, the poorest, women, the aged, the disabled and other socially/economically vulnerable groups who would be adversely affected from a project. As regards

vulnerability among PAFs, there are 541 families consisting 2094 persons who belong to vulnerable category. Out of these three families are women headed households, 174 families are scheduled castes, 126 are scheduled tribes, 52 families are below the line of poverty including women headed households, and 35 families having disability people.

Impact on Business/Livelihood activities

Out of 1047 PAFs, 338 PAFs have business establishments falling under the direct project impact corridor and they shall be economically displaced. Majority of them are involved in selling of garments, small mobile kiosk, household items, workshop/garage, tea stall, restaurant, manufacturing etc. Business loss to these establishments may be inferred from the income earned from these sources. Nearly half of the business properties earn less than Rs.15,000 per month, as reported during the census survey. Another 28 per cent PAFs earns between Rs.15000 to Rs.25000 per month. 12 per cent of the PAFs claimed to be earning more than hundred thousands from these properties. It is observed from the data that all of 338 PAFs will be losing quoted income accruing from the affected business properties.

Impact on Women

The SIA results showed that due to development of proposed metro rail project in Ahmadabad city, about 1047 families consisting 3597 persons would be affected. Among the affected persons nearly half were women members. A total of three female headed households, 1521 women members were affected. The sex ratio was found to be 733 females against 1000 males in project area. As compared to State figure of 919, the sex ratio found in the project area was quite low. Women in the project area mostly involved in, house work, labour work and managing small shops and only small portion of women are involved in private jobs. It is observed that women are hard working in bringing in income to the family. There is predictability of negative impacts as a result of relocation or loss of livelihood and that may affect the women

social relationships, adjustments in running a household in a different setting with lesser earnings. All this can result in the women opting for voluntary work to supplement income, which could lead to vulnerabilities that may affect her social, economic, physical and emotional health. It is, thus, imperative that women are required to be involved as full-fledged participants taking part at all the stages of the project starting from planning through implementation and even at the post project stages

Impact on Tribal People

About 12 per cent of total project affected families are tribal and they are found in the project area no longer live in forests/hills. The tribal population has integrated with the main stream population. Few of them fall within the category of below poverty line. If any adverse impacts on tribal people are identified during implementation, the project proponent will ensure that an indigenous peoples plan is prepared in accordance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and JICA's Involuntary Resettlement Policy and it will be approved by Government of Gujarat and JICA before award of the related civil works contract.

Impact on Community Assets and Cultural Resources

Survey for the identification of structures related to community property resources was conducted along the proposed alignment with an objective of identifying structures of common property resources such as public toilet, wells, bore wells, places of worship, educational institution, health centers etc. and other structures such as roads, government buildings, expected to be affected by the proposed alignment. Common property resources are divided into government structures and community owned structures associated with public use.

The project shall impact total 36 community structures. Out of the total, 11 are religious structures and 11 are community

structures(two public toilets, two educational institutions, two health centers and five bus stops) and remaining 14 are other structures(i.e., boundary walls). Out of the total religious structures, five are fully affected and six are partially affected. Of the total community structures, two toilets, two educational and two health centers and five bus stops are fully affected.

Employment Loss of Wage Earner

Census data identifies a total of 139 PAPs who are wage earners and likely to lose existing employment opportunities because of project related impacts. Nearly 56 percent of the wage earner PAPs report of earning less than Rs.10,000 per month. Only about 6 per cent of the PAPs (in wage earner category) have monthly income above Rs.15,000.

(i) Positive Impacts

The metro project shall contribute to reduce in road traffic and road stress, fuel consumption, air pollution, travel time, vehicle operating cost, accidents and road maintenance. The metro project shall increase mobility, better accessibility to facilitates the influence area, increase economic stimulation in the micro region of infrastructure, increase social wellbeing, increase business opportunities, improve aesthetics and image of the city. Overall the metro rail project shall change the transportation face of Ahmadabad and Gandhinagar city.

Views of the respondents revealed that there are some positive benefits of the metro project. About 42 per cent of respondents agreed that there will be an increase in business and employment opportunities in the area and 35 per cent feel that condition of transport system in the city will be improved and property value will be increased. They believe that the metro development may decrease accidents and green house gas emission.

Social Mitigation Measures

The social mitigation measures were corresponded to all main issues identified in the social assessment that are described in the following sub-sections: (i)Resettlement by social relationship, (ii)provision of income and livelihood restoration assistance, (iii)provision of community resources and cultural sites, (iv) measures to address gender issues,(v) Provisions for Schedule Caste and Scheduled Tribe, (vi) provision for mobility of disabled people, (vii) provision of public infrastructures,(viii)provision of training, institutional strengthening and capacity building programme and (ix) monitoring and evaluation programme. The details are summarized as follows:

Resettlement by social relationship

In order to maintain the existing social relationship it is proposed that the resettlement of affected persons communities be implemented in the following framework: (a) relocation of affected persons community should be made as the whole area to settle together in the new resettlement colony;(b) those of same ethnic group community should be placed close together in the new resettlement colony and (c) communities and households from the same neighborhood should be placed next to each other to the maximum extent.

Provision of income and livelihood restoration assistance

Restoration of pre-project levels of income is an important part of rehabilitating in affected communities. The project policy has many provisions in it for restoration of income of affected persons with an aim of improving the socio-economic conditions of PAPs. In addition to this, the project will facilitate in taking full advantage of existing government schemes by the affected persons. The NGO will coordinate with various departments to integrate with over all project scenarios. The project has provision of training to upgrade the skill level and one time economic rehabilitation grant to vulnerable families in re-establishing themselves economically.

Measures to address gender issues

In order to design an effective and sustainable urban transport project, its social and gender dimensions must be taken into consideration at an early stage of the project(Pradhan,2018). Gender sensitive measures are taken to enhance the project positive benefits and minimize the potential negative impacts. In the planning and design stage, the project has all the hall marks of moving from the minimum compliance framework towards empowerment, whereby women have the opportunity to participate in the consultation process and various measures have been put in place such as job opportunities for women in the construction, operation and maintenance of the metro rail system, equal wage, training and benefit from livelihood restoration programs. Specific provisions in the construction camp for women like temporary housing, health care, day crèche facilities, proper scheduling of construction works, and control on child labour etc have been considered in the design of the project to help all the women and children living in the construction camp.

