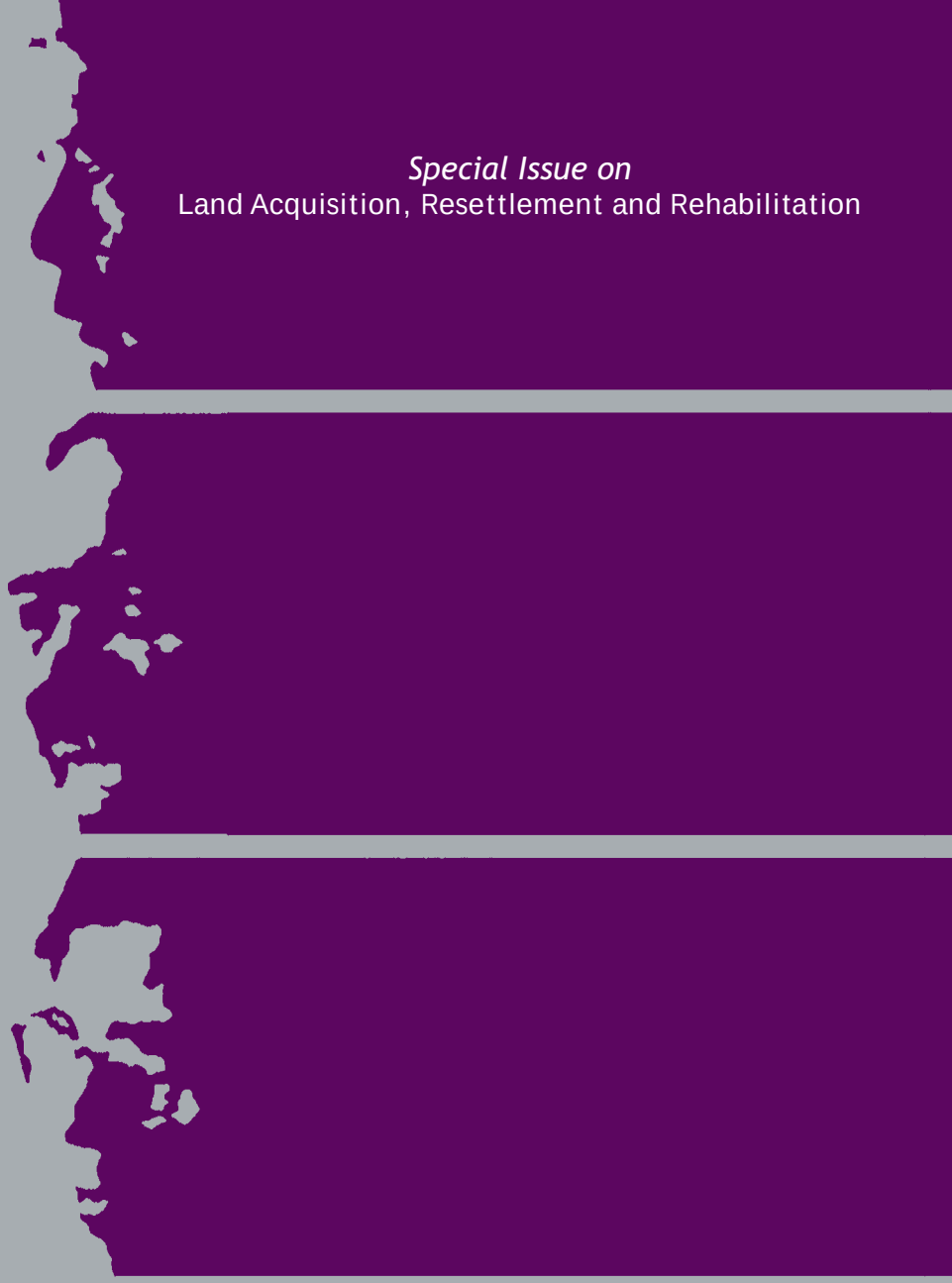
Special Issue on
Land Acquisition, Resettlement and Rehabilitation



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Foreword

The progress on the infrastructural front, especially in the South Asian region has been greatly hampered by delays due to conflicts and protests by those who forego their land in the process. The opposition to land acquisition has largely stemmed from equity, environmental and socio-cultural concerns. Given the magnitude of the issue in developing countries, addressing the concerns of the land owners within the regulatory framework has assumed critical importance. The past decade has witnessed initiatives at policy and operational front in various countries to address this challenge. In India, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013 replaced the colonial Land Acquisition Act (LAA), 1894 from 1st January, 2014. It is the first legislation world-wide mandating Resettlement and Rehabilitation (R&R) for both the land and livelihood losers. It is also the first legislation that links Land Acquisition and Resettlement and Rehabilitation (LARR) both in planning and implementation. Through appropriate changes in the process/implementation mechanisms, the new law also tries to improve the situation on the equity, transparency and social acceptability front. While the RFCTLARR Act, 2013 provided for greater transparency and benefits for the affected families, the long drawn processes and concerns over the ensuing delay has been the focus of the debate and discussion since its enactment.

Though the issues relating to LARR are near universal, there is little or no experience sharing across different projects and countries. There are also wide differences between the purely academic research work and the complicated challenges faced by the practitioners in the field. It is sad to note that R & R practitioners have not made significant contributions to the literature on issues relating to land acquisition and resultant resettlement. The "Land Issue" that has become the most significant impediment to infrastructure development is dynamic, yet context specific. By deploying insights from their vast experience in dealing with the issue, challenges faced and good practices followed, their literary contributions could be more grounded in reality and offer valuable lessons. The problem is rather that what is experienced is not necessarily remarked or written about. On the other hand, the lack of sustained practical exposure to the ground realities by academicians make their scholarly contributions only being lauded for their academic rigour but of little practical value by the practitioners.

This special issue on LARR is an attempt to bridge the above gaps through a collection of research papers from policymakers and practitioners on the complex issue. The special issue is divided into two parts. The first part is devoted to the core theme of LARR, with special emphasis on India's new land acquisition law. The papers in this part provide an integrated set of contributions that look at diverse aspects-policy, legal, social and operational aspects of the new law based on experiences so far. The first part starts with an introductory status report of significant developments since the new law came into force. The technical paper by Charanjit Singh on *Endeavours for Appropriate Land Acquisition Act: Traverse of Hurdles and Support* provides a summary account of the two decade long struggle of the policy makers in giving the final shape to this revolutionary legislation. The intense internal dynamics of the

development of the technical policy to political approval to a law is what an ordinary reader will be ill-informed about. The paper provides an interesting account of the chronology of events into making of the RFCTLARR Act, 2013.

Case laws on operational clauses of land acquisition act have served as the most useful repository of knowledge for practitioners and policy makers dealing with LARR. The third paper by Reshmy Nair on *Judicial Interpretation of the Land Acquisition Act-LAA, 1894 to the RFCTLARR Act, 2013* captures the essence of some of the important judgments that transformed state-centric legislation to a more people-centric law. The paper also includes interpretations that provides operational clarity to provisions that continue to be significant in the changed legal framework. Another paper by Neeraj Kapoor and Badri Prasad provides a practitioners' perspective on the implementation concerns of the RFCTLARR Act. The paper is an elaborate clause-by-clause narrative of the challenges expected by the practitioners in the yet-to-be implemented law. The substantive issues raised in this paper have been at the core of the debate since the enactment of the legislation. A paper on *Social Impact Assessment* by Hari Mohan Mathur discusses the most intensely debated provision in the RFCTLARR Act, 2013. Briefly tracing the origin of the tool in the Indian context, the paper discusses the existing challenges in the implementation of this progressive provision while re-emphasizing its immense utility as an effective resettlement planning tool.

The second part of the special issue focuses on LARR issues relating to specific sectors. Growth is essential but one cannot be blind to the havoc created by unplanned infrastructure development on the community whose land makes way for the project. Mohammed Hasan's paper on *Development and Tribal Displacement in Water Sector: Experiences, Challenges and Opportunities in the Resettlement of Affected Tribal Communities* discusses issues relating to the economic rehabilitation of the tribal communities affected by development-induced displacement in the water sector. It discusses the typology of impacts, challenges in planning and implementing resettlement and economic rehabilitation activities of the displaced population and throws light on the unexplored opportunities that could go a long way in successfully meeting the special needs of the tribal communities.

The story of an 'empowered community' stalling a big-ticket project is the Vedanta Aluminium's project at Lanjigarh. Binod Chandra Mishra's paper provides a literary account of the process of gram sabha, reasons behind the failure and the lessons for investors before they plan investment in rural areas, particularly those dominated by tribal communities. The last paper by Stephen Joseph Sparks is a case study of the Theun-Hinboun Expansion Project (THXP) in Central Lao PDR. Sidestepping of responsibility is generally the norm in R & R. The case study proves otherwise. Widely considered as a good practice in resettlement world-wide, the author examines the critical factors in the preparation, construction and operation phases that contributed to the overall good results of the resettlement program.

The views expressed in this special issue are solely those of the authors in their private capacity and do not represent the views of the College.

We hope this Special Issue will enrich the body of knowledge.

ASCI Journal of Management 45 (1): 1–10

Reshmy Nair*

RFCTLARR Act, 2013: Overview of Recent Developments

Abstract

"Harmony with land is like harmony with a friend; you cannot cherish his right hand and chop off his left", once said Aldo Leopold. The man's pursuit to gain supremacy over the land has seen many a dispute turning into battles and wars, resulting in mass destruction. Legislations on land, their usage and modifications in line with the changing times have always been an existential imperative. The overview carries the readers through the developments in the last couple of years after India brought in a historic legislation on land acquisition to replace a century old colonial law - an unbiased view of the major happenings, the rationale, the consequences and the alternatives in the area of land acquisition in the country.

Introduction

In the context of Land acquisition, the year 2015-16 reflected the saying *that the more the things change, the more they remain the same*. If 1 January, 2014 was significant for ushering in the "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013" (hereafter referred to as the 2013 Act), the landmark legislation that garnered world-wide attention; 1 January, 2015 came with the RFCTLARR (Amendment) Ordinance, 2014, an ordinance for amending the yet to be implemented law! The RFCTLARR (Amendment) Bill, 2015, was introduced in the Lok Sabha in February, 2015. Though the Bill was passed by the Lower House with certain amendments, lack of political support for the controversial Bill proved an insurmountable bottleneck for the ruling dispensation. Every ordinance has to be laid before Parliament and ceases to exist six weeks from its first sitting. Failure to get adequate political support resulted in the lapsing of the ordinance and the government re-promulgated two more ordinances in succession during March and May on the ground of maintaining continuity to some of the crucial provisions.

Ordinances and Controversies: The period between 1 January to 31 August, 2015 was governed by three ordinances. Given the sustained resistance from the opposition and some of its allies over the contentious provisions, the RFCTLARR (Amendment)

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Second Bill introduced in the Lok Sabha during May 2015 was referred to a Joint Committee of Parliament chaired by Shri. S.S. Ahluwalia for detailed discussion on the provisions of the legislation. The Committee has since been given six extensions and is expected to submit its report in the monsoon session in July 2016. The chronology of important developments are given in Table 1

Table 1 RFCTLARR Act, 2013: Chronology of Developments

Date	Policy Developments
1 January, 2014	RFCTLARR Act, 2013 comes into force
31 December, 2014	RFCTLARR (Amendment) Ordinance, 2014 promulgated
24 February, 2015	RFCTLARR (Amendment) Bill, 2015 introduced in Lok Sabha
10 March, 2015	RFCTLARR (Amendment) Bill, 2015 passed in Lok Sabha with amendments
3 April, 2015	RFCTLARR (Amendment) Ordinance, 2015 incorporating the amendments made by the Lok Sabha
11 May, 2015	RFCTLARR (Amendment) Second Bill, 2015 introduced in the Lok Sabha
13 May, 2015	RFCTLARR (Amendment) Second Bill, 2015 referred to the Joint Committee of Parliament
30 May, 2015	RFCTLARR (Amendment) Second Ordinance, 2015 promulgated
28 August, 2015	RFCTLARR 'Difficulty Removal Order' with effect from 1st September 2015 to lend continuity to applicability of compensation/R & R norms in Schedule IV legislations

The most controversial provisions in the Ordinances were the exemption from the mandatory landowner consent requirements and discretion given to the state governments to exempt Social Impact Assessment (SIA) and multi-crop land acquisition restrictions for five categories of projects; projects vital to national security or defence of India; rural infrastructure including electrification; affordable housing and housing for the poor people; industrial corridors and infrastructure projects including PPP projects where land ownership continues to vest with the government. The Ordinances also tried to improve the operability of the retrospective provisions and restrict the innumerable number of cases filed at various courts across the country for lapse of proceedings. This included excluding the periods during which the proceedings for acquisition of the land were held up on account of stay/injunction from the five years applicability clause in Section 24 (2) and excluding

the cases where compensation was deposited in a court/account maintained for the purpose. The Ordinances also sought to increase the timeframe for return of unutilised land to the land bank/land owner from 'five years' as contemplated in the Act to 'a period specified for setting up of any project or for five years, whichever is later'. There were also few non-controversial changes relating to corrections of typos appearing in Section 46 (land purchase) and Section 113 (difficulty removal clause) as well as diluting the provisions relating to 'Offences and Penalties' dealing with government departments.

Section 105 of the 2013 Act had exempted the thirteen central legislations in Schedule IV of the 2013 Act from its procedural provisions while mandating that at par compensation and Resettlement and Rehabilitation (R&R) benefits in tune with the central law may be provided within one year of the coming into force of the new law i.e. by 1 January, 2015. The process could not be completed within the timeframe and the ordinance therefore also sought to extend the above provisions of the 2013 Act to these legislations from 1 January 2015. After the lapse of successive Ordinances, the government issued a 'Difficulty Removal Order' with effect from 1 September 2015 to lend continuity to the extension of beneficial provisions to the central laws in the exempted category.

The Lull Phase: The year 2015-16 did not see any progress in the much needed corrections required in the 2013 Act. Nor were there any steps to remove the existing ambiguities in some of the crucial provisions. While the Joint Committee of Parliament debates on the issues requiring substantive changes, it remains unclear why some of these non-controversial issues could not have been dealt with in the Removal of Difficulty Clause (especially since the mode was adopted to lend continuity to application of compensation/R & R norms in the thirteen Schedule IV legislations). Politically, land continued to be the flashpoint for parties to find connects with the masses. The Ordinance route considered by the government formed a rallying point for concerted opposition. However, the extreme reaction of the opposition parties to the contemplated action to amend a law that was yet to be implemented was not unwarranted. The room available for interpretation of the 'five categories of projects' was too wide and the 'to be exempted provisions' were at the heart of the people-centric legislation. It may have been less controversial if thresholds were introduced instead of blanket exemptions to consent and SIA requirements for the seemingly all encompassing five categories of projects. This may have eased the amendment process with regard to the non-controversial provisions and paved the way for other critical corrections required in the legislation. However, substantial operational issues still remained unaddressed in the conceptualised amendments.

Social Impact Assessment: The most keenly debated provision in the new law is the pre-notification process of SIA. It is ironical that a process that had the potential of

increasing the legitimacy of the development process, reducing information asymmetry induced land selling in the project area, addressing perception related land conflicts and thus aiding the developer is now a much reviled concept. This is as much owing to the complete lack of groundwork for the operationalisation of the progressive provision but also the misunderstandings and myths associated with the SIA process. While some associate it with just a survey process and hence a duplication that should be avoided at all costs, others believe that it adds on to cost without commensurate benefits. A few other opponents feel it is commonsense that requires no specialised study, particularly since all losses cannot be quantified. The several conflict-ridden and stalled land acquisition projects in the country certainly did not have a process of SIA to deal with and are living examples of the first myth associated with the costs imposed by the SIA process. The World Bank had pointed out that the cost caused by delays in the construction of India's Sardar Sarovar Project as a result of strong local, national and international opposition exceeded $200 million a year. A robust pre project process of impact assessment would have greatly aided the process.

SIA is much more than forecasting impacts and mitigation plans. It is a process that can go a long way in generating a social acceptance for the project and minimising local resistance to projects. In fact, as important as the deliverables from the SIA Study in terms of quantitative information would be the process in itself! SIA helps in addressing not only the genuine concerns of the affected community but also the public perception of risks associated with a project. Ideally the process should be considered an integral part of the development process, not a step or hurdle to be overcome. The process is essentially designed not to hamper development, but to maximise the potential benefit for all parties associated with the development. A significant drawback is the lack of documentation of the benefits that the consultative process has made in various projects. It would have been extremely beneficial if the foregone years since the enactment of the Act could have been more productively utilised to address the operational issues with the implementation of this progressive provision-formulating guidelines for effective implementation, institutionalising capacity building of dealing government officials and other stakeholders, empanelling experts/institutions to conduct the studies and supporting state governments which lack the enabling environment.

Rules to RFCTLARR Act, 2013: The year 2015-16 witnessed progress in the formulation and finalisation of rules by most of the state governments with the exception of Punjab, Tamil Nadu, Gujarat, Rajasthan and West Bengal among the major states. While Maharashtra was the first state to publish the draft rules to the RFCTLARR Act during March 2014, states like Andhra Pradesh, Bihar, Jharkhand and Telangana were the first ones to finalise their rules. Bihar became the first state that issued guidelines on land procurement through land lease as per section 104 of

the Act. In December 2015, the Department of Land Resources published the comprehensive rules for compensation and R&R, applicable to cases where central government would be the appropriate government. The uniform multiplier of two in all rural areas and a low land purchase limit for applicability of R&R (50 acres in urban areas and hundred acres in rural areas), notified by the central government in February 2016 was in stark contrast to many state governments. States that confined the maximum multiplier in rural areas to less than two included Andhra Pradesh (1.5 in rural scheduled areas and 1.25 in other rural areas), Madhya Pradesh ('1' in all rural areas) and Chhattisgarh ('1' in rural areas subject to minimum land compensation[1]). A highly significant Mumbai High Court judgment holding that the state governments did not really have the discretion of fixing the upper limit of multiplier at less than 'two' forced the state Government to make appropriate amendments to follow the High Court's directive. The RFCTLARR rules framed by most of the state governments however leaves a lot to be desired in terms of lending operational clarity to the implementation of the new provisions.

The Exemptions from Central Law: Tamil Nadu became the first and only state to seek/receive presidential assent for its three state legislations under which it carries out more than eighty percent of the land acquisition in the state. These Acts are the Tamil Nadu Highways Act, 2001, Tamil Nadu Acquisition of Land for Industrial Purpose Act, 1997 and Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978. To continue land acquisition under these three state legislations, the Government passed the RFCTLARR (Tamil Nadu Amendment) Act, 2014 by inserting Section 105A, which places the above three Acts in a newly created Fifth Schedule, at par with the thirteen Central enactments. The amendment received assent of the President on 1st January, 2015 subject to the condition that the provisions of compensation, R & R and safeguards available for the tribal/forest dwelling population in the 2013 Act are incorporated in the state legislations. Accordingly, the Government of Tamil Nadu issued instructions that these provisions shall apply to the cases of land acquisition where the notices under each Tamil Nadu Act have been published on or after 1 January 2014. Despite the encouragement of the central dispensation to the state governments to formulate their own land acquisition laws, the states chose to do it at own their pace and Tamil Nadu remained the only state seeking presidential assent for amendment in 2015. However, this is expected to change in 2016 with the developments in Gujarat, where the State Assembly has recently passed a diluted version of the 2013 Act.

Land Purchase Policies: Perception about the potential delay in procurement of land through the new legislation led three state governments to frame land purchase policies. Madhya Pradesh came out with a Consent Land Purchase Policy for procuring

[1] INR 6 lakhs for barren land, 8 lakhs for single-cropped land and 10 lakhs for irrigated land

the land for the state departments. The compensation for the land that is offered in the policy is double the value of calculated compensation (guideline value plus assets). Uttar Pradesh that had a land purchase policy prior to the enactment of the 2013 Act has also reframed the Mutual Consent Land Purchase Policy for the state government Departments/PPP Projects. The compensation offered is four times the market value (guidance value) in the rural areas and twice the market value in the urban areas. Similarly, the Telangana Government Order provides for procurement of land for public purpose by the District Level Land Procurement Committee under the Chairmanship of the Collector. Land procurement under these purchase policies are being done independently and not through the elaborate procedures laid down in the Act. Notably, these purchase policies also provide lesser benefits than mandated by the Act and hence is unlikely to be successful in the present form in the long run. This brings us to the central question of the future of the procedural provisions of the 2013 Law, particularly its elaborate consultation and transparency requirements. With procurement of land through above purchase policies and acquisitions continuing under multiple state development Acts, the centrally exempted legislations (Schedule IV) and most importantly, with the determined effort to circumvent the provisions by various governments, would the much hailed transparency provisions of the 2013 law just remain idealistic principles with limited applicability? In the present scenario, this is certainly not an overstretched figment of imagination! It is unclear if the framers of the new law had ever anticipated such an appalling scenario.

The First Case of Implementation of RFCTLARR Act: In the midst of the widespread perception about implementation issues and the potential inordinate delay in the procurement of land through the RFCTLARR Act, the first land acquisition was completed by the Government of Punjab. The acquisition process for 10.88 acres project (Master Plan Road of New Chandigarh, from Majra T-Junction to Palanpur) was completed in one year. As against the maximum timeline of eight months for the completion of SIA process, the project took a little more than four months. According to the provisions of the 2013 Act, the Preliminary Notification has to be mandatorily issued within a period of one year after the appraisal of SIA Report by the Expert Group. In the above project case, the same was issued in less than a month of the Appraisal. The final declaration was issued in three and a half months of the issue of preliminary notification as against the maximum specified timeline of twelve months. Finally, the Award for the project was issued in less than two months after the issue of declaration under section 19. The other three projects in Punjab (with limited land requirements of 5-50 acres) that were initiated during the time the ordinance was in place (making use of the exemption to SIA) are expected to complete the land acquisition process in less than 1.5 years. There are several similar instances in other states.

The Punjab experience, albeit with limited land acquisition impacts, dispels the myth of insurmountable implementation issues/inordinate delay in acquiring land under the new Act. For larger land requirements and those inducing relocation of affected families, the timelines could be longer. While the issues of lack of expert institutions that can conduct SIA studies, inadequate personnel in the government machinery to carry out the transparency and consultative requirements in the Act etc may be impeding successful implementation of the Act in many states; it may not be stretched so far as to say that land acquisition is impossible under the new legislation. It is important to stress that faster land acquisition under both the old and the new legislations require a proactive and enabling district administration. The other point that policy makers need to consider is whether the entire bureaucratic machinery can be better utilized in cases where land requirement is extremely meager. Do we really need to have such an elaborate procedure for acquiring miniscule proportion of land and that involves no relocation of families? The oft-repeated statement that land acquisition through the Act has virtually come to a standstill has been largely due to virtual status quo on the part of the state governments in deciding the key action points, issuing guidelines, formulation of rules and setting up institutional structures mandated by the new Act. The status quo largely owes to the anticipation of amendment of the 2013 Law by the new political dispensation at the Centre.

Need to Rationalize Cost and Timelines: There are number of measures urgently required for rationalising the cost/timelines and improving the operability of RFCTLARR Act. Measures like restricting R&R entitlement to physically/economically displaced; establishing triggers for provision of infrastructural entitlements, setting appropriate cut-off dates for eligibility of R&R entitlements, doing away with applicability of multiplication factor in case of consented compensation etc. would contribute to rationalising cost. Similarly, introducing a threshold (based on land size/displacement) for mandatory SIA, reducing the maximum timelines prescribed in the Act; establishing a sound grievance redressal mechanism, initiation of updation of land records soon after notification of SIA; removal of discretion available with the government to delay the prescribed timelines; providing for advance possession of land under urgency clause wherever land is required to be acquired for construction of R & R colony etc would help in rationalising the timelines.

The Price of Land: Another critical issue that deserves mention regarding the future of RFCTLARR Act as a land assembly strategy is the mechanism in place to arrive at realistic land values. For any land assembly tool to succeed, there should be robust system to determine land values. The most significant information used world-wide to assess land values include market data on transactions, assessing the attributes of the property, data concerning the potential income from land, cost of inputs into land development etc. Developing countries like India are known to have a major

constraint with the transaction data as these do not reflect the true price of land because of black market transactions to save on taxes. The rationale for use of the multiplier in the rural context is primarily to address this concern. However, a major drawback of the new legislation is that it only provides for a single mechanism for valuation of the land to be acquired. The land valuation, despite the multiplier, may not provide for an appropriate assessment of the property in question, particularly where large transaction data for similar lands are not available. For a futuristic land acquisition policy, the comparable sales approach may have to be complemented with other land valuation mechanisms.

Under RFCTLARR Act, the price of land can be expected to increase by about 50 to 150 percent in urban and rural areas respectively. The additional R & R cost would be about 6 lakhs per affected family and about 10-12 lakhs for families that would be displaced. The increase in the land costs under the new Act however needs to be understood in proper perspective. First, the circle rates and registered deeds are usually much lower than the real market value. It is on this depressed market value that the multiplier is applied. Second, forced by protests, governments/project proponents have increasingly been resorting to negotiated compensation/consent awards, often paying several times higher than the market value. Third, the frequent discussion of the RFCTLARR imposed increase in land costs completely ignores the conflict ridden delays, the time/cost overruns and the court imposed several fold increases in the compensation/interest costs that had become the norm in the decade before the enactment of the Act. While the applicability of R & R in cases of voluntary purchase of land is not devoid of social/economic rationale, the legal question still remains and it will be interesting to see the judicial interpretation of the same. Many state governments on their part, viewing it as a significant deterrent to industrialization have fixed extremely high land purchase limits for applicability of R & R viz. Uttar Pradesh (6250 acres), Andhra Pradesh (5000 acres), Bihar (2500 acres), Jharkhand (5000 acres), and Telangana (2000 acres).

Land Pooling-An Alternate Land Assembly Strategy? Acquisition of land has been the primary method through which land requirements for infrastructure, both in the rural and urban areas were being met. Land readjustment/pooling, a technique for carrying out the unified servicing and subdivision of separate landholdings for planned urban development is seen as one of the most promising alternative. The Andhra Pradesh Government's procurement of more than 34000 acres of land for building the new capital city through its land pooling policy became the most discussed and lauded initiative during the year. While the Andhra experience is certainly laudable, a study of the model reveals the specific factors behind its fast tracked land procurement. The highest priority accorded to the project by the political establishment led by its highly popular Chief Minister; the massive state department led consultation exercises involving even house to house campaigns;

the threat of expropriation through land acquisition offering no real choice for the dissenting voices (given the low market values in many dry villages/ registered deeds poorly reflecting the realistic land values); ensuring no displacement by not tampering with the existing habitations; conduct of census before preparation of returnable matrix and providing for benefits to the landless who had a significant presence in the area etc all contributed to the success of the initiative. The land pooling and redistribution process in urban areas of is generally launched in various states through the mechanism of Town Planning Schemes (TPS). While the TPS has become a more sustainable practice in Gujarat, the other land pooling models in the country are the Delhi, Haryana and Punjab Models. Most recently, the Rajasthan Assembly has also passed a land pooling scheme. The Delhi and Haryana land pooling schemes are yet to be implemented for various reasons. The land pooling model is definitely an excellent alternative strategy of land procurement especially in the urban/urban fringe areas if it leaves the landowners with a significant gain in their total land value respite the reduced size of their landholdings.

In India, the expansion of the land pooling policies is more owing to the potential of using land to finance the urban infrastructure development and doing away with the requirement of massive compensation/R & R payment as mandated by the new land acquisition law. However, it needs to be recognised that irrespective of the land assembly mechanisms, balancing social and economic issues is vital to effective land management. The land pooling model is not a panacea for conflicts over property values. Even in the case of Japan, a country that extensively uses the strategy, the local government does not go ahead that unless there is a substantial majority of landowners supporting the project. Instigated property exchange under the threat of a land appropriation law as in case of Andhra Pradesh or mandatory participation in case of Gujarat can be legally sanctioned but cannot be solution to address the conflicts and gain social acceptance in the long run. In terms of a genuine option between compensation (acquisition) and pooling benefits, only the Punjab policy gives a choice. The changing options by landowners and favouring compensation (instead of land pooling benefits) in Punjab in recent times also dispels the myth of superiority of the strategy at all times.

Though the land pooling/land reconstitution strategy is successfully practised in different countries with infrastructural gaps and financial constraints of government, the underlying socio-economic background of the population from whom land is to be procured is different. In the Indian context, such models may have to duly take into account the equity criterion, giving adequate attention to the impact on small holdings (for whom the use value of land may be more important than its notional exchange value) as also adequately dealing with the issue of tenant farmers and squatters dependent on the land. Also, another area requiring vast improvement in this land pooling policies is the land valuation mechanisms/contribution ratios

(returnable land to the land owners). These should be finalised on sound technical basis with built in elements of the proportionality principle, equity and fairness. Presently, these leave a lot to be desired.

Equity Vs Efficiency: At one end of the debate is the view that the society is forced to bear very high costs if governments are forced to pay exorbitant sums to the landowners. This is the greatest concern with the 2013 Act. At the other end is the potential for reduced land conflicts/time and cost overruns owing to the higher compensation and R & R support. Would the former outweigh the latter? We do not think so. While the use of the new land acquisition act may be reviled on account of the time/cost implications, the legislation scores over the colonial legislation in terms of equity and social acceptance, two key ingredients for a successful land assembly strategy. Finding the balance between efficiency and equity may be a difficult but certainly not an un-achievable task. The implementation experience, thought limited, thus reveales that the fear associated with the timelines is more hyped than real.

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Charanjit Singh*

In Search of an Appropriate Land Acquisition Act - Traverse of Hurdles and Support

Abstract

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013 was passed by the Parliament after a strenuous journey of parleys in the year 2013. The recent attempts to amend it have raised a huge controversy with opinions dividing along sharp lines. One side supports it strongly on the ground that it is essential to facilitate economic development while the other side opposes it for its potential to dilute the provisions which safeguard interests of the affected families. This paper helps the reader to appreciate the two-decade long efforts in giving the final shape to this path-breaking legislation, role of various stakeholders and continuing challenge in getting consensus of all relevant in stakeholders in dealing with the land legislation.

Introduction

It is a fact that "Land" is one of the biggest resources of any country, however, in India its value increases many fold due to socio-economic ties of vast majority of the populace with it. The Government needs to acquire land from the private individuals for setting up infrastructure and other public purpose projects as well as for developmental activities. Whereas the sovereign power of State has the authority to take land for the public purpose, every subject has the right to be heard before he/she is deprived of his property by the State. This is recognized as a legal right as per Article 300A of the Constitution which provides "*No person shall be deprived of his property save by authority of law*."

Acquisition and Requisitioning of Property in Concurrent List

The Constitution of India has laid federal system as its basic structure of government of the country (Basu, 2013). The Union and States derive their legislative powers from the Constitution. In the context of land, this has led to an interesting situation. While "Land and its Management" is placed under the State List, "Acquisition and

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Requisition of Property", which is intimately related to it, falls under the Concurrent List. To deal with the issues related to land acquisition and determining the amount of compensation in lieu of the land acquired by the government, 'The Land Acquisition Act (LAA)' was promulgated on the first day of March, 1894. This Act falls under the union domain. However, there have been several other enactments by the centre as well as the states on this subject. Efforts were made since 1824, when the first legislation on land acquisition[1] was enacted to balance the right of the state to acquire land on one hand and the individual's prerogative to own land on the other hand. The LAA, 1894 has also been amended seventeen times since its promulgation by the Central Government. The last major amendment to the Act was made in the year 1984. Further, each state government had amended its various sections from time to time as per their convenience. However, in the past few years, protests against indiscriminate land acquisition, unfair compensation and lack of attention to resettlement and rehabilitation have erupted repeatedly in various parts of the country. This has not only led to stalling of various projects but has also led to bloodshed. The churning process culminated in the promulgation of the RFCTLARR Act, 2013 on 27 September, 2013 which replaced the LA Act, 1894. This path-breaking legislation took arduous journey of around 20 years in which various rounds of discussions were held and repeated changes made in the draft.

Early Efforts to Amend LAA, 1894

The erstwhile Parliamentary Standing Committee on Urban and Rural Development examined the various provisions of Land Acquisition Act of 1894 in consultation with the State Governments and made exhaustive observations/recommendations in its Eighth Report (Tenth Lok Sabha), presented to Parliament on 15 December, 1994. Subsequently, the Standing Committees on Rural Development have persistently been recommending in their respective Reports to bring amendments to the old and outdated LAA so as to balance the larger interests of the public for whom the land is being acquired and the right of the individuals whose land is expropriated.

