



THE LAWWAY WITH LAWYERS JOURNAL

VOLUME:-17 ISSUE NO:- 17 , NOVEMBER 01, 2024

ISSN (ONLINE):- 2584-1106

Website: www.the-lawway-with-lawyers.com

Email: thelawwaywithelawyers@gmail.com

Authored by:- Mr. Shaik Sulthan , SRM School of Law

Co-Authored by:- Mr. Mahalingam V, SRM School of Law.

Determination of Social Impact and Public Purpose under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement (RFCTLARR) Act, 2013

ABSTRACT

This paper highlights the paradigm shift in land acquisition process in India aftermath the enforcement of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013. This briefing focuses on the process of identifying and managing the social impacts on industrial projects., it's policies, plans and for infrastructure development, urbanization which have a multiplier effect on economic development. This paper also dwells all the measures to be taken to mitigate negative impacts and identify opportunities to enhance benefits for local communities and broader society. While discussing the specific issues in land acquisition and identifying challenges in carrying out SIA study, the present paper proposes conducting SIA in a comprehensive and participatory way to assess the impact, make people aware and minimize resistance. The article argues for integration of Rehabilitation and Resettlement plan with National Skill Development Mission to capacitate the affected people for new sets of livelihood options.

Land acquisition for such projects displaces many and causes loss of livelihoods in the short run, which also creates resistance. The imperfect nature of land market also creates additional bottlenecks for efficient land transfer. The RFCTLARR Act 2013 proposes for Social Impact Assessment (SIA) study to map and estimate costs and benefits to the people affected through the acquisition. Central to the principles and practice of SIA is the involvement of affected

communities and other stakeholders in the process are also addressed. SIA should inform decision-making by government and companies from the early stages of a project. Equally important is the role of SIA in the ongoing management of social issues throughout the whole project right from acquisition of land, rehabilitation, and resettlement. As such, the social management plan that derives from an SIA is extremely important. It also considers some of the key challenges to implementing SIA in practice and offers some recommendations for future practice.

Keywords:

1. Social Impact Assessment(SIA), 2.Public Purpose, 3.Land Acquisition, 4.Displacement, 5. Livelihood, 6.Compensation, 7.Rehabilitation and Resettlement

INRODUCTION

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement (RFCTLARR) Act, 2013, was enacted to reform the process of land acquisition in India. Its main objectives are to ensure fair compensation to the landowners, provide adequate rehabilitation and resettlement to those displaced, and guarantee that the acquisition serves a public purpose with minimal negative social impact. A significant aspect of the RFCTLARR Act is the emphasis on determining the social impact and the public purpose of any land acquisition to protect the rights and welfare of affected communities.

On January 1, 2014, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has come into force. This law replaced the Land Acquisition Act of 1894. The law regulates the acquisition of land by Government (Centre and states except J&K) for industrialization, development of essential infrastructural facilities and urbanization. It puts in place the rules for granting compensation, rehabilitation and resettlement to the affected persons.

The law makes sure that he affected persons get fair compensation when their land is taken away:-

- Transparency is brought into the process of land acquisition.
- Adequate provisions are made for rehabilitation of the affected people.
- Local self governments including Gram Sabhas are consulted in the process of Land acquisition.
- The affected persons become partners in development post acquisition.
- Mandatory consent of at least 70% of affected people for acquiring land for Public-private partnership (PPP) projects and 80% for acquiring land for private companies.

The 2013 Act follows a bottom-up approach, more so, because the requirement of the ‘social impact assessment’ [“SIA”] study has been added¹. The bottom-up approach is a mechanism

wherein decision-making originates from and involves lower levels as it proceeds upwards.² The SIA study is to be done in consultancy with the most decentralized government of the region which may include but is not limited to municipal corporations and Panchayats.³ It collates information pertaining to the number of affected families, the extent to which they will be affected, and other criteria to gauge the negative and positive impact that the probable land acquisition might have over the entire local community.⁴ More importantly, the outcome of the study is aimed at ascertaining whether the land acquisition serves a public purpose.