Provisions for Schedule Caste and Scheduled Tribe

In order to restore and enhance the economic conditions of affected scheduled castes and scheduled tribes people, adequate compensation and various resettlement and rehabilitation assistances are incorporated in the resettlement action plan as per the RFCTLARR Act,2013. There is also a large number of State and Central Government schemes targeted at these population and annually budget allocation is made to finance special programmes for scheduled castes and scheduled tribes development. The project proponent will play an important role to link these welfare schemes for the development of these people. If any adverse impacts on tribal people are identified during implementation, the project proponent will ensure that an indigenous peoples plan is prepared in accordance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and JICA's Involuntary Resettlement Policy and it will be approved by Government of Gujarat and JICA before award of the related civil works contract.

Provision for mobility of disabled people

The issue of accessibility for the elderly and disabled is an important one in any urban transport project. Based on Ministry of Urban Development guideline disabled friendly features will be provided both at stations and in rolling stock and these features being part of detailed project report would be implemented in the proposed project. Access to the stations would be through entrance located on each side of the road and a ramp with a gentle slop would be provided to enable the disabled as well as the blind to reach the entry to the stations. Further lifts (disabled friendly), tactile flooring etc. would be provided to enable access up to platform and thereon to coaches with earmarked places behind driver cabs(MEGA, 2014).

Provision of community and religious structures

Community and religious structures should be replaced in consultation with the community. Losses which cannot be replaced have to be compensated or replaced by a comparable or better resource.

Provision of training, institutional strengthening and capacity building programme

The success and sustainability of resettlement programme for metro project depends primarily among other thing, on the capacity of management bodies and PAPs themselves. It is thus proposed that comprehensive programme, for training, institutional strengthening and capacity building programme be conducted for various groups of stakeholders who are directly concerned with the implementation and management of resettlement plan of proposed metro project.

Monitoring and evaluation programme

Implementation of resettlement action plan will be monitored by internally and evaluated by externally. MEGA will be responsible

for internal monitoring whereas mid and end term evaluation will be conducted by independent evaluation consultant. The SMU of MEGA is responsible for supervision and implementation of the RAP and will prepare monthly progress reports on resettlement activities. Independent Evaluation Agency/Consultant will submit mid and end term evaluation report to MEGA and JICA and determine whether resettlement goals have been achieved, more importantly whether livelihoods and living standards have been restored/ enhanced and suggest suitable recommendations for improvement.

Resettlement Action Plan

Resettlement action plan of proposed metro rail project was prepared based on social impact assessment. These programs are summarized as followings: (a) census to establish cut-of-date and eligibility of entitlement, (b) public participation and consultation during design and implementation of RAP, (c) grievance procedures and mechanism to redress grievance, (d) relocation and resettlement site plan, (e) income and livelihood restoration programme, (f) institutional arrangement, (g) time period of implementation, (h) resettlement cost estimate and (i) monitoring and evaluation.

The objective of the project is to build the metro rail system by adopting adequate environmental standards to provide for the protection of the people and the environment. The SIA was intended to see how project social impacts would affect the people and local community and how positive impacts might be enhanced and the negative impacts avoided, minimized or mitigated. The main findings of this review are (i) the SIA team made a sincere effort to examine the SIA instructions, social impacts and mitigation measures by employing a combination of established methods of social investigation, (ii) the affected community received adequate opportunity to participate in the SIA process and provided valuable suggestions to address various social issues, (iii) the study revealed that community opinions and value collected through social impact assessment significantly

influenced the final outcome of the process. The study concludes that application of SIA is essentially needed for achieving success in project management.

Conclusion

The paper acknowledges the importance of SIA under RFCTLARR Act, 2013 for addressing social impacts in design and implementation of metro rail project. SIA is now an essential requirement of development planning under the RFCTLARR Act, 2013. The provisions of SIA in the new law are a step in the right direction (Mathur, 2016). The development of metro rail project has both positive and negative impacts. The full range of social impacts and benefits were identified and their magnitude assessed in detail through a formal SIA process. The major social impacts would be loss of residential and commercial land, impact on families, vulnerable group and women, impact on tribal people, loss of business and employment, loss of community and cultural assets etc. In order to address these negative impacts social mitigation measures were corresponded through (i) adequate compensation (ii) resettlement of social relationship, (iii) provision of income and livelihood restoration assistance, (iv) measures to address gender issues, (v) provision of scheduled castes and scheduled tribes, (vi) provision of mobility of disabled people, (vii) provision of community resources and cultural sites, (viii) provision of training, institutional strengthening and capacity building and (ix) implementing of monitoring and evaluation programmes. Stakeholders' participation was considered as fundamental to effectively addressing social issues in the design process. A project specific RAP has been prepared in accordance with the RFCTLARR Act, 2013 and JICA guideline's for environmental and social consideration and it is based on the results of SIA study. From this study, some good set of lessons have been learnt in a variety of areas as follows (i) different affected social groups with different interests have been considered separately, (ii) public hearing/consultation of SIA, (iii) appraisal of SIA report by an expert group, (iv) good institutional arrangement (MEGA, Social

Management Unit, Ahmedabad Municipal Corporation, NGO, Independent Evaluation Agency, Implementation Support Consultant, Grievance Redress Committee in different levels),(iv) applying both international and national regulations on compensation and resettlement of development projects.

Although SIA is recognized as important and mandatory under RFCTLARR Act, 2013, it is yet to be established SIA unit by the State Government. It is important to integrate the resettlement and rehabilitation plan with National Skill Development Mission (NSDM) to capacitate the affected people for new sets of livelihood options (Samanta & Shireesh, 2015). For successful completion of the project it is required to identify and address social issues at an early stage of the project and integrate them into resettlement and rehabilitation management plan and make resettlement as development in the holistic approach. Finally, SIA report which is the final document after the SIA process has been completed should not be seen as a document of project approvals and permits but it should be a core component of the design process as it should inform the final option selection and design.