The aforesaid concerns led to preparation of draft Land Acquisition (Amendment) Bill, 1998 and the draft National Policy Packages and Guidelines for Resettlement and Rehabilitation, 1998. These were first discussed in the National Workshop held at Lal Bahadur Shastri National Academy of Administration (LBSNAA), Mussorie, from 1 to 3 June, 1998. The Workshop, sponsored by the Department of Rural Development (Ministry of Rural Areas and Employment, Government of India) and the Economic

[1] 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.

Development Institute (EDI) of the World Bank, was attended by sixty one participants who inter alia included high ranking government officials, representatives of major public sector and private sector organisations, representatives of Confederation of the Indian Industries, academicians from research institutions and universities, representatives of World Bank, activists representing protest movements etc. The workshop recommended that all efforts be made to keep land requirement at minimum, establish Land Use Policy Body to review utilization of land to be acquired/ previously acquired, efforts be made to avoid multiple displacements, institutionalize measures to ensure resettlement before displacement etc. The Workshop also suggested that the draft Bill should be widely publicized and discussed at various forums before enactment. It is interesting to note that most of these recommendations now form part of the new legislation.

The above were the first efforts in the direction of ensuring legal entitlement of R & R which was never part of the LAA. These initiatives ultimately culminated in a Bill being placed before the Cabinet. The Cabinet, in its meeting held on 23 November, 1998, decided that the proposal relating to amendment to the LAA, 1894, in the first instance, be examined by a Group of Ministers (GoM). The GoM held several meetings to consider the proposed amendments to the LAA, 1894. Finally, the Land Acquisition (Amendment) Bill, 2004 was submitted to the Cabinet Secretariat on 29 January, 2004 for approval of the Cabinet. The Cabinet Secretariat, after consideration, returned the Bill with the direction that the Department of Land Resources may submit a fresh proposal after formation of the 14th Lok Sabha.

Intermittent Policy Efforts

In the year 2004, the National Policy on Resettlement & Rehabilitation for Project Affected Families-2003 was published in the Gazette of India on 17 February, 2004. This Policy for the first time recognized that the R & R was an integral part of the land acquisition and the requiring body was required to properly rehabilitate the land losers. Important developments took place in the year 2007 on the policy and legislation front. First, the National Policy on Resettlement & Rehabilitation for Project Affected Families-2003 was revised by the the Ministry of Rural Development, GoI, taking into consideration the suggestions received from several quarters. The revised Policy, i.e., the National Rehabilitation and Resettlement Policy, 2007 (NRRP, 2007), was approved by the Cabinet on 11 October, 2007 and later placed before the parliament. It was notified in the official Gazette on 31 October, 2007. The Policy covers cases of families affected due to land acquisition or involuntary displacement due to any other reason and is in vogue now. It provides for the basic minimum requirements that all projects leading to involuntary displacement must address.

Renewed Initiatives

On the legislation front, two Bills were prepared by the Ministry. The Rehabilitation and Resettlement Bill, 2007 was developed on the lines of the provisions of the NRRP, 2007. Land Acquisition (Amendment) Bill, 2007 was developed to amend the LAA, 1894. Both the Bills were introduced in the Lok Sabha on 6 December, 2007. These were referred to the Standing Committee on Rural Development on 7 December, 2007 by Hon'ble Speaker for examination and Report to the Parliament. After detailed deliberations, the Standing Committee submitted 39th and 40th Reports on these Bills to the Lok Sabha on 21 October, 2008. These were also laid in the Rajya Sabha on the same day. Based on these Reports, the amendments to the Bills were proposed by the Ministry. These were considered by the Cabinet in its meeting held on 19 December, 2008 and were referred to the GoM. The GoM approved the amendments in its meeting held on 24 February, 2009. The aforesaid Bills along with amendments were considered and passed by Lok Sabha in its sitting held on 25 February, 2009 and referred to Rajya Sabha for consideration. However, before these Bills could be considered by the Rajya Sabha, they lapsed due to dissolution of the 14th Lok Sabha.

After the constitution of the 15th Lok Sabha, the Department of Land Resources (DoLR) in the Ministry of Rural Development came out with the LA (Amendment) Bill, 2009 and the R & R Bill, 2009 and placed them before the Cabinet for its consideration. The Cabinet approved their introduction in the Parliament on 23 July, 2009. Accordingly, the Bills were sent to Lok Sabha Secretariat on 5 August, 2009. However, the Bills could not be introduced in the Lok Sabha due to lack of consensus on the provisions of the Bills.

Single Integrated Legislation

In the year 2011, the DoLR again took a fresh initiative by merging the LA (Amendment) Bill and the R & R Bill into a single integrated Bill, i.e., the Land Acquisition, Rehabilitation & Resettlement (LARR) Bill, 2011 and placed it before the Cabinet for its consideration. It was approved by the Cabinet on 5 September, 2011 and introduced in the Lok Sabha on 7 September, 2011.The Bill was referred to the Parliamentary Standing Committee on Rural Development by the Hon'ble Speaker of Lok Sabha for examination & Report to the Parliament on 13 September, 2011. The Committee after detailed examination submitted its 31st Report on the aforesaid Bill to the Lok Sabha on 17 May, 2012 which was laid in Rajya Sabha on the same day. Based on the recommendations of the Parliamentary Standing Committee or otherwise, the Ministry prepared amendments to the aforesaid Bill. These were considered by the Cabinet in its meeting held on 28 August, 2012. As per the decision of the Cabinet, the matter was referred to the GoM. Three meetings of the GoM were held on 27 September, 2012, 8 October, 2012 and 16 October, 2012. Based on the recommendations of the GoM, the revised amendments to the LARR Bill, 2011 were placed before the Cabinet.

The Official Amendments to the LARR Bill, 2011 were considered and approved by the Cabinet in its meeting held on 13 December, 2012. These were proposed to be moved in the Parliament on 18th December, 2012 for consideration. But, the same were deferred to be considered in the next Session of the Parliament. There was still lack of consensus on the contentious Bill. Therefore, to ensure consensus on various provisions of the Bill, three all-Party meetings were held on 9 April, 2013, 18 April, 2013 and 5 August, 2013. Ultimately, a broad consensus was reached on its various provisions. Accordingly, the revised official amendments to the LARR Bill, 2011 were moved by the Department. These were considered and approved by the Cabinet in its meeting held on 8 August, 2013.

A New Era in LARR

Lok Sabha considered and passed the aforesaid Bill along with the amendments on 29 August, 2013. Though the Bill received the approval of the Rajya Sabha on 4 September, 2013, there were certain amendments relating to social impact assessment and R & R benefits. The Bill was therefore again sent to Lok Sabha which agreed to the changes on 5 September, 2013. As per the amendments, the name of the legislation was changed to "*The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013*". It received the assent of the President on 26 September, 2013.The Act has been published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 27 September, 2013 as Act No. 30 of 2013. The notification for commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Bill, 2013 was published in the Gazette of India Extraordinary, Part II, Section 3, sub-section (ii), dated the 19 December, 2013 and it has come into force from 1 January, 2014.

Conclusion

The RFCTLARR Act, 2013 had to cover an arduous and long journey of discussions/ consultations with a plethora of stakeholders and repeated modifications before a semblance of consensus could be arrived at. This is not surprising considering the importance of the land for the people in the country and the competing demands for it. Land issues affect a significant number of land losers, majority of who are marginal and small farmers and involve countless landless and other vulnerable people among those affected. Therefore, any further efforts to amend the new legislation must be thought and considered thoroughly and a wide and transparent consultation process must be ensured to build a consensus on this vital subject.

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Judicial Interpretation of the Land Acquisition Act in India: LAA, 1894 to RFCTLARR Act, 2013

Abstract

In the 120 years of its existence, the pre-constitutional colonial law, Land Acquisition Act, 1894, had been subjected to many interpretations by different courts of the country. These judicial interventions helped expose the inherent unfairness of the legislation, provided the much needed succor to the aggrieved land owners, cemented the way for many amendments and eventually laid the foundation for transition to the new law. On the implementation side, the interpretations provided ample clarity to operationally define many provisions. The paper makes an attempt to capture the essence of some of the important judgments that not only transformed the state-centric legislation to a more people-centric law but also provided operational clarity to some of the provisions that continue to be significant in the changed legal framework. As the country is getting into the implementation mode of the new law, this paper is contextually more relevant. Few judicial interventions in the case of new law have also been carefully chosen to provide greater clarity to the clauses with ambiguity or implementation issues.

Introduction

In a developing economy striving for economic and social transformation, land occupies a very central place. About fifty percent of the people continue to derive their livelihood from the agricultural sector in India. For a significant majority of our population, land is a dominant source of livelihood. Beyond the assured source of employment, land serves as a source of collateral, provides cushion against inflation and is a source of social prestige. On the other hand, land is a crucial resource required for development activities. The opposition to land acquisition stems from this dichotomy of views on land by different stakeholders. While traditional literature on development economics gave primary importance to optimizing labour and capital, very little attention was paid to land as a constraining factor. The developments in the last couple of decades have changed the focus to

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land availability as the most significant impediment to infrastructure development for the developing economies.

The Genesis of Regulatory Framework

The power of compulsory acquisition of land is possessed by the governments of all modern nations. The constitutional framework of various countries provides the power to compulsorily acquire land as the single exception to fully protected private property rights. In most countries, the legislative framework for acquisition of land specifies the mechanisms by which the government can compulsorily acquire land, the purposes for which compulsory acquisition can be used, the agencies and officials with the power to compulsorily acquire land, the procedures to be followed, the methods for determining compensation, the rights of affected owners/communities, the legal remedies etc. These regulations specify the instructions on how to carry out compulsory acquisition during all phases of the process.

In India, the genesis of regulatory framework of land acquisition date backs to the colonial times. The Bengal Regulation 1 of 1824 that applied to all the provinces under the presidency of Fort William, was the first legislative attempt in this regard. The law was premised on the doctrine of *Eminent Domain,* a legal theory of government taking power; the power of the sovereign to take or destroy private property for public purpose without the consent of the owner. The different definitions of the term including interpretations by the judiciary are provided in Box 1.1. In justification of the powers, the two most cited maxims are *salus pouli est suprema lex* (regard for the public welfare is the highest law) and *necessita publica major est quam* private (public necessity is greater than private necessity).

The Bengal Regulation 1 of 1824 was aimed at enabling the officers of the government to obtain, at a fair valuation, land or other immovable property required for roads, canals or other public purposes. Similar legislations were enacted in Bombay and Madras in the following decades called the Bombay Building Act XXVIII of 1839 and Madras Act XX of 1852. The legislation soon required to be enlarged for acquiring land for the railways in the middle of the nineteenth century. The Act XLII of 1850 declared that railways were public works within the meaning of the Regulation and enabled the provisions of Regulation I of 1824 to be used for the construction of railways.

Box 1.1 Eminent Domain

Eminent domain is the legal theory of government taking power; the power of the sovereign to take or destroy private property for public purpose without the consent of the owner. The term was taken from the legal treatise, *De Jure Belli et Pacis*, written by the Dutch jurist Hugo Grotius in 1625, who 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."

It is a right inherent in every sovereign to take and appropriate the property belonging to individual citizens for public use. This right, which is described as eminent domain in American Law, is like the power of taxation, an offspring of political necessity, and it is supposed to be based upon implied reservation by Government that private property acquired by its citizens under its protection may be taken or its use controlled for public benefit irrespective of the wishes of the owner (Chiranjit Lal Chowdhuri Vs. Union of India[1])

Eminent domain may be defined as the right or power of a sovereign state to take private property for public use without the owners consent upon the payment of just compensation. It means nothing more or less than an inherent political right, founded on a common necessity and interest of appropriating the property of individual members of the community to the great necessities and common good of the whole society. It embraces all cases where, by the authority of the state and for the public good, the property of an individual is taken without his consent to be devoted to some particular use, by the State itself, by a corporation, public or private, or by a private citizen for the welfare of the public (American Jurisprudence, Second, Volume 26, pp 638-39; Quoted by Apex Court in Sooraram Pratap Reddy Vs. District Collector, Ranga Reddy District[2]).

Eminent Domain is the inherent power of a governmental entity to take privately owned property, especially land, and convert it to public use, subject to reasonable compensation for the taking (Ramanatha Aiyar, Law Lexicon, 3rd Edition).

[1] AIR 1951 S.C.41 53-54

[2] Special Leave Petition (C) No. 2239 of 2006

The first enactment on land acquisition for the whole of British India was the Act VI of 1857, which repealed all the previous enactments (GoI, 1958). One drawback of the improvised Act was the lack of any provision for acquiring land for companies for providing public utility services. This was provided by the amendment to the Act in 1863. Further, under the Act, the Collector was empowered to fix the amount of compensation and disputes, if any, were to be referred to the administrators whose decision was to be final. The working of the Act revealed considerable dissatisfaction with the values arrived at by the arbitrators and the lack of legal remedy to get their decision revised. This paved the way for the enactment of the Act X of 1870. The Act, for the first time provided for a reference to a civil court for the determination of the amount of compensation when the collector could not settle the same by agreement.

The drawbacks associated with the 1870 Act finally resulted in the enactment of the LAA, 1894. The Act originally applied only to British India. The native states like Hyderabad, Mysore and Travancore passed their own legislations. Further, there were few amendments to the LAA, 1894 by some provinces (empowered by the Government of India Acts of 1919 and 1935 by which provinces could legislate with respect to compulsory acquisition of land). The amendment of the Act in 1923, the XXXVIII Act of 1923, for the first time provided an opportunity to the persons interested in the lands proposed to be acquired to state their objections to the acquisition of land and to be heard by the authority concerned in support of their objections.

Developments after Independence

The Constitution of India brought the subject matter of acquisition and requisition of property under Entry No.42 of Concurrent List, empowering the Union government under Articles 254 (2) to legislate on the subject and control the state legislations in line with the Central Act. The Constitution, as originally enacted, had provisions under Articles 19 (1) (f) and Article 31 which constituted the Fundamental Right to Property. The 44th Constitutional Amendment of 1978 removed the right 'to acquire, hold, and dispose of property' from the Constitution as a fundamental right and retained it as only a legal right in Article 300A (that is, no person shall be deprived of his property save by authority of law). Under the Constitution of India, states have the legislative competence to enact laws relating to land. However, acquisition and requisitioning of property is a concurrent subject. Land can be acquired either by the state or the central government for the purposes listed under state and central list respectively. The state governments can make any amendments they want as long as such changes are not opposed to the provisions as they stand in the Central Act. The LAA, 1894 Act underwent series of amendment in its 120 years of existence till its repeal and replacement by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act,

2013. The primary objectives of the amendments were to provide more reasonable award of compensation and institutionalize the timelines that could hasten the process of acquisition (Box 1.2).

Box 1.2 Land Acquisition Act – The 1984 Amendments

Timelines: *For the first time, a timeline was set up for completion of works under Sections 4 to 6 i.e. between preliminary notification and final declaration (one year) and under sections 6 to 11 i.e. between final declaration and award (two years).*

Higher Solatium: *The payment of solatium was increased from 15 to 30 per cent of the market value.*

Additional Market Value: *Payment of interest at 12 per cent per-annum was introduced covering the period commencing the date of notification under Section 4 till the date of award of the Collector or the date of possession, whichever is earlier.*

Negotiated Land Value: *Section 11A, Consent Award was introduced*

Award Re-determination: *Section 28A was inserted in the Act to provide equal benefits to all persons to automatically get similar amounts of compensation for losing similar quantum of land without further approaching any court.*

Procedure for acquisition of land for a public owned or state controlled body was provided by amending the words 'public purpose' vide Section 3 (f) (iv).

Compensation for Advance Possession: *For emergency acquisition under section 17, taking of possession was brought under a pre-condition of payment of 80 per cent of the estimated compensation.*

LAA, 1894: Interpretations of Judiciary

Laws are primarily enacted to achieve the social and political objectives of the State. The LAA, 1894 was enacted to primarily meet the need of the colonial state to create infrastructure to facilitate movement of goods and services for trade and commerce. The Act continued to serve the needs of the post independent India with its massive infrastructure development programme. The first two decades after independence saw some of the largest land acquisition projects in the country's history (multi-purpose irrigation projects of Bhakra Nangal in Himachal Pradesh, Hirakud Dam in Orissa, Damodar Valley Project in West Bengal, the Steel Plants in Bhilai, Rourkela, Durgapur etc). However, while efficiency in quick procurement of land was the hallmark of the legislation, dissatisfaction veered around its unfair implementation and inherent prejudice against the landowners. The issues emerging from the implementation of the LAA, 1894 were aptly captured more than forty

years ago by the Land Acquisition Review Committee[3]. Interestingly, much of the following quoted from the Report of the Committee in 1970 continued to remain largely true for more than four decades.

"The LAA 1894 is over 75 years old. When enacted it was not faced with the requirements of the Constitution of India. It is remarkable that broadly speaking it fulfilled the needs of the community for such a length of time. Even today, the Act is not so much vulnerable on its provisions as on the way the executive authority tried to implement them. From one end of the country to the other, the same story has been repeated again and again that it has been used as an engine of oppression by the administrative authorities and the weaker and poorer sections of the community have suffered the most. The complaint (not without substance) is that only an illusory compensation was awarded in an appreciable number of cases and that too was not paid for years. Emergent acquisition became the order of the day without the existence of any emergency. The law was ignored and the exception was made the law perhaps on the ground that observance of the law would have meant delay. The executive mind considered the delay in acquiring possession as a matter of great importance but the delay in payment of compensation to poor landowners as of no consequence. This callous indifference was manifested again and again. Many of the sufferers lost their hereditary occupation also which alone provided them with some sort of economic security. As a result, quite an appreciable number of citizens were completely uprooted and turned into refugees in their own land of birth"

Judicial Interpretations on Principles Governing Land Acquisition

Public purpose: Nothing has been more debated in the working of the LAA than the principles governing acquisition of land for public purpose, the absence of an exhaustive definition and the issues that emerge when land is not used for the purpose for which it was acquired. The LAA did not provide a conclusive definition of this term, and only an inclusive definition existed in Section 3 (f) of the Act. As per Section 6(3) of the amended Act, once a declaration has been made that the land is required for a public purpose; such a declaration is conclusive evidence of the fact that the land is needed for a public purpose. The expression, 'public purpose' has been considered by the courts in several cases. The present section gives a chronological order of the nature of the debate and important interpretations by the Apex Court.

One of the earliest important case was that of Hamabhai Framji Petit Vs. Secretary of State for India[4]. In that case, the Judicial Committee of the Privy Council had to

[3] The Committee consisting of Members of Parliament and nominees of the state governments was set up by GoI in 1967 to examine the entire framework of LAA, 1894 and its administration and to suggest improvement in its working.

[4] (1915) 17 BOMLR 100

consider the meaning of the words 'public purpose' occurring in a lease of the 19th century. The Court held that "*the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned*".

In the State of Bihar Vs. Kamleshwar Singh[5], the Apex Court observed that "it is the presence of general interest of the community in an object or an aim that transforms such object or aim into a public purpose" and further that "*the Legislature is the best judge of what is good for the community, by whose suffrage it comes into existence and it is not possible for this court to say that there was no public purpose behind the acquisition contemplated by the impugned statute*".

Given the above, another critical question which arose in the earlier years was if the existence of public purpose should be made justiciable. In the State of Bombay Vs. R. S. Nanji[6], the Supreme Court held that *though "prima facie, the government is the best judge as to whether public purpose is served by issuing a requisition order, it is not the sole judge. The courts have the jurisdiction, and it is their duty to determine the matter whenever a question is raised as to whether a requisition order is or is not for a public purpose. It is a fact that any law in India passed after the commencement of the Constitution would be unconstitutional if it seeks to make the executive determination of the existence of a public purpose final and non-justiciable"*.

In its 10th Report on the Law of Acquisition and Requisition of Land[7], the Law Commission of India had expressed the view that it was neither possible nor expedient to attempt an exhaustive definition of public purpose. All that can therefore be attempted in a legislation of this kind is to provide an inclusive definition so as to endow it with sufficient elasticity to enable the courts to interpret the meaning of public purpose according to the needs of the situation. The Report was made in 1958. Many subsequent cases too endorsed the view that it is not possible to lay down any hard and fast definition of public purpose which would meet the needs of the present and the future in a rapidly changing world. In other words, it implied that the purposes for which the right of acquisition may be exercised must be determined by the needs of the government.

In Somavanti Vs. State of Punjab[8], the Supreme Court held that the conclusiveness or finality attached to the declaration (Section 6 which provides that the declaration shall be conclusive evidence that land is needed for a public purpose) is not only as

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[5] AIR 1952 SC 352

[6] AIR 1956 SC 294

[7] Para 38, page 18 of the Report

[8] AIR 1963 SC 1951

regards the fact that the land is needed but also as regards the question that the purpose for which the land is needed is a public purpose.

The Land Acquisition Review Committee, 1970 pointed out that while the expression 'public purpose' is not capable of a precise definition, it would still be possible to specify cases in which acquisition should not be considered as being for a public purpose. The Committee felt that some restrictions on acquisition of land should be imposed in certain cases. This recommendation to place restrictions on acquisition of land in the LAA was however not accepted.

In Daulat Singh Surana Vs. Land Acquisition Officer[9], the apex court emphasized two points of judicial stand on 'public purpose' that the term should not be defined as it changes with passage of time and the interest of the community is always superior to the interest of the individual. Thus, the declaration of the Government as regards the existence of a public purpose was to be final except in cases involving fraud or colourable exercise of the power. The Supreme Court in the Sooraram Reddy Vs. Ranga Reddy District[10], articulated the grounds of review as (i) malafide exercise of power (ii) a public purpose that is only apparently public purpose but in reality private purpose or other collateral purpose (iii) an acquisition without following the procedure established under the Act (iv) when the acquisition is unreasonable or irrational and (v) when the acquisition is not a public purpose at all and the fraud on the statute is apparent. While the power of judicial review of the Courts makes the determination of public purpose justiciable, they have been generally placing restrictions on themselves and leaving it largely to the domain of the government.

The use (or abuse) of eminent domain powers is not confined to our country. The most talked about case in the recent times with regard to determination of public purpose was the Kelo Vs. City of New London[11] in the United States. The case related to the acquisition of 90 acre land along the Thames River in South Eastern Connecticut for economic development projects by the Connecticut State Agency, New London Development Corporation (NLDC). While the Supreme Court in a 5-4 majority decision ruled in favour of the City of New London, allowing the acquisition of private property and holding that the use of eminent domain for economic development did not violate the public use clauses of the state and federal constitutions and further that if an economic project creates new jobs, increases tax and other city revenues and revitalizes a depressed urban area, it does qualify as a public use. On a dissenting note, Justice Thomas stated[12], "*allowing the government to take property solely*

[9] AIR 2007, SC 471 (para 31, 32)

[10] SLP(C) No. 2239 of 2006

[11] 125 S.Ct. 2655]

[12] 125 S.Ct.2655, pp 2686-7

for a public purpose is bad enough, but extending the concept of public purpose to encompass any economically beneficial goal guarantees that these losses will fall disproportionately on the poor communities. Those communities are not systematically less likely to put their lands to the highest and the best social use, but are also the least politically powerful". Despite the favorable decision in favor of the private entity, the case generated much public debate and many States in USA introduced laws restricting the use of eminent domain.

Use of acquired land for other purposes: Another prominent issue in the implementation of the LAA, 1894 that had brought about considerable discontentment among the landowners was the frequent change of use of land from the one for which it was acquired from them. However, the judicial interventions have also been largely accommodative of the actions of the appropriate government. For instance, in Suresh Verma Vs. State of Punjab[13] case, the apex court held that, once the acquisition is complete, the land vests in the government, and it is subsequently open for the government to use it for some other purpose. Similarly in the Banwasi Seva Ashram case[14] too, the court did not find anything amiss about the change in plans or issues with the people who ought to have been consulted for the change in the objective with which land was acquired by them in the first place. The Court only directed the adoption of proper processes of payment of compensation or rehabilitation of the displaced by NTPC.

However, the abuse of the provision was well recognized as early as in the 1960s. Terming this as a form of abuse that is at least frequent if not rampant, a significant recommendation of the Land Acquisition Review Committee[15] was that if the land acquired or any portion thereof, is not used for the purpose for which it was acquired or for any other declared public purpose within reasonable time, the Government must offer the land to the original owner/perpetual lessee/tenant of agricultural land who has acquired occupancy rights, or their heirs as the case may be on repayment of the amount of reasonable compensation and it must also be made open to the owner or his heir to claim back the said land on the above terms from the government. The Committee felt that this would safeguard the land-owner from irresponsible action of such executive officers who completely forget that their act also involves considerable hardship and deprivation to the citizens of their country who also have certain basic rights. Notably, the Committee also pointed out that such a provision would induce them to calculate and estimate the quantity of land needed much more carefully and would also stop the abuse of excessive acquisition of land. The progressive recommendation of the Review Committee

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[13] AIR 1971, Punjab and Haryana (P&H), 406

[14] AIR 1987 SC 374

[15] LA Review Committee Report, 1970, page 17-18

remained in the realm of the Report till it found way as a provision in the RFCTLARR Act, 2013.

Judicial Interpretations Providing Clarity in Operationalisation of Land Acquisition Law

The operation of LAA and all its aspects have been aided by the significant number of case laws. While these case laws have been practically on most of the operational provisions, few important ones relating to possession of land and land valuation, that would continue to be of interest under the new legal regime are discussed below:

Possession of land: Under Section 16 of the LAA, 1894, the Collector could go ahead with possession of land after passing the award and upon doing so, the land vested absolutely in the government, free from all encumbrances. In terms of the plain language, the vesting of the acquired land in the Government takes place as soon as possession is taken by the Collector after passing an award under Section 11. However, the Act does not operationally define or prescribe the mode and manner of taking possession of the acquired land by the Collector. The above operational gap exists in the new legislation too. The judicial interventions would therefore be significant in the implementation of the new law and its retrospective applicability. The principles governing the process of possession, culled out from the various apex court judgments are given below:

- No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land.
- If the acquired land is vacant, the act of the concerned State authority to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.
- If crop is standing on the acquired land or building/structure exists, mere going on the spot by the concerned authority will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the concerned authority will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. However, the refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.
- If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken

by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

- If beneficiary of the acquisition is an agency/instrumentality of the State and 80 percent of the total compensation is deposited under Section 17(3A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken.

Box 1.3 Procedures for Possession of Land

It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession

Balmokand Khatri Educational and Industrial Trust Vs. State of Punjab[16]

No hard and fast rule can be laid down as to what act would be sufficient to constitute taking of possession of the acquired land. When there is no crop or structure on the land, only symbolic possession could be taken

Balwant Narayan Bhagde Vs. M.D. Bhagwat[17]

Appellant NTPC paid 80 per cent of the total compensation in terms of Section 17(3A). It is difficult to comprehend that after depositing that much of amount it had obtained possession only on a small fraction of land.

NTPC v. Mahesh Dutta[18]

When possession is to be taken of a large tract of land then it is permissible to take possession by a properly executed panchnama.

Sita Ram Bhandar Society Vs. Govt. of NCT, Delhi[19], Omprakash Verma Vs. State of Andhra Pradesh[20], Brij Pal Bhargava Vs. State of UP.[21]

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[16] (1996) 4 SCC 212

[17] (1976) 1 SCC 700

[18] (2009) 8 SCC 339

[19] (2009) 10 SCC 501

[20] (2010) 13 SCC 158

[21] 2011(2) SCALE 692

Land valuation: There are various case laws that helped operationalize the LAA, 1894. This is particularly true in terms of land valuation methods. The section confines to the land valuation method recognized by the new law viz. comparable sales method[22] and excludes case judgments pertaining to other methods including capitalization method. The new legislation spells out a methodology for calculation of compensation. However, the case laws would continue to provide operational clarity to several terms used in the Act like "similar type of land", "in the vicinity" etc.

The comparable sales method is the most frequently used method used to determine market value of land compulsorily acquired under the LAA. The rationale of the method is that a recent sale from a willing seller to a willing buyer of a property (the comparable property) is the best reflection of the value of the land. In Shaji Kuriakose Vs. Indian Oil Corporation Limited[23], the Supreme Court held that ***"It is no doubt true that courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act***. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. The Apex Court in India has therefore laid down many factors that are required to be fulfilled for the use of the method:

- The sale must be a genuine transaction.
- The sale deed must have been executed at the time proximate to the date of issue of preliminary notification under Section 4 of the Act.
- The land covered by the sale must be in the vicinity of the acquired land.
- The land covered by the sales must be similar to the acquired land.
- The size of plot of the land covered by the sales should be comparable to the land acquired.

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[22] The capitalization method was also applied when comparable sales information was not available. The land valuation under this method was done after multiplying the annual net returns or profit by a certain multiplier. The annual net returns is arrived at by first calculating the gross annual income (ascertained from all known components of income from the land) and deducting the annual total cost incurred from the production of gross income. The choice of the multiplier is important in reaching the determined compensation when using the capitalization of income method. In India, a multiplier of 10 is generally used for agricultural land. This multiplier has been broadly accepted by the Indian courts too. For assessment of the value of buildings based on their net rental income, a multiplier of 15 or 20 was typically used.

[23] (2001) 7 SCC 650

- The land covered under the sale instance should have similar potential as that of the acquired land[24]

The court has explicitly explained the factors that are essential to be categorized as comparable case, also pointing out the challenges in focusing on the location factor in case of developed and undeveloped land (Box 1.4). If the above factors are satisfied, it is held rational to provide for the sale value of the land covered by the sales for the acquired land. In Viluben Jhalejar Contractor Vs. State of Gujarat[25], the Hon'ble Supreme Court held that the amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. When there are dissimilarities with regard to locality, shape, site or nature of land between land covered by the sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land. The positive and negative factors in the valuation of land in cases of land acquisition are given in Table 1.1.

Table 1.1 Valuation of Land by Courts: Positive and Negative Factors

Positive Factors	Negative Factors
Smallness of size	Largeness of area
Proximity to a road the road	Situation in the interior at a distance from
Frontage on a road	Narrow strip of land with very small frontage compared to depth
Nearness to developed locality	Lower level requiring filling up the area depressed
Regular shape	Remoteness from developed locality
Level vis-à-vis land	Some disadvantageous factors which would deter a purchaser
Special value for an owner of an adjoining property to whom it may have some very special advantage	

Source: Viluben Jhajar Contractor Vs. State of Gujarat[26]

[24] Faridabad Gas Power Project – NTPC Ltd. and Others. Vs. Om Rakash & Others. [2009 (4) SCC 719]; Shaji Kuriakose and Another Vs. Indian Oil Corp. Ltd. and Others., AIR 2001, SC 3341; Ravinder Narain and Another Vs. Union of India, [2003 (4) SCC 481]

[25] (2005) 4 SCC 577

[26] *ibid*

The crux of the valuation problem in India is the understatement of the vast majority of registered sale deeds to reduce tax liability. Most states impose a transaction tax on sales of immovable property which ranges from 10–14 percent of the sales price. Parties to a transaction thus have a substantial incentive to understate the sales price. In recognition of this problem, all states have developed government-determined "registration values" or "circle rates" to help determine the basis for tax liability. Nearly all sellers and buyers just record the "registration value" in the sales deed even when the actual sales price is higher[27]. There are two other factors that result in undervaluation following this method. First, the tribal landowners are restricted by law from selling their land to non-tribals, resulting in significant reduction of the market value of their land and thus their compensation upon acquisition. Second, the poor people who had received land from the government through various measures are often restricted by law from selling their land, affecting the market value of that land.

The courts have also held that the potentiality of the acquired land should also be taken into consideration for ascertaining the market value of the land. The potentiality is the capacity or possibility for changing or developing into state of actuality. The potentiality of land depends upon its condition, situation, use to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions[28]. It has been held that failing to consider potential value of the acquired land is an error of principle in Kausalya Devi Bogra Vs. Land Acquisition. Officer[29]. The sales statistics method however also assumes that this is captured in the market value (Box 1.4). The apex Court has in numerous judgments in emphasized the need to take a pragmatic view in arriving at the market value. The following is quoted from the judgment of the two judge bench in Mehrawal Khewaji Trust (Registered), Faridkot and Others Vs. State of Punjab and Others (supra[30]):

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[27] Actual sale prices typically range from 20–100 percent higher than the "registration value" based on field experience in several Indian states. In ADB funded NHAI projects, the applied definition of "replacement value" is 200–300 percent higher than the compensation award made by the land acquisition officers. A World Bank assessment report of a Karnataka irrigation project found that their applied definition of "replacement value" was 122 percent higher than the average compensation provided based on registered sale deeds (ADB, 2007).