This paper delves into the process and criteria for the determination of social impact and public purpose under the RFCTLARR Act, 2013, examining its significance, legal provisions, and practical implications.

¹ The 2013 Act, S.4.

² 'Bottoms-up' as defined in the Oxford English Dictionary, Version 11.7.712 (2020).

³ The 2013 Act, S.4(2).

⁴ The 2013 Act, S.4(4)(b).

SOCIAL IMPACT ASSESSMENT (SIA)

One of the major innovations introduced by the RFCTLARR Act is the mandatory **Social Impact Assessment (SIA)** for all land acquisitions. The SIA serves as a critical tool for evaluating the broader consequences of land acquisition on individuals, families, and communities.

SIA is important in applied anthropology, as its main goal is to deliver positive social outcomes and eliminate any possible negative or long term effects.⁵

- SIA is predicting in advance, the social impacts (social/ cultural, economic, Infrastructure



and public services, physical cultural resources and intangible Cultural resources) likely to follow from a project proposal.

- Outcome: Proposing suitable steps necessary to prevent/contain harmful potential Impacts of proposed projects.

The key objectives of the SIA are:

1. **Evaluating the potential impact** on affected families, including their livelihood, social networks, and access to public utilities.
2. **Ensuring transparency and inclusivity**, by involving stakeholders and giving them a voice in the assessment process.
3. **Identifying the benefits and drawbacks** of the acquisition, including displacement, loss of livelihood, and potential social unrest.
4. **Determining the measures for mitigation**, rehabilitation, and resettlement. ⁵

“What is Social Impact Assessment?”. ResearchGate. Retrieved 2020-12-03.

PROCESS FLOW OF SOCIAL IMPACT ASSESMENT PLAN IN RFCTLARR ACT, 2013

1. Preparation of Social Impact Assessment Study U/s 4

The process of land acquisition starts with the Preparation of Social Impact Assessment Study. Whenever government intends to acquire land for a public purpose, it shall consult the concerned Gram Sabha, Panchayat, Municipality or Municipal Corporation and then carry out a Social Impact Assessment study in consultation with them.⁶ When and how this consultation will take place, is defined by the government via notification. Such notification will be brought out in local language and will be made available to the Panchayat, Municipality or Municipal Corporation and the offices of District Collector and SDM.⁷ It will be published in the local media and will be uploaded on relevant website of the government. The act mandates the government to ensure that adequate representation has been given to the representatives of Panchayat, Gram Sabha, Municipality or Municipal Corporation while conducting such SIA study. This study has to be finished in 6 months time.

2. Public hearing for Social Impact Assessment U/s 5

Whenever a Social Impact Assessment is required to be prepared under section 4, the appropriate Government shall ensure that a public hearing is held at the affected area, after giving adequate publicity about the date, time and venue for the public hearing, to ascertain the views of the affected families to be recorded and included in the Social Impact Assessment Report.⁸ In order that the report of social impact assessment is effective, it must be in the first instance examined by the expert group and then examined by the High Level Committee headed by the Chief Secretary. The High Level Committee records its opinion

- On the public purpose
- Fulfilment of public interest on the basis of the social impact assessment report
- That the land acquired is minimum
- All the possibilities and alternatives are examined
- No irrigated double crop wet land is involved
- Consent of the people affected has been obtained.

3. Publication of Social Impact Assessment Report U/s 6

After the above two stages are complete, the government would put in place a preliminary notification in which it would publish the details of the land acquired. This notification will be made accessible in local area via various media. The local Governments are informed about this notification. Once the notification is out, no person of the affected area can sell any

⁶The 2013 Act, S.4(1).

⁷The 2013 Act, S.4(2).