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Land Acquisition: The Lessons from Singur

Sandip Mitra⁶³

Abstract

Land Acquisition had been a focal theme of discussion in the policy circles of Developing countries since long. It is well known that land owned by Governments being inadequate for development (especially industrialisation and infrastructure building), land acquisition policy has been resorted to by Governments. While this is often termed as infringement of the property rights of people, the other school of thought reiterates the need for optimal compensation. Current paper highlights the work on Land acquisition for industrialisation undertaken on “Singur” by Ghatak, Mitra, Mookherjee and Nath (EPW2013) which tried to address the problems of land acquisition with a focus on optimal compensation policy. The paper concludes with some recommendations based on some of the related studies undertaken.

Introduction:

The Problem of land acquisition for development has been a focal theme of discussion worldwide in the academic and policy circles in the last few decades. The problem has been more severe in land scarce, highly populated developing countries as there have been disagreements among the stake holders on multiple issues touching the life and living of the common people. While Governments have been promoting rapid urbanisation/industrialisation to ensure development, a considerable section of resident population (generally poor) feels increasingly insecure and perceive the same as a threat of due to displacement. World Bank Reports (various issues), FAO Reports (various issues) have mentioned the experience of several countries in the world over the years.

⁶³ Associate Professor, Indian Statistical Institute, Trunk Road, Kolkata, West Bengal

The need to device an optimal compensation policy and address the property rights related questions have been spelt out by the Economists and the policy makers throughout the world. Several Research papers (Theoretical and Empirical) have been developed in the field. One may refer to Besley (1995), Ghatak, Mookherjee (2014), Eswaran(1985) to understand the complexity involved in the process of land acquisition and offering compensations.

Disputes among rural communities affected by land acquisition have been widely observed in India as well as various countries in Asia and sub-Saharan Africa since long (Cao et al 2008). As the land acquisition problem is localised in nature, it may be more meaningful to concentrate on one of the specific land acquisitions undertaken by the Government in the past for an in-depth study. The current paper would be mainly based on the study undertaken by the author with Ghatak, Mookherjee and Nath in 2013 to understand the underlying reasons behind the Singur land acquisition problem. In this connection a few steps on rural development would be suggested referring to other studies undertaken with a group of Economists.

In the Singur study two opposing views have been dealt with. The first view has been that the government had paid less compensation than expected and the same generated discontent in the area. The opposite view had been that the refusal to accept compensations by some landowners and the uprisings in the local community were politically motivated rather than justified by adverse economic impact or under-compensation. A large scale sample survey on households of the affected areas under the Singur block were conducted.

Our main findings have been that most of the land was acquired from marginal landowners and from those engaged in cultivation on the acquired plots. While this was true on average, a significant fraction of landowners were under-compensated owing to misclassification of their plots in the official land records. Owners with under-compensated types of plot were significantly more

likely to reject the compensation offer. Those whose livelihoods were more tied up with cultivation and those with possible speculative motives (absentee landlords or those who purchased the plots rather than inheriting them) were more inclined to reject. (Acquisition of land resulted in 40% lower income growth for owners and half that for tenants.

Understanding that the land acquisition problem has many socio-economic aspects to discuss, the paper also attempts to discuss the aspiration of rural poor in this context. The study will be incomplete if some discussion on the supply side factors are not made. Passing remarks will be made of the possible role of the Government and the private companies interested before and after the land acquisition. The need for updated land records, monitoring of development schemes and appropriate roll-out of CSR activity might help to minimise the chaotic land acquisitions and save the common people from deeper crises.

Details of the Singur Study:

The Study on Singur essentially addressed the following questions: (a) Whose lands were acquired: poor cultivators or wealthier landowners/non-cultivators? How much land was acquired: was it large relative to lands owned previously for the majority of affected landowners? (b) Did the government offer compensation at the market value of lands acquired, as required by the 1894 Land Acquisition 4

Act. If not, why not? (c) Could the decisions of landowners to refuse the government's offer be explained by under-compensation, and/or the extent to which their livelihoods were affected? (d) What was the impact of the acquisition and compensation offered on incomes, consumption and assets of those whose lands were acquired, as well as tenants and workers that had previously been employed on acquired lands?

To answer this questions a large scale sample survey at the household level has been necessary. The surveys were conducted

in the six villages of Singur, where land had been acquired, and included both types of households whose lands were and were not acquired. Similar surveys were conducted in six neighbouring villages not subject to any land acquisition for comparison purposes. In addition tenant households and those whose primary occupation is agricultural and non- agricultural work were also included in the sample to understand the effect of the acquisition on these groups. Impact of acquisition was estimated comparing changes between 2005 (prior to the 2006 acquisition) and 2010 (after the departure of Tata Motors) in the relevant outcome variables between affected and unaffected households within the same village, and across affected and neighbouring unaffected villages.

Table 1 provides aggregate statistics from the listing data for the six affected villages. There were 5,056 households residing in these villages. Over 90% of these households were either landless or marginal landowners. One in three households were directly affected in the sense that agricultural land they owned was acquired (with the corresponding proportion of affected households for all types of land acquired was 46%).

Table 2 provides a breakdown of landowners in our sample that were subject to acquisition by the size of land acquired (Panel A), of land-owned in 2005 (Panel B) and occupation (Panel C). Panel A shows Seventy-two per cent of the land acquired involved plots larger than a half acre, and 42% was above 1 acre, the average landholding per household in 2005.

Acquired lands were a non-negligible proportion of owned lands for the affected owners. The proportion was smaller (27%) for the smallest acquisitions involving plots smaller than 0.08 acre. But for acquired plots above 0.08 acre they accounted for more than half of all land-owned in 2005. For those unwilling to accept compensation, the average proportion of land acquired was higher (61%, compared with 55%).