[28] Collector Vs. Dr. Harisingh Thakur (1979), 1 SCC 236; Raghubans Narain Singh Vs. U.P. Govt. AIR 1967 SC 465 and Administrator General of W.B. Vs. Collector (1988) 2 SCC 150; Himmat Singh and Others Vs. State of M.P. Civil Appeal No. 1248 of 2007

[29] (1984) 2 SCC 324 and Suresh Kumar Vs. Town Improvement Trust (1989) 2 SCC 329

[30] CA. No. 6792 of 2004

Box. 1.4 Case Laws-Market Value of Land

Value of Developed Vs. Underdeveloped Land

Market value of fully developed land cannot be compared with wholly underdeveloped land although they may be adjoining or situated at a little distance

Ranvir Sigh Vs. Union of India[31]

Factors Essential for a Sale to be a "Comparable Case"

The element of speculation will be reduced to the minimum if the underlying principles of fixation of market value with reference to comparable sales were made. Only when the following factors are present, it could merit a consideration as a comparable case

(i) When sale was within a reasonable time of the date of notification under Section 4(1)

(ii) It should be a bonafide transaction

(iii) It should be of the land acquired or of the land adjacent to the land acquired

(iv) It should possess similar advantages

Ravinder Narain Vs. Union of India[32]

Future Speculative Values Should Be Excluded

If a land has potential as building site, the market makes allowance for it, and naturally the market value of land rises accordingly. The market value itself includes estimates by the market of speculative advances in the value of lands in consequence of improvement already made in the locality or in consequence of potentialities for many purposes. The market, even in villages, take into account the use already made of similar lands in the locality and the probable most advantageous use similar lands are capable of being put to. It is not for the court to speculate as to the future potentialities of sites or lands. The Court has only to consider the market value on the relevant date. If the land has future potentialities, the market value includes the value of such future potentialities

Yeshwant Rao Govindrao Vs.The Collector Nagpur[33]

"It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied that it is a bona fide transaction, has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which

[31] AIR 2005 SC 3467

[32] C.A. No.11733-11734 of 1995

[33] AIR 1961 Bombay 129

similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation."

On the other hand, the courts have also pointed out the need to exercise caution in the claims to compensation of landowners in many cases (Box 1.5).

Box 1.5 Miscellaneous Case Laws on Land Compensation

No Higher Compensation On Higher Value of Land at Later Date

Claimants were entitled to the market value of land as on date of publication of notification under Section 4. Higher compensation could not be claimed on ground that after some years and after development of land, authorities were selling land at much more higher price

R.P.Singh Vs.Union of India[34]

Deduction of Materials for Land Acquired with Houses and Trees

House, buildings and trees were not required. The option was given to the landlord to remove the same and value of the materials removed is to be determined in the award. The amount determined had to be deducted from the sum payable as compensation.

Union of India Vs. Savjiram[35]

Compensation in case of Land with Building or Land with Fruit Bearing Trees

It is settled law that in evaluating the market value of the acquired property, namely, land and building or the land with fruit- bearing trees standing thereon, value of both is to be determined not as separate units but as one unit. Therefore, it would be open to the Land Acquisition Officer or the Court either to assess the land with all its advantages or fix the market value thereof on the basis of comparable sale instances. In case where comparable sale instances are not available and where there is reliable and acceptable evidence on record of the annual income, market value could be assessed and determined on the basis of net annual income multiplied by appropriate multiplier for its capitalization. In the case of fruit bearing trees its net yield is to be taken into consideration, that is to say, by deducting expenses incurred for getting the yield and also the value of the timber and expenses to cut and remove the trees from the land.

Airports Authority of India Vs. Satyagopal Roy[36]

[34] AIR 2005 SC 4189

[35] AIR 2004 SC 4532

[36] AIR 2002 SC 1423

Major Issues in the Land Acquisition Act

The LAA, 1894 was widely criticized for the wide misuse of its provisions over the years. The important issues associated with the Act are given below:

- *First,* the government was empowered to acquire land for a 'public purpose'. The term was not comprehensively defined and had wide potential for misuse. As explained above, the lack of clear definition of "public purpose" had resulted in the Apex Court providing for broad discretionary powers to the state in terms of deciding the contours of public purpose.

- *Second,* the LAA neither ensured minimisation of land acquisition nor focused on non-displacing/least displacing alternatives. Lands were acquired vastly exceeding project requirements in most cases. Often, acquired lands remained unutilised for years. As a result, there was scant regard for the sufferings of the people and the primary consideration always remained the interests of the parties for whom land was to be acquired.

- *Third,* the government was armed with urgency/emergency powers with which it could cut short the entire process of notices and objections. This became widely prevalent, not just confined for the purpose for which it was envisaged, causing tremendous discontentment among the affected communities.

- *Fourth,* the process of acquisition was very time-consuming and could take up to three years or more even if implemented without undue resistance.

- *Fifth,* despite the inclusion of the term 'persons interested' in LAA, 1894, very often, only the minimum subsets of affected landowners were identified. The compensation was paid to only those whose rights were formalised. The sharecroppers, landless labourers and others, who had an interest in the land, were not compensated. Several people practising agriculture were not legally registered and thus were not eligible for compensation, leading to widespread unrest. In many parts of the country and more prevalent in remote areas, the people had been living on land for years or even generations on which the government claims ownership.

  Also, the customary use and access rights to Common Property Resources (CPR) were not compensated though the access to the CPRs play an important role in the livelihood of poor people, particularly in the rural areas of the country

- *Sixth,* there was no clear formula given as to how compensation must be calculated in the central legislation (though the LA manuals in various states do provide for some guidelines). Government officials often considered the least value derived from all possible compensation approaches and as a result the final compensation arrived was often much lower than that expected by

landowners. The undervaluation due to reliance on understated values in sale deeds, explained above, was the most potent issue.

Further, the asset appreciation that occured after the determination of compensation resulted in a failure to reach replacement costs. In other words, the cash compensation, based on pre-project rates was in most cases not enough for recipients to purchase equivalent land at higher post-project rates. The replacement value advocated by international funding agencies like World Bank, Asian Development Bank etc. does not correspond to the compensation computed based on market value. More often, this has been a contentious issue between the state governments and multilateral funding agencies.

In Udho Dass Vs. State of Haryana and Others [37], the Supreme Court held that that although, provision has been made for the payment of solatium, interest and an additional amount in the 1894 Act, the same had not kept pace with the astronomical rise in land prices in many parts of India, and most certainly in North India, and the compensation awarded could not fully compensate for the acquisition of the land. The Court observed that the 12 percent per annum increase which had often been found to be adequate in matters relating to compensation, hardly did justice to those land owners whose lands had been taken away and the increase was even at times up to 100 percent a year for land which had the potential of being urbanized and commercialized.

- *Seventh,* the compensation was in most cases confined to cash. Land-for-land compensation options were often not considered. Non-existent/inadequate provisions of R & R, unproductive utilization of compensation amount and lack of alternative livelihood opportunities all combined to create an extremely unfair post-displacement experience for the affected communities.

- *Eighth,* in many states, the poor households were provided land by the state governments through land reform or government land allocation programs. Since such lands are inalienable, and if they were compensated, it was at a much lower rate with the courts too finding them in order. In some cases, the competent authorities held that such households were not entitled to any compensation.

- *Ninth, t*he low compensation standards and procedural rigidities were compounded in other central legislations (pertaining to highways, mining etc) which were highly loaded in favour of the project authorities

[37] (2010) 12 SCC 51

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

Given the above deficiencies and issues associated with the LAA, 1894, there had been an escalating demand from all quarters including the judiciary (Box 1.6) to have a more humane law that recognized the issues related to development-induced displacement. The RFCTLARR Act, 2013 is an effort in this direction.

Box 1.6 Archaic Legislation-Need for Replacement

There is no provision in the Act for rehabilitation of persons displaced from their land although by compulsory acquisition, their livelihood gets affected. Moreover, acquired land remains unused and untilised for years. The Act has become outdated and needs to be replaced at earliest, by fair, reasonable and rational enactment in tune with constitutional provisions.

Ramji Veerji Patel Vs. Revenue Divisional Officer[38]

Special Features of the New LARR Legislation

The 2013 Act provides for a comprehensive definition of public purpose, increases the quantum compensation for land, introduces provisions of mandatory social impact assessment for all projects involving land acquisition, 'prior consent rule' in select situations, mandatory R & R package to all affected families and extending the same beyond eminent domain acquisitions to land purchases (beyond the 'state fixed limits'), acquisition of multi-cropped irrigated land and acquisition of land in the scheduled areas made last demonstrable resorts, benefit sharing from accretion in land value of non-developed land, restraining indiscriminate use of urgency clause, change of purpose/ownership of acquired land, ensuring a participative, transparent and consultative process etc. The Act came into effect from 1st January, 2014.

Judicial Interpretation of RFCTLARR Act, 2013

In the two years of being in force, the judiciary has been flooded with a number of cases including invoking the retrospective applicability of the provisions of the new law, statutory right at the time of ordinance, deciding the multiplication factor, urgent acquisition, consequence of delay in issuance of Section 12(2) after Section 11, physical possession, preliminary notification, etc. These have been discussed in the subsequent sections.

[38] (2011) 10 SCC 643

a) Retrospective clause

Section 24 of the 2013 Act provides for retrospective applicability of the new legislation in certain cases. The Act came into effect from 1st January 2014. For those cases, where land acquisition award was passed under the LAA, 1894 before the said date, new legislation would not apply. However, if the proceedings were initiated and the award was yet to be passed, the determination of compensation has to be made under the new Act. For the old cases, where, the award was made five years before the commencement of the Act but physical possession was not taken or compensation was not paid, the proceedings would be deemed to have lapsed. The proviso to Section 24(2) also states that in those cases where the award has been made but compensation in respect of majority of land holdings has not been deposited into the account of the beneficiaries; all the beneficiaries would be entitled to determination of compensation in accordance to the provisions of the RFCTLARR Act.

The first and the most important case interpreting the applicability of the retrospective clause was the Pune Municipal Corporation Vs. Landowners case. The apex court went into the literal construction of the expression "compensation paid" occurring in Section 24(2) of the 2013 Act and held that ***the procedure, mode and manner for payment of compensation are prescribed in Section 31-34 of LAA, 1894[39]. The Collector can only act in the manner so provided.*** The apex Court held that the land acquisition proceedings shall be deemed to have lapsed because the compensation so awarded was neither paid to the landowners/ persons interested nor deposited in the Court. The deposit of the compensation amount in the government treasury is of no avail and cannot be held equivalent to compensation paid to the landowners/persons interested". The Court also clarified that the application of Section 6 of the General Clauses Act. 1897 with regard to the effect of repeals is subject to Section 24(2).

In Union of India and Others Vs. Shiv Raj and Others[40], the apex Court held that the period spent in litigation challenging an award cannot be excluded for the

[39] Section 31(1) of the 1894 Act enjoins upon the Collector, on making an award under Section 11, to tender payment of compensation to persons interested entitled thereto according to award. It further mandates the Collector to make payment of compensation to them unless prevented by one of the contingencies contemplated in sub-section (2). The contingencies contemplated in Section 31(2) are:

- the persons interested entitled to compensation do not consent to receive it
- there is no person competent to alienate the land and
- there is dispute as to the title to receive compensation or as to the apportionment of it. If due to any of the contingencies contemplated in Section 31(2), the Collector is prevented from making payment of compensation to the persons interested who are entitled to compensation, then the Collector is required to deposit the compensation in the court to which reference under Section 18 may be made.

[40] 2014 6 SCC 564

purpose of determining whether the period of five years has elapsed or not. If the possession has not been taken or compensation has not been paid due to the challenge to the land acquisition proceedings, the pendente lite period will be included to determine the five year period. The same was also held in another important judgment of the apex court in Sree Balaji Nagar Residential Association (BLNA) Vs. State of Tamil Nadu and Others[41]. In this case, it was noted that though there is a lack of clarity on the issue of payment of compensation to the majority of the land holding under acquisition, there was no dispute that possession of the land under consideration had not been taken and hence the proceedings are liable to lapse. The Court held that the proviso appended to Section 24 (2) comes into operation only when the physical possession of land has been taken.

In Velayan Kumar Vs. Union of India and Others[42], the Supreme Court while deciding that the acquisition proceedings for the appellants land has lapsed emphasized on the due procedures that ought to be followed by the acquisition authority for possession of land. The Court observed that, "it is clear from the facts and circumstances of the case that actual physical possession of the land in question has not been taken by the respondents. Even if, for the sake of argument it is accepted that possession of the land was taken by the respondents, it is clear that due procedure has not been followed by the Acquisition Authority by way of preparing proper 'Panchnama' in the presence of independent witnesses and the land-holders"[43].

However, there were cases which the High Courts denied the applicability of the beneficial clause. In M/S Akriti Global Traders Ltd. Vs. State Of Haryana and Others[44], the Punjab-Haryana High Court held that compensation was paid and the possession of land was taken for the construction of road. There is also one independent witness of the action of delivery of possession. The Court held that it is not necessary that there has to be multiple witnesses. Taking of possession and handing over to the State is an act performed by the officials in their ordinary course of business. Such act carries presumption of correctness. Therefore, the petitioner cannot be permitted to say that the act of taking possession is not proper. Similarly, in Maniben Bhikhabhai Ambaliya Vs. State of Gujarat[45], where

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[41] C.A.No.8700 of 2013

[42] C.A.No.10954 of 2014

[43] Other Similar Cases with respect to Section 24(2) decided in favour of land-owners by the Supreme Court include Bharat Kumar Vs. State of Haryana and Another – 2014, Rajiv Chowdhry HUF Vs. Union of India; Civil Appeal No.8786 of 2013, Govt. Of NCT of Delhi And Others Vs. Jagjit Singh And Others; Civil Appeal No. 2592 of 2015 and M/S. Competent Automobiles Co. ... Vs. Union Of India & Others; Civil Appeal No. No. 5054 of 2008.

[44] CWP No.14571 of 2015 (O&M)

[45] Special C.A. No. 14545 of 2012

land was acquired for the purposes of construction of a dam, the land owner is admitted to have received compensation but it has been contended that he continued to cultivate the land despite the compensation. The Gujarat High Court held that the contention of the petitioner therefore that possession of the land was never taken over despite acquisition is not born out from the materials on record and hence 24(2) will not be applicable.

b) Statutory right at the time of Ordinance

The RFCTLARR (Amendment) Ordinance came into effect from 1st January, 2015. The period 1st January 2015 to 31st August 2015 was a period governed by the ordinances. The Judgement of the Supreme Court in Radiance Fincap Ltd. Vs. Union of India[46] was another landmark judgment. The Court held that the rights of the parties in an appeal are determined under the law in force on the date of suit. In other words, the right conferred to the land holders/owners of the acquired land under Section 24(2) of the Act is a statutory right and, therefore cannot be taken away by an ordinance without giving retrospective effect to the same. The Court held that when a repeal of an enactment is followed by a fresh legislation, such legislation does not affect the substantive rights of the parties on the date of suit or adjudication of suit unless such a legislation is retrospective. This was also upheld by the court in Karnail Kaur and Others Vs. State of Punjab and Others[47]. The Judgment also answered another significant question of law with regard to the application of retrospective clause even when the land owned by the appellants only formed a small proportion of total land for which possession had been taken.

c) Discretion with appropriate government to decide the multiplication factor

As per the RFCTLARR Act, 2013, the state governments had to arrive at the multiplication factor on a sliding scale between 1 and 2, based on distance of the project from the urban area (for determination of market value in the rural areas). In Panjabrao Ganpatrao Borade Vs. State of Maharashtra[48], the Mumbai High Court, in its first of the kind judgement held that discretion available with the state government is only with regard to the determination of different slabs of multiplication factors depending upon the distance of the project from urban areas. There is no discretion of limiting the multiplier factor to a figure below two. The Court also held that the benefit granted by the statute cannot be nullified by the rules framed there under.

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[46] 2015 8 SCC. 544

[47] 2015 42 SCD 319

[48] W.P. No. 4274 of 2014

d) Non-compliance of Section 11 A in urgent acquisition[49]

In two cases, Laxmi Devi Vs. State of Bihar and Others and M/S.Soorajmull Nagarmull Vs. State of Bihar and Others, the Supreme Court while refraining from passing any orders or directions interfering with the possession of the respondent state over the subject land held that acquisition proceedings with regard to the subject lands have lapsed on account on non-compliance of Section 11A. In Laxmi Devi, the Court pointed out that it was imperative to distinguish between the setting aside of an acquisition and the reversion of possession to the erstwhile landowners. The Court held that the option that does the least violence to the intent and content of the Act is in upholding Section 11A even in cases of acquisition under Section 17 while preserving the requirement of Section 17 that the unencumbered possession of the land remain vested in the Government. While refraining from passing any orders or direction pertaining to or interfering with the possession of the Government over the subject land, the Court held that acquisition is set aside for non- compliance with the provisions of Section 11A of the LA Act.

In a similar case, M/S.Soorajmull Nagarmull Vs. State of Bihar and Others[50], the Court set aside the 1981 acquisition for non-compliance with the provisions of Section 11A of LAA, 1894 Act. The Court however stated that once possession has been taken by the state under Section 17, it is no longer open for the state to return the land to the legal entity who had been dispossessed from it. Accordingly, the apex Court directed the state to initiate fresh acquisition proceedings.

e) Delay in issuance of Section 12(2) after Section 11

In Smt Anitha Tholia Vs. State of Telangana[51], the Andhra High Court held that under Section 11 of the repealed Act, an award is made the moment it is signed by the Collector/Land Acquisition officer and does not depend on any other contingency including its actual communication. Thus, communication of award is not a precondition for making of the award. The Statute has not prescribed time limit within which notice under Section 12(2) should be issued. Given the above, the Court held that mere delay in issuing notice under Section 12 (2), does not vitiate the award made, as making of an award is not contingent upon its communication. Section 12 (2) is relevant only for the purpose of availing of opportunity to file application under Section 18 of repealed Act for reference to Civil Court.

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[49] According to Section 11 A, LAA, 1894, if no award is passed within two years from the date of declaration, the entire proceedings for acquisition of land shall lapse

[50] C.A.No.10394 of 2011

[51] W.P. Nos. 23476 of 2014

On the other hand in Devidas R. Bollaki Vs. State of Telangana[52], the Andhra High Court held that the communication of award dated 23.12.2013 through notice dated 31.12.2014 under Section 12(2) of Act 1 of 1894, is illegal and contrary to Section 24 (1) of Act 30 of 2013. The Court held that the file noting on 23.12.2013 cannot be treated as an award made under Section 11 of Act 1 of 1894 as it is not communicated as late as 31.12.2014. Further, Section 12(2) of Act 1 of 1894 mandates expeditious communication of award. So, to continue proceedings under Act 1 of 1894, the communication of award is necessary. Unless and until the rights are crystallized and accrued, the same cannot be put against a party. Therefore, the communication of award dated 23.12.2013 through notice dated 31.12.2014 under Section 12(2) of Act 1 of 1894, is illegal and contrary to Section 24 (1) of Act 30 of 2013. Consequently, it was held that the compensation should be determined under Act 30 of 2013 by passing a fresh award.

f) Physical possession of land acquired

In a detailed judgment going into meaning of term "physical possession", the Punjab-Haryana High Court in Sunita Sahrawat And Others Vs. State of Haryana & Others[53] held that the expression "physical possession" in subsection (2) makes it clear that mere formal possession is not sufficient. Actual physical possession is necessary to take the case out of the ambit of Section 24(2) of the RFCT Act. The Court however pointed out that there is no strait jacket formula for determining whether or not physical possession was taken and would therefore depend on the facts of each case. Though vesting of the acquired land in the Government takes place as soon as possession is taken by the Collector after passing an award under Section 11, the Act did not prescribe the mode and manner of taking possession of the acquired land by the Collector. The detailed judgement includes the procedures that are to be followed at the time of possession of land as interpreted by the Apex Court in various judgements (as explained earlier). The Court also raised three issues that it felt was of enormous importance in the applicability of the Act in the future:

1. Effect of third party rights having been created in the property over the years in cases where the compensation has not been paid or possession has not been taken.
2. Whether a proceeding can be said to have lapsed in view of Section 24(2) if possession of only a part of the property, however negligible or small a proportion it may bear to the whole, is not taken?

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[52] W.P.Nos.1467 of 2015

[53] W.P.No.6652 of 2014 (O&M)

3. Whether the proceedings could be said to have lapsed under Section 24(2) in cases where the Court grants an enhancement under Section 18 although the amount mentioned in the award had not been paid over to the persons interested or deposited in Court?

With regard to the notification of a Zonal Committee by the Governor for each of the five zones to decide the representations regarding retrospective clause, the Court held that the Panel is only for convenience and neither can any aggrieved person be compelled to approach the Panel nor would its decision be binding on the land owners/persons

g) Challenging preliminary notification

The Orissa High Court in Manipur Bhawan Vs. State Of Orissa[54] held that challenge to preliminary notification is not maintainable under the RFCTLARR Act, 2013 and can do so only after publication of declaration under Section 19.

h) Absence of timeline in other legislations

The Madras High Court in S.N. Sumathi Vs. State Of Tamil Nadu[55] held that in the absence of a timeline for lapse of proceedings under the State Act (Tamil Nadu State Highway Act), the proceedings cannot be declared as unconstitutional. The Court however suggested that the government may incorporate provision specifying time limit for determination of the compensation in the Tamil Nadu Highway Act similar to Section 11A of the LAA, 1894 and Section 25 of RRFCTLARR Act, 2013.

i) Depositing compensation in reference court post RFCTLARR Act, 2013

In Working Friends Cooperative Society Vs. State of Punjab[56], the compensation was deposited in the government treasury and upon the coming into the force of the Act was deposited in the Reference Court. The Apex Court held that the deposit was apart from anything else, made only after the Act came into force. Though a large chunk of land was acquired, the Court held that the land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the RFCTLARR Act in the case of appellant's land.

j) Locus standi of a subsequent purchaser

The Punjab and Haryana Court in M/S. National Packing Industries Vs. State of Haryana and Others[57] came down heavily on the petitioner stating that not only he has no locus standi to question the acquisition proceedings but also to claim

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[54] W.P.No.5096 of 2015

[55] W.P.No.34150 of 2014

[56] C.A.No. 8468 of 2015

[57] C.A.No. 2304 of 2014

the benefit under 2013 Act as he was a subsequent purchaser. The question whether a subsequent vendee has got locus standi to assail the acquisition process has been set at rest by the Hon'ble Supreme Court in earlier cases. It was held by the apex court in Sneh Prabha and others Vs. State of Uttar Pradesh[58] that any person who purchases land after publication of the notification under Section 4(1), does so at his/her own peril. The object of publication of the notification under Section 4(1) is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings point out an impediment to anyone to encumber the land acquired there under. Therefore, any alienation of land after the publication of the notification under Section 4 (1) does not bind the Government or the beneficiary under the acquisition. If any subsequent purchaser acquires land, his/her only right would be subject to the provisions of the Act and/or to receive compensation for the land."

On the other hand, the Delhi High Court in Priyaneet Kaur and Others Vs. Govt of National Capital Territory of Delhi and Others[59] disagreed with the primary objection of the Government that the petitioners being subsequent purchasers cannot claim benefits under RFCTLARR Act and held that once the acquisition is deemed to have lapsed because of Section 24(2) of the 2013 Act, the benefit of the same cannot be denied to the petitioners on the ground that the petitioners are subsequent purchasers.

k) Applicability of retrospective clause on central/special acts of the state

In Pramod Kumar & Another Vs. The State Of Bihar and Others[60], the Patna High Court held that the petitioner cannot claim enhanced compensation under the 2013 Act. According to the Court, the 2013 Act has substituted the LAA, 1894. Section 3(J) of the National Highways Act (NHA), 1956 specifically mentions that provisions of the Land Acquisition Act, 1894 would not be applicable in matter of acquiring the land under NHA. More importantly, the Court pointed out that the NHA, 1956 is a Special Act, while LAA, 1894 is a general Act, further holding that the special Act will prevail over general, on the principle of *generalia speciallibus non derogant* (special will prevail over general).

In Naranjan Singh Vs. Improvement Trust Hoshiarpur and Others[61], the Punjab and Haryana Court held that the provisions of the RFCTLARR Act, 2013 are not applicable to the acquisition of land under the Punjab Town Improvement Act, 1922 as Land Acquisition Act, 1894 was incorporated in the former Act. When a Statute is by reference or citation, the amendment to the earlier law is accepted

[58] 1996 AIR 540

[59] WP (C) 1393/2014

[60] Civil WP No.11748 of 2013

[61] CWP No.14958 of 1997

to be applicable to the later law while in the case of incorporation, the subsequent amendments to the earlier law are irrelevant for application to the subsequent law. Thus, the amendments made in the Land Acquisition Act, 1894 would not per se be applicable for the acquisition of land under the Punjab Town Improvement Act and hence the benefits under Section 24 (2) was denied. In another similar case, the Karnataka High Court (Sri Chikkaveerappa Vs. State Of Karnataka[62] held that land acquired under the Bangalore Development Authority Act could not claim compensation under Section 24 of the RFCTLARR Act. The High Court held that retrospective clause Section 24(2) is only applicable to lands acquired under the LAA, 1894.

Conclusion

The RFCTLARR Act, 2013 is a comprehensive legislation that provides enlarged benefits to the affected families, incorporates detailed transparency provisions to be carried out by the state agencies during the acquisition process and includes a plethora of safeguards to curb the misuse of the provisions of the acquisition law. The judicial interpretations will undoubtedly be critical to preserve the rights of the citizens enshrined in the land mark legislation. The interventions will also be significant to provide technical clarity to several progressive yet complicated provisions that provide wide room for interpretation. The new law also presents several challenges for the judiciary to tackle in the coming days. Of keen interest would be the way the Courts would take a stand on the potential illegal claimants to the R & R benefits which the law by itself does not amply take care; how it would deal with the governments trying to circumscribe the beneficial provisions of the legislation by coming out with alternate policies with much reduced benefits; of how it would lend more clarity to operationalize certain challenging provisions; of how it would try to balance the equity and efficiency concerns in land acquisition for infrastructure development.

[62] WP 1541/2007

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Implementation Concerns of RFCTLARR Act, 2013 - A Practitioner's Perspective

Abstract

In 2013, the Central Government repealed the 119 year old colonial legislation, Land Acquisition Act 1894, and enacted the Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013. The Act is a bold attempt to address two critical aspects: Acquisition and Resettlement and Rehabilitation (R&R). However, since the time this Act has come into effect, the pace of land acquisition in the country has slowed down. Concerns are being raised by various departments of the State Governments about the new provisions, complexities thereof and the difficulties in implementation. Notwithstanding the political developments on the issue, this paper highlights the concerns with respect to the implementation of the provisions of the new Act without going into the merits or demerits of the stated provisions. The concerns are purely from a practitioner's perspective.

Introduction

The issue of land acquisition has been a matter of much public debate in the recent times. With the economy stated to pick up a much higher annual growth rate, the issue becomes gigantic in terms of proportions. Majority of the population of the country are still economically dependent on agriculture. The Land Acquisition Act 1894 (LAA, 1894) of British era, based on the principle of *eminent domain* was the main legal instrument available with the Government for acquisition of private land for public purpose. Though 'Land' is a State subject, 'Land Acquisition' falls under the concurrent list of the Constitution. The LAA, 1894 had been an issue of debate among people and land acquisition practitioners. A series of amendments including a major amendment in 1984 failed to address some of the important issues associated with the involuntary land acquisition process. Land acquisition, particularly forcible acquisitions, definition of 'public purpose', widespread use of the 'urgency clause', inadequate compensation, lack of transparency in the

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acquisition process, lack of adequate participation and consultation with communities whose land was being acquired and virtually no R & R package as part of legal framework were the major issues associated with the colonial law. All these factors coupled with the urgent need to industrialize had put land acquisition and R&R issues at the heart of the debate in India.

The era of 119 years of LA Act 1894 ended on 26th Sept 2013, when the President of India gave assent to the much awaited RFCTLARR Act, 2013. It marked the beginning of a new era in the development history of India. However, it seems, the then Government of the day, in its enthusiasm and with the best of intentions drafted a law, not keeping the practicalities and implementation issues in mind. Without going into the merits and demerits of the provisions, this paper analyses clause by clause, the concerns and implementation hurdles the new legislation is likely to face. The concerns are only related to smooth and expeditious implementation of the Act so that a win-win situation is created not only for the affected community but the industry as well. The RFCTLARR Act has become effective since January 1, 2014. Since this period, land acquisition through the Act has slowed down considerably. The major issues inhibiting the smooth implementation of the Act is the procedural hiccups, non-clarity in certain provisions, delay in formulation of rules as well as delay in setting up institutional structures as envisaged in the Act. One of the major issues worth highlighting is the pre notification process of SIA and complexities thereof. Moreover, the rules being framed by the various state governments as well as other actions initiated at their level till date, indicate that strategies to bypass or circumvent the provisions envisaged are being actively contemplated. The issue being so politically sensitive, the present central government has also been weighing its political options to modify the legislation and has therefore allowed its own ordinances to lapse. The following concerns (from a purely practitioner's perspective), if probably addressed in right earnest could benefit all the stakeholders and avoid duplicity and overlapping mechanisms in the present legal framework.

Definitions of Key Words

Public purpose: Though Section 2 (1) defines the public purpose, the list is very comprehensive and practically covers all land acquisition requirements of the governments. One of the major objectives of the Act was to define public purpose so that land acquisition by Government could be reduced. The list of public purpose activities could have been leaner and trimmed.

*Affected family***:** Section 3 (c) (i) covers all land owners losing land as affected families, irrespective of the quantum and percentage of land acquired and consequent livelihood lost. This implies that people with miniscule land holdings (even in decimals) will also qualify for the same R&R benefits as others, though

their livelihood may not have been dependant on these small parcels of land. This will encourage people to divide their land artificially in smaller parcels and sell them through an organized network, thereby increasing the number of affected families and consequent land acquisition cost. One can surely look into similar activity going on rampantly in the State of Chhattisgarh in the industrial districts or for that matter any industrial district of the country.

*Adversely affected family***:** Section 3 (I) (iii) of the Act mentions 'adversely affected families' though the term is undefined in the Act.

Scheduled area: Section 3 (zd) does not cover the tribal areas of the North East included in Schedule VI of the constitution. Hence, strictly adhering to the provisions may mean non-applicability of provisions of Scheduled Areas in the Act to the Schedule VI areas (mentioned only once at 42 (2)).

*Involuntary displacement***:** It has been left undefined though used extensively in the Act. If it is linked with the definition of displaced families, then it could be interpreted as wherever physical relocation or shifting is mandated or required.

Resettlement and Rehabilitation: These have also been left undefined. While some organizations and policies use 'resettlement' as a composite word involving both relocation and livelihood restoration issues, others use it differently. For clarity, these requires to be properly defined.

Social Impact Assessment (SIA)

Time-bound SIA: The Act mandates the conduct of an SIA for the proposed land acquisition area prior to initiation of land acquisition. This is totally a new dimension in the LA process as now acquisition process cannot be initiated prior to successful completion of SIA. Earlier, social impacts were assessed as part of Environment Impact Assessment (EIA), albeit for the 10 km radius study area. However, it was not a pre requisite for initiation of land acquisition. The new legislation provides for a detailed modus operandi for conducting SIA in addition to the EIA process and which will be a necessary pre notification process to land acquisition. In Sections 4 to 8, the mechanism and timelines for determining whether the project is for public purpose has been detailed. The Act provides for SIA by appropriate government in consultation with Gram Sabha or an equivalent body in urban areas as part of preliminary investigation for the land acquisition which will assess the legitimacy of public purpose involved, impact on affected families and the availability of better alternatives. A time schedule of six months has been envisaged for the conduct of the SIA study. Further, time period of around 3 months has been kept for appraisal and approval. During the SIA, a public hearing is to be conducted to ensure full participation of affected families. There is also a provision to prepare a Social Impact Management Plan (SIMP). However, there is no restriction of land transaction

during the process of SIA. During the period of SIA, the real land owner may not be known owing to non-updation of land records. It is also pertinent to mention here that the fate of project/acquisition of land is still not decided till the appraisal of expert committee and approval of appropriate government. The major concerns with regard to the new provisions are given below:

Public purpose: SIA is applicable mandatorily before any land acquisition process for public purpose irrespective of the quantum of land being acquired. Even if an SIA has been conducted for a particular project of public purpose, prima facie it appears that any additional land requirement for the same public purpose project also requires repetition of the entire process. One of the major objectives of conducting SIA is to assess whether the proposed acquisition serves public purpose. Since a comprehensive list of public purpose projects has already been included in the Act, it can straightaway be determined whether the proposed acquisition falls in the specified categories or not, even without conducting the study.