⁸The 2013 Act, S.5.

land or make any other land related transactions. The officers are empowered to enter upon and survey and take levels of any land in the area. The Collector, the Administrator for Rehabilitation and Resettlement shall conduct a survey and undertake a census of the affected families. A draft Rehabilitation and Resettlement scheme is prepared by the Commissioner of the Rehabilitation and Resettlement. The details of this scheme are made available to local public via various media.⁹

4. Appraisal of Social Impact Assessment report by an Expert Group U/s 7

Once the SIA study is over and its report is ready, the government will refer this report to an independent multi-disciplinary Expert Group. This expert group has to be constituted by the government. This expert group has representatives as follows:

- Two non-official social scientists
- Two representatives of the local self government i.e. Panchayat, Gram Sabha, Municipality or Municipal Corporation
- Two rehabilitation experts
 - One technical expert.

The chairperson of this expert group will be the person nominated from any of the above members. This group will study the SIA report. If this group finds that the project does not serve any public purpose or the social costs and adverse social impacts of the project outweigh the potential benefits, they will recommend so within 2 months time. Once it is done, no acquisition can take place and the entire process is abandoned. However, story does not end here. Even if the expert group says no, the government is able to acquire the land. The

Government would need to record in writing that__ :

- project is legitimate and bona fide public purpose
- it's potential benefits and the public purpose outweigh the social costs and adverse Social impact
- minimum area of land required is proposed to be acquired
 - There is no unutilized land which has been previously acquired in the area.

The above discussion makes it clear that although the expert group has power to reject the project, the government shall have an upper hand and overriding powers.

5. Examination of proposals for land acquisition and Social Impact Assessment report by appropriate Government U/s 8

The approval of Administrator implies that the State Government has already prepared the schemes for rehabilitation and resettlement. The draft schemes incorporated in Scheduled II are recommendatory. Depending on the circumstances, the State Government may adopt the draft under Schedule II as it is or may affect such changes which are an improvement over the proposals contained in Schedule II. The scheme of the Government which is in conformity with the Schedule is the minimum. The publication of the scheme and the report of the administrator to carry out the terms of the scheme are mandatory. It implies that the consideration of all the matters by the Government should be thorough.

⁹ The 2013 Act, S.6(4).

SUBJECT MATTERS OF SIA

The subject matter of the SIA includes answering the following

questions. Does the proposed acquisition really serve a public purpose?

How many families would be affected and how many of them will be displaced?

What is the extent of the public and private land including the houses is going to be affected?

Is the land proposed to be acquired is absolute bare minimum extent needed for the proposed project?

If the acquisition at a different place was considered and found not feasible.

What will be the nature and cost of addressing the social impacts over there?

A simultaneously completed Environment Impact Assessment to be addressed.

The SIA ensures that the acquisition process is not merely focused on financial compensation but also on minimizing adverse social and environmental effects.

Public Purpose

The 1894 Act became the first piece of legislation in the colonial era, to define the term “public purpose”¹⁰. Inter alia, it covers the acquisition of land for purposes related to rural planning; development of State-owned or controlled corporations, educational and housing facilities; and providing residence to the poor or landless affected by natural calamities or persons displaced due to governmental schemes¹¹. Subsequently, the 2013 Act repealed the 1894 Act,¹² and provided a slightly altered definition of “public purpose”. However, even though the new definition is comparatively restrictive, it nonetheless includes within its ambit: projects related to defence and national security, roadways, railways, and ports; projects related to residential schemes for the poor and landless; and planned development for the improvement of villages.¹³

The RFCTLARR Act clearly defines "**public purpose**" to ensure that land is acquired only for projects that serve the greater good of society. Public purpose under the Act is carefully outlined to prevent arbitrary acquisitions that may benefit private entities or individuals at the cost of public welfare. In comparison, to the 1894 Act, the definition provided for in the 2013 Act, is slightly restrictive.¹⁴

¹⁰ Law Commission of India, Law of Acquisition and Requisitioning of Land, 10th Report (1958). ¹¹ The Land Acquisition Act, No. 1 of 1894, S.3(f).