Panel B examines whether the acquisition affected poor or wealthy landowners, with wealth measured by 2005 landholdings. 69% of affected owners owned less than an acre of land (the mean landholding) in 2005. Nearly 40% owned less than half an acre; within this group 62% of land owned was acquired. *The proportions were somewhat higher for households unwilling to accept compensation.* The majority of those affected were marginal landowners. Within this group more than half the lands owned were subject to acquisition.

Panel C examines the occupational characteristics of affected owners. Slightly less than half were households headed by owner cultivators, and 54% households headed by owner cultivators or tenants. These two groups accounted for 58% of the land acquired. Another 21% of affected households were headed by workers, and they accounted for another 14% of land acquired. *Hence, nearly three-fourths of acquisition affected households headed by cultivators or workers.*

Did the Government Offer Compensation at the Market Rate?

We examine the evidence concerning compensations offered by the government for the acquired plots. We use two sources of evidence here: (1) the state government's own statements and records of compensation offered, and (2) household reports of the compensation offers they received. For (1) we use compensation policies specified in state government orders, and records of the special land acquisition office at Hooghly district concerning compensations and relevant characteristics of all plots acquired. For the second source, we rely on responses of households in our survey, concerning characteristics of their plots that had been acquired and the compensations they had been offered. We were unable to match the two sources of data for plot-wise compensation. We have therefore, compared the corresponding averages for compensation of different grades and check if they are consistent

Government's Stated Compensation Policy: Under the provisions of the 1894 Land Acquisition Bill, compensations are to be based on the market value of land at the time of acquisition. The West Bengal Government's Order No 1705-LA-3M-07/06 dated 6 June 2006 gives “guidelines to be followed in the matter of assessment of market value of land”. Paragraph 3 of this order prescribes standard average prices of land classified according to (1) whether land is irrigated or not; (2) whether it is single cropped or double/triple cropped agricultural land; (3) whether it is homestead land or fallow land or whether there are water bodies, etc; (4) proximity to state/national highways or other strategic locations. Using these principles the government approved a set of market-based rates for different categories of land. These are provided in Table 3. The two kinds of agricultural land are called sali and sona, respectively. Sali denotes singlecropped low land that does not receive assured irrigation from state canals. Sona is multi-cropped land on a higher level receiving assured irrigation. There are further gradations within sali and sona plots with regard to elevation. These definitions of the type of land are not watertight, in more senses than one. Sona plots tend only on average to be more irrigated and multicropped than sali plots. The type of plot can be changed over time with suitable investments in water access and multi-cropping arrangements. The land records describe whether any given plot is sali or sona, presumably based on an inspection carried out by land assessors. The land records could be out of date, as land that was previously sali may have been converted to sona as a result of investments made by the owner, after the last inspection. The owner is supposed to apply for a redesignation of the plot from sali to sona in such cases. In practice, this is often not done owing to the time and cost associated with any such redesignation. In any case, the government order stated rates payable on compensation of sali and sona lands at different rates, with sona lands to be paid a considerable premium. The order did not describe how these rates were decided. The government order also mentioned a number of possible modifications to these rates: (1) compensation for the value of structures built on the land; (2) solatium of 30% on and over the basic market value of the land and value of things

attached to land; (3) value of trees according to age and kind of trees on the property; (4) damages for the standing crop at the time the land was acquired; and (5) additional compensation at the rate of 12 % pa for the period from the date of notification till the award was declared. These components were to be paid over and above the land value. A subsequent governor's Order No 1703-LA-3M-07/06 detailed procedures to be followed by those who have ownership rights for the land acquired and file a claim for compensation. It asked claimants to make claims about the market value of their land, incorporating details such as distance, irrigation, the solatium of 30% (plus interest at 12% pa for delayed award payments), and allowed scope for bargaining across the table. Hence, the government order allowed scope for variations in the actual compensations based on claims made by affected owners. But all such modifications would have served, if at all, to raise actual compensations offered. An examination of the detailed plot-wise records of the special land acquisition office in Hooghly district reveals that the majority of sali and sona plots were paid as per the stated rates in Table 3. Approximately, one quarter of all plots were not assessed a positive land value, so these owners were offered zero compensation. However, handwritten corrections were later inserted for some of these, perhaps as a result of appeals made by the concerned owners. On the three quarter of the plots that were assessed at a positive value, land rate was paid at declared rate for sali. Solatiums were offered for the vast majority of these at the stated 30% rate.

What Was the True Market Value of Land? It is really difficult to get the true market value of land on the following grounds: First, land markets are believed to be thin in developing countries, so data concerning market prices are not readily available. Second, officially recorded market prices may deviate from true market prices owing to transaction costs involved in recording market transactions. Many market transactions are never recorded officially, and even for those that are recorded the stated price understate the true price in order to reduce stamp and registration duties payable to the government. Third, the exact time at which market prices are assessed can matter in periods of substantial

inflation in real estate values. Going by past transactions may then understate the true market price at the time of acquisition.

Surveyed households whose lands were acquired were asked what the market value of their acquired property was at the time of acquisition. These assessments were on the basis of their knowledge of comparable properties that had been transacted recently. While there may be some bias and imprecision in owners' own beliefs concerning what their properties would have commanded on the market, it has a number of advantages over relying on prices of actually transacted properties. First, data is available on all plots rather than just those which were actually transacted. This avoids the bias associated with selection of properties that were actually transacted. It expands the number of observations considerably, relieving the problem of market thinness and smallness of the sample. Moreover, these valuations are assessed for the same year 2006 of acquisition, thus, obviating the need to extrapolate from past years and adjust for inflation in property values. Another advantage of using this data is that it provides us an idea of what landowners perceived concerning the valuation of the acquired properties, which may help in explaining how they reacted to the compensations offered. Nevertheless, it is possible that owners may tend to exaggerate the market value of their properties. We shall, therefore, check consistency of stated land values with estimated income losses resulting from acquisition.