Estimating affected families – a difficult task: Estimation of affected families and displaced families at the SIA stage is not expected to be accurate as the transactions are frozen only at a later date viz. at the time of preliminary notification. In the light of numerous experiences in the past, it can be stated with certainty that consequent to the project proposal, the transactions increase with a view to avail the R & R benefits[1]. Taking advantage of this loophole, a large number of families settle in the area just for getting R&R benefits, though not dependant on those areas of land for livelihood.

Difficulties in tribal areas: The land records are not updated in most areas, particularly the tribal dominated areas, (it is as old as 1912 in some areas)[2]. No accurate estimation is possible till the land records are updated prior to SIA. The land records updation is a complex process. The sale purchase transaction and their registration deeds are maintained in separate documents and are not updated in the land records, unless and until mutation is done and is entered in Record of Rights (RoR). Updation of ROR is generally done after a fixed tenure. In practice, it is seen that land records continue to show old land owners (and they continue to give *lagan*/revenue receipts) even after the lands are acquired and projects commissioned.

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[1] In order to curtail entitlements to such persons, a three year limit prior to cutoff date was introduced in National Policy for Rehabilitation and Resettlement (NPRR), 2003 for eligibility for R&R benefits. This was subsequently deleted from NRRP-2007 for land owner affected families and this is being continued even in the present Act.

[2] State of Jharkhand

- The tillers on Government Land particularly Gair Majrua Khas (GMK) land.
- Land records in tribal dominated areas under Schedule V and VI of Constitution of India.

Consent of land losers: The provision of taking 80 percent and 70 percent consent (provison to Section 8 (3)), would also be impractical till one knows the real resident/ owner of the land in the area. In other words, these clauses would be implemented in true sense only, if the cutoff date is shifted to at least section 4 (i.e. notification for SIA) or 3 years prior to Section 4 as per updated land records (which could be done at least at the time of Section 4, if not before). Moreover, it would be prudent if the list of landless labourers, sharecroppers etc are also updated & entered in the land records. This is already being done in West Bengal. However, it is understood that some state governments are incorporating in their rules, to update land records prior to conduction of SIA, specially in those cases where prior consents are required to be taken as part of SIA.

SIMP - duplicity of an action: Preparation of an SIMP is a noble thought but in reality a duplication of the exercise. It would be prudent if the impacts are identified at the time of SIA and the ameliorative measures are included as part of the finalization of R&R scheme rather than preparing a separate SIMP. The SIA should only assess the desired objectives and suggest measures to be included in the R&R scheme for mitigation of impacts.

Public hearing: The SIA also involves conducting a public hearing to ascertain the views of the affected families. It may be prudent to mention that the Act envisages two public hearings and six public consultations (additional consultations for schedule V & VI areas). Further, public hearing is also mandatory as part of EIA and the same is also taken cognizance by Ministry of Environment and Forests (MOEF) while considering environmental clearance[3]. The Forest Act also envisages conducting of Gram Sabhas. Each agency claims that their hearings are for specific issues. Those who have conducted/attended public hearings will be able to vouch how such platforms are hijacked by local leaders and politicians, as well as social activists and NGOs. Many a times the conduct of public hearings is itself obstructed. There is a need to ensure that such consultations are not hijacked by vested interests.

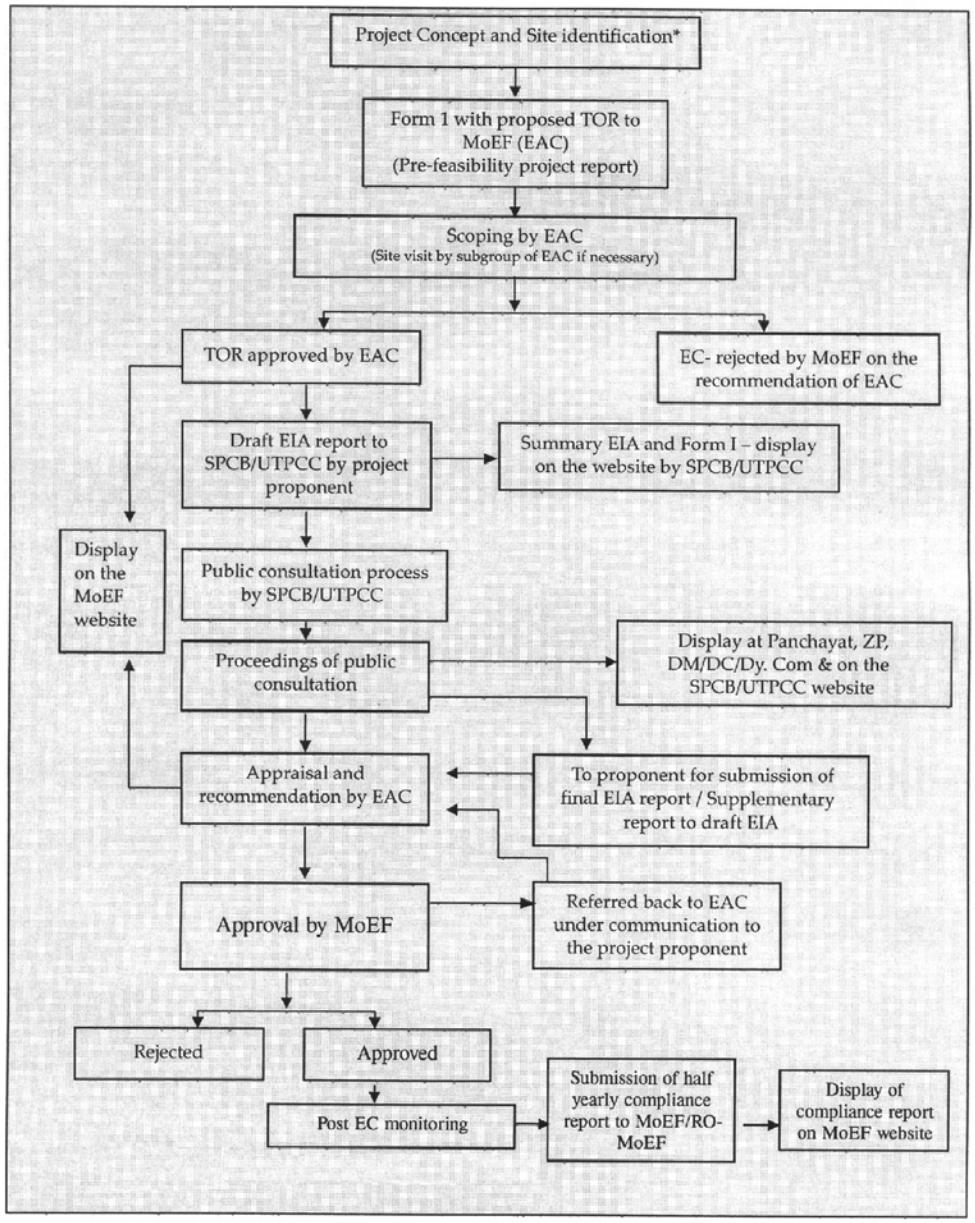
SIA units: As per the SIA and Consent Rules framed by the Department of Land Resources, Government of India, the States are required to create well equipped SIA units to operationalise the SIA. These are yet to be done in most of the states. Further, to the best of the available knowledge, not a single SIA report is available in the public domain post the implementation of the Act. The first SIA was conducted in Punjab for a very small area of 10.88 acre in Village Pallanpur. Instead, the

[3] The process of conducting public hearing has also been made mandatory for certain developmental projects through its notification issued on 10.04.1997. The issue raised in the public hearing including social issues are taken cognizance of by SPCB and consequently by MOEF which considering clearance for the project and the issues are suitably addressed through conditions imposed while issuing the clearance letter.

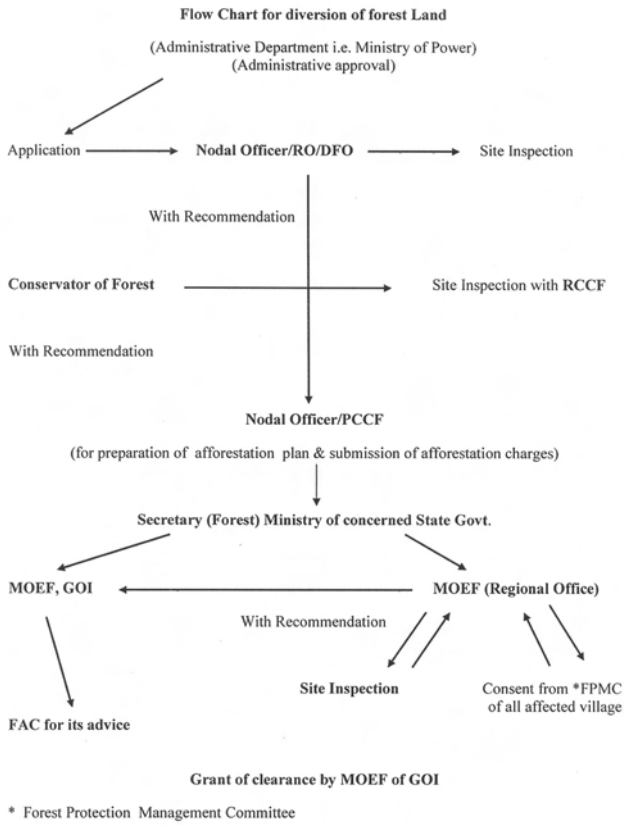
States are envisaging to get these studies conducted through various institutes without any established procedures. There is no proper system or justification of costs for conducting the SIA Study. The project authorities are being asked to deposit money whatever is being demanded by these institutes. These issues if not addressed at this stage may lead to bigger challenges in the future. The entire exercise could be challenged as biased and prejudiced depending upon the institutions being selected to conduct the SIA assignment.

Different yardsticks for SIA: The Act envisages exemption of SIA for irrigation projects where EIA is required under the provisions of law for the time being in force. EIA is also mandatory in a similar manner for power projects (both thermal and hydro) and for many other infrastructure projects. Why should we have different yardsticks for different projects? It would be in the fitness of things to entail similar provisions of exemption of SIA for power and other infrastructure projects, where EIA is mandatory.

Issue of SIA vs EIA: Notwithstanding the above, the Act envisages that a copy of SIA report is to be made available to the EIA conducting agency. This, in effect means EIA cannot be completed prior to completion of SIA, leading to further extending the time cycle. On preparation of draft EIA, the State Pollution Control Board shall have to organise another public hearing for MOEF clearance process. Practically, one cannot restrict the proceeding and agenda of any public hearing for specific social or environmental issues as these are all inter-linked. This clearly is a case of duplicity of efforts involving a lot of time and money.



Box1: The EIA Clearance Process Framework



Box 2: The Forest Clearance Process Framework

Issue of additional compensation: The Act envisages granting of 12 percent compensation additionally to the market value from the date of publication of notification of SIA (section 30 {3}). This should either be shifted to section 11 (at which point the transactions in land are frozen) or the cutoff date should be advanced to the SIA notification date under section 4 to maintain parity.

SIA Expert Group: With respect to issues related to appraisal of SIA by an expert group, the constitution of the committee itself is likely to be very subjective and will lead to questioning by different stakeholders.

Restriction on Acquisition of Agricultural Land

In order to safeguard food security, the RFCTLARR Act restricts any acquisition of irrigated and multi-cropped land. Acquisition is allowed only in exceptional circumstances, as a demonstrable last resort, with adequate safeguards (development of equivalent area of cultivable wasteland or land value to be deposited with government). As the land profile of each state differs, state wise distinctions

have to be specified with regard to the net sown area for the acquisition of agricultural land. Restrictions on acquisition of multi-cropped irrigated land will lead to significant reduction in the available land pool. Linear projects are exempted from this provision. Though this safeguard has been introduced with a well deserved intention, implementation of the provisions will be an uphill task leading to delay in project execution. Till date, only six states (Table 1.1) have specified limits as required under Section 10 (2) while framing rules/issuing separate Government Orders (GOs). Incidentally this major item has been inadvertently not mentioned in Section 109 for formulation of rules.

Table 1.1 Limiting Acquisition of Multi-crop Irrigated Land- State Government Rules/Orders

S.N.	State	Provisions
1	Telangana	Shall not exceed fifteen percent of the net present cultivable area in the state and the limits in the district shall be prescribed by the District Collectors.
2	Chhattisgarh	Shall not exceed two percent of the total irrigated multi-cropped land in the state.
3	Jharkhand	Shall not exceed 1/4th of the net present cultivable area in the state and limits in the district shall be prescribed by the District Collectors.
4	Madhya Pradesh	Shall not exceed 50 percent of the highest net sown area in a agricultural year, by all projects in the district.
5	Maharashtra	The irrigated multi-cropped land and the total net sown area of the concerned district or state shall in no case exceed twenty per cent in aggregate for all projects in a concerned district or state.
6	Kerala	Shall not exceed two percent of the aggregate net sown area in a district and five percent of the aggregate net sown area within the state.

If the specific limits are required to be prescribed by District Collectors, it makes the decision process individual oriented, defeating the very purpose/intention of its incorporation in the legislation. Experience with the compensatory afforestation incases of forest clearance and utilization of funds has not been very encouraging. It can only be sincerely hoped that a similar fate is not awaiting the implementation of Section 10 (3) of the Act. It would be prudent if a list of all culturable wastelands is firstly made available in public domain. Further, it is also not clear if the exemptions available for linear projects will be applicable to linear nature of some of the

components of other infrastructure projects like merry go round railway systems of power projects, roads, pipe line corridor etc (Section 10(4)).

Land Acquisition Process: Notification and acquisition

The RFCTLARR Act, 2013 has more or less retained the provisions of the LAA, 1894, albeit with minor additions. The major concerns with regard to the acquisition process are as under:

Freezing transactions: As explained earlier, the justifications of freezing transaction at the preliminary stage (Section 11 (4)) do not make any sense and it should be at the date of notification for SIA.

Updating land records: The updation of land records should be done before conducting SIA for genuine consultation under SIA. As stated earlier, the issue is being addressed by some state governments through required stipulations while framing rules at least for the projects requiring consents. In any case, two month period for updation as mandated by the Act is too short a period. This is impractical if a genuine updation has to take place. In states like Jharkhand, the land records have been last updated between 1910 and 1920. So updation of records is practically difficult, if the area involved is large and if it goes beyond a district boundary.

Objections by land losers: In Section 15, the landowners can raise objections for suitability of land, justification for public purposes, as also the findings of SIA. This is entirely a repetitive effort; since ample opportunities are given at the time of SIA to raise objections, even in writing. A public hearing is also mandatory during SIA where everybody is given an opportunity to raise their concerns.

What happens if objections against SIA Report are accepted? If the findings of SIA are found questionable, does it go back to the section 4 stage? In that case, will the entire process be repeated or shelved? Would this not be questioning the credibility of the government and the role of its own experts who assessed the SIA? The entire process will thus serve no purpose and only delay the execution of the projects. This process was understandable as part of the earlier LAA, 1894, but under the new Act with a mandated SIA process, this should have been modified suitably.

Who is an affected family? It would have been more prudent if Section 16 was carefully worded. If the definition of affected families (Section 3(c)) is closely scrutinized, it includes all land owners whose land has been acquired irrespective of the quantum of loss making them eligible for R&R benefits. The interpretation of Section 16 (1) (b) may, however, mean the land-losers who lose livelihood. Making all land owners eligible for R&R benefits and giving a uniform package to all is totally impractical. The policy makers seem to be unaware of the ground realities in Chhattisgarh and Odisha where one would find land transactions in small decimals

soon after a project is announced. This is solely done to enter their names in the list of affected families and thereby claim entitlement for R&R benefits at a later date.

Capacity to undertake census: Are the state governments ready to undertake such survey and census? In some states, the governments are requesting the project authorities to undertake such surveys due to lack of infrastructural or institutional capacity.

Role of Gram Sabha: Section 16 (2) envisages the Administrator to prepare a draft R&R scheme which is to be publically discussed as part of public hearing in every affected Gram Sabha involving more than 25 percent of land proposed to be acquired. It is not clear whether this takes into account only private land or other lands like government land, forest land etc. Though it has been mentioned that consultation in Scheduled Areas will be as per provisions of PESA, does this leave out Schedule VI areas as PESA is only applicable in Schedule V areas?

Public hearing: The public hearing mandated by the Act after preparing the draft R & R Scheme is the third public hearing (others being done as part of EIA and SIA). Only after the third public hearing, the final declaration (Section 19) for any proposed land acquisition can happen. Have the policy planners ever thought of the project cycle? The repetitive public hearings are a major concern.

Depositing full compensation: Under Section 19 (2), the requiring body has to deposit full (or part) amount before declaration. Infrastructure projects require large tracts of land. The estimated expenditure for compensation and R&R benefits would be huge as per the provisions of the new Act. Whether all project authorities, especially the state governments, would be able to comply with this is doubtful, especially when the project execution is uncertain at this stage and the projects are yet to achieve financial closure. The utilisation of the amount in any case is going to happen only on the passing of award under Section 30 and 31. It would be prudent if the condition of deposition of money was prescribed prior to Section 30, instead of Section 19.

Difficulties in mining projects: Different stages for land acquisition and R&R as envisaged in Section 19(2) and (3) would face practical difficulties especially in case of mining projects. In practice, the land acquisition may be smoother and expeditious if done at one go even if the project components are envisaged to come up in stages.

Retrospective Clause

Maximum litigations[4] have occurred in the past two years on the provisions of the retrospective clause given in Section 24 of the Act. The courts have strictly gone as per the stated provision and ruled accordingly without going into other merits. There are numerous instances where some part land acquisition has been completed (award passed prior to 1st January 2014 or coming into force of the New Act) for a particular project and the balance which was in process has now to be awarded at per the new rates and provisions of the RFCT LARR Act. In a proposed railway line passing through several villages as part of coal transportation system of a power project, some of the villages were awarded prior to the said cut-off date. For the remaining villages, where award was delayed owing to some procedural issues on account of state governments, the compensation had to be awarded at the enhanced rate. The list of anomalies which will arise due to Section 24 could be diverse and endless. Normally, any new legislation is applicable from prospective effect. It would have been prudent if Section 24 was removed altogether.

Determination of Market Value

Replacement value: Section 26 provides a detailed mechanism to arrive at the realistic market value. However, it still falls short of declaring replacement value for assets as the guiding principle. This is a prime requisite of international funding agencies. The replacement value principle should have been mentioned in Section 29 to determine the compensation of building and assets.

Inflating market value: The specific mention of inclusion of highest value sale deeds to determine the market value has the potential for more paper transactions with the purpose of notionally inflating the market value. Though a clause has been eventually added empowering the Collector for discounting any sale deed that is not reflective of the ground reality, this may be practically irrelevant as revealed in the experience of land transactions in Chhattisgarh, Odisha and Jharkhand for some infrastructure projects.

Other Issues

Shares as part compensation: This is envisaged in Section 26 of the Act. The provision may be impractical. The shares of a company having multi location or pan national presence will also be difficult to be offered to specific location families. The volatility

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[4] Supreme Court Judegments in Pune Municipal Corporation and Another Vs. Harakchand Mishrilal Solanki and Others (Civil Appeal Nos 877 to 894 of 2014), Union of India and Others Vs. Shiv Raj and Others (Civil Appeal Nos 5478-5483 of 2014), Sree Balaji Nagar Residential Association Vs. State of Tamil Nadu and Others (Civil Appeal Nos. 8700 of 2013 with Civil Appeal Nos 8701 of 2013; 8702 of 2013; 8703 of 2013; and 8704 of 2013); Delhi High Court Judgement in Jagjit Singh and Others Vs. Union of India and Others (WP-C Nos 2806/2004 & 2807-2934 /2004)

of these shares will depend on a number of factors beyond the specific location. Is distribution of shares in a locality and community who have largely never experienced market trading really advisable? Isn't this fraught with risks particularly in case of private organizations prone to frequent ownership changes? Offering of shares as a benefit sharing mechanism, over and above the compensation would have been a much better alternative instead.

Religious or linguistic minority institution: Specific inclusion of a paragraph on determination of market value for a religious or linguistic minority institution in Section 26 should have been avoided. Further, in absence of definitions for these categories of institutions, it may lead to implementation hurdles.

Additional market value: Apart from the issue of notification date of SIA as the cut-off date for payment of 12 percent, there are conflicting interpretations to this clause as to whether this additional 12 percent amount is to be loaded before or after loading the solatium and various states are interpreting it differently.[5]

Issues Pertaining to R&R Award

A totally new provision of preparation of individual R&R awards has been introduced in addition to land acquisition awards. The R&R awards are to be passed for each affected family in terms of entitlements provided in the second schedule. Thus, finalization of affected families and its correctness gains utmost importance and criticality, prior to this step. Section 31 (2) envisages at least 11 entries to be made in the R&R award. This is different from the procedural practice of LA Awards which are prepared in a different fashion. Few practical concerns are given below:

Cumbersome process in preparing awards: In the states, where land holdings are small, the number of affected families will be large and preparation of individual awards with provisional entries would be quite cumbersome. Furthermore, joint holdings for which land compensation was paid by a single cheque for all account holders under LA Award would now entail separate awards for each joint owner. The bank account numbers will have to be opened and details collected in advance so that they could be entered in the award. All the above processes are going to be time consuming.

Issue of landless families: Awards to be made for landless families is going to be a complex issue as there is no proper documentation readily available and freezing of this list at this stage would be compulsory. If a landless family is working both in affected and non-affected area, it would be tricky for administrator to identify and

[5] States of Uttar Pradesh and Andhra Pradesh are loading solatium before 12 percent additional market value. While in Odisha solatium is being loaded after adding 12 percent additional market value.

freeze the list rationally, realistically and expeditiously. Further, if a landless family working in affected area, is able to move and restore his livelihood and work area alternately in non affected area, is he entitled for a uniform rehabilitation package or should be compensated only for transient temporary disturbance? It remains unclear.

Mandatory employment: A new dimension has been added in the legal framework by adding the mandatory employment at Section 31 (2) (h). How would the provision of employment be implemented before finalizing the likelihood of available vacancies? Another issue is to find out the suitability of potentially affected families and their members. What would be the time frame for this? These are all very politically sensitive issues that people would not dare to question but may be difficult to implement in the present suggested scenario.

Irrigation/hydel projects: Section 38 (1) requires the Collector to take possession of land only after ensuring full payment of compensation as well as R&R entitlements. Further, for irrigation or hydel projects, R&R has to be completed within six months prior to submergence of the lands acquired. R&R process is to be completed in all its aspects before displacing affected families. So, all activities including mandatory employment will have to be completed before displacement. Though the word displacement has not been defined in the Act, a displaced family has been defined as the one who has to be physically relocated or resettled. The completion of all R&R prior to taking possession will be an uphill task and easily challengeable in the courts.

Issue of multiple displacement: Sections 39 and 40 (3) envisage payment of additional compensation in matters of multiple displacement and on grounds of urgency. It is not clear whether a person who was a minor at the time of first displacement and became a major at the time of second displacement would qualify for additional benefits at the time of second and successive displacements. The multiple displacement benefit at present seems to be applicable to only displaced families. However, whether a person who has lost only land but not displaced earlier or has been displaced earlier but now losing only land would qualify for additional benefit is not clear.

Denial of additional compensation incase for urgent acquisition for national security: Denial of additional compensation in certain cases as per Section 40(5) in not in line with the spirit of the Act and it would have been prudent if additional compensation in cases of urgency is paid to all, irrespective of the project objective.

Issue of Scheduled Areas: Sections 41 (1) and (2) envisages avoidance of acquisition of land in Scheduled Areas and only as a demonstrable last resort. The entire debate of keeping the Scheduled Areas away from the development process needs a fresh

outlook as such provisions would only result in such areas not getting the fruits of development. While provisioning additional benefits and safeguards are understandable and should be supported, including it as a 'no go' area as part of a legal document or an Act is neither advisable nor implementable. Further, the prior consent clause of Gram Sabhas or Autonomous District Councils goes even beyond the provisions of PESA which provides informal consultation only.

Issues related to Schedule Castes (SCs) and Schedule Tribes (STs): Section 41 (6) envisages payment of compensation to SCs and STs in installments, the final installment after taking over the possession of the land. This seems to be an error as the entire compensation for all affected families is to be paid in full, prior to taking possession of the land (Section 38). It is not clear whether provisions of Section 41 specially sub-sections 4, 5, 6, 8, 9, 10 and 11 is applicable to all affected families of SC & STs in all areas or from the Scheduled Area only (while it appears only for scheduled areas, it is open to interpretation in the absence of clarity). In case it is only for Scheduled Areas, should it not be extended to SCs & STs of other area as well?.

R&R Process

This chapter details out the manner and procedure to be adopted for R&R and has been more or less adapted from the National Rehabilitation and Resettlement Policy (NRRP, 2007), albeit with minor modifications. The concerns with regard to practical implementation are as under:

Need to define displacement: Since the term 'involuntary displacement' has not been defined in the Act, can it be presumed that the Administrator is to be notified only in case of displacement i.e. physical shifting or resettlement (Section 43 (1)) and not in case the affected families losing only their land but not entailing displacement?

Social audit: Section 44 (3) and 45 (1) envisage post implementation social audit in consultation with Gram Sabha. All the activities including provision of infrastructure facilities in the resettlement area need to be completed within and not later than 18 months of passing R&R award. It is not clear if the social audit is to be done immediately after the award in the absence of any time frame mandated by the Act. Whether it is one-time or to be repeated subsequently is also not clear. The Terms of Reference (TOR) for the social audit should also be formulated as part of framing rules to make the exercise more objective. Unfortunately, none of the states have thought of the same till date. Further, MOEF clearances normally specify conduction of annual social audits as well, which again would lead to duplicity of efforts.

R&R Committee: Section 45 (2) indicates a broad framework of the R&R committee. Whether the 100 acre limit as proposed in Section 45 (1) is only for private land or entire land for project area is not clear. Is the selection of members entirely at the discretion of the appropriate government? All such queries still remain unanswered despite framing of rules and guidelines by majority of the states.

Issues with Respect to Direct Purchase of Land

Can PSUs purchase land? Section 46 (1) specifies guidelines for purchase of land by private entities through private negotiations (other than specified persons), though a typographical error in the definition of specified persons indicates just the opposite. This raises two pertinent issues. Does the present Act not allow the appropriate government and the government companies to purchase land through private negotiations? If that is the case, it is unclear how some states and PSUs are coming up with their own individual purchase policies or indulging in direct land purchase albeit with an objective of faster land procurement/acquisition and referring to the relevant provisions of the Act for direct purchase. Unfortunately, some of these state policies on purchase provide lesser compensation and R&R benefits than envisaged in the Act. Purchase policies of MP and UP[6] are a case in the point. The Government of West Bengal insists that land should only be directly purchased by the industries on a 'one to one' basis. The state does not even have any basic guidelines similar to UP & MP Policies for implementation.

Variation in land purchase limits for R&R benefits: Even if the limits specified by various state governments as required under Section 46 (5) are examined, the limits are as low as 10 acres in Chhattisgarh to as high as 6250 acres in UP and 5000 acres in Jharkhand and Andhra Pradesh?. Is it a mockery of diversity or an intentional strategy on the part of various state governments to circumvent the provision of R&R benefits? On the other hand, it may be the complexities involved in the implementation of this section that is responsible for the states to take up this step. The land purchase limits for applicability of R&R provisions as specified by various states are given in Table 1.2

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[6] As per "Consent Land Purchase Policy" dated 12th Nov'2014, Government of Madhya Pradesh, land compensation is as per collector guidelines or at prevalent market rate plus compensation of properties will be given as compensation. An equivalent amount as R&R benefits shall also be given to land owner only.

As per "Land Purchase Policy on Mutual Agreement" dated 19th March, 2015, Government of Uttar Pradesh, maximum compensation must not be more than 4 times of Collector guidelines/ prevalent market rate in rural areas. However, in RFCTLARR Act, compensation as decided as per Section 26 is minimum. The direct purchase policy is silent on R&R benefits. R&R benefits as per rules framed by GoUP are applicable only in case of purchase of more than 2500 Ha, thereby almost negating the payment on account of R&R as Rehabilitation Grant.

Table 1.2 Limits for Land Purchases for R&R Applicability

States	Limit as specified
Bihar	1000 Ha (2500 acre)
Jharkhand	2000 Ha (5000 acre)
Madhya Pradesh	No mention (But purchase policy with less entitlement framed)
Chattisgarh	4 Ha (10 acre)
Uttar Pradesh	2500 Ha (6250 acre)
Maharashtra	1000 Ha (2500 acre)
Karnataka	220 ha or 500 acre dry/20 ha or 50 acre irrigated land (lower limits for housing & education)
Telangana	800 Ha (2000 acre)
Andhra Pradesh	2000 Ha (5000 acre)
Kerala	101.47 Ha (250 acre)
Government of India	40 Ha (100 acre)

Private negotiation and R&R benefits: Section 46 (6) envisages sharing of compensation for land purchased through private negotiations after 5th September, 2011. This clause is silent on R&R benefits. Logically, if a person has recently purchased land immediately before the land acquisition, whether his livelihood is to be compensated or for those who were tilling it since ages but parted off just before is another issue.

Other Concerns in the Implementation of the Act

National Monitoring Committee for R&R: It would be premature to comment at this stage on monitoring committee except that the Act envisages too many committees. It has been frequently experienced by the practitioners that they are practically left attending different committee meetings all day long, leaving little time for actual implementation and involvement thereof.

*Payment of compensation***:** This provision is similar to the earlier Act albeit with minor modifications with respect to the new provisions of LA and R&R authority. However, Section 80 regarding applicable interest for the period between possession and payment would now probably be applicable only in case of urgent acquisition (scope of which has now been severely restricted). The higher payment by the LARR Authority is unlikely given the fixed compensation formulae and also since compensation and R&R are being decided on a consultative basis.

Temporary Acquisition of Land: Section 81 pertains to temporary acquisition. It would have been prudent if this section could have also covered Right of Use (ROU) or Right of Way (ROW), wherein land is temporarily required to lay underground pipelines. This is becoming a serious bottleneck especially in cases where pipelines are required to transport material other than minerals for infrastructure projects. There are Acts available for transportation of gases, oil pipelines, other minerals etc but not for water. Once this is envisaged, provisions in the Act to restore and return of land could be similar as provisional in Section 82 albeit with a restriction barring the land owners to put any permanent structure for which suitable and adequate payment of compensation could be envisaged. Till date only five states have come up with an ROU/ROW Act-Gujarat, Haryana, Orissa, MP and Bihar.

Partial impacts: Section 94 pertains to acquisition of part house or building. However, it also deals with land which could be part of that house or building. Section 94(3) is unclear and on reading it conveys a meaning exactly opposite of what it is intended to. The project proponents are often requested by affected families to take over their balance left out land claiming that they are now not economically viable. While some of these demands could be for extracting greater benefits, there are also many genuinely affected people. However, the Act is silent on these cases.

Exemptions from income tax: Section 97 could also have been made available to agreements under private negotiations under Section 46 especially when direct purchase of land is being promoted by state governments in a big way. The stamp duty or registration charges could be borne by the requiring body. This would be in line with the spirit of Section 96.

Return of unutilised land: The provisions of Section 101 are likely to face challenges and implementation issues, especially in projects having long gestation periods and where the land is required in stages (like mining projects). Suitable amendment was introduced in the ordinance, which has been withdrawn. Further, the return of land to the original owners or their legal heirs will remain a tricky issue without return of compensation given earlier.

Option of taking land on lease: Though this option is introduced in this Act under Section 104, this could have been more elaborated. The project proponents are apprehensive of the risks involved in case of non-renewal of lease. Infrastructure projects in particular are long term projects having long shelf life. For instance, though an average life of a power project is around 25 years, the projects run efficiently much beyond that period and in case of lease, this spans much beyond a single generation. This would therefore require adequate safeguards to be in built for addressing these concerns. Another issue is related to financing of the project. International lending institutions insist that land and property should be wholly owned by the project to make available finances. Lease hold properties may entail

difficulties in securing financial closure and may be able to secure loans at a higher rate of interest thereby increasing the overall cost of the project. However, this option could be exercised for real estate projects. An alternative option could be to acquire land and evolve a benefit sharing mechanism with the stakeholders. This could be a win-win situation for all. A beginning is being made in that direction at least in case of hydro power and mining projects. Let us hope that similar mechanisms are put in place for other infrastructure projects as well.