¹² The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, No. 77-C of 2011, S.114(1).

¹³ The 2013 Act, S.2(1).

¹⁴ G. Raghuram and Simi Sunny, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Ordinance 2014: A Process Perspective, IIMA WORKING PAPER NO. 2015-07-03 (2015).

Categories of Public Purpose

The RFCTLARR Act identifies several categories of public purpose under which land can be acquired, including:

1. **Infrastructure development:** This includes roads, highways, railways, airports, ports, and other public transportation systems.
2. **Development of facilities:** Land can be acquired for educational institutions, health institutions, and other public facilities.
3. **Projects for national security:** Land can be acquired for defense purposes, border security, and similar strategic needs.
4. **Affordable housing:** Projects for providing housing to weaker sections of society, such as slum rehabilitation or low-income housing projects.
5. **Industrial corridors and special economic zones (SEZs):** The Act permits acquisition for industrial and economic development, but with stricter oversight.
6. **Agricultural improvements:** Public purpose can also include projects aimed at improving agricultural productivity, such as irrigation or water management systems.

Determining Public Purpose

While the Act provides a broad definition of public purpose, there is a stringent process for determining whether a particular project truly serves the public interest.

1. **Government Notification:** The appropriate government must issue a notification specifying that the land is being acquired for public purpose.
2. **Expert Group Review:** After the SIA is conducted, an Expert Group evaluates whether the intended use of the land qualifies as a public purpose, ensuring that private interests are not being unduly favored.
3. **Consultation and Consent:** In some cases, particularly when land is acquired for private companies or public-private partnerships, the consent of a significant portion of affected families (70% for public-private partnerships, 80% for private projects) is required.

Challenges in Defining Public Purpose

The definition of public purpose has historically been a contentious issue in India, especially when private corporations are involved. While the RFCTLARR Act attempts to streamline and clarify the meaning of public purpose, challenges remain in ensuring that acquisitions truly benefit society rather than private interests. The consent provision serves as a safeguard but has been criticized for being bypassed in some cases.

There might be cases where the rehabilitation of homeless persons does not actually serve a public purpose. In this regard, attention must be drawn to the judgment of the Gujarat High Court in *Nabipur Gram Panchayat v. State of Gujarat*.¹⁵ Herein, the land on the outskirts of a village inhabited by about 4,000 people, dependant on agriculture, was being used since time immemorial for grazing more than 1100 cattle heads. The village Panchayat was instructed to mutate the aforesaid grazing land into a shelter with a view to plot the same for landless persons. This was met with widespread opposition on account of the already existing

¹⁵ *Nabipur Gram Panchayat v. State of Gujarat*, AIR 1995 Guj 52.

problem of shortage of land for grazing, which would be further aggravated upon the construction of the shelter. Irrespective of these objections, the order for construction was passed, which was then appealed against. While the Respondents claimed that the land was acquired for the “public purpose” of rehabilitating homeless persons, the acquisition was held by the Court, as one not serving a public purpose. Thus, while both the statutory definitions of public purpose include each case of rehabilitation of homeless persons, in this case, it was held otherwise.

Second, another direct ground for a public purpose, as identified by both, the 1894 and 2013 Act, is healthcare.¹⁶ The text of either of these provisions provides that every case of healthcare would fall under the ambit of “public purpose”.

However, there might be cases where healthcare does not actually serve a public purpose. In this regard, it is pertinent to discuss the decision of the Supreme Court of India in *M.I. Builders Pvt. Ltd v. Radhey Shyam Sahu*.¹⁷ Herein, a public park of historical importance

was located in a crowded market area. The local administration sought to ease the congestion in the area by constructing an underground shopping complex, in place of the said park. When this was appealed against, the Court observed *that such construction “would only complicate the situation and that the present scheme would further congest the area”*. Thus, *the public purpose allegedly being served by such acquisition was deemed “illusory” by the Court. In doing so the Court also upheld the decision of the High Court of Judicature at Allahabad which termed such acquisition as “illegal, arbitrary and unconstitutional”*.¹⁸ Thus, while under the statutory definition, all cases of healthcare fall under the ambit of “public purpose”, in this case, it was held to be not for a public purpose.