Comparing Self-Reported Market Values and Offered Compensations: Table 5 provides averages of market values and compensation offers reported by households, classified into the four different types of land. We see that high lands commanded a premium of about Rs 30,000 per acre among both sali and sona lands. The average reported market value of sona high land was Rs 9 lakh per acre; for sali high land it was Rs 8.6 lakh per acre. This implies that the government's offered rate (inclusive of the 30% solatium) were substantially above the market value of sona land, but somewhat below that of sali lands. Inclusive of solatium, sona lands were offered Rs 11.44 lakh per acre, while sali was offered

Rs 7.8 lakh per acre. This suggests that sona land was overcompensated, while sali was slightly under-compensated relative to market values.

However, looking at the compensation offers reported by the households themselves, we obtain exactly the opposite conclusion. Table 5 shows that both sona and sali high landowners reported receiving compensation offers of Rs 8.8 lakh per acre, in contrast to the Rs 11.4 lakh and Rs 7.8 lakh figures contained in the government order and in the official land documents. Comparing the reported compensation offers with the reported market valuations, we see that sona high owners were under-compensated (average offer of Rs 8.8 lakh as against the market valuation of Rs 9 lakh per acre) and sali high owners were overcompensated (average offer of Rs 8.8 lakh compared with a market value of Rs 8.6 lakh per acre.)

Discrepancy between Compensation Offers Reported by Households and Government Records: The large discrepancy between official documents and household reports of compensations offered is striking. It is not just a case of households tending to under-report compensations offered generally, since sali owners reported compensation offers that were larger (Rs 8.8 lakh per acre) than what the government records (Rs 7.8 lakh, inclusive of solatium) indicate. Perhaps this was a result of additional adjustments over the announced rates made on the basis of structures, trees, location of sali properties, and some degree of bargaining that the government order allowed. But then why would the same not happen in the case of owners of sona lands, who reported being offered Rs 8.8 lakh on average rather than the Rs 11.4 lakh mandated by the government order inclusive of solatium?

In order to unearth the source of this discrepancy, we interviewed local farmers, residents and government officials. The most likely explanation is that the government land records and household responses disagree substantially about the classification of land type. Government land records are based on plot characteristics at

some past point of time, following inspection by land assessors. In the meantime, farmers may have upgraded their lands from sali to sona, but may not have succeeded in getting this change to be noted in the official land records.

Many plots that the owners reported as sona, were actually recorded as sali on official documents, and offered compensation at sali rates. Table 6 provides data concerning irrigation and multi-cropping status of acquired plots. Ninety-seven per cent of plots reported by owners as sona were both irrigated and multi-cropped.

Table 6. Land rates approved by Govt In comparison about half of sali high plots and less than 7% of sali low plots had this feature. The majority of sali high plots are irrigated, but it is possible that the irrigation source for these is not state canals. We conclude that averaging across all types of plots, compensations offered by the government for agricultural plots were close to their market values; however, there was a systematic under-compensation for sona plots and overcompensation for sali plots. Sona plots which were under-compensated accounted for about one-third of the land acquired and of owners affected. The most likely explanation for this is the failure of the official land records to incorporate accurate information concerning plot characteristics: specifically, failing to identify their irrigation and multi-cropping status correctly.

Inability of Compensation Offers to Incorporate Land Heterogeneity: The preceding results in table 7 indicate the need to focus on heterogeneity of market values of plots acquired, and the inability of government compensation offers to incorporate this heterogeneity. This is the pertinent question rather than how the compensation offered related to market values on average.

Impact on Subsequent Incomes and Assets

Affected owner cultivators whose lands were acquired saw their crop incomes fall by 12.7% between 2005 and 2010, in contrast to

unaffected owner cultivators whose crop incomes grew by 18%. Regression analysis confirms that acquisition of half an owner's land was associated with a 40% lower rate of growth of crop income. Affected tenants experienced 4.8% growth in crop incomes, in contrast to unaffected tenants whose incomes grew by 20%. The effect on incomes of tenants was therefore approximately half that for owner cultivators, implying that the 25% compensation rate for tenants resulted in under-compensation. It was found that agricultural workers (i.e., those previously hired to work on plots that were acquired) experienced a 22% decline in employment earnings, compared with a 14% decline for unaffected agricultural workers. Non-agricultural workers, on the other hand, experienced a growth of employment earnings by over 30%. Hence, the acquisition had dramatically different consequences for agricultural and non-agricultural workers, a natural consequence of the shift away from agricultural to non-agricultural employment as a result of construction related to the Tata factory. Table 1 earlier showed that affected agricultural workers constituted a large fraction of the population in the six villages concerned, and were the single largest affected group. Unlike owners and tenants, there was no compensation available for those who lost employment.

The impact of the acquisition on growth in the value of various kinds of household assets between 2005 and 2010:

The survey asked respondents to list household assets owned in 2005 and subsequent changes in these until 2010.

For owner cultivators and tenants this is defined as the sum of change in crop income and interest income on compensation (computed at an annual rate of 6.5%, the rate on bank fixed deposits), less the average change in crop income of unaffected households in the same village. For workers we use the difference between change in employment earnings and the average change for unaffected workers. We see a significant impact of the income shock only on changes in the value of consumer durables. For owners we obtain similar results using the extent of under

compensation as an analogous measure of a wealth shock (market value of land minus compensation offered): the only significant impact of this wealth shock was on acquisition of consumer durables, the value of which decreased by 25% more following Rs 1 lakh under-compensation.