Higher R&R benefits: Though Sections 107 and 108 empower the states to formulate higher benefits but these are silent on whether states can bypass the procedures or other non-monetary provisions. A case in the point is certain legislations which are being drafted/enacted by some state governments e.g. Tamil Naidu, Rajasthan etc, where some of the monetary benefits may have been increased but the procedural aspects are not entirely in consonance with the provisions of the present Act.

Implementation Issues in the First Schedule

Apportionment of compensation: This is envisaged among the persons interested. Though similar provisions existed in the earlier Act, these were rarely implemented in the absence of documented agreements of interested persons (informal agreements are still the norm in rural Indian society).

Multiplication factor for rural areas: The factor is to be between 1 and 2, based on the distance from the urban area. The multiplication factors notified by different state governments are given in Table 1.3. Whether they comply with the provisions of the Act is highly debatable. Some states have interpreted it to mean that they are competent to limit the factor to less than two in the rural Areas. Madhya Pradesh, Chhattisgarh and Andhra Pradesh fall in this category. Incidentally, a similar decision by Maharashtra was struck down by the Hon'ble High Court. The factor was subsequently raised. The multiplication factor in various states is given in Table 1.3

Table 1.3 State-wise Multiplication Factor in Rural Area

S. No.	States	Multiplication Factor Rural Area
1	Bihar	2.0
2	Jharkhand	2.0
3	Kerala	2.0
4	Madhya Pradesh	1.0
5	Odisha	Radial Distance from Urban 0-10 Km - 1.0 11-20 Km - 1.2 21-30 Km - 1.4 31-40 Km - 1.8 Above 40 Km - 2.0
6	Chhattisgarh	1 in rural area, subject to minimum compensation including (solatium+ interest) 6 lacs for barren land 8 lacs for single crop land 10 lacs for irrigated land
7	Uttar Pradesh	2.0
8	Maharashtra	Municipal Area- 1.0 Non municipal area- 1.5 Area not covered above- 2.0
9	Karnataka	a) 1 in TMC, CMC City Corporation area b) 1.5 for outside of the above area but within 5 Km radius c) 2 other than above
10	Telangana	1.5 in rural area other than Schedule Area 2.0 in rural area in Schedule Area
11	Andhra Pradesh	1.25 in rural area other than Scheduled Area 1.5 in rural area in Scheduled Area
12	Haryana	2.0
13	Assam	1.5 upto 10 KM radius from Urban Area 2.0 beyond 10 KM
14	Tripura	1.5 upto 10 KM Radius from Urban Area 2.0 beyond 10 KM
15	Punjab	0-10 Km from Urban-1.0 10-20 Km from Urban-1.5 Above 20 KM – 2.0

Value of assets for compensation calculation: As explained earlier, possession of land cannot be taken under RFCTLARR Act before payment of compensation/R & R. Since the values of assets are also to be included in the land compensation award, the entire exercise will remain incomplete till the valuation of assets is finalized. This involves various departments and can be expected to delay the process.

Implementation Issues in the Second Schedule

Housing units: In practice, people create overnight structure to avail resettlement benefits, sometimes even in connivance with state government officials[7], claiming that they use it for residential purposes. This aspect could have been addressed in the law. Since the new Act envisages everything to be done only by the state government without the involvement of project authority, possibility of such activities will surely increase. Further, the Indira Awas Yojna specifications leave much to be desired.

Land for land: In case of provision of 'land for land', it is not clear whether this provision for SCs & STs is applicable to all projects or only for irrigation projects. There are different interpretations in various government circles. If it is mandatory, the provision would be very difficult to implement. Even if it is accepted that this clause is applicable only for irrigation projects, the clause could be interpreted to imply that any affected family is entitled for allotment of minimum one acre while SCs & STs will be provided land equivalent to land acquired (which could be even less than one acre). A clearer wording of the paragraph is extremely important to remove this anomaly.

Employment as an entitlement: Employment as a rehabilitation measure is surely going to hit the implementation process. It is also not clear who has the authority to select the options, the affected family, project proponent or the appropriate government? Most infrastructure projects are capital intensive, using state of the art technology. Even if the project proponent is sincere in making this option workable, it may not succeed because the number of jobs available will not match the large number of affected families. The provision of employment through the vendors and agencies has the likelihood of raising techno-economic and legal issues in practicality. There are also other social issues that emerge when the jobs are provided as a limited measure.

Annuity: Though annuity policies are a noble idea and initiated by several companies, not many financial institutions are making it available in the market. There are

[7] In one specific project in Hazaribagh district in Jharkhand, the number of original homesteads increased manifold to avail Resettlement benefits. False certification of overnight structures as residential units by state government officials has happened in the past in many infrastructure projects.

implementation issues as twenty years and beyond is a very long period. The annuity concept is just like a dole or a pension which is normally paid once a person becomes old or superannuates or comes in the marginalised or vulnerable category. Provision of annuity at a young age may only create a dependency syndrome. Further, since the person does not get the lump sum amount, he cannot use this money for investment and entrepreneurial activity. The opposite view is that the people misuse the money in wasteful expenditure, if given in lump sum, which is also a valid viewpoint. It would be more prudent if people are guided and educated in using the money gainfully rather than denying them this opportunity altogether. Further, drafting of the paragraph relating to annuity is subject to interpretation and can be read in the following manner;

a) This is applicable only to agriculture labour affected families;

b) The indexation is as per Consumer Price Index (CPI) for agricultural labour, though applicable to all; or

c) Normal affected family shall get Rs. 2000 per month without indexation and an agricultural labour affected family shall get annuity along with appropriate indexation to the CPI.

   This doubt has primarily arisen because the indexation proposed for other monetary benefits have been linked with general CPC, whereas for annuity, this is linked with CPI for agricultural labour.

Resettlement Allowance: The Second Schedule also envisages a onetime resettlement allowance. Whether it is applicable to all affected families or as per logic should be given only to displaced affected families. In the absence of definition of resettlement, this is open to interpretation.

Second Schedule: Similar challenges also exist in interpreting Section 16 (b) and the heading of second Schedule, as to whether all land owners are entitled for R&R benefits or only those land owners whose livelihood is primarily dependant on land. Logically, the second interpretation should be correct but it conflicts with definition of affected family as given under Section 3(c) (i).

Implementation issues in the Third Schedule

Development in affected villages: The Third Schedule specifies minimum infrastructure facilities and basic amenities to be provided in the resettlement colonies. However, the Act does not mention about community development works in the project affected villages, where affected families though not displaced, continue to live. Surely, there is a need to take up infrastructural development and welfare activities even beyond the resettlement areas. Experts point out that this comes under the domain of Corporate Social Responsibility (CSR) and therefore

such development works should be covered under CSR policy. However, CSR funds are normally available only out of profit and that will happen only when the project is completed and starts operation. Do the affected families need to wait till such time? In fact the need and requirement of such funds and activities is much more during project construction stage.

The state governments direct the project proponents to take up big ticket community projects like setting up engineering colleges, medical colleges, polytechnics etc. prior to or simultaneously with the proposed project. These developmental projects involve huge funds and surely cannot wait for CSR funds to be made available. It would have been more prudent if such community development activities which are essential to be undertaken during construction stage as a part of land acquisition process are also made part of this schedule or elsewhere in the Act as part of R&R Scheme.

Conclusion

Though the efforts and objectives of Government of India for enactment of the new Act are well appreciated, however, the implementation of Law is more important than its creation as an idealistic legal policy. The concerns raised in the paper are genuine and faced by many organisations envisaging acquiring land through the provisions of this Act for their projects. The paper also suggests possible modifications to address the concerns, wherever feasible. The non-clarity on the issues raised in the paper is preventing smooth and expeditious implementation of the Act. The policy makers may do well to address the concerns highlighted in the paper to create a win-win situation for all the stakeholders in the times to come. It would be an earnest wish that the Act becomes a working document that facilitates and contributes to overall socio-economic growth of the country and its subjects in particular.

Annexure I

Maximum Timelines Prescribed Under RFCTLARR Act, 2013

Tentative Time Lines

SN	Section No.	Event	As per LA Act, 1894	As per RFCTLARR (Month)
1	4	Pre SIA Process (preparatory work)		4
2	4/8	Social Impact Assessment process/ Consent validated in SIA process/ Public hearing on SIA	-	6
3	7	SIA Report evaluation by Expert Group	-	2
4	8	Examination of proposal by Appropriate Govt.	-	1
5	14	Preliminary notification from the date of appraisal by Expert Group	-	12
6	11	Preliminary notification of intent (11) to acquire land for public purpose till the declaration of Public purpose	12	12
7	19-31	Notification on declaration of public purpose till the award	24	12
8	38	Completion of full payment of compensation and disbursement of monetary part of R&R entitlement	-	6
9	38	Possession of land by Collector	-	2 (estimated)
		Earliest start of the project thereafter	36	57

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Social Impact Assessment in India

Abstract

Social Impact Assessment (SIA) originated about fifty years ago as a tool to assess the potential negative social impacts of development projects. In India, it is barely two decades old, and has emerged mainly in response to the lessons learned from past project failures, the pressures from civil society groups and farmer protests against their displacement. Initially mandated as a policy guideline, it has recently become a law. This paper looks at the recent SIA experiences and issues, and concludes with suggestions on ways to turn it into an effective resettlement planning tool.

Introduction

The impacts of development projects occur in different forms. While significant benefits result for the society, the people in the project area may often bear the brunt of adverse impacts. This can happen, for example, when they are forced to relocate to make way for building dams, highways, power stations and such infrastructure projects. There is now a growing concern over the fate of the displaced people. This has given rise to the need to understand beforehand the implications of adverse project impacts so that mitigation plans could be put in place in advance. It is this context that Social Impact Assessment (SIA), known to foresee and mitigate adverse project impact, has gained recognition.

SIA is important for all development planners, but it is particularly so for industrial and infrastructural development projects. Research has shown that it is always helpful to consider in advance the likely impacts of a proposed investment on the affected people and devise ways to manage its negative aspects. If an assessment finds that people are opposed to the project, there is no use proceeding with it only to retreat later under pressure. Shell International, for example, believes that focused attention to social dimension shows definitive business returns (Jones, 2002).

Why So Much of Focus on SIA?

SIA has been around for quite some time. Social scientists have long been involved in doing impact assessment of various kinds of interventions on society. However,

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SIA, as it is known today emerged about fifty years or so, as a tool to anticipate and manage potentially negative outcomes of development projects. SIA has since been widely in use in USA and other western countries for planning development projects with positive effects on their performance. Essentially, it is a tool for doing development better.

In India, SIA emerged more than a decade ago. Several factors have brought it into existence. The strong pressure from civil society groups has been a known trigger. Other factors leading to its emergence include firstly, the recent unprecedented rise in farmer protests against their displacement for the sake of development projects, and secondly, the planners' concern for people displaced by development, coupled with their own worries over the possible negative impacts of the increased land-related conflicts on development overall. Concerned over these developments, the planners have now turned to SIA, the tool known to help foresee and mitigate socially disruptive project impacts.

In the past, SIA was not a requirement for planning purposes. Development projects were often launched without any prior consideration of their potentially adverse social impacts. Designed to promote development for all, they instead ended up inflicting unintended hardships for the local population (Mathur, 2016). The Sardar Sarovar Dam, one of the Narmada project components, is one such example. An Independent Review Commission for Sardar Sarovar Dam set up by the World Bank in 1991 found that this project was launched without even the basic data on the number of people that it was going to displace. It further noted that this was inexplicable because by then the World Bank had developed policies and procedures on SIA and the planning of resettlement (Morse and Berger: 1992).

Ignoring Development Impacts

Even now, the adverse social impacts of development projects continue to be mostly ignored. In Orissa, for example, the Lower Suktel Irrigation Dam Project that re-started in 2013 after a long interruption, was first started without an assessment of its possible adverse impacts on a large tribal and dalit population living in the area and facing submergence (Agnihotri, 2016). Sometime later after its launch, a study of this project was conducted in the context of developing a comprehensive resettlement policy for the Orissa government. Though not planned as an SIA, not even remotely, this developed into a study that came close to being an SIA for the Lower Suktel project. The study recommended that an alternative be explored that dispenses with large-scale displacement, and generates benefits for the entire local population rather than only for some powerful landowners. However, the government preferred to ignore even the findings of this study. And as per recent reports, the project is now proceeding the way it was initially designed, knowingly ignoring the dam's avoidable adverse social impacts that are bound to hurt the poor.

The situation is not much different in the World Bank-funded projects, either. Studies have shown that the deficiencies in the initial survey of project impacts subsequently make it difficult to prepare realistic resettlement plans, and to deliver resettlement entitlements in ways that were acceptable to the project-affected people (Mathur, 2013). Still, the planners of Mumbai Urban Transport Project (MUTP) failed to learn from these experiences. The consequences of a flawed initial Baseline Socio-Economic Survey (BSES) for this project, which failed to make a precise inventory of the various categories of MUTP-affected persons and their incomes, later hugely complicated the resettlement implementation process and left large numbers inadequately compensated and dissatisfied (Modi, 2016). This led to angry protests first against the project authorities and then against the Government of Maharashtra. When the affected people failed to get a satisfactory response to their grievances, they approached the World Bank's Inspection Panel. Eventually, intervention by the Panel resolved the problems, ending the long persisting deadlock (World Bank, 2005) The fact, however, remains that had the initial assessment of impacts been carried out with care, in a participatory manner, the MUTP resettlement implementation would not have been as troublesome as it turned out to be.

Emergence of SIA in India

The promulgation of a National Rehabilitation and Resettlement Policy in 2007 was hailed as a major development on SIA (Government of India, 2007). It replaced the earlier National Resettlement and Rehabilitation Policy, 2003 under pressure from civil society and other groups. The 2003 policy was the first that mandated SIA as an integral part of the resettlement planning process. More details and processes in SIA were incorporated in the subsequent 2007 policy. The policy laid down that SIA should be carried out whenever a new project or expansion of an existing project was undertaken. This also required the preparation of a Resettlement Action Plan (RAP) to mitigate negative social impacts arising from the project implementation process.

Although the 2007 policy was seen as an initiative that introduced more detailed process of SIA in India as a prerequisite for planning, but on closer examination it turned out to be not as promising as it seemed at first sight. The impacts for an SIA that the policy underlines are losses to buildings, institutions, places of worship and facilities. Such obvious key social impacts as disintegration of a close-knit community, social networks and the disappearance of an entire way of life are not emphasized (Iyer, 2011). Emphasis in the policy is primarily on counting loss to community infrastructure rather than losses to individuals that negatively affect their lives. Moreover, as a recent review of implementation of the SIA provision in the National R&R policy, 2007 has brought out, the policy remained largely on paper, un-implemented (CSD, 2010). This was mainly due to the absence of guidelines for

conducting SIA, though there were feeble attempts in some projects to conduct SIA.

SIA Policy Becomes Law

While violations of a policy do not attract a legal penalty, the violations of law do. To give teeth to the policy, a new land acquisition and resettlement law has now come into effect. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 replaced a nineteenth century old land acquisition law of 1894, and integrate the 2007 resettlement policy with some amendments (GoI, 2013).

Under the new law, SIA is a legal requirement for all cases of proposed land acquisition, which must be completed within six months (Shekhar, 2016). To ensure credible SIAs, it provides for consultation and public hearing, and even prior consent (80 percent of all landowners in case of private projects and 70 percent for Public Private Partnership projects). To ensure that the SIA report is evaluated independently, it also provides for the constitution of an Expert Group. Before going ahead with the project, government is expected to examine the SIA report in detail primarily to see that the acquisition of land is for a legitimate and bona fide public purpose and involves minimum displacement.

Turning SIA policy into SIA law is a new initiative that meets a long-standing demand of both impact assessment experts and civil society groups fighting for a legal provision for SIA. But it is not clear whether SIA will receive the same importance in development decision-making processes as other components — technical, economic, environmental and financial. In accordance with this law, SIA is to be conducted, not before a new project is undertaken, but much later, just before initiating the land acquisition process. Normally SIA is undertaken as the first step once a decision has been made to proceed with the project, because if the impacts are identified as severe early enough, this gives the planners time to decide whether they still want to go ahead with the project as it is or go ahead with some modifications in the project design. With no requirement to conduct SIA in the very beginning stages of project preparation process in the new law, SIA may well turn out to be yet another case where voluminous reports are produced, but with no intent to use them ever, simply an exercise in futility.

Putting SIA into practice is also not going to be an easy task. The challenges at the operational level will be enormous. At present, the lack of skilled manpower to carry out SIA is an obvious hurdle. The required capacity cannot be built overnight. It takes time to build institutional capacity, and this will require greater attention and more importantly, commitment.

Criticism of the New Law

The new land acquisition and resettlement law has already come in for some criticism. Critics have pointed out that it has left investors largely unhappy and civil society groups complaining that it has not gone far enough to protect farmer interests. A major criticism from developers against the new law, especially its provisions regarding the prior consent of farmers, mandatory SIA and other time-consuming procedures is that these will ensure that the slow moving land acquisition process gets still slower. But this view is not acceptable to all stakeholders particularly those who claim to speak for farmers.

Taking these conflicting viewpoints into consideration, the Government is trying to amend the law suitably, enacted barely two years ago (Mathur, 2016). But these efforts have not yet succeeded, because of the strong opposition to the proposed amendments from some political parties in the Upper House of the Parliament (Rajya Sabha), where the government lacks majority. Meanwhile, the effort to dilute the SIA and other provisions in the new land law, through the promulgation of ordinances, seems to have been given up, and SIA stays as a central requirement for all development planning.

Issues in SIA

(a) Distortions in reporting SIA findings

A major issue in social assessments is that they can often be manipulated. Financial institutions require a favourable SIA report to clear a project proposal. To meet this requirement, developers often force SIA consultants to produce a report that may get faster approvals to their investment proposals. If SIA consultant persists resisting downplaying negative social impacts (which often happens), he risks losing future consulting opportunities. Even in environmental impact assessments, which rely largely on quantifiable data, the potential for biases exist. In SIAs, where impacts are not measurable, distortions and biases should be neither unexpected nor uncommon. Such biases can, however, be avoided, if the consultant employed is an independent and trained professional. Another suggestion is if SIA is conducted by a group of experts that is less likely to come under the influence from vested interests than an individual expert.

(b) Non-tangible impacts

Some social and cultural impacts are not measurable. For example, the loss of social networks, social and cultural alienation are among the impacts that cannot be assessed, but for the affected people these losses mean a lot. They do miss the community life that they earlier enjoyed. Though real, there is no way of assessing or compensating them.

(c) Differential impacts

A project may produce different impacts on different kinds of people. Not everybody is equally hurt all the time. Some groups even benefit disproportionately from the same project, while large numbers due to its adverse impact may end up at the losing end of the development process. Tribal people, women and other marginalized groups, in particular, are hurt disproportionately. The existence of policy or law seems not to have brought about any significant change in their situation. SIAs continue to be largely ignored. Where conducted, they neither follow the standard methodology of conducting assessments, nor are trained practitioners employed to do the job either.

(d) Inadequate impact assessments

The first requirement for undertaking an SIA study is that there be a reasonable estimate of the number of people who will be affected, but even this basic information is often unavailable. It is obvious that an assessment of potential adverse impacts conducted without basic data could never be adequate. It was common in such cases for large numbers to go uncounted. When impacts are not assessed correctly initially, their mitigation later becomes difficult (Gill, 2006).

(e) Manufacturing consent

Public hearings are held as part of formally consulting the affected people, but they have failed to involve groups who are routinely excluded due to cultural, linguistic, and economic barriers (lower caste and tribal people, minorities and the poor). Women are often left out from the consultation process. Mehta (2000: 278) found that in villages affected by the Sardar Sarovar Project, women were rarely consulted by officials or by male members in decision-making processes. Their participation was next to nothing. They were not even consulted about decisions concerning food, water, wood-fuel or hand pumps. Men, in fact, admitted that had women been consulted and involved in the process of site selection, many of the hardships in the new site might have been averted. Instead of involving people in the SIA process, the public hearings often relied on using force, and villagers refusing consent were misrepresented as their consent in official reports. Padel and Das (2011) very aptly remarked: "Such manipulated public hearings were just a classic case of manufacturing consent through a pretense of 'consultation'" .

SIA is still new to resettlement planning

Partly, the reason for the failure of SIA policy provision to influence the planning process is that SIA in India is still a developing subject, and requires to adopt new techniques and approaches. While adverse environmental impacts of projects have

increasingly begun to be addressed in a systematic manner through regularly conducted Environmental Impact Assessments (EIAs), that is not true yet for adverse Social Impact Assessments (SIAs) of development projects, which too can be equally devastating, if not more.

If the goal of SIA and resettlement planning is to enable those displaced by a project improve their standard of living, identification of the possible harmful consequences of a development intervention in the very early stage of planning will be critical. The fact is that in India, SIA is yet to be fully integrated into the process of resettlement planning. Much more needs to be done before SIA can be conducted effectively and contribute to better project planning, as discussed below.

Making SIA an Effective Planning Tool

The question now is no longer whether or not an SIA is necessary or useful but the question is how to make SIA an effective tool for planning better resettlement. For this to happen, the following will require close attention:

- SIA is to be conducted in the very beginning stage of the project preparation process, because at this point it is still possible to make changes in project design (not undertaken just before starting land acquisition process, as in the existing Indian law).
- Project-affected people are closely associated with the entire SIA process, not merely with helping the consultant to identify negative social impacts, usually through public hearings, which as the experience has shown often end up as a mere ritual.
- No negative impacts are left out from the social assessment process, especially those affecting women and tribal communities as they disproportionately suffer from displacement.
- The SIA consultant is an independent, trained and licensed expert, not seen as someone working under the developer's pressure.

Conclusion

It needs to be re-emphasised that the consequences of not doing assessment well can often be disastrous. In this context, a recent newspaper report about the Tatas Nano car project is particularly noteworthy. The Tatas are reported to have remarked that had they anticipated such a strong protest against their small car project in West Bengal, which forced them to shift it to Gujarat, they would not have gone there. Obviously, Social Impact Assessment in this case was not conducted adequately. A carefully carried out SIA could have detected the possibility of such a massive farmer protest brewing against the project, and saved the company from

embarrassment and financial loss. Investors are now beginning to see more clearly the usefulness of SIA.

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Development and Tribal Displacement in Water Sector: Experiences, Challenges and Opportunities in the Resettlement of Affected Tribal Communities

Abstract

Development of infrastructure projects in the country has led to physical displacement of local communities. Majority of those displaced are people from vulnerable sections and significant among them are tribal. Once removed from their hearths and local environment with bountiful nature, tribal not only undergo trauma but also face challenges, particularly in the process of their resettlement and restoration of economic sustenance. Further, these resettlers have been offered limited options and quite often are regarded as just add-on activities to the main project. Of all the measures so far planned and implemented to resettle displaced tribal families, 'land-for-land' appears to be the most suitable option for restoring their economic livelihood. This paper focuses on issues relating to the economic rehabilitation of the tribal communities affected by development projects resulting in displacement in the water sector. It also discusses the typology of impacts, experiences and challenges in planning and implementing resettlement activities, economic rehabilitation of displaced population and approaches to restoration of their livelihood. Besides, with respect to tribal, the paper discusses the new safeguards for affected tribal families under the RFCTLARR Act, 2013.

Introduction

In a world where millions suffer from hunger, acute food shortage and resultant malnutrition, water resources projects for supply of drinking water, irrigation for farm lands and electricity, contribute to food security and hold promise for a vast majority of population. According to the Central Water Commission (CWC), benefits like hydro-electricity, irrigation, and flood control, industrial and municipal water supply are not possible unless water is stored in reservoirs created by dams. These projects even out the distribution of water over large areas and significantly reduce its unpredictability and uncertainty by storing surface water to make it available in a controlled fashion when and where it is required and in quantities desired.

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However, construction of large infrastructure in water sector is usually accompanied by certain complicated ecological and human problems, especially those inducing changes in their living pattern. Among the most adverse impacts of such projects is the associated large scale human displacement resulting in mal-adjustment and social tension. No trauma could be more shocking for a family than to get uprooted from a place where they had lived for generations and to move to an alien place where they may be a total strangers. And nothing could be more irksome than being asked to switch over to a vocation which the family had never practised before. For an indication of magnitude, most often the estimate of the World Bank Environment Department (WBED) is quoted. According to this estimate, roughly 10 million people are displaced each year due to the construction of dams, urban development, transportation and infrastructure programs; and roughly 40 per cent of development-induced displacement every year (over 4 million people) is a result of dam projects (Stanley, 2005).

Development of Water Resources in India

Water resources sector includes projects in irrigation, hydro-electricity, flood control, urban water supply and water for industrial usage. The International Commission on Large Dams (ICOLD), considers a dam as 'large'if it is 15 meters or more in height (from the foundation) or if it has a height of 5-15 meters and a reservoir volume of more than 3 million cubic meters. Accordingly, ICOLD reports that the world had 5,000 large dams in 1950 and over 45,000 by the late 1990s. India is one of the largest dam constructing countries in the world with more than 4,200 dams, of which 1,704 are large dams. Of these, more than 50 dams are having a height of more than 50 meters from the deepest foundation to the crest level. India, with 2.4 per cent of the world's total area, has more than 16 per cent of the world's population; but has only 4 per cent of the total available fresh water[1]. Prior to 1947, water resource development in the country comprised mostly of diversion weirs or small earthen dams (mainly tanks) not exceeding 15 to 20 meters in height; in fact, there were only 30 dams with 30 meters or more in height. The anticipated irrigation potential created up to March 2007 is 102.77 million ha, which is around 73 per cent of the ultimate irrigation potential of 140 million ha. The Working Group for Water Resources for the Eleventh Five Year Plan had reported that 179 new projects were taken up in the Tenth Plan, including 48 major and 91 medium projects. The mega water sector projects taken up, immediately after independence include Bhakra, Hirakud, Rihand, Tungabhadra, Mayurakshi, Nagarjunasagar, Damodar Valley, Machkund, Pykara, Kundah hydro-electric, Rengali, Pong, Koyna, Indra Sagar, Tehri, Srisailam, Subernarekha and so on.

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[1] Eleventh Five Year Plan (2007–2012)

The data maintained at CWC indicates that at the end of 9th Five Year Plan, nearly 1,723 major and medium projects (including 256 extension, renovation and modernization schemes) were under execution. Of these, 1,553 (397 major and 1,136 medium) projects were new construction. Presently, while 1,145 (228 major and 917 medium) projects are reported to have been completed, construction is in progress in the rest 388 (169 major and 219 medium) projects. However, these figures do not include the projects that were planned for construction during the 10th Five Year Plan. According to CWC, there are presently 682 irrigation (including major, medium and extension/renovation) projects in tribal sub-plan. Of these, 278 projects are still under construction including 46 planned during 10th Plan. At the end of the 9th plan period, irrigation projects (both major and medium) are reported to have created an ultimate irrigation potential of 58.47 million hectares. In addition, about 81.54 million ha has been brought under minor irrigation schemes and ground water.

Definition of a Tribe

Tribal communities are the groups that face the brunt of such infrastructure development. According to Xaxa (1999 and 2005), a tribe is defined as a more or less homogeneous community having a common government (governance system), a common dialect and a common culture. The international funding agencies like the World Bank refer tribal groups as Indigenous Peoples and define them as distinct social and cultural groups of people who possess the following characteristics in varying degrees:

- A distinct indigenous cultural group
- Attached to geographically distinct habitats, ancestral territories and natural resources
- Customary social and political institutions
- An indigenous language, different from the official language

Tribes are referred differently in different areas – grijans in Andhra Pradesh (AP), adivasis in Odisha[2] and vana jatis in other parts of the country. The constitution of India (Article 342) defines tribal groups and tribal areas. Article 341 of the Constitution requires the President of India to specify the tribes and castes in relation to a State or Union Territory and these are referred as Scheduled Tribe (ST). Accordingly, there are 461 tribal groups officially designated as STs (Singh, 1994) in the country. However, 'no one knows how many tribesmen (scheduled and non-scheduled) are there in the country and what is their economic condition' (Sau, 2006).

[2] Odisha was known earlier as Orissa and in the text this has been referred to as Odisha only.

The definition of a community as a tribal group assumes importance from their fragile economic conditions and their vulnerability to changed conditions. Tribal communities get further vulnerable, if they are disturbed from their physical and social environment. This eventually has implications both in terms of planning and implementing Resettlement and Rehabilitation (R&R) programs if the affected and/ or displaced population belongs to these communities.

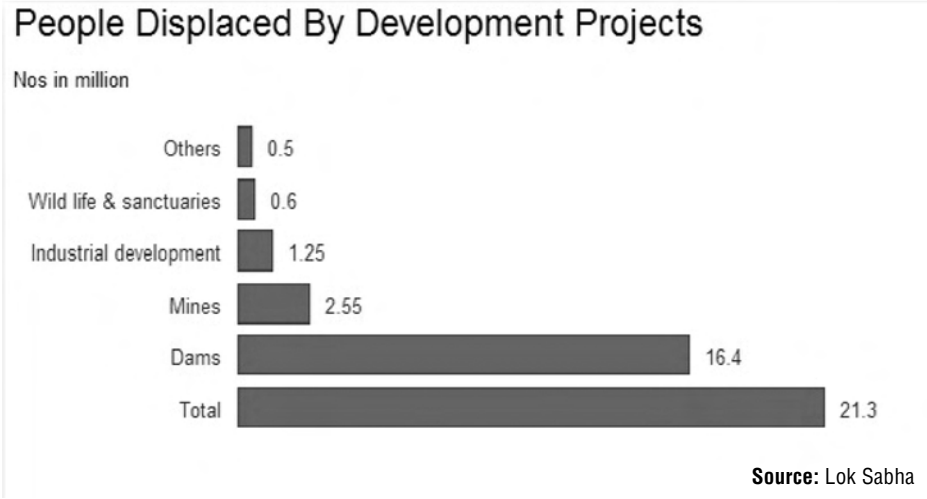
In the post-independent period, various safeguards for the protection and development of Scheduled Tribes (STs) were institutionalized in accordance with the special provisions mentioned in the Indian Constitution such as: Article 15(4), 16(4), 19 (5), 23, 29, 46, 164, 275(1), 330, 332, 334, 335, 338, 339(1), 339(2), 371(A), 371(B),371(C), Fifth and Sixth Schedules.

Infrastructure Development - Population Displacement

Development process involves construction of major infrastructure in different sectors; irrigation, transport (roadways and railways), mining and industries, wild life sanctuaries, urban development and so on that require large tracts of land impacting adversely the local population and environment. The country does not have a reliable database on the extent of displacement and the resultant deprival of livelihoods. According to a conservative estimate (Fernandes, 2001), a total of 21.3 million people (including tribal and other vulnerable groups) have been displaced (between the 1st and 7th Five Year plans) in the country due to various development projects. In another estimate (Fernandes, 2006), the number of affected is far higher than this: around 5 million in composite AP, 3 million each in Odisha and Jharkhand, 1 million in Kerala, 2 million in Assam, 4.2 millions in Gujarat, 7.5 million in West Bengal, 3 million in Jharkhand, 2 million in Assam, and 100,000 in Goa. Thus, without including the high displacement states of Chattisgarh, Madhya Pradesh and Maharashtra (which have not been studied), the total comes to 26 million Displaced Persons/Project Affected Persons. These figures, together with case studies from some other states, point to an all-India figure of 60 million affected, including physically displaced people (during 1947-2004) from 25 million hectares of land, including 7 million hectares of forest, 6 million hectares of other common revenue and forest lands and common property resources (Fernandes, 2006).

Official sources underestimate the actual data on displacement because these figures exclude the dependents on Common Property Resources (CPR), including forests. Most of them are tribal who do not have any official documents to show their ownership over the land that they were dependent. The average displacement per dam has been 900 to 1800 people per dam but the same during 1986 to 1993, had been 12,500 people per dam. The displacement between 1986 and 1993 was a total 32 million people (Report of the World Commission for Dams, 2000). However, height of the dam and the terrain slope determines the submergence area and hence the affected area. Accordingly, Fernandes (2008) estimates that a major dam displaces

25,000 to 250,000 persons (at least 15 of them have displaced over a lakh people each) and a medium dam affects 400 to 6,000 persons. Studies found that only 35.27 per cent in Odisha, 28.82 per cent in AP, 40.78 per cent in Goa, 13 per cent in Kerala and 9 per cent in West Bengal got rehabilitation benefits (Rakhi and Thaneshwar, 2014).



Source: Dams, Displacement and the Human Cost of Development (Prachi, 2004)

Considering the scale of irrigation development and its impact on tribal communities, this paper has purposively focused on Odisha and composite AP[3] with significant tribal population. As an elaboration of this phenomenon, details have been collected for Odisha and AP and discussed in this paper.