These two illustrations help establish that the instances that have been provided for within the definition of “public purpose” in the 1894 and the 2013 Act, are not precise enough to serve a public purpose. While Indian Courts have previously acknowledged that a perfect and accurate definition of “public purpose” is impossible to come up with,¹⁹ the current method of ascertaining it, by defining it on a case to case basis, is also flawed. At the minimum, a definite standard has to be put in place in order to decide whether, in actuality, a particular instance fulfils a public purpose. Thus, the touchstone against which it is possible to find out whether an instance fulfills public purpose is missing.

CONCLUSION

The costs of development, industrialisation and forward growth of civilisations mean nothing when basic survival is threatened by displacement from people’s original localities or, in other words, their homes. No civilisation can flourish at the cost of their fellow beings. Thus social impact assessment and the need to act on their recommendations and indicators are of paramount importance to the development narrative in a democratic way, which ensures people’s rights to live in their own homes in their natural ways of living do not get trampled upon, thus ensuring a holistically developed society as a whole, and therefore conserving the image of a welfare state.

¹⁶ The 1894 Act, §3(f); The 2013 Act, §2.

¹⁷ M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu, AIR 1999 SC 2468, ¶52 (India).

¹⁸ Id.

¹⁹ State of Bombay v. R.S. Nanji, [1956] S.C.R. 18, ¶ (India).

SIA evaluates all impacts on humans and on all the ways in which people and communities interact with their socio-cultural, economic and biophysical surroundings. SIA thus has strong links with a wide range of specialist sub-fields involved in the assessment of areas such as: cultural heritage impacts (both tangible and non-tangible); community impacts; cultural impacts; demographic impacts; development impacts; economic and fiscal impacts; impacts on indigenous rights; infrastructural impacts, institutional impacts; political impacts (human rights, governance, democratisation etc); poverty; psychological impacts; resource issues (access and ownership of resources); impacts on social and human capital; and other impacts on societies.

REFERENCES:

BOOKS/ACTS

- Prof.A.Chandrasekaran A., Land Laws of Tamil Nadu, (C. Sitaram & Co. Pvt. Ltd. Third Edition, 2020)
- Prem Kumar Dara, Introduction to Environmental Impact Assessment (Lambert Academic Publications, 1st ed. 2016).
- The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

RESEARCH PAPERS/ARTICLES:

- G. Raghuram & Simi Suenmy (G. Raghuram & Simi Suenmy, Right to fair compensation and Transparency in land Acquisition, Rehabilitation and Resettlement ordinance 2014: A Process Perspective, (INDIAN INSTITUTE OF MANAGEMENT AHMEDABAD, W.P. No. 2015-07-03 July 2015))
- Report on Social Impact Assessment for Land Acquisition (For Critical Gap of DLF Home Developers' Mega Housing Project at New Chandigarh) published by Faculty of Physical Planning & Architecture, Guru Nanak Dev University, Amritsar, 2023.
- Economic Times Article dtd. 14th April 2018 on Land Acquisition
- Social Impact Assessment Manual by Anthropological Survey of India

REPORTS & RECORDS:

- Relevance and Process of SIA Study under RFCTLAR&R Act,2013 by Deeptimayee Bhue, Asst Collector; O/o Sub-Collector, Padampur, Bargarh during 20th Batch Induction Training, 2018.

CASE LAWS:

1. Nabipur Gram Panchayat v. State of Gujarat, AIR 1995 Guj 52.

2. M.I. Builders Pvt. Ltd. V. Radhey Shyam Sahu, AIR 1999 SC 2468, ¶52 (India).

3. State of Bombay v. R.S. Nanji, [1956] S.C.R. 18, ¶ (India).