Whether the interest earned on compensations offered was sufficient to overcome the loss in crop incomes of affected cultivators:

This is analogous to computing the corresponding wealth shock defined as under-compensation, based on the difference between offered compensation and reported market value of land. This is one way of evaluating the reliability of the reported land market values, by checking its consistency with the estimated income shocks. Our survey shows that the majority of compensation recipients deposited the compensation money in the bank. This enables us to work out the interest income from the compensation, assuming they were invested in bank fixed deposits at an annual interest rate of 6.5%. Averaging over all affected owner cultivators, it shows that the interest on compensation exceeded the loss in crop income by Rs 956 per year. This is roughly what one would expect from the fact that *offered compensation rates were slightly above the market value of land*, averaging across all affected owner cultivators. In contrast, tenants received compensation which was substantially smaller, while experiencing crop income drops of a similar magnitude, so that their net incomes decreased by Rs 894 annually. It was interesting to find the corresponding net change in income for owner cultivators across the different types of plots acquired. The change is significantly higher for sali owners compared with sona owners, confirming our earlier assessment based on reported land values that the former were overcompensated while the latter were under-compensated

Our main findings concerning the four questions posed in the Introduction can be summarised as follows: (a) How much land was acquired, and from whom? The majority of plots acquired

were non-negligible in size, compared to the average in Singur. Most of the land was acquired from marginal landowners, and from those engaged in cultivation on the acquired plots. For most affected owners, more than half the land they owned in 2005 was acquired. (b) Did the government offer compensations at the market value of the lands acquired? While this was true on average, a significant fraction of landowners were under-compensated owing to mis-classification of their plots as *sali* rather than *sona* in the official land records, besides inability of the latter to incorporate other sources of plot heterogeneity. (c) What explains decisions of owners to accept the offered compensations? Owners with under-compensated types of plot were significantly more likely to reject the compensation offer. Those whose livelihoods were more tied up with cultivation and those with possible speculative motives (absentee landlords or those who purchased the plots rather than inheriting them) were more inclined to reject. (d) What was the impact of the acquisition on incomes and assets of those affected? Acquisition of land resulted in 40% lower income growth for owners and half that for tenants. Consumer durables grew more slowly for undercompensated affected owners, compared to others in the same village. Agricultural workers that were directly affected experienced significant reductions in employment earnings compared with unaffected agricultural workers, who in turn, experienced smaller earnings growth compared with non-agricultural workers. Hence, land acquisition in Singur imposed significant economic hardships on a large fraction of affected owners, tenants and workers. A large fraction of owners were undercompensated relative to market values. Tenants were undercompensated and agricultural workers were not compensated at all. While it is difficult for us to say how much local reactions were politically motivated, these economic hardships provide a plausible explanation for some of the observed refusals and protests.

An obvious implication for future land acquisition policy is the need to base compensation on better measures of land values

than is permitted by official land records. Getting the soil grade right will reduce the incidence of under-compensation, chances of rejection and subsequent protest significantly. Displaced tenants and workers who constitute the poorer sections of these rural communities also need to be compensated in some way to avoid undesirable adverse impacts on their livelihoods, as well as to minimise any political fallout. Another difficult issue concerns the principle of basing compensations on market values. Many owners value their land more than their market values on account of other attributes of land, such as financial security, complementarity with farming skills, locational factors, or considerations of identity or social prestige. That is why long-standing owners have not exercised the option to sell their land at market prices. To ensure that such owners are adequately compensated would require raising compensations above market values. What makes this difficult to achieve in practice is that valuations of land have an inherently subjective nature varying from owner to owner. These problems could motivate the use of more reliable means of assessing values imputed by their owners such as auctions, as argued by Ghatak and Ghosh (2011).

To avoid political backlash, it may be better to involve people prior to land acquisition in development programmes (including CSR activities). This indirectly would signal to the local people the honest intention of the Government for improving level of living of the people through rapid industrialisation.

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Updating of Land Records for Land Acquisition Purposes in Bihar

Dr. C. Ashokvardhan, IAS (Retd.)⁶⁴

Section 11 (%) of the RFCTLARR (Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement) Act, 2013 provides that after issuance of preliminary notification under sub section (1) of Section 11, the Collector shall, before the issue of declaration under Section 19 of the said Act, undertake and complete the exercise of updating of land records, as prescribed, within a period of two months.

Rule 23 (4) under Chapter-V of the Bihar Land Acquisition Rules, 2014 lays down the following procedure in this regard:

- 1 Deletion of entries made in the names of dead persons.
- 2 Entry of the names of legal heirs of dead persons.
- 3 Confirming rights on land accruing through registered deeds of transfer: sale, gift, partition and the like.
- 4 Entry of all mortgages in land records.
- 5 Deletion of entries of mortgages after full redemption of loans, on the basis of a certificate to that effect by the agency advancing loans.
- 6 Entries of relevant particulars pertaining to forest laws in vogue.
- 7 Entries pertaining to the status of public lands.
- 8 Entry of particulars regarding assets like trees, wells etc. situate on the lands.
- 9 Making necessary entries regarding crops sown on the lands with area.
- 10 Any other entry regarding land acquisition, rehabilitation and re-settlement.

Section 11 (4) of the RFCTLARR Act, 2013 has provided that no transaction/ transfer like sale-purchase on the land involved in acquisition can take place, after the date of publication of the

⁶⁴Member, Bihar Land Tribunal, II off. Polo Road, Patna, Bihar

preliminary notification, without the prior permission of the District Collector.

Accordingly, the Department of Revenue and Land Reforms, Government of Bihar has, vide Letter No. 41 dated 19.01.2017, directed all Collectors to make available preliminary notification issued under section 11 (1) of the Act, to the District Sub-Registrars so that transfer/ sale-purchase of the notified land does not take place.

Letter No. 41 dated 19.01.2017 mentioned in the foregoing has issued the following directions to all Collectors:

- 1 A copy of the preliminary notification issued under section 11 (1) of the RFCTLARR Act, 2013 be made available to all Circle Officers.
- 2 The Circle Officers will update land records with respect to land incorporated in the preliminary notification, in the light of record of rights available at the Anchal level and in the light of documents/ records made available in the camp by the landholders.
- 3 The Circle Officer will issue Land Possession Certificates, in time, to landholders in respect of the land involved in acquisition.
- 4 In case the Anchal Office suffers from a shortage of workforce, the Collector will make available necessary workforce, on deputation, at his level, to the Anchal Office.
- 5 A copy of the Preliminary Notification u/s 11 (1) of the Act, with regard to the land under acquisition, will be made available to the District Sub-Registrar at the earliest.