In Odisha, tribal constituted 22.8 per cent of the state's population according to 2011 census. In this state, there are 88 major and medium irrigation projects, of which 18 are still under construction and one project (Vamsadhara medium irrigation project) is in the initial stage[4]. Of the 83 irrigation projects (for which data are available), 4 projects have a dam height of more than 50 meter, 33 have a dam height between 20-50 meter and 8 dams are less than 20 meter in height.

On the other hand, in AP, tribal constitute 6.6 per cent of the state's population, but account for 27 per cent of its 32 lakh affected (including displaced) persons from 1951 to1995 (Fernandes et al, 2001). The state has the second largest number

[3] The state of AP has been divided into two states - Telangana and Residual AP in June 2014. In this paper, any reference to the state of AP denotes the erstwhile composite state prior to the division.

[4] Source: Water Resources Information System of India - Wiki

of irrigation schemes, next only to Maharashtra; there are 53 major and 92 medium irrigation schemes. In the on-going major irrigation development under Jalayagnam program, 32 major and 17 medium irrigation projects are under progress for creating an irrigation potential of 7.1 million acres. Besides, large scale acquisition of agricultural land is being done for Special Economic Zones (SEZs).

Tribal Displacement

There are varying estimates with regard to displacement of local people, particularly tribal communities due to development of water resources in the state. At the national level, tribal constitute at least 55 per cent of those displaced mainly from water resources and mining projects (Saxena, 2006). According to Haan and Dubey (2005), three to five million people have been displaced since 1950 in Odisha on account of various development projects (including water resources), of which more than fifty per cent are tribal. Taneja and Thakkar (2000) point out that estimates on displacement in India from dam projects alone range from 21 million to 40 million (Stanely, 2004).

Among the sectors, development of irrigation and hydel projects are the major cause for population displacement, accounting for nearly 80 per cent (16.5 million) of the total displacement in India (Saxena, 2006). While tribal constitute eight per cent of the total population, they account for 40 per cent of the displaced persons in the country (Fernandes, 1994). However, resettlement was done for only 25 percent of the displaced tribals (Ramachandraiah and Venkateswarlu, 2014). Maharashtra Irrigation II and the Upper Krishna Irrigation Project in Karnataka, together resulted in the displacement of over 450,000 persons (Parasuraman, 1999). The Sardar Sarovar Project affected about 297 villages and displaced over 200,000 persons. In Korba project in adjacent Madhya Pradesh (MP), 59 villages were submerged displacing more than 2,720 families. In one estimate, Saxena and Sen (1999) estimated that in Sonbhadra region of UP/MP nearly 36,000 families (mostly tribal) were displaced due to various development projects including Rihand (10,000 families) and Kanhar (2,000 families) water sector projects in that region. In AP, they are a little over 6 percent of the State's population, but are 27 percent of its 32 lakh displaced/ affected people during 1951-1995. In Odisha, they are 22 percent of the population but 42 percent of its displaced/affected people (Fernandes, 2003).

In Odisha, Balimela hydro project affected more than 250 villages resulting in displacement of people most of whom were tribal. Hirakud and Rourkela Steel plant in the state acquired about 225,578 acres, mostly owned by tribal (Bharali, 2006). Covering 34 irrigation (dam) projects in Odisha, Hasan (1992) estimated that these projects affected 92,512 families of whom 36,880 were displaced and 40 per cent of them were tribal families. Making use of the available information, Pandey (1998) estimated that during 1950-1993, 1446 villages were affected by development

projects (in 51 irrigation, 2 coal mines, 5 industrial and 3 thermal sectors) and adversely affected 81,176 families. In the neighbouring state of Jharkhand, Ekka and Asif (2000) conservatively estimated that projects taken up during 1951-95 had displaced around 1.5 million of which tribals constituted more than 41 per cent.

According to Ota (2000), tribal alone constituted more than 35 per cent of the total displaced from infrastructure projects in Odisha, majority from water resources. Continuing, Ota states that there are about 70 major and medium irrigation projects in Odisha; both completed and on-going, which have displaced a total number of about 400,000 people. Some of the major irrigation projects in Odisha that have forced the people to move out of their hearths are: Hirakud (submerged 74,300 ha in 285 villages and displaced more than 22,144 families constituting 110,000 people), Rengali (265 villages and displaced 10,842 families), Subernarekha (submerged 4,000 ha, displacing 9,044 families from 109 villages), Upper Indravati (submerged 11,000 ha in 99 villages and displaced 5,301 families), Upper kolab (submerged 11,350 ha in 49 villages and displaced 3,179 families), Machkund (displaced 2,983 families) and six schemes under World Bank assisted Odisha Water Resources Consolidation Project (displaced more than 4,000 families besides impacting livelihood of another 50,000 families), etc.

Besides the irrigation sector, development in other sectors in Odisha has seriously impacted the livelihood of a significant number of families including 3,143 families from mine projects in Ibb valley and Talcher areas, 8,817 from five industrial projects and 2,426 from three thermal projects in the same area (Pandey, 1998). Discussing the backwardness among tribes in Odisha, Haan and Dubey (2005) identified displacement as an issue that affects the development of tribal groups in the state. Odisha resettled 35.27 per cent (Fernandes and Asif, 1997) and AP resettled 28.82 per cent (Fernandes et al, 2001) displaced families. In AP, 21,094 families (majority tribal) from 100 villages were evicted due to submergence by Srisailam project. In a sample of 627 from fourteen representative projects in AP, all those who were to be resettled were tribal and dalit displaced families (Fernandes et al, 2001). The availability of work among the affected families in this state had declined from 83.72 per cent before deprivation to 41.61 per cent after it. In Odisha, out of 266,500 families, the projects gave one regular job to each of 9,000 families only, a mere 3 per cent.

Presently, the united AP is one region in the country which is witnessing major irrigation development program (jalayagnam) displacing lakhs of people from the project areas besides impacting the communities in their vicinity. For example, the Indira Sagar Project, including Polavaram dam across river Godavari, will adversely impact 237,000 people from 276 villages of 9 mandals. The affected area cuts across the state boundary and now covers four states: AP (Residual), Telangana, Odisha and Chhattisgarh. Of these, 150,697 people from 226 villages will face

displacement; around 53 per cent of them are tribal. Submergence area in Polavaram includes 170 habitations of Koya and Kondareddy tribals, and the rest mostly dalits or scheduled castes (SC) dependent on minor forest produce for their livelihood[5]. In projects, like Yeleru and Sri Ram Sagar (SRSP) in AP, proper resettlement is still not complete after decades of project construction. Some of the submergence villages in Yeleru project were under notified Scheduled Areas where no comprehensive rehabilitation plan was prepared and no R&R provisions were implemented. The miserable plight of 20,000 people of 12 submergence villages in this project is one such experience out of several cases across India[6] (article on the internet).

Land, Forest, Common Property Resources and Tribal Life

While the proponents of development projects stress on the social and economic benefits from irrigation dam projects including large scale irrigated agriculture, electricity generation and resultant industrialization, flood control and supply of drinking water; project opponents argue the huge costs imposed by these projects on the society through the resultant adverse ecological and human impacts, cost overruns and debt burden. However, the major resistance to such projects arises from adverse impacts – environmental degradation (of ecosystems and fishery resources), and social disturbance (especially displacement of population and impoverishment, and inequitable sharing of costs and benefits).

Loss of CPR

In India, most of the water sector projects are in remote locations far removed from the mainstream and the developmental impacts. As a result, many people in these areas look at such projects as symbols of hope and a promise for future. Most of these areas have been in the interior of forests where nature is in full governance over its inhabitants and tribal are primary beneficiaries.

The tribals live in a natural resource-based informal economy that depends on agriculture and on the non-timber forest including medicinal herbs, edible fruits and flowers, leaves, etc besides getting small timber and firewood. Land is central to tribal life and if it is lost, both its owner and dependents lose their economic support, socio-cultural relations and food security, resulting in their impoverishment and marginalisation. The tribal communities alienated from their land (including forests and other common properties) are thus deprived of their entire livelihood.

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[5] Down to Earth, 15 May 2011

[6] http://webcache.googleusercontent.com/search?q=cache:http://hyderabad sancharnet.in/rvrmohan/Article_rehabilitation_issues.rtf&gws_rd=cr&ei=c0C4Vq- 5LMyvuQSEwKKYBA

A substantial number of project affected people are tribal dependent on CPR for their livelihood (Fernandez, 1994) but the same was not recognised under the previous Land Acquisition (LA) Act, 1984 for compensating losses. According to 1990 Government Order No.64[7] of the Social Welfare Department of Government of AP, "the dispossession and displacement of tribal on numerous counts mounting in the sensitive areas, is creating conditions of discontent and unrest in some of the scheduled areas"[8].

Tribal life and culture are so inter-woven and integrated with the forests and CPR that once dispossessed they are totally uprooted and shaken. Submergence of tribal land and forests affect the cultural identity of ethnic tribes besides the irrecoverable ecological destruction. The proportion of CPR is high in states where the proportion of tribals among the displaced population is high. For example, in Odisha where tribals constitute 22 per cent of the population, and 42 per cent of displaced people (1951-1995), CPR amount to 56 per cent of the 1 million ha (or 25 lakh acres) used for all projects in that period. In AP, tribals constitute 28 per cent of displaced community, and CPR amount to 50 per cent of the 11 lakh ha used for development projects during 1951-1995 (Fernandes, 2008). Two thirds of the 70,000 acres that Nagarjunasagar in AP submerged were CPRs (Fernandes, 2003). With relocation from their original hearths, the social organization of tribal communities gets dismantled, their formal and informal networks get disrupted and loss of this social capital inwardly erodes human mobilization and awareness build-up around issues of relevance (Agnihotri, 1998).

Typology of Impacts

In the context of involuntary displacement, the development projects have varied adverse impacts on the local population. Based on the type and extent of losses in terms of their access to their private and/or public land and properties, the affected families are accordingly categorised and the mitigation measures are planned. Generally, the following typical losses are observed in any development-induced displacement:

1) loss of homestead and house
2) loss of homestead, house, agriculture land and other productive assets
3) partial loss of homestead, house, agriculture land and other productive assets
4) loss of homestead only
5) loss of productive agriculture land only

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[7] Consolidating the instructions of various earlier G.O.s related to displacement of tribals, Social Welfare (T) Department, Government of Andhra Pradesh released G.O. Ms.No.64 of 1990.

[8] Rehabilitation of Displaced People in Irrigation Projects: Policies and Practice with Reference to AP in Hyderabad.sancharnet.in/rvrmohan/Article_rehabilitation_issues.rtf

6) loss of access to common properties
7) loss of livelihood – in terms of employment and clientele
8) loss of access to civic amenities and
9) any other loss not included above.

One can still refine these typologies depending on the local socio-cultural and economic conditions of the affected area and its population. The challenge of planning and implementing R&R programs largely depends on the typology of such project impacts.

Challenges in Implementing Resettlement

In most projects, particularly during the last one and half decades (before the enactment of RFCTLARR Act, 2013), one comes across with examples of well stated resettlement policies and provisions that could help the project affected communities to restore their livelihood. However, the challenge faced by the resettlement managers in their projects was how to move from the policy provisions to actual implementation. 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. For example, the poor are more likely to adapt an alternate economic rehabilitation activity which can ensure them a more viable and sustainable livings while the rich or well off sections may prefer cash so as to make their own choices for self resettlement. This requires specific measures for high risk groups and vulnerable sections and the tribal are an important group among them. 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 from the experiences in implementing resettlement plans to help evolve strategies to improve its management. Some of these experiences are discussed in the subsequent section, with references to Odisha and AP and projects from other states.

Experiences in Implementing R&R Programs

Non-recognition of customary rights: This is an important issue from the point of view of ST communities who have been using the forest and other CPR for generations. One needs to recognise that the nature of tribal relationship with land is distinct from the dominant society. In the latter, the relationship is more economic in nature while in the context of tribal, the relationship is not just economic but it also occupies the spiritual and emotional space in their life. Historically, all members of the ST community had rights over the land that they cultivated and it was non-

alienable. The rights were predominantly customary and had community rather than legal sanction.

Though over time, some of the tribal lands have come under private occupancy and use, a significant proportion of such land is still community based. However, the same was not recognised under the provisions of LAA. It is not only that the development-induced affected tribal families are deprived of compensation due to the loss of common properties, more often they find it difficult for inclusion in the list of families eligible for support in their resettlement process.

Compensating assets including land: This is the most contentious issue and continues to be one of the main reasons to increased resistance to development of infrastructure projects. The LA process and computation procedures were guided mainly by the amended LA Act of 1984 which did not guarantee the actual market price or replacement value. Market value, which is the criterion for compensation, and the low price given render the affected people further powerless. For example, in Gujarat, 22,171 hectares of land were acquired from 15,560 families in the 1980s for World Bank funded medium irrigation projects. They were paid an average of Rs 8,780 per ha when the market rate was Rs 16,000 (Fernandes, 2008). In a survey in Srisailam project in AP, it was found that while the prevailing market was Rs 5,000 for an acre of dry land and Rs 13,800 for wet land, the compensation (including solatium) paid was only Rs 932 and Rs 2,332 respectively. In other words, compensation was five times less than the actual market value (Fact-finding Committee on the Srisailam Project, 1986). In Kovvada reservoir in AP, the oustees struggled for about 4-5 years to collect their land compensation and spent most of the compensation amount towards bribes to Government officials and the extensive travels they made to the government offices. The rest of the compensation amount was paid to the money lenders to clear off their debts (Ram Babu, 2008). In Rengali project in Odisha, compensation per acre of land varied from Rs 500 to Rs 4,500 and for homestead land it was Rs 4,500 (Mishra, 2002). In Polavaram project, many people received compensation at the rate of Rs.1.15 lakh per acre; but they will not be able to purchase new land at this rate, as the land rates have gone up to Rs.4 to 6 lakhs/acre (Ramchandraiah and Venkateshwarlu, 2004).

In the LA process, customary right holders (mainly forest dependent communities), tenants, sharecroppers, wage labourers, artisans and encroachers were not considered eligible for compensation because they did not have legal title to land. Paradoxically, these were the most vulnerable and were in need of support. Similarly, community assets like grazing grounds and forests, which are critical for the livelihood of the poor, were not compensated. Further, not only that the compensation was low, many a time the payment was either delayed or payment was uncertain and the affected families were vulnerable to graft in the disbursement of compensation. The cash payment had serious impacts on tribal communities who

hardly had any experience in handling large cash and recipients were subjected to fraud, adjustment against old debts and are lured to liquor and unproductive purposes.

Lack of updated land records: This is an important factor seriously impacting the economic rehabilitation of affected families; in fact this is universal in Scheduled Areas where tribal are in majority. In Polavaram project, several problems have arisen as the land records are not prepared and updated from time to time, sometimes even leading to violent situations (Ramchandraiah and Venkateshwarlu, 2004). Most of the land records in tribal areas are quite old and have not been updated to include recent transactions, mutations, etc. which makes it difficult to determine the eligibility of affected people for compensation. Since the land records are old they do not recognise the changes in the land use pattern at the time of acquisition process, as a result the compensation does not correspond to the type of land acquired. All these lead to delays in passing awards and the affected families are at a disadvantage since the compensation does not correspond to the actual status of the land. Most often, such delays impact the project construction schedule.

Long delays in dispossession of land: Most often, there is time lag between the completion of LA process and taking up project construction. In other words, lands have been acquired but project construction did not start. As a result, projects (e.g. Rihand of NTPC and coal mines in Singrauli region) faced enormous amount of resistance from the affected people to get their acquired land vacated, even after paying compensation. In these cases, it was found that the displaced people had already spent their compensation, most often for unproductive purposes and at the same time they continued to occupy and enjoy the benefits of the acquired land. Resultantly, at the time of actual construction of the project, such people refused to vacate the acquired land because they had no funds for constructing alternate housing and rebuilding their economic livelihood. This is a reflection of wrong planning and/or changing of priorities. The long delays also impact the land market, affecting the capacity of the resettlers to replace the land lost – one of the reasons is the speculative market which pushes up the land prices in the area.

Losing access to land without compensation: The flip side of the above situation is that the project authorities, without paying compensation, take advance possession of the land and more often the compensation is not paid even for several years – mainly due to inadequate flow of funds for the resettlement component of the project and construction activities take priority over acquisition process and resettlement activities. For example, most of the oustees in the HAL, NALCO and other projects in Odisha had not received compensation for their acquired assets (Pandey, 1998). The project authorities clearly treat the involuntary resettlement component as subordinate to construction processes and schedules (Erikson, 1999).

Landlessness and decreased landholding: Landlessness is aggravated by the shift in occupational patterns and downward occupational mobility. For example, in AP, the average area cultivated declined from 3.04 acres to 1.45 acres. Small and marginal farmers became landless and medium farmers joined the ranks of small and marginal farmers. 45 per cent of people who were cultivators before displacement became landless agricultural labours and other daily wage earners in the post displacement. Access to work dropped from 83.72 per cent before displacement to 41.61 per cent in the post displacement period (Fernandez 2008). Support mechanisms such as ponds, wells, poultry, cattle and draft animals that supplement incomes also declined. Access to work dropped from 84 percent before displacement or deprivation of assets to 42 percent after it. Landlessness was aggravated by the shift in occupational patterns and downward occupational mobility (Fernandes, 2008).

Project construction taking precedence over relocation: In a large number of irrigation projects, construction takes precedence over resettlement and construction becomes the driving objective to vacate the submergence zone to allow impounding of water. There are hardly any efforts to prepare and assist the families to relocate and to make the resettlement process a gradual and less painful transition to their new habitats. Most of the resettlement sites are planned in locations without due considerations to the availability of livelihood opportunities, or the preferences of displaced persons themselves. House sites are often much smaller than those in which the oustees lived in the village, many oustees feel lost in the semi-urban design and PWD-style construction of the new settlements (e.g. Subernarekha and Tehri projects). While it is a fact that the affected villagers are generally not properly informed about the details of the evacuation plan, there is also a tendency of affected families not to move unless water reaches their doors and do not take government announcements about the evacuation seriously. This points out to the need for proper planning of resettlement program and project construction schedule including ensuring alternate housing and basic civic amenities and measures to restore, at least to the pre-project level status.

Self relocation: Most of the alternate housing provided by the project is not generally preferred by the displaced tribal families as this does not meet their socio-economic considerations and requirement for housing their cattle, keeping agricultural implements and storing farm inputs and produce. In Barnala medium irrigation project in Odisha, displaced families did not opt for the project sponsored resettlement site as it was away from the forest area. Similarly, project authorities constructed beautiful houses in Tehri in Uttarkhand and Subernarekah in Jharkhand but majority did not settle in these alternate houses, instead made their own arrangements since these sites did not meet their socio-economic environment and requirements. Similarly, in Upper Kolab, out of 5,077 displaced families, only 14 per cent went to rehabilitation sites (Patwardhan, 2000).

Land-for-land: This option of land-for-land for resettlement is generally recognised as a guiding principle for economic rehabilitation of displaced tribal families. This recognition is reflected not only in the present RFCTLARR Act 2013 but it was an important provision of earlier R&R policies: National Policy on R&R for Project Affected Families, 2005 state R&R policies of AP and Orissa. As long as tribal live within their region, they are able to retain better lifestyle and social bondage, even after the forest and other resources are depleted because their economy and culture is adapted to their environment but not to any other economy (Fernandes, 2001). In 1977, for the first time in India, in response to sustained protests and agitations, Odisha conceded the demand of displaced landless for land based resettlement (Mahapatra, 1999). This helped in reducing to a great extent the impoverishment risks of tribals, caste groups, landless, etc.

In earlier projects like Machkund in Malkangiri in Odisha, most tribal (450 out of 600) affected families on resettlement were given an average of 5 acres (Stanely, 1996 and Mahapatra, 1999). However, in Odisha. 'land-for-land' was pioneered in Rengali project, a major multipurpose hydel project which displaced more than 10,000 families where each displaced family was allotted land free of cost for agriculture. Dadarghati project oustees were allotted irrigated land for agriculture purpose. Initially (1973), Odisha R&R policy had provisions to allocate 6 acres of unirrigated land or half it if irrigated. This was reduced to 5 acres and 2.5 acres in 1989, subsequently 2 to 4 acres and further reduced to 2.5 acres and 1.25 acres in 2005, however, family definition also changed with reduced family size. This, on one hand, was the result of Forest Conservation Act (FCA) and on the other and more importantly, pressure of increasing population on land. With enforcement of FCA, there are strict measures to contain conversion of forest areas for non-forest use.

Thangaraj (1996) points out that Odisha is a state that seriously implemented 'land for land' option. Besides, there are cases where displaced families, mostly non-tribal, used their compensation money most productively in purchasing alternate land. In this regard, some good examples of land based resettlement in Odisha are:

(i) In Upper Indravati project, 3,777 displaced families had alternate land and of these, more than one-third had replaced more than 2 acres alternate land;
(ii) More than half of the displaced families in Renagli are reported to have replacement land; and
(iii) Nearly 94 per cent of the displaced families in Ramial project had land-based resettlement.

In AP, most of the 'land for land resettlement' has been made by displaced families themselves except some feeble attempts (observed by the author) in Hyderabad Metro Water Supply project and Srisailam project.

Most often, the complaints with regard to allotted land is that it is inferior in quality, mostly barren and waste lands with hardly any top soil and rocky in some cases. The author had observed that in Renagli irrigation project, in a number of cases though displaced families received 6 acres of land, the quality of land was too inferior to be cultivated and was not reclaimed. The allotted land was in patches and in some cases spread over 15-20 patches in different locations, making farm operations a difficult task, besides the problems relating to management and protection of such lands. However, people with money and power are observed to have access to good quality and large size land allotment (Mathur, 1997) as compared to the poor tribal and other vulnerable sections.

In some of the projects, land for land for rehabilitation was attempted through Land Purchase Committee (LPC) but the results, so far, have not been encouraging. For example, in Sardar Sarovar Project, many oustees are reported to have run into trouble as a result of this system (Amte, 1989). Success to ensure land-based rehabilitation largely depends on the availability of land in the vicinity of the project area. However, as it is becoming increasingly difficult to find suitable land of equal productivity in the vicinity of the affected area, there is a need to explore new opportunities to restore their economic living. For example, the World Bank funded AP Community Based Forest Management Project helped the affected tribal families in farm based economic rehabilitation through development of their unused land through various soil and water conservation measures including small irrigation facilities, terrace cultivation, fruit tree plantations, etc. According to an Impact Assessment Report on RAP implementation, landowning families had reported an increase of Rs 1443 per acre of land. The average annual household farm income had increased from Rs 2147 to Rs 3590. In animal husbandry sector, landless affected families were getting an average monthly income of Rs 1,500 from milch cattle and Rs 1,300 from sheep rearing. There were some landless families who had opted for plough bullocks and were earning up to Rs 3,500 per month by engaging the animals in agricultural operations in others fields (Hasan and Kalaghati, 2010).

Non-farm land based economic activities: For tribal affected families, restoring their income level is possible if suitable land based measures (including dairy, poultry, livestock rearing, fisheries, etc.) are properly planned and implemented with both forward and backward linkages. Where such income measures are not feasible or the affected people are not ready to take up such activities, all efforts should be made to ensure a long term flow of cash to help in the sustenance of their livelihood. More discussion on this is in the subsequent sections.

Dairy and livestock program: This is an important economic activity pursued by tribal groups; however, as an economic rehabilitation measure it has limited scope in providing adequate income flow to restore their livelihood. Therefore, it is not a promising intervention in restoring livelihood of tribal groups unless it is taken up

as one of the activities and not the only measure for economic rehabilitation. Income from livestock could supplement the household income but in majority of the cases cannot become the main source of livelihood due to poor productivity, limited market opportunities and economies of scale.

One could explain that tribals may prefer livestock as an economic activity and not as the core activity to reconstruct their economic livelihood. Planned livestock economy requires good exposure to improved livestock husbandry practices, well developed infrastructure (particularly roads) and access to markets and financial institutions. The tribal groups are more amenable to exploitation by traders, money lenders and other vested interests that control the livestock market. A good example of convergence with government schemes was observed in AP Community Based Forestry Management Project where Project worked with the Animal Husbandry department to link with its ongoing 'Pashukranti program' Under this linkage, affected families were able to get one milch cattle, in addition to the one they could purchase with the assistance under resettlement program. This tie-up was considered critical for the affected families to sustain the dairy activity- with two milch animals; it ensured financial viability of milk production and ensured a regular flow of income to the family. Similar convergence was done in other economic schemes (Hasan and Kalaghati, 2010).

Non-land based rehabilitation measures: It is the most difficult one with marginalised rural communities, particularly tribals. There are good examples at individual/group level[9], but these are sporadic and few with inherent difficulties in scaling up. This is particularly important since most of the tribal groups lack required skill, entrepreneurship and risk bearing capacity. Besides, the tribal groups are not exposed to market forces and fluctuations and are not well acquainted with financial transactions. It is for these reasons that tribals, in general, do not show interest or inclination to take up any non-land based activity. However, in several resettlement plans (e.g. coal project in Talcher and Ibb valley in Odisha), it is included as the most preferred option. One plausible reason could be that the options provided to affected families were limited or the implementing agencies either had not explored new avenues or they had inadequate exposure.

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[9] In the Coal Sector Environmental and Social Mitigation Project, some of the successful attempts to promote non-land based economic activities included making of cane baskets (to carry coal from underground mines), gloves (for those who handle coal), transport vehicles in coal transfer, supply of office stationary and other requirements, office cleaning and maintenance of greenery in office campuses, etc. Similar attempts were made in a number of projects under NTPC. 'Petty contracts' is one opportunity which a number of affected people are keen to sustain their livelihood. Joint enterprises (with the involvement of two or families) have also proved successful, particularly in transport sector (e.g. Coal India, NTPC, Hyderabad Drinking Water project, AP Irrigation Project III etc.).

Regular jobs: This is one of the most promising options to restore the livelihood of affected people in most of the public sector units (including Coal India, NTPC, NHPC, etc.) and also it is an important R&R measure under RFCTLARR Act, 2013. However, new jobs are possible mainly in mining and industrial projects. It is a suitable and potential source of sustained livelihood option only if it can be ensured to all the eligible affected persons who are backed with the required skill/education. In most cases, the resistance against a project develops when only few of the affected families are provided with this option. On the socio-cultural front, regular jobs made available to few families are reported to have led to social disintegration of the family and social systems. The young among the affected families who got regular jobs are reported to have shunned their families and parents leading to vertical split in their families. The son who gets the job does not consider himself obliged to share his earning with his siblings…..even parents may not get support….This option breeds bitterness and feuds in families (Dhagamwar, 2006). The author has also observed this happening in the case of large number of families in Singrauli area (Madhya Pradesh), displaced due to open cast coal mining, mega thermal projects and other industrial development. In this context, Government of Karnataka took an important decision that those who get job as an R&R entitlement should take care of their families at least for ten years and any complaint in this regard would disqualify them from their job. Another issue which is common in the tribal areas is the job performance – the migrants who are usually skilled and experienced outperform the local people. As a result, the locals get further marginalized (Aggarwal, 1998). The author observed that in some projects (NALCO, Coal India) displaced tribal provided with regular jobs in the projects have reported high rate of absenteeism.

Cash-based economic rehabilitation: Cash payment is generally not a preferred option for displaced tribal families or as a matter of fact for any development induced affected family. Cash payment does not really compensate the tribal for the difficulties they experience in their lifestyle and ethos. Though cash payment is not approved by the resettlement practitioners, compensation for the assets lost is still considered by the implementing agencies as an alternate economic rehabilitation. The World Commission on Dams (2000) recorded in its report: 'Cash compensation is a principal vehicle for delivering resettlement benefits, but it has often been delayed and, even where paid on time, has usually failed to replace lost livelihoods'. Cash hand outs often result in impoverishment (Cernea, 1988) and it disproportionately benefits some interest groups, and not so much the poor, small and marginal farmers, the landless, and women (Zaman, 1990). From the study of seven projects in Odisha, Pandey (1998) concludes that except two projects, most of the oustees made little use of their compensation money for purchase of land, instead spent on food, clothing and house construction. In practice, 'cash compensation' as an income restoration measure often fails to benefit PAPs for a

variety of reasons, including its failure to restore the livelihood of those who do not have land (Mathur, 2006). Studying major projects in a tribal dominated Koraput in Odisha, Stanely (1996) observed that in almost all these projects, payment of compensation was construed as economic rehabilitation. In Upper Kolab project in Odisha, displaced tribal families, influenced by vested interests, opted for monetary compensation instead of land based rehabilitation. Since these families had limited exposure to monetary economy, most of the compensation money received by them was appropriated by money lenders and traders; resulting in their impoverishment.

Exploring new economic opportunities: With the economic boom in project areas, the smart migrants (well equipped with required education and skill as well as with better entrepreneurship) outsmart the local people (mainly belonging to vulnerable sections including scheduled tribes and castes, women, landless and others). As a result, these migrants grab most of the opportunities offered by development projects. In fact, this disturbs the socio-economic system of the area and most often results in alienating local people in their own territory and creating conditions that are not conducive to the smooth development and functioning of the project. To contain such aberrations, projects need to carefully plan to ensure that the affected communities are exposed to new economic prospects and facilitate them to avail and get benefitted from such openings. This requires the resettlement to adopt development approach in formulating strategies and plans. By applying the 'resettlement as development approach' …., the risks posed by displacement can be converted into opportunities for reconstruction (Wet, 2001). An attempt was made in Upper kolab in Odisha, where an area development plan was developed (though not implemented in true sense for several reasons) to explore new economic opportunities to capitalize the benefits of irrigation development in the area. Similarly, in Upper Krishna Project in Karnataka, the resettlement colonies were planned in such a way that the resettlers could exploit the opportunities in the project area to sustain their livelihood.

Redressing grievances: Responsible and transparent complaint redress mechanism is critical to effective implementation of R&R programs. Indeed, the failure of the public agencies has led to active involvement of NGOs, local social activists and judicial activism seeking redress of problems faced by affected communities. Essentially, this calls for good governance, with transparency and accountability, in R&R implementation. An institutionalized grievance handling and redressal mechanisms would help in ensuring improved implementation of resettlement projects.

Role of vested interests: Notwithstanding the above observations, one needs to consider the vulnerability of tribal to exploitation by vested interests. The displaced tribal are generally the weakest sections of the society and are most often subjected to exploitation by local landlords, money lenders, lawyers, officials of government

agencies, middlemen, evaluators of assets, bank officials, traders and other vested interests. Together with the presence of these elements, the non-performance/ lack of active involvement and commitment of the project executing agency is one of the main problems for ineffective implementation of resettlement programs.

Safeguards under RFCTLARR Act 2013

Learning from the poor implementation experience of resettlement activities in different projects, several safeguards have been provided for the project affected persons, particularly for tribal in the new RFCTLARR Act 2013. The legislation is more participatory and has several measures to ensure a smoother planning and implementation of LA and R&R measures. This Act is considered as a historic legislation and is expected to provide just and fair compensation to farmers and at the same time ensuring that no land is acquired forcibly. Also, it links LA with obligations for undertaking R&R measures in a time bound manner. Sections 41 and 42 of the Act spell out special provisions for the SCs and STs. A large number of the other provisions also address the issues of LA and R&R of the STs and other vulnerable sections among those affected by development projects. A few of the tribal specific policies and other progressive provisions in the new law are mentioned below.

Progressive provisions that will benefit tribal affected families: This is the first time that an attempt has been made to link LA with R&R of affected families. Obligations towards affected families are elaborated in four Chapters (V-VIII) and two Schedules (Second and Third) of the Act, outlining intricate processes for LA and planning for their resettlement. The Second Schedule in particular outlines the benefits (such as land for land, housing, employment and annuities) that shall accrue in addition to the one-time cash payments. The third Schedule is devoted to the provision of infrastructural amenities to secure a reasonable standard of community life in the new villages or colony.

Definition of affected family: This embraces agricultural labour, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans who may be working in the affected area, whose primary source of livelihood stands affected by the acquisition of land and traditional forest dwellers including scheduled tribes losing access to forest (Section 3c). The inclusion of forest dwelling tribes in the definition of affected family and any person who is granted forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 or any other law in the definition of 'landowners' are very progressive measures that go a long way in recognising the rights of the tribal community.

Time bound planning and implementation: The RFCTLARR Act 2013 stipulates completion of award within a period of twelve months from the date of publication

of declaration and summary of R&R under section 19. More importantly, the Act specifies a mandatory timeline for payment of compensation (within three months of Award) and completion of R & R process before displacement (monetary R & R entitlements to be disbursed within six months and infrastructural entitlements in R & R colony within eighteen months of the Award). This will help to remove lot of uncertainties and long wait for all affected families, particularly tribal, in planning their future relocation and income restoration.

Updating land records: Section 11(5) of the RFCTLARR Act 2013 requires that records of all land required for the project need to be updated within two months of the issuance of the notice under sub-section 11(1). This provision is useful in scheduled areas where the land records have not been updated since long time due to which there are disputes on the ownership of land and identification of persons eligible for payment of compensation and determining eligibilities for R&R assistance.

Increased compensation level: The Act proposes the payment of compensations that is up to four times the market value for land and other fixed assets in rural areas and two times the market value in urban areas including 100 percent solatium on the market value. This should help the affected families to find alternate land or seek new economic opportunities. However, one needs to watch the impact of this increased compensation norms on the land market in the areas where development of infrastructure is on-going or is planned for the future.

Retrospective effectiveness: This is important for projects where no award has been made after initiating the LA process where compensation determination provisions under RFCTLARR Act, 2013 shall become applicable. Further, in cases where land was acquired five years or more prior to the commencement of the new Act but no compensation has been paid or no possession of the land has taken place, then the LA process shall be started, if required, afresh in accordance with the provisions of the new Act.

Social Impact Assessment (SIA): An SIA needs to be undertaken and prepared in consultation with the concerned affected communities and stakeholders; local government and a public hearing must be conducted for the same. The Report thus prepared must be made available to the public in the local language. This is an important provision which ensures involvement of affected communities in assessing and planning for resettlement plans. However, there is a strong but implicit resentment and opposition to this provision from various project proponents. In fact, this is being contested at various forums.

Special safeguards for ST: The Act has specific provisions (Sections 41 and 42) and procedures to be adopted in areas inhabited by tribal people. Some of these are:

a) No LA in scheduled areas: As far as possible, no acquisition should be planned in Scheduled Areas (included in Fifth and Sixth schedules to the constitution) and if unavoidable, it should be the last resort for the project.
b) Consent of the Gram Sabha: No land can be acquired in Scheduled Areas without the prior consent of the Gram Sabhas/Panchayats.
c) Approval of Development Plan: Based on the results and findings of the SIA, a Development Plan needs to be prepared and discussed in the Gram Sabhas where STs are expected to be displaced and get approval.
d) Settling rights of tribal: The Development Plan should include details of procedures for settling land rights, restoring titles of STs, and include a program for the development of alternate fuel, fodder and other forest produce to meet the demands of the tribal affected population.
e) Application of PESA: The Act ensures that the provisions of Panchayat (Extension to Scheduled Areas) Act (PESA), 1996 are applicable to the project, if located in the Scheduled Areas.
f) Advance compensation: At least one-third of the compensation should be paid as first installment towards compensating land and the rest before taking over its possession. There is an on-going debate on this issue among policy makers and project proponents.
g) Tribal to be resettled in same schedule area: The affected tribal families preferably are to be settled in the same schedule area as a compact block to maintain their ethnic, linguistic and cultural identity.
h) Non-alienation of tribal land: Any alienation of tribal land in total disregard to applicable laws and regulations would be declared null and void.
i) Fishing rights: Affected tribal members would be given fishing rights in the reservoir of the water resources projects.
j) Additional R&R benefits: Tribal families, if relocated outside the district should be given additional twenty five per cent of R&R benefits and one time grant of fifty thousand in cash.
k) Consent of majority – a must: In cases where the Public Private Partnership (PPP) projects are involved, consent of at least 70 percent of the affected families shall be obtained. In case of acquisition for private companies, consent of at least 80 percent is required (Section 2.2). Thus, this Act ensures that no forcible acquisition of land takes place at least for these categories of projects.
l) Exemption from income tax and stamp duty: No income tax shall be levied and no stamp duty shall be charged on any award or agreement made under
m) Suggestion for land for land resettlement in command areas in irrigation projects.

Important Challenges in Implementation

Despite the above progressive provisions, the effectiveness of the Act will be known only when the projects start planning and implementing these provisions. However, one can expect that the resettlement managers would continue to face some of the following major challenges in planning and implementing resettlement component of the infrastructure projects, particularly for project affected tribal families.

a) Land for land: One of the biggest challenges would be in finding suitable land required to ensure land-for-land resettlement for tribal affected families.

b) Relocation: Projects need to identify relocation sites in the proximity of the forest to ensure that the affected tribal families continue to access the non-timber forest produce, which is an important source of their livelihood. Alternatively, there is a need to find large tracts of land in resettlement sites to take up plantations for fuel, fodder, small timber, etc.

c) Handling of large cash grants: Under the RFCTLARR Act, 2013, project affected and displaced tribal families are likely to receive large compensation amount and cash grants in-lieu of R&R provisions. The challenge that the resettlement managers would face would be ensuring the productive use of such cash payments and protecting them from exploitation by vested interests including traders, money lenders, etc. This necessarily requires exploring new financial instruments. Studies carried out at the Srisailam and Lower Manair dam projects in AP also confirm the inadequacy of cash as a mode of compensation (Zaman, 1990).

d) Speculative land market: Large compensation and cash grants in the project area are likely to influence the land market. Immediate impact would be increasing land prices. The affected families would therefore find it difficult to replace required land unless project authorities take required steps to help the willing affected families in replacing their land.

e) Skill improvement: Keeping in view the limited opportunity for land-for-land resettlement, it is most likely that majority of tribal affected families would have to adapt to non-land economic activities which might need new skills to adopt non-farm economic activities. Considering the socio-economic back ground and low literacy level, it would be a great challenge to help affected families acquire required skills and make them ready to face challenges in the market, both for raw material and the products.

Opportun To Be Exploited

While the new legislation (RFCTLARR Act, 2013) has a number of new provisions which would go a long way in ensuring transparent process of LA and R&R to restore the livelihood of affected families, however, there are still a number of opportunities

and areas that have been either not yet fully explored and exploited or have been used only partially. These include the following:

- Long term leases of land in the periphery of the reservoir (for draw down cultivation) in place of LA and introducing crop insurance in offshore areas to promote long-term lease of such areas.
- Pooling of land and allotting to oustees - distribution of land in the benefited or the irrigation command area.
- Using reservoir water for fisheries on community basis - There are good examples from countries like Indonesia.
- Reserving a certain portion of water in the project reservoir for use (through surface and lift) by affected families (such a provision exists in Maharashtra).
- Opening new employment opportunities through developing ancillary industries in the vicinity of the project area along with the main investment
- Linking self employment to the project economy - This was demonstrated with good results in the World Bank funded Coal Sector Environment and Social Mitigation Project spread over 24 locations in seven states in the country (Hasan, 2003).
- Providing linkages with government economic schemes for promoting new economic avenues as well as for improving the economy of scale and profitability of the existing economic activities at the household level
- Reserving jobs in public sector for the eligible affected people. A number of public sector organizations (NTPC, NHPC, Coal India), Government of Karnataka had this provision in their R&R policies. Jobs like health worker, gardener, canteen-boys, security staff (in the project township), sweepers, cleaners, etc are jobs that could be provided to displaced people with less education and low skill level.
- Planning 'group economic activities' that have potential (this approach was adopted, quite effectively, in Hyderabad Drinking Water and Sewerage project and Andhra Pradesh Community based Forest Management Project) and could be exploited for the benefit of the affected community.
- Fisheries development: In India, access to reservoir fisheries and/or marketing is often given by government or project authorities to outside concessionaires. This is one sector which can support a large number of displaced and affected families. There are good experiences of such efforts in countries other than India.
- Introduce area development plan for the project area - This could open up and provide new economic opportunities for the displaced people.
- Linking certain Corporate Social Responsibility activities for the benefit of the affected people, both at the individual and group levels.

Conclusions

The land-based economic rehabilitation not only holds good promise and hope in helping the displaced tribal people to minimise impoverishment in the post resettlement period, it also ensures a sustained source of living and security for the future generation. However, one needs to have a carefully thought out strategy (weighing the options of leasing-in over land acquisition, irrigation potential created in the benefitted zone or irrigation command area, offshore cultivation, opportunities for land based economic activities and possible entrepreneurship in the project area with new economic avenues) in implementing land-based resettlement in water sector projects.

Under the circumstances where suitable land is not available, the resettlement strategy should aim at providing opportunities for gainful employment and self-employment to improve or at least restore the economic base of those affected. Such a strategy might help the disturbed communities in their economic reestablishment as self-sustaining units. However, this should be done in relation to the educational background and skill level of affected persons and their existing employment pattern. While planning for income generation, due consideration should be given to new economic prospects, availability of raw material, market opportunities and the existing institutional arrangements to extend technical, financial and other required support.

In the case of tribal families, it would be more useful to take advantage of various constitutional provisions and different programs focused on tribal development in the country with a view to dovetail them for their resettlement. This requires more concerted and coordinated efforts of those associated with the planning and implementing resettlement program and the required institutional arrangement should be in place to ensure them. The paper has listed a number of opportunities that could be explored and exploited to help affected communities. However, to use these opportunities, it requires thoughtful planning to develop a combination of different approaches depending upon the socio-cultural conditions of the displaced communities and their economic background and skill endowment. There is also a need to develop strategies and plan for better investment of huge cash grants that affected families would receive through various provisions of RFCTLARR Act, 2013.

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The Role of Gram Sabha in Addressing Socio-economic Issues in Mining Operations - A Case Study of Vedanta Alumina, Odisha

Abstract

Vedanta Aluminium Limited (VAL) project at Lanjigarh has attracted nation-wide attention for its rejection by Gram Sabha (GS). This paper details the process of GS and their impact on the industrial projects in the state, drawing broad conclusions from the above project. The reason behind the failure and the consequence of the failure of the project is discussed in the article. The provisions of the Panchayats Extension to the Scheduled Areas (PESA) Act and the implementation of GS have been narrated keeping in view the socio-economic factors and the pace of industrial development of the State.

Introduction

Vedanta Resources is a global metals and mineral company with headquarters in London, United Kingdom. It is the largest mineral and non-ferrous metal company in India and also has mining operations in Australia and Zambia. Their main products are copper, zinc, Aluminium, lead and iron ore. It is also developing commercial power stations in India such as 2,400 MW power plants in Jharsuguda, Odisha and 1,980 MW power project in Punjab. Vedanta Aluminium Ltd. is a subsidiary company of Vedanta Resources with headquarters at Jharsuguda in the state of Odisha.

Alumina Plant by Vedanta Group in Odisha

In 2004, Vedanta entered into a Memorandum of Understanding (MoU) with Odisha Government for bauxite supplies. According to the agreement, roughly half the assured off-take of 150 million tones was to come from Niyamgiri. As per the MoU, the government initiated the process of allotting a mine in Niyamgiri close to Lanjigrah to carry the materials to the site through conveyer belt. The move by Vedanta to establish an aluminium refinery was an entrepreneurial masterstroke given that the plant was to come up around the time when there was a scorching

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demand for aluminum. Moreover, although Odisha is known to have substantial deposits of bauxite (an estimated 2,000 million tones as against the country's total deposit of 3,000 million), it has never been substantially mined on account of local resistance. The Vedanta Aluminium Refinery has 498 direct employees and nearly 2,500 contractual labourers under the Partner Company.

Land Requirement for the Project

M/s Vedanta Aluminium Ltd approached the Government of Odisha for acquiring 2,278 acres of land in Lanjigarh, Kalahandi for setting up the one metric tonne per annum (MTPA) project close to the mines located near Lanjigarh. Out of the 2,278 acres, non-forest land was about 529 acres and private land of 1,749 acres. The total land acquired was 2,063 acres which was transferred to the company in the year 2004. The company also proposed for a creation of ancillary and downstream hub within 20 acres of land. The site has 121 project displaced families, who have been relocated and resettled in the new R&R colony in 2005, established by the project authorities based on the prevailing R&R policy of the state. The fact that the displaced families relocated and resettled in the project sponsored resettlement site implies that the displaced families had accepted the R&R package. It is important to mention here that state came up with its people centric R&R policy only after 2006.The government record says the company has spent about 7,292.38 lakhs under CSR activity towards health, education, sports and infrastructure.

Investment without Access to the Mineral

Vedanta decided to move with speed and aggression and built its infrastructure even before it had got the clearances required to mine bauxite in Niyamgiri. The company knew very well that the tribals in these parts of the state had resisted the company's presence in the region for years. Further, the associate company as well as the mining part of the company was required to be set up in forest land, and hence there were requirement to seek forest clearances. While this scenario prevailed in the area, VAL went ahead with a one million tonne per annum alumina refinery plant in Lanjigarh, roughly 15 km from the Niyamgiri hills at a cost of Rs 5,000 crores. Another Rs 35,000 crores were invested in a 0.5 million tonnes per annum Aluminium smelter plant and a 1,215 MW captive power plant at Jharsuguda in Odisha. Added to this, there was a proposed investment of nearly Rs 10,000 crores for a 2,400 MW independent power plant that group company Sterlite Energy had proposed to put up, which had linkages with the Alumina project. Thus, Vedanta had already spent roughly Rs 50,000 crores to develop and set up the required infrastructure to make Alumina refinery plant without getting access to the required raw material (bauxite). It is a big challenge which the VAL had taken upon itself. However, it doesn't look like that access is going to come too soon. Essentially, VAL needs to frame strategies to overcome such unduly long delays and earn from the

investments already made.

The Application of PESA ACT, 1996

Niyamgiri is a forest located in south-west part of Odisha in India. The area has traditional medicinal rice and medicinal plants called Shorea. The site is commonly known as land of Dongria Kondhs and the abode of Niyam Raja, the traditional worship deity of the tribal people. Since the project area forms the part of Schedule Area, PESA Act 1996 is applicable. It is mandatory to get the consent of people through GS for any acquisition/environment/forest clearance. The GS of the village consists of persons whose name is registered in the electoral list of the village. PESA empowers every GS to safeguard and preserve the traditions and customs of the people. According to PESA, the GS or the Panchayat at the appropriate level needs to be consulted before acquiring land for development projects and before resettling and rehabilitating persons affected by such projects. The actual planning and implementation of the project in the Schedule Area is required to be coordinated at the state level. Under Section 4 (K) of PESA Act, the recommendations of the GS or the panchayat at the appropriate levels are mandatory prior to grant of Prospecting License (PL) or Mining Lease (ML) for mining minerals in the Schedule Areas.

VAL is reported to have followed, while going for PL and ML for mining bauxite in Niyamgiri area, all the mandatory requirements for conduct of GS. For taking consent of local tribal inhabitants, GS was conducted under the guidance of the concerned District Collector and the process followed was monitored by the district administration. The author was also part of the process where the GS gave the consent and its resolution was in favour of the industry.

Historical Analysis of Tribal Communities of the Project Area

Historical analysis of all tribal dominated states like Jharkhand, Odisha and Chhattisgarh clearly shows that there have been many uprisings by the tribal chieftains primarily because they were agitated against outside interference in their culture and customs. In the past, vast areas of land were acquired under the LA Act of 1894 and the Coal Bearing Areas (Acquisition and Development) Act, 1957 for public control over the land with prospect of coal mining and its development. An overwhelming majority of such mining projects fall in tribal dominated Schedule Areas. Large numbers of tribal people were displaced due to land acquisition for these mining projects. The local people lost their land and hearths; access to forests, water bodies; community identity, culture and livelihood. Further, due to illiteracy and lack of technical capabilities, these local people could not get direct or indirect jobs in the mining and associated industries and hence could not become part of the development process.

In Odisha, more than 55 percent of the area comes under Scheduled Areas under the Fifth Schedule to the Constitution of India. These areas are rich in natural resources (land, water, forest, minerals, flora and fauna) and are being exploited for mining, industrial and water development projects. Natural justice demands that any development activity taking place within Odisha should also benefit the project affected and local people, who sacrifice their land, forest, water resources and other natural resources unlike migrants or investors from outside who exploit these resources for economic gains. The past experience indicates that most of those who were displaced due to various projects in Odisha have neither been properly rehabilitated nor resettled. Thus, displacement has resulted in the exodus of the local populace from the area and even the state in search of livelihood elsewhere. Those who migrated into Odisha in search of new job opportunities have also increased manifold during the last 60 to 70 years. This has resulted in the change of demographic profile of the population of the Scheduled Areas, especially hitherto tribal dominated areas. The social, economic, political and cultural identity of the people of Odisha, especially the tribal and other vulnerable sections of the population including scheduled castes, has been adversely affected because of the migrant groups. Some of these tribal groups have unique features and one among such groups is Kondhs.

Socio-economic Features of Kondh/Dongria Kondh

The Kondhs are indigenous tribal groups of India and mostly reside in the eastern part of India including states of Odisha, Jharkhand etc. The Kondhs are believed to be from the Proto-Australoid ethnic group. Their native language is Kui, a Dravidian language written with the Oriya script. The Kondhs are adept land dwellers, exhibiting greater adaptability to the forest environment. However, due to development interventions in education, medical facilities, irrigation, and plantation so on, they are forced into the modern way of life in many ways. They are gradually adapting to the mainstream life with a significant change in their traditional life style.

One sub-group of Kondhs is Dongria Kondhs. They inhabit the Niyamgiri hill area (where Vedanta project is located) which is a part of Rayagada and Kalahandi districts of Odisha. They normally live very close to streams (locally called Jharana) that flow from Niyamgiri hills and their livelihood largely depends on the streams and hilly forests of Niyamgiri. There are many perennial streams to support their agriculture and life styles. They practice hunting in the forests and their subsistence economy is based on foraging, hunting and gathering. However, due to development projects including bauxite mining and acquisition of their fertile farm lands, they now increasingly depend on subsistence agriculture and practice shifting cultivation, locally known as Podu Chasa.

The Dongria family is often nuclear. Female members of a family are considered assets because of their contribution inside and outside the household economic

activities. Women are on equal footing with the male members in all activities, from constructing a house to cultivating agricultural lands. Due to this, the bride price is paid to her parents when she gets married which is a striking feature of the Dongrias. The Dongrias commonly practice polygamy. They are great admirers of aesthetic romanticism. Body tattooing is practiced by both sexes. Dongorias have religious belief in traditional worship of the Niyamraja, with sacrifice of buffalo and calves.

Dongria Agitation - Exploitation of the Situation

The persistent strong protests and resentment against the Vedanta project has now gone beyond the national boundaries and has attracted world-wide attention. The tribe's plight is the subject of a short film 'Survival International' which is narrated by actress Joanna Lumley. As part of protests, called 'Demand Dignity' campaign, the Amnesty International published a report in 2011 concerning the rights of the Dongria Kondh in the project area. The Dongria Kondh tribes also appealed to James Cameron to help them stop Vedanta, reckoning that the author of the film Avatar, which deals with a similar subject, would understand their plight. An advertisement in Variety magazine said: "Appeal to James Cameron. Avatar is fantasy … and real. The Dongria Kondh tribe in India is struggling to defend their land against a mining company hell-bent on destroying their sacred mountain. Please help the Dongria." Other celebrities backing the campaign include Arundhati Roy (the Booker prize-winning author), as well as the British actors Joanna Lumley and Michael Palin. Lingaraj Azad, a leader of the Save Niyamgiri World- Committee, said that the Dongria Kondh's campaign was "not just that of an isolated tribe for its customary rights over its traditional lands and habitats, but that of the entire world over protecting our natural heritage". In 2010, India's Environment Ministry ordered Vedanta Resources to halt a six fold expansion of their Alumina refinery plant in Odisha.

An NGO managed to demonstrate before British parliament parading few of the Dongoria Kondhs which was news at that time. It was intended to attract the attention of British government as Vedanta group head office is located at London. The British government drew the attention that the Supreme Court was asked to look at the Dongria Kondh's rights and project impacts on their life style and livelihood sustenance. The government emphasised that 'a change in the company's behavior' is 'essential'. With international activists and senior political leaders highlighting the rights of the Dongria Kondhs, the case had taken on a high-profile dimension. Paradoxically, no activist/political view comes with a solution to the conflicting interests.

Supreme Court Intervention

While the company has appealed to the Supreme Court (in April 2012) against the Environmental Ministry decision, the tribal leaders have resolved to continue their struggle and fight against the project. India's Supreme Court did approve Vedanta's mine in principle, but the British government has pointed out that the Court has never been asked to look at the Dongria Kondh's rights.

The Dongrias remained united in their determination to stop Vedanta from turning their sacred mountain into an industrial waste land. On a petition, Supreme Court while intervening in environment clearance for VAL mining project, asked for the consent of people of the area through GS under PESA Act. One of the Supreme Court's conditions was that some of the mine's profits should be reserved for 'tribal development'. The Court maintained that no 'development' or 'compensation' package could cure the problems that mining in Niyamgiri would cause: the destruction of a unique environment and culture. The Dongrias have accused Vedanta of 'trying to flood them with money' and have made it clear that 'mining only makes profit for the rich. They feel that they would become beggars if the company destroys their physical environment with mountain and bountiful forest. The apex court's direction of empowering GS to have a decisive role in preserving the religious and cultural rights of the Dongaria Kondhs at Niyamgiri was a major success for these tribal.

The Role of GS

The apex court directive of empowering GS is hailed as a landmark decision. "The negative outcome of a single GS would have the same impact on the project as those of 12 GS," says Odisha Tribals Welfare Secretary, Santosh Sarangi.

If the project, according to the opinion of the tribal in a particular village, affected their religious rights, how could that be ignored, the court pointed out. The court directed that, after all the GS were held, the proceedings and resolutions should be sent to the Union Ministry of Environment and Forest (MoEF), which would take a final view on the forest clearance of the mining project (withdrawn in August 2010 by the then Union Minister, Jairam Ramesh). No doubt, bauxite mining in Niyamgiri is crucial for procuring raw material for Vedanta Aluminium Ltd (VAL), which had set up its one million tonne per annum Lanjigarh alumina refinery at an approximate cost of Rs 5,000 crores, on the assurance of bauxite supply from this mine, owned by Odisha Mining Corporation (OMC).

In the landmark judgment in the Vedanta case, the Supreme Court directed the smallest units of local governance to use their powers and take a decision on whether the Vedanta group's $1.7 billion bauxite mining project in Odisha's Niyamgiri Hills can go forward or not. Affirming the decision-making power of the village councils of Rayagada and Kalahandi under the Forest Rights Act (FRA), the court directed

these GS to "take a decision...within three months" on any claims of cultural, religious, community and individual rights that the forest dwellers of the region may have.

A top VAL official, however, said the outcome of the GS would not have any impact on the mining project. "The apex court had pointed out in its order over forest clearance for the mining project in 2008 and that opinion of GS is required for minor minerals and not for major ores like bauxite and iron ore. The Supreme Court had only asked for settlement of individual, community and religious rights of tribals through GS. As far as religious rights are concerned, they maintain that it should pertain to particular places of worship and not the entire hill range".

Alternative Arrangement for Refinery Operations by VAL

Meanwhile, the Lanjigarh Alumina refinery is currently running at 60 per cent of its capacity by sourcing bauxite from outside the state. Also, VAL is trying to get supplies from BALCO's Kawardah mines in Chhatishgarh soon. While the cost of bauxite at Niyamgiri or mines outside the state works out to be almost the same (Rs 700 - 750 per tonne), it is the extra Rs 1,600 - 2,000 per tonne transport and other logistics cost for bauxite secured from Jharkhand, Maharashtra and Chhatishgarh that is bleeding the company's economy. For its refinery, VAL needs about three million tonnes of bauxite annually. This puts an extra Rs 600 crore burden under the raw material head, affecting the viability of the plant. The company has also applied for 26 alternative mines in the radius of 150 km of Niyamgiri and has urged the state government to expedite processing of its applications pending with OMC, especially those related to bauxite leases that fall under the non-forest areas. These applications are either at the PL (prospecting license) or ML (mining lease) stages.

Conducting GS

The GS are being held on the direction of the Supreme Court which had asked the Odisha government to organise these village assemblies to settle the individual and community rights and address the claims of the tribals living on Niyamgiri hill slopes with regard to protection of their religious rights. The apex court had also directed MoEF to take a final view on the issue of forest clearance of the project taking into consideration the proceedings of the GS. Thus, the court has strongly endorsed the role of the GS as democratic decision-making forum on issues of individual, community and cultural rights of tribals and traditional forest dwellers.

Environmental issues

The recent ruling in the Niyamgiri bauxite mining case has far reaching impacts on mining in tribal areas where environmental laws such as the Forest (Conservation) Act, 1980, Forest Rights Act, 2006 and the Environment (Protection) Act, 1986 are given scant respect by industrial project proponents looking for natural resources. This trend, in fact, has accelerated in recent years, with national development being measured by a single indicator, the Gross Domestic Product. The Supreme Court order in the Vedanta case endorsed the rights of tribals under the PESA, permitted them to make fresh claims and designated the GS as the competent forum to decide the issues. It is beyond doubt that there is an organic connection between tribals and the land, and this has been accepted by the Supreme Court in 1997. It is essential that this bond must be accepted and respected.

Besides the above fundamental issue, several key questions relating to negative externalities caused by development projects have also been addressed by the legal framework: diversion of forest land for industry should be compensated through payment of Net Present Value (NPV); separate funds must be earmarked for compensatory afforestation and wildlife management; designated pre-tax profits should be allocated for development of Scheduled Areas. Unfortunately, such basic requirements are often portrayed as impediments to economic growth, and environmental losses thus stand ignored. Moreover, no adequate transparent and independent assessment mechanism to monitor implementation of conditions set for grant of clearance exists in many parts of the country.

In Odisha, for instance, environmental rules and conditions were brazenly violated by Vedanta Alumina when it launched the expansion of its project before clearance was given. While this was recorded by the Saxena committee of the Environment Ministry (MoEF, 2010), no state enforcing committee, however, has noticed and recorded any such violations. How could this be ignored by the state enforcing agencies is an intriguing question. It implies that other than law, many other political considerations regulate the clearance process of the mines, and Vedanta is no exception. One would agree that the Supreme Court order is a good precedent to follow in all projects that have environmental and social consequences. Development is a natural aspiration, but it must be genuine and should not result in the loss of even the existing quality of life of the people living in such projects. At the same time, it does not mean that quality of life will be the subject of industrial projects when they are required to go for any clearance for their projects. It should be the subject of state and central governance.

Outcome of the GS - "No" to Niyamgiri Mining

The GSs were conducted under the direct supervision of the Court. People all over the world keenly watched the proceedings and outcome of each GS. It attracted

the central page of both print and electronic media. Following were the outcome in all GS.

S. No.	Village/ GS	Voice of GS
1	Kesar Padhi	We require Niyam Raja. Long live the Earth deity.
2	Jara Pa	We will protect Niyam Raja till last drop of our blood.
3.	Batudi	We may sacrifice our lives but won't spare hand full earth from Niyamgiri.
4.	Khambesi	Take our lives first and then you step on Niyamgiri.
5.	Serakapadi	The hill is ours, we won't spare our hill.
6.	Lakhapadara	The principle of Dongaria is one and their Deity "Niyam Raja" is one.
7.	Lamba	We get everything from Niyam Raja except kerosene and salt.
8.	Tadijhula	We exist for Niyamgiri and ready to die for it, if needed.
9.	Palaberi	We cannot think about life even in our dreams except Niyamgiri.
10.	Kunakadu	On death of "Niyamgiri" deity, we will die.
11.	Phuladumer	Our "Niyam Raja" is great to us, like "Lord Jagannath" to you.
12.	Izurupa	Jungle is ours and Niyamgiri is ours. If any eyes on Niyam Raja, he will be doomed on the ire of Niyam Raja.

Form the above, it is observed that twelve GSs have been organised in Niyamgiri area of Lanjigarh and all the GSs rejected the mining operations of VAL and OMC. The common voice echoed is: 'Water, air, fire and forest of Niyamgiri are ours. Our law is one. Who is Government to speak here? Mining operation will have adverse impacts on our livelihood and our forest, and the religious and cultural rights will be diminished. Mining operations will not only result in pollution of our natural environment but also destroy agriculture, flora and fauna and rare medicinal plants. Flow of many streams will dry up. Our deity Niyam Raja, who is protecting us for generations, will meet untimely death. On the death of our deity, we will also die. So we won't allow our deity to be killed. What to speak of mining operations, a needle tip earth from this mountain range won't be spared'. These were the strong feelings expressed by the 12 GSs held in all these villages in pursuance to the decision of the Hon'ble Supreme Court. The same voice was heard from all tribal groups of the area: Dongaria, Kutia, Jharnamia Kondhas as well as other tribes/

castes in the presence of the District Judge. All the villagers who participated in the GS had one voice: 'We may die but we will not give up our fight. Thus, though the GS was conducted, the Government remained unsuccessful in getting support in favour of Vedanta project.

Impact of GS decision

"No mining of Bauxite from Niyamgiri". The above view of the GSs has ceased the way of establishment a big project of Rs 50,000 crores in Odisha. Vedanta established the industry at Lanjigarh with the hope of procuring high grade bauxite cheaply. The plan has failed utterly. It is a big question as to how much Vedanta will run the Alumina refinery and other ancillary units if it has to procure bauxite (Alumina ore) from Gujarat, Chatisgarh, Andhra Pradesh, etc. The result is that the plant cannot run to its capacity without getting its required raw material.

The big question that one needs to answer is whether the objections of the local tribals to the above mining and refinery project due to destruction of Niyamgiri Raja and its environment are the only reasons or there are other factors that are impacting the progress of the project? The related question is how the industrialisation projects can be fruitfully implemented in such adverse situations? With such a vitiated situation; and with distrust and suspicion ridden environment, any developmental work may be difficult to implement. Besides the above, the forest and environmental laws are so complicated that it is difficult to arrive at any solution. Whether it is appropriate to sacrifice development on the altar of faith is another big question. Now challenges have cropped up for both central as well as state governments. Whether the opinion of public will prevail or will be overlooked? It is not only one Vedanta Company, if the fate of big projects will be left to the decision of GS then the resultant negative impacts on the investment scenario in India, is a big question for the Government to decide. On one one hand, there is a strong voice not to hurt the interests and concerns (Niyam Raja is an example) of tribals and on the other side there are hurdles in the path of development. No doubt, one needs to balance between the rights of tribal and the required economic growth of the country and at same time there is a need to safeguard the environment and utilization of earth resources. Essentially, this requires a meaningful and open minded debate to discuss the issues threadbare and find solutions and strategies.

This is not the question of only Niyamgiri area. Similar situations do prevail in other parts of the country where development is at logger heads with the local communities. The argument of the inhabitants of Niyamgiri is that if the mine is excavated and the industries are operated, the environment of that area will be polluted. The calm serene atmosphere and the greenery of that area will be destroyed. A systematic analysis of these allegations is very essential.

Causes of Resistance in General

The question is why is there opposition of the locals/public against industrialisation process in several parts of the country? One of the main causes behind this opposition seems to be the problem of displacement and resultant loss of livelihood. Everywhere the government and the project proponents have failed to fulfill the assurances given to the displaced people at the time of establishment of the project. This is creating doubts in the minds of displaced persons, and encouraging them to oppose projects that have adverse impacts on them. After project establishment, the displaced persons are deprived of employment and denied required rehabilitation measures. As a result, a negative mind set is grooming against industry across different parts of the country. There appears to be an un-conducive environment prevailing in the country, starting from Singur in West Bengal to Kalinganagar in Odisha and likewise in other parts of the country. The local people strongly believe that the establishment of industry will not be beneficial for them in any manner. The administration also fails to assure them of the likely benefits. There is a feeling that their lives will be more miserable and they will become poorer.

Court Ruling and Ensuing Issues

Jubilant tribal activists are also treating the Vedanta verdict not just as a victory for the Dongria Kondhs against Vedanta, but as a validation of the GS's powers under the FRA. The court's directive on the FRA is a clear message that the GS can decide on their rights, that their decision is final, and it has the power to decide on protecting forests and natural heritage. In particular, by sending the matter back to the GS because a key matter has not been placed before it for its active consideration' the court is treating the GS as a statutory, legal authority at the same level similar to the 'forest advisory committees' of MoEF. Another question is that if the GS clears land acquisition for the industrial unit of the project, should the mining project be treated in isolation to the project clearance by GS in neighboring villages. In the author's opinion, all clearances should be obtained in one go. The investment in the industry without assured raw material, as has happened in Vedanta case will be a case of 'bad investment'. The Bench of the Supreme Court also made it clear that the FRA 'protects a wide range of rights of forest dwellers and STs including their customary rights to use forest land as a community forest resource and not restricted merely to property rights or to areas of habitation'.