The Circle Officers were required by the above mentioned Letter No. 41 dated 19.01.2017 to submit report on updation of land records of land under acquisition, to the Collectors, in the following proforma:

Village
Thana

Anchal
Area under acquisition

| | | | |
|--|---|----------------------------------|--|
| 1. | 2. | 3. | 4. |
| Khata No. | Plot No. | Khatiyani Area (in acre) | Area under acquisition (in acre) |
| 5. | 6. | 7. | 8. |
| Name and full address of Khatiyani raiyat | Name and full address of present raiyat (with portion/ share) | Basis for ownership change | Mutation/ Settlement Case No. |
| 9. | 10. | 11. | 12. |
| Jamabandi No. | Status of Current Possession | Construction, if any | Tree |
| 13. | 14. | 15. | 16. |
| Well | Boring | Tank | Remarks |

The Department of Revenue and Land Reforms vide Letter No. 339 dated 10.03.2017 clarified it to Collector, Patna that compensation is to be paid to the interest holding raiyat/ awardee on receipt of indemnity bond after verification of the following documents, which lead to the determination of real raiyat of the land under acquisition:

- 1 Copy of the record of rights
- 2 Copy of sale deeds
- 3 Rent receipts
- 4 LPC (Land Possession Certificates) issued by the Circle Officer
- 5 Genealogical Table issued in favour of the raiyat in consonance with the Khatiyani
- 6 Voter Identity Card
- 7 PAN Card
- 8 Aadhaar Card

Nature and Class of Land

Letter No. 337 dated 10.03.2017 from Department of Revenue and Land Reforms, Government of Bihar, to all Collectors has clarified that after filing of requisition for acquisition of land for a project (under RFCTLARR Act, 2013, Railway Special Act, 2008 and National Highway Act, 1956) and prior to the publication of notification, still and video photography of the land concerned must be kept on record so that no disputes crop up with regard to the nature of land. The still and video must bear the date and time of the snapshot. The same should as well carry the picture of the officers and employees involved in the photography and videography. All this will go on to prove that no change had been effected in the location, shape and nature of the land.

A committee, was constituted by the Department of Revenue and Land Reforms, Government of Bihar Letter No. 450 dated 12.04.2017 with a view to disposing off, with transparency, disputes relating to rate/ value of the land under acquisition. The Committee was required to address present nature and clarification of land as well as to determine the value/ rate and adequate compensation in respect of the land concerned.

The Committee comprises the following:

- 1 District Collector – Chairman
- 2 Additional Collector-cum-Administrator Rehabilitation & Resettlement – Member
- 3 District Land Acquisition Officer – Member Secretary
- 4 District Sub Registrar – Member
- 5 Representative of Requisitioning Body – Member
- 6 Deputy Development Commissioner-cum-Chief Executive Officer Zila Parishad/ Executive Officer, Urban Local Body (where the land is located) – Member

After the publication of the Declaration under Section 19 (1) of the RFCTLARR Act, 2013 is done, between issuance of notices to interest-holders raiyats and prior to enquiry and land acquisition

award by the Collector, the aforesaid 6 – Member Committee shall hold spot verification/ measurement of the land under acquisition. Village-wise and plot-wise class of land will be determined and kept on record. The Committee, in discretion, will determine land classification against potential of the land under acquisition keeping in view the value of neighbouring plots enhanced due to some project coming up on the same. Thereafter, the market value of the land will be determined by the aforesaid Committee and the same will be recorded.

The same process of verification will be adopted in respect of projects under the NH Act 1956 and Railway Special Act, 2008 (after the publication of notification) after disposal of objections under relevant sections of those Acts.

In exercise of the powers conferred under Section 104 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013. The Government of Bihar has notified the following state policy for taking land on lease from the raiyats for the works of public purposes as per need.

BIHARRAIYATILAND LEASE POLICY, 2014

- 1 The land may be taken on lease for the construction of infrastructure, such as academic institutions/ road/ electricity project/ approach road/ stadium/ embankment/ canal/ land bank etc., rehabilitation of persons affected by natural disaster and for other works of public purposes defined under section 2 (1) of the Act.
- 2 The land shall be taken on the condition of perpetual lease and shall be registered.
- 3 The land on perpetual lease may be taken at the rate of four times in the rural areas and two times in the urban areas of the MVR (Minimum Valuation Register) rate.

Provided that, if trees or any other structure are situated on the said land, the District Collector shall, getting them evaluated by District Forest Officer and Executive Engineer, Building

Construction Department respectively, make payment of the evaluated amount.

- 4 The departments of the government and the public sector undertakings, companies may take land on perpetual lease by adopting a transparent procedure, in view of the above facts.
- 5 There will be the following transparent procedure for taking land on permanent lease by concerned departments/ government companies/ undertakings:

- (a) First of all, the competent authority shall approve the proposal for taking the land on lease. It will be compulsory to mention in the proposal the area, public purposes and the estimated value of the required land.
- (b) Thereafter, the Land/ Site Selection Committee shall be constituted by the competent authority. After inspection of the land, recommendation of the Land/ Site Selection Committee will be made by the said Land Selection Committee. At the time of land/ site selection the concerned land owners and the representatives of the Panchayats will be informed of the provisions of the purposes of the lease policy for which the land has to be taken. The Land/ Site Selection Committee shall select 2-3 alternative lands so that it may be convenient in taking the land.
- (c) After reviewing the recommendations of the Land/ Site Selection Committee, recommended lands/ sites will be enlisted serially on the basis of sustainability by the competent authority.
- (d) The information of title and nature of the enlisted lands shall be obtained from the District Collector. The District Collector shall, after getting the lands/ sites legally verified, be satisfied that the land is not disputed and is in possession of the title holder.
- (e) The concurrence on the lease by the land owners shall be obtained through advertisements in the newspapers. The competent authority shall select the land in the light of concurrence of the land owners. The value of the land will be evaluated by the district Collector according to provisions of paragraph-3.

- (f) If structures or trees are situated on the land, their valuation shall also be made in accordance with paragraph-3 by the District Collector.
 - (g) Thereafter disposal of the lease and payment of the value of the land will be made by the department.
 - (h) The government department/ government companies/ undertakings may delegate the powers to execute land lease to their subordinate officers.
- 6 The model format for perpetual lease shall be prepared by the Revenue and Land Reforms Department after vetting by the Law Department and shall be circulated to other departments.
- 7 The amount payable to the interested raiyats under lease shall be paid through Account Payee Cheques on the date of registration.

The general form of perpetual lease for raiyati land was circulated vide Department of Revenue and Land Reforms, Government of Bihar Letter No. 154 dated 22.01.2016.

The Department of Revenue and Land Reforms, Government of Bihar, vide Letter No. 1093 dated 08.09.2016 formed a committee which will explore the feasibility of lands being acquired on perpetual lease. The District Collector will constitute a Committee under the Chairmanship of Additional Collector. The District Land Acquisition Officer, Sub Divisional Officer, Deputy Collector Land Reforms, concerning Circle Officer and two representatives of the requisitioning body will be on the aforesaid Committee. The Committee shall visit the project affected areas and interact with interested landholders and Panchayat representatives. The Committee will propagate the importance and contents of the lease policy. Thereafter, the Committee will obtain, in writing, the consent or dissent of affected persons and communicate the same, in a record, to the Collector of the district along with its own reasoned findings. If the Collector is satisfied that there is a case for going ahead in accordance with lease policy, further steps would be taken accordingly. In case it is not possible land acquisition in a regular way will be taken up.

Summing Up

The time-limit of sixty days for updating of land records in respect of land owners calls for a need-based field bujharat in a project affected area. It is a well-known fact that land records have not been updated through revisional or in-built concurrent recordings over a period of time. Lands have changed hands through various modes of transfer. Devolutions have not been taken care of and Jamabandis in ancestors' names have not been split or sub-divided among heirs. Various stages of formal surveys haven't long drawn out and while the import of modern technology has definitely made a dent on expeditious production of ortho-maps, the preparation of textual records is a gigantic task calling for expertise in revenue and personal laws. Dearth of requisite manpower poses yet another stumbling block.

In the given circumstances, one is left with no other option but to go in for need-based bujharat in selected pockets. Steps to be taken in this regard have been delineated in the foregoing. The revenue officials will make spot verification on a family-to-family basis taking note of persons who have expired and heirs who have succeeded.

The Government of Bihar has also constituted a high level committee headed by Collector to re-determine the class and nature of land, may be, different from recorded entries, after actual spot verification. Determination of rightful owner and that of current class/ nature of land are equally important since rate/ value of land matter most in weaning affected families away from resistance. Resistance is common on class of land routinely fixed by authorities on the basis of fairly old record of rights, while de-facto situation on the spot presents variant picture from agriculture to homestead and homestead to commercial is generally pressed for getting higher compensation.

The Government of Bihar has given an allowance to the notion of 'potential' in re-determining the class of land. In the event of spurt in activities in the neighbourhood of a proposed project area, older

land classification in a mechanical manner have to give way to a re-classification, or else, there might be stiff resistance to land acquisition. Apart from expediency, humane approach to land acquisition will come about if land-losers get their dues at par with current classification/ value of land.

Field bujharat on fast track in the midst of people with a Collector-headed Committee participating in the same sets in motion a participative/ consultative process.

In Bihar, the above approach will be undertaken in respect of bringing on record the current land-owner and the current class of land.

Inputs, however meagre and scattered from project affected areas, may prove an additive to the processes of regular survey and settlement, whether on-going or yet to commence. Care, however, has to be taken against excessive reliance on and delegation of authority by the Collector-level committee to subordinate officers acting a proxy for the Committee itself. That will be undoing of the purpose and intent of the Committee. It will also result in irregularities and collusive recording. This is sure to breed discontent and opposition to land acquisition in the long run. This may also result in high pitched demands unfounded on reason and ground realities. The updation of land records as stipulated under Section 11 (5) of the RFCTLARR Act, 2013 must be read in conjunction with Section 3 (c) (ii) of the Act which provides for a family which does not own any land but a member or members of such family may be tenants or share-croppers and the like. In case the land rights of tenants and share-croppers are not recorded in course of field bujharat their fate will be sealed and they will not get the entitlements due to them under the RFCTLARR Act, 2013. Ends of justice will meet if along with the current status of land owners the details of tenants and share-croppers subsisting on the land are recorded too so that the latter could be adequately compensated for their losses on account of land acquisition.

It is gratifying to note that Rule 23 (4) under chapter V of the Bihar Land Acquisition Rules, 2014 provides for making necessary entries regarding share-croppers subsisting on the lands under acquisition.

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The B. N. Yugandhar Centre for Rural Studies (BNYCRS) is a Research Centre of Lal Bahadur Shastri National Academy of Administration, Mussoorie. It was set up in the year 1989 by the Ministry of Rural Development, Government of India, with a multifaceted agenda that included among others, the concurrent evaluation of the ever-unfolding ground realities pertaining to the implementation of the Land Reforms and Poverty Alleviation Programmes in India. Sensitizing of the officer trainees of the Indian Administrative Service in the process of evaluating of land reforms and poverty alleviation programmes by exposing them to the ground realities; setting up a forum for regular exchange of views on land reforms and poverty alleviation between academicians, administrators, activists and concerned citizens and creating awareness amongst the public about the various programmes initiated by the government of India through non-governmental organizations are also important objectives of the B. N. Yugandhar Centre for Rural Studies. A large number of books, reports related to land reforms, poverty alleviation programmes, rural socio-economic problems etc. published both externally and internally bear testimony to the excellent quality of the Centre.



B. N. Yugandhar Centre for Rural Studies

Lal Bahadur Shastri

National Academy of Administration

Mussoorie—248 179

EPABX Lines : +91.135.2222000, 2632405, 2632236, 2632489

FAX : 0135-2632350, 2632720

Web : <http://www.lbsnaa.gov.in>