Present Status of the Project

Presently, the Vedanta group has almost everything in place including the refinery plant to make aluminum, with just with one problem - it does not have the raw material, bauxite, and now has little hope of getting it. It would be difficult to imagine how a cash pile of Rs 50,000 crores would compare with the tallest mountains in the Niyamgiri Hills of Odisha. However, the money's worth is reflected in a sprawling

alumina refinery established by the Vedanta Group here a few years ago. Now it will be a billion dollar question, 'will it work in view of GS rejection of mining in Niyamgiri'?

After the GS failure to resolve in favour of mining at Niyamgiri, the future of VAL Langigarh plant was in danger. The Group approached Government of Odisha for alternative source of mining and simultaneously ran the plant with externally sourced raw material procured from different parts of country and outside country. The plant ran with less of its capacity for certain period. Now it is almost stopping the operation of the refinery and laying off certain staff for want of raw material (bauxite). Alternatively, it may run for few days with raw material sourced from external sources. Under the non-availability of the raw material, it is uncertain how long can the present situation continue.

Major Lessons from Vedanta Project

Village Panchayats (village councils) take major decisions with the involvement of all their members through GS or Panchayat meetings. Such meetings have been very useful in Niyamgiri for the local people to come out with their views and opinions on the Vedanta project. Conducting GS in Niyamgiri has brought out many lessons to learn, both for the policy makers and project implementers. There are also lessons for investors to learn before they plan investment in rural areas, particularly those dominated by tribal communities and how to deal with the GSs, the lowest decision making bodies. Some of these are given below.

1. GS, though the smallest unit of the political system in our democracy, is the most powerful unit to decide in the process in government.
2. Investors must understand and appreciate the people's power, giving due recognition to the issues and concerns of the locals (including the project affected people) than the views/opinions of a few bureaucrats and politicians in power. The investors should also be careful with the vested interests, including peoples' representatives or activists who claim to represent the local communities.
3. Government should come up with regulations and procedures well before any investment because any investment already made with the existing law should be protected with non-retrospective implementation of new regulation/other safeguards.
4. Activists/NGOs, working for the peoples cause, should come up with their agenda very clear right from the day one of their engagement with the communities as well as with project proponents. They should be very clear whether they seek development or want status quo in the socioeconomic condition of the area and its people. This should be made clear to the stakeholders.

5. There is a need for the central government and regulatory departments to work in coordination with each other. One should recognise that the investment made by any industrial house is public money which is siphoned through bank loans. The infrastructure developed to facilitate investments and development of projects is tax payer's money. Any miscarriage of such money will have great bearing on the economic/financial situation of the state/nation as a whole.
6. While seeking the opinion of illiterate or less exposed tribal people for nation building/industrialisation, proper home work should be done by the industrial houses by engaging with the villagers, educating about them the benefits of development. This will help them make an informed decision.

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The Theun-Hinboun Expansion Project, Lao PDR: A Case Study

Abstract

The Theun-Hinboun Expansion Project (THXP) in Central Lao PDR was developed and implemented in accordance with international good practices. The resettlement programme involved moving 4,367 people from 11 villages and hamlets to four resettlement sites over a three year period (2009-2011) in order to allow inundation of a 105 km² reservoir. The work is still ongoing with the goal of achieving full restoration of livelihood within ten years of physical resettlement. The case study of the project examines the factors that contributed to the overall good results of its resettlement programme. Three phases are analysed: preparation, construction and operation. Actions undertaken during each of these phases and ongoing work reveal some essential aspects about the nature of resettlement in the context of a large hydropower project.

Introduction

Resettlement has been acknowledged as one of the most challenging aspects of hydropower development and rarely achieving a successful outcome of sustainable development. The success of large dams technically and financially is well documented, but social and environmental success eludes the industry which has been plagued by poor and unsustainable results, and subsequent negative media coverage. Benefits of hydropower investments are often more apparent in distant cities and for industries located in considerable distances from impacted areas, rather than directly impacted rural communities dependent on natural resources in the vicinity of projects. Evidence points to directly impacted communities becoming only marginally better off or even ending up in a worse socio-economic condition than before the project (World Commission on Dams, 2000; Scudder, 2005).

It is true that hydropower projects have large environmental and social footprints since construction sites, especially reservoirs claim large areas of land and impact

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waterways both upstream and downstream of a project. The process of planning, implementing and restoring impacted communities or resettlers is an extremely time-consuming and complex process that is not always understood or appreciated by management or project owners. Planning the vast range of resettlement activities through studies, consultations and technical planning, needs to commence well in advance of actual construction. Implementation is a complex challenge of logistics, cooperation, trust and resources. Restoration during the operational phase requires dogged persistence and endurance in order to achieve the final outcome of sustainability.

In this case study, an overview of the company and project will be presented as necessary background to understand the context. Then a summary of the main steps and actions in each of the three phases of the project (planning, construction and operation) will be presented, followed by an analysis of the most important measures taken that contributed to a successful completion of actions. Finally, reflections on lessons learnt and what could have been done differently or better will be discussed in light of the outcomes and ongoing challenges.

Theun-Hinboun Power Company

The Theun-Hinboun Power Company (THPC) is a unique company in Lao PDR. It was the first private hydropower company in the country, established in 1994 at a time when private investment was at its nascence after more than 15 years of state economic control. The company is owned jointly by Electricité de Laos (EdL), a state owned utility (60%), Statkraft (20%) and Greater Mekong Sub-region (GMS) Power Laos, a subsidiary of a Thai power investment company (20%). Although these three partners represent very different backgrounds, expertise and experience, relations between the shareholders has been very cooperative and productive, with a well-developed atmosphere of open discussions and consensus.

All partners should be seen as serious, long-term investors in the power sector in Laos, not construction companies or financial institutions but organizations specializing in the power sector. The Government of Laos being the majority shareholder ensured that the project received official support and that the short/long-term interests in developing the region around the project were carried out in accordance with government policy. The resettlement plans and other social measures complemented government programs and initiatives in the region or helped establish new programs. The role of Statkraft was one of an experienced technical hydropower developer with high international standards relating to environmental and social issues. This ensured that THXP could attract and secure international financing and provide the necessary expertise. GMS is a company that specialises in energy projects in SE Asia and was also instrumental in building good relations with EGAT (Energy Generation Authority of Thailand), the buyer of 90 percent of the electricity, and with Thai banks who contributed significantly to financing the project.

Theun-Hinboun Power Project and Expansion Project

The Theun-Hinboun Expansion Project (THXP) is an expansion project for enhancing and developing the power potential of the existing Theun-Hinboun Power Project. This first private-sector Build-Own-Operate-Transfer (BOOT) hydropower project in the Laos is located on the Nam Theun in central Laos, approximately 100 km upstream of the confluence of the Mekong and the Nam Theun/Nam Kading and about 300 km from the capital, Vientiane. The first project was a trans-basin, run-of-the-river scheme that diverted 110 m^3/sec of water from the Nam Theun through a tunnel to a powerhouse lower down in the Nam Hinboun basin, generating 201 MW and resulting in a discharge through a tailrace canal and regulating pond into the Nam Hai, a tributary of the Nam Hinboun. The dam has a height of 25m (Zone 4B in Figure 1), creating a Headpond (15-million m^3 storage volume) which imposes higher water levels along a 24-kilometre stretch of the Nam Theun, but not higher than the natural annual flood levels (Zone 2 in Figure 1). As the dam has no impoundment zone due to the "run-of-the-river" design; no resettlement was required for this first project.

The Expansion Project (THXP), commissioned at the end of 2012, is a typical reservoir project with far greater social and environmental impacts. Although the dam is only 65 m (Zone 4A), it creates a storage reservoir with an area of 105 km^2 and a gross storage capacity of 2,450 Mm^3 (Zone 1). This is located upstream of the original project on the Nam Gnouang tributary of the Nam Theun. A new power plant (Zone 4C) was constructed besides the existing one and capacity increased to 500MW. An additional tunnel (Zone 4B) conveys double the volume of water to the Nam Hinboun basin. The discharges from the power plant impacts communities in the downstream areas (Zones 3A-3D). The transmission lines link the project to the local grid (22 and 115 KV lines) and for export to Thailand (230 KV) in parallel with the existing 230 KV line (Zones 4D and 4E).

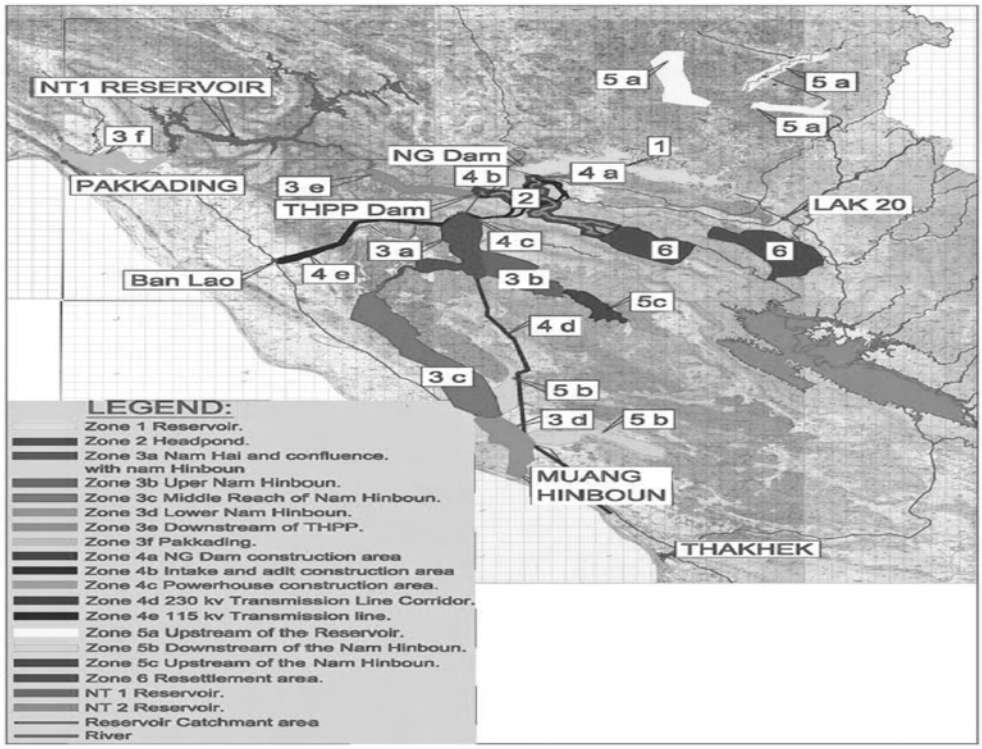

Figure 1: Map of the THXP Impact Zones (NORPLAN, 2008)

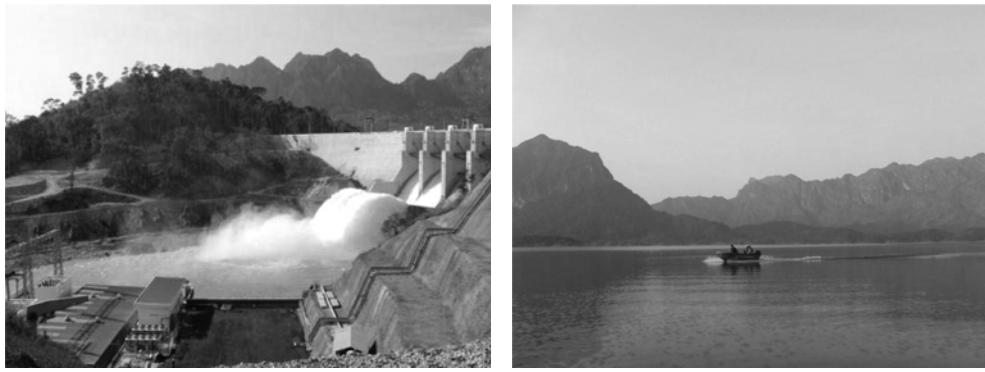

Figure 2: THXP Dam, New Power House and Reservoir
(Photos: Stephen Sparkes)

Planning and Preparation of Resettlement

THXP was planned in accordance with ADB safeguard policies, the Equator Principles and Lao law, including the Resettlement Policy and Sustainable Development Policy (2003), both drafted by ex-pat consultants with the goal of creating compatibility

with international standards. There were several important aspects of this phase, Stage 1 or "Planning and Recruitment" (Scudder, 2005:33), that led to a smooth implementation of the resettlement program for THXP:

- A comprehensive plan and analysis of the baseline situation
- Inclusion of all key social program goals and commitments in the Concession Agreement
- Extensive consultations with all stakeholders, including lenders and government
- Support from management and a degree of autonomy
- Qualified and experienced personnel to manage consultants and start-up programs
- Securing access to land for contractors
- Preventative and pro-active actions before construction

a) Comprehensive planning

A full environmental and social impact assessment was undertaken by the Norwegian consulting company, NORPLAN, in 2007-8. The reports consisted of an Environmental Impact Assessment (EIA), an Environmental Management and Monitoring Plan (EMMP) and a Resettlement Action Plan (RAP). The main elements of the RAP included an overview of all policies and legal requirements, stakeholder analysis, organizational aspects and thorough social baseline and analysis of the socio-economic status of the villages in the proposed reservoir and all other project affected areas. The RAP also focused on the reservoir villages and host villages.

Given the poor history of hydropower resettlement globally and the numerous studies and criticism of resettlement failure (WCD, 2000), more than two years of work went into the analysis of project impacts, resulting in the following sub-plans or approaches:

1) Institutional framework that outlined all the roles and responsibilities of the various stakeholders, including the company and the government. The key positions in the social team that would manage the resettlement were described in the company organization, called the Social and Environmental Division (SED) and the supporting functions of the Government of Laos (GoL).
2) An approach to health issues for the resettlement villages, including health checks, preventive health programs before moving and follow-up support in the form of free health treatment for two years and gradual reduction of subsidies.
3) An approach to dealing with gender (programs earmarked for women), ethnic minorities and vulnerable groups (tailored and culturally-sensitive solutions) formulated by gender specialists and anthropologists.

4) Compensation plan for the loss of non-moveable assets, including permanently cultivated land and structures. This involved the evaluation of these assets and partial cash compensation for resettlers or the option of full-cash compensation for those not willing to be resettled but preferred to go their own way.
5) Site selection process of identifying adequate land for resettlers and assessments of host village resources and especially land that would be available for resettlers' long-term needs.
6) Detailed infrastructure requirements' plan, including house designs and styles to suit the different ethnic and cultural requirements, replacement farm buildings, as well as roads, water supply, electricity and community buildings.
7) Detailed monitoring indicators and income targets based on need assessment for new resettlement areas.

The report in final draft form was presented to the government, lenders and management, and a summary of key findings and recommendations were presented to various stakeholders. All comments and suggestions were taken into consideration before the final document was completed in early 2008. Having an early, detailed draft allowed for information to be shared and for constructive engagement of the stakeholders regarding the plans. This also provided for the interaction with management and the technical teams, regarding, for example, transmission line routing, locations of camps and other project infrastructure and timing of resettlement in relation rising levels of the reservoir. The total cost of surveys for baseline material, consultations and preventative and pre-construction programs was approximately 3.2 million USD in total (2006-2008).

b) Legal basis

All the main recommendations and goals outlined in the RAP were included in the Licence Agreement (LA). The main organizational principles with THPC as lead and GoL in supporting roles were explained, the goals and targets of the main programs and activities were outlined and the budget and schedule agreed to after some tough negotiations. The LA also contained two additional features not common in such documents: a table of entitlements for all project affected persons that listed all the conditions for receiving benefits or qualifying of support or compensation, and a commitment to achieving income targets in a sustainable manner. Having a 40-page Annexure on social commitments as part of the LA ensured that both the Government and Company were bound legally to provide entitlements to all impacted communities and to achieve the sustainable results.

c) Consultations with all stakeholders

During the social baseline surveys and analysis that was carried out by NORPLAN, THPC was responsible for consultations and eventually worked jointly with the consultant and various levels of the government in finalizing resettlement plans. Initial consultations were undertaken in early 2007 to inform people of the project, disseminating a basic overview of features and potential impacts and eliciting their concerns and expectations. In the case of the resettlement villages, preferred locations and expectations in terms of infrastructure, housing and livelihoods were noted. This information was then compared with the ongoing technical studies of available land and water and existing infrastructure within the district (there was a strong political desire to resettle only within the district).

A second round of consultations was held with resettlers after models of houses were drafted and the site selection was narrowed to viable technical choices that were also preferred locations. There was considerable amount of scepticism to some of the sites and many complained that it would not be possible to grow rice or crops at these locations. In general, it should be noted, that there was not a good history of resettlement in the country with the exception of the Nam Theun 2 project upstream which was in the process of moving communities and provided a number of lessons to be learnt by THXP. A decision was taken by SED management to push ahead with the establishment of demonstration farms that contained examples of new house types and fields to grow all crops and trees that would constitute elements of a new livelihood package. Resettlers were taken to these farms for exposure visits to see the houses and crops being grown on the resettlement lands. Hearing consultants and company people promise improved living conditions at resettlement sites was one thing, but being able to inspect house designs and feeling (and even taste) the soil was another. This helped greatly in convincing resettlers of the Company's commitment to ensure a better life for the resettlers and of the feasibility of the sites and programs. Further, consultations occurred before the actual physical move to the site, including detailing village layouts (based on ethnic group and family clusters), locations of community structures, distribution of rice paddy and upland fields and choice of house designs. Many resettlers even moved for periods into temporary huts to supervise the details of their houses during the last phase of their construction.

The example below of the first resettlement site of Nongxong where 109 resettler houses moved in, illustrates how land-use areas were identified for future use. Existing land use was plotted and areas of less intensive use or not in use were then identified for resettlers (speculative lands).The areas for community forestry activities and the condition of surrounding forests were also charted in the village territory. Regarding livelihoods, it should be noted that the reduced land areas and government policy to eliminate swidden rotation of more than three

years, meant that any sustainable solution required developing permanent agricultural systems in the form of rice paddy and upland fields. Although villagers aspired to rice paddy in particular, they were unfamiliar with some of the techniques, managing labour, soil fertility issues, land preparation and water management. There would also be an increased reliance directly on the markets and cash crops.

Consultations with various levels of government were also very intense. Many meetings were held with local government bodies at the village level to define goals and needs so that they can be part of the resettlement process. Meetings were also held with the newly formed Resettlement Management Unit and District Working Groups so that they were fully orientated on their roles and responsibilities, and with provincial and national officials. Equally intensive were the meetings with lenders since resettlement is often seen as a high reputational risk issue. There were numerous visits by banks and institutions and by the Lenders' Technical Advisor (LTA) to review plans and visit locations at the site. For satisfying all compliance needs, number of additional actions were required after the Licence Agreement was finalised and signed.

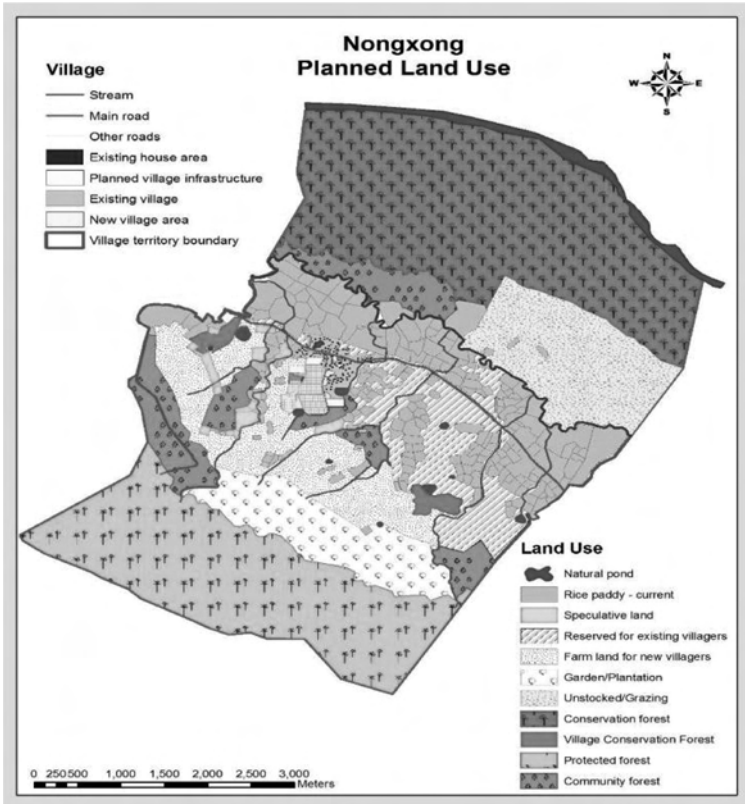

Figure 3: Nongxong Resettlement Planned Land Use Map (RAP -NORPLAN, 2008)

d) Management support and staff build up

The SED Manager was involved at an early stage while the detailed studies were being carried out. Because there was an existing run-of-the-river project, there was 30 staff carrying on various social and environmental activities in Zones 2-3. The shareholders and management of THPC had experience from their first investment regarding the challenges of social mitigation, negative NGO coverage, lender compliance and government requirements, such that they acknowledged the importance of early planning and funding for consultations and other essential pre-construction activities. The Management was fully committed to supporting SED from the onset and did not delve into the details of programmes or decisions as long as the results could speak for themselves.

From the start, SED had a certain degree of autonomy in making decisions based on the best ways of achieving the targets and goals outlined in both the RAP and the Licence Agreement. Hiring of SED field managers and other key staff went ahead so that there were more than 100 staff in place at the start of construction. Preparations for resettlement were well advanced and numerous preventive and pro-active programs were started, ensuring a smooth transition from planning. Further, increases in staff (to 190 in total) was not a major budget issue as wages and housing for local staff at resettlement sites and other locations was at a reasonable cost. The number of foreign positions never exceeded five.

Figure 4: Village Consultations and Demonstration Areas
(Photos: Stephen Sparkes)

e) Land handover

A critical activity that needs to be addressed by a combination of legal, land permit and social teams is land acquisition so that the contractor can arrive at site and mobilize on time in areas that have been secured by the project. This process can take well over a year to complete and coordination between the various sections of the project are key, as well as discussions with government agencies responsible for providing the final permits and villagers on the ground that will be affected by the loss of land and resources.

It is one thing to be granted title to land by a national authority but another to secure the land for the contractor. Even if villagers are not legally entitled to use the land, what seemed to be "empty land" was used for grazing, collection of forest products or fallow areas for rotational agricultural production. A socio-economic and asset survey of project construction lands and land use was undertaken to ensure that nothing was missed in terms of compensating for all losses, regardless of whether there were official land titles or deeds. In nearly all cases, farmers had claims to areas through traditional use or usufruct rights, passing on lands from parents to children directly or having village leaders distribute lands within village territory.

Planning and executing this survey was important since it sets a precedent for all future compensation exercises in terms of both methodology and rates. It is so important to be consistent when establishing rates for compensation as more powerful and influential people tend to claim additional payments and apply pressure on the Company for differential treatment. In the THXP, there were few cases and these required additional time and patience, resurveying the lands and crops with government officials and negotiating agreements that did not diverge from the established rates. Publishing the rates and informing all villages helped to reduce the number of such incidents.

As is the case with most projects, contractors often request additional land areas for spoils, quarries and work areas, or opt for alternative locations. Because SED had carried out the work of asset assessment and payments consistently and had trained personnel, additional land areas (approximately 10 percent) were quickly surveyed and acquired, causing no delays or claims.

f) Preventive and pro-active programmes

Preparing for the first resettlement move four months after financial close required considerable planning and preparation, both for the site of Nongxong where the first two villages were to be relocated but also in general so as to establish good relations with all stakeholders and to offset and reduce certain construction impacts.

For the resettlement site and preparation, most of the infrastructure activities were well underway by the time of financial close. The existing road was upgraded, electricity lines extended to the village site, water supply and drainage system were put in place and land areas for houses and fields were being cleared. A new school, health centre and village hall were under construction. The villagers had agreed to compensation of assets and locations of individual houses with about 20 percent electing for cash payments and self-resettlement after approval of plans by district authorities (most of these households relocated to urban areas or adjacent villages). Particular attention was paid to a small ethnic

minority group, referred to as Thaveung, who were provided a location at one end of the village near the forests. Separate consultations were held with this vulnerable group and efforts were made to modify the resettlement package to their specific needs.

The Project also initiated a number of general preventive and pro-active actions in the project area as a whole to prepare communities for the influx of workers and possible disruptions. Workshops for local authorities and enforcement agencies were conducted with the aim of managing population influx and workers' presence. Information on human trafficking and HIV/AIDS campaigns were initiated to offset potential social and health problems brought into the area by outsiders.

g) Lessons learnt from planning phase of THXP

In general, all actions were completed successfully and on time in the planning phase such that resettlement could be carried out in accordance with the project schedule. There were some minor issues regarding how crops and trees were counted and recorded, with some staff using hectares and others counting individual plants, delaying the agreements as there were no norms in Laos at the time. This emphasised the importance of coordinating methods and training of multidisciplinary teams and making sure that government and the Company agreed on rates and methodologies in advance.

A number of influential households initiated claims that the Company had not included some of their fields in the first survey of land use. Others followed suit seeing this as an opportunity to acquire more cash compensation. A number of recounts were initiated and some totals were adjusted due to mistakes or areas not included. However, the majority turned out to be the newly cleared lands which were rejected; starting a long, drawn-out argument with a small number of households that was not resolved until three years after physical resettlement was completed. Such claims are expected given the pressures and concerns of a resettlement process. Yet, the established rates, clear procedures, as well as a grievance mechanism limited the disruptive impact of these actions. Additional consultations with government about such possible issues could have been helpful since local authorities could have assisted the project staff in enforcing these procedures.

Resettlement Implementation Phase

This phase was the most intense and challenging both because it involved the actual physical moving of communities - linked directly to the construction schedule and the filling of the reservoir - and because it involved the first stages of adjustment and adaptation to a new setting. This is referred to as Stage 2 "Adjustment and

Coping" by Scudder (2005:34-36) and is a transitional phase where multi-dimensional stress is present, including the trauma of losing one's home, socio-economic and cultural setting and ability to control or make decisions regarding one's future. This the period of greatest risk for the resettlers who often have to face new physical challenges (exposure to new diseases, adequate water supplies and changes in health conditions and nutrition), psychological stress (losses of what is familiar and anxiety about the future) and socio-cultural changes (undermining of traditional leadership, conflict and power struggles and loss of traditional sources of income and having to learn new livelihood methods) - (Scudder, 2005:22-28; Verma, 2004:186-218). In this paper, the following aspects in the context of THXP for the resettlement implementation period will be presented:

- Logistics of physical resettlement
- Moving households, the village and the cosmos
- Settling-in period
- Lingering attachments
- Food Security and livelihood challenges
- Institutional aspects and relations with host communities

a) Logistics of physical resettlement

The resettling of 4,367 people is a huge logistical challenge requiring the combined skills of engineers, social scientists, community development experts, agronomists, government liaison staff and many others. As mentioned above in the preparatory phase, much work was done ahead of the commencement of construction since the first group of resettlers (109 households) needed to be relocated four months after financial close in order to ensure these two villages would not be flooded by the coffer dam and diversion works. In all, eleven settlements were resettled in three phases. This allowed the team to learn and improve over three years, starting with the movement of two villages near the dam, then four settlements in the middle of the reservoir and the remainder during the last year. The planning and implementation of each phase was similar to a large extent.

After the location was confirmed, permission from local government granted and host villagers informed about benefit packages (electricity, improved services and upgraded roads), all resettlement infrastructure had to be put in place. This involved securing access sufficient to allow vehicles and supplies to enter the resettlement area and carry out tasks. After fencing off residential areas and the locations of roads, clearing commenced. However, large trees could only be removed by the district authorities but bush and scrub areas could be cleared by the project. Levelling of roads, drainage, wells and/or offtakes from springs and piping for water supply systems and electricity were all undertaken by local contractors under supervision of the project staff.

The marking out of house plots (1000m^2) and clearing of these areas were undertaken by the contractors and the resettlers were then invited to the site to confirm they were happy with the selection of the site and location. At the same time, the location and type of house was decided so that contractors could construct the frame. A second visit was arranged for resettlers to instruct the contractors as to where to place doors, windows and stairways, as well as any other details or specific design features. A few families even moved to temporary huts of bamboo on the house plot to supervise the final stages of house construction. This confirmed their commitment to move to the new sites but added a further complication as they were residing in a construction site, which did not have a place for children to play, and required water, something that was short during the driest months and when it was needed for the construction teams and equipment. Transitional support was provided in the form of rice for one year and subsidized medical care for three years, as well as food/cash for work opportunities to improve the site and household plots, such as fencing, planting fruit trees, etc.

In addition to houses, a number of community buildings needed to be ready prior to the arrival of resettlers. This included health centres for three of the four sites (one site was within eight kilometres from a district hospital), so that the health of the resettlers could be monitored and any diseases or complaints dealt with efficiently. Schools had to be opened, so that children's education were not disrupted. The project office could be converted into a village office after construction was completed and temples were added later since villagers wanted to participate in their construction and gain merit in accordance with Buddhist traditions.

Carrying out all these activities, some simultaneously, required a lot of personnel. In addition to the engineers and supervisors engaged in construction work, a team of social scientists and development experts worked closely with the communities, informing them of progress, organising visits to the new sites and addressing all concerns and questions. Much time was used in showing resettlers the advantages of the new location and assuring them of ample land, support during the transition and explaining the resettlement process. A number of villagers had difficulty making up their minds whether to go with the project and accept the resettlement packages or take cash payment for the loss of assets and moving allowance. About 20 percent went their own way during the first stage (mostly those with property elsewhere or relatives in towns), but this percentage dwindled to only two households during the last stage, as it became evident that the company would deliver on its promises. Health teams (company and district health staff) carried out medical checks and follow-up when the resettlers arrived to ensure that there were no communicable diseases and people were in good health. Education advisors worked with the district

education office to ensure that teachers were available for resettlers and that equipment, materials and facilities were ready for pupils.

A final but key task for the teams was to clear land and assign fields. This involved a combination of project agricultural experts, consultants and government staff to clear and then divide future paddy land and upland fields equitably and to construct access to these fields. The first year of production was for swidden rice and over the next years, the fields were to be transformed into paddy with supplementary irrigation. Rice support was provided for one year but most households attempted to grow rice as is the tradition. The results varied but the main emphasis was to have them use the land and establish a presence.

b) Moving households, the village and the cosmos

The actual moving of people is both a physical and psychological exercise. The former involves preparing the sites, as outlined above, and the actual physical movement of populations. First, there was the dismantling of village structures and loading up of belongings, assets, wood and livestock for transportation to the new sites. This was undertaken by hiring a fleet of trucks and numerous journeys back and forth (three per household on average) except for the last three sites when boats and rafts were used for transportation of materials and small livestock with large livestock making the trek over the hills.

Project staff and government officials were needed at the old sites to oversee the dismantling work and ensure that safety procedures were followed. The staff also organised the transport and accompanied the resettlers to the site. And still more staff and officials were needed to receive the resettlers, noting all assets and ensuring that the families settled in, received essential support in the form of food and equipment.

Figure 5: Dismantling Houses and arriving at Resettlement Sites
(Photos: THPC, 2013)

The psychological dimension was also very much present, referring to the stress of leaving one's home and setting out on a new venture with many unknowns. Although most resettlers had visited the new sites, agreed to move willingly and even supervised the construction of their new houses, it was still a traumatic experience, especially for the elderly.

An example of this can be illustrated by local beliefs in spirits for it is not only the village and people who move but also the ancestors and part of the spirit world that exists in parallel with the world of the living. As an anthropologist by training and having spent many months living and researching in the region, the author is aware of these connections and their importance. However, agreeing on a suitable date ahead of time was not sufficient in terms of appeasing the spirits for the village of Ka-an in the middle of the reservoir. Vehicles had been hired and arrived at the village the day before waiting to be loaded up with goods and people, and houses were in the process of being dismantled. On the first day of the planned move, nothing happened except some minor work on dismantling houses and piling up of belongings. Upon inquiring, we learnt that it was not an auspicious day for a move, as the local spirit priest did not find the chicken innards to be clean and in the right places. Nobody dared to move house when the spirit world was not aligned. Another sacrifice in the next day was equally bad, and it was not until the third day that poultry liver and innards allowed for the commencement of moving people. However, this turned out to be a very good day indeed and everyone wanted to initiate moving so the company had to rent more vehicles at very short notice and increase staff to cope with the enthusiasm.

Resettlers performed rituals when they left the village and their old houses (informing spirits of their departure) and before they moved into their new houses (inviting ancestors and good spirits to dwell in the same space and ward off evil spirits). Ample time and consideration were required to make sure these rituals were carried out properly in order to put people at ease in the new locations.

c) Settling-in period

There is a danger that resettlers will feel very much out of place and even become apathetic at the new sites since they are upset at leaving their homes and everything that is familiar and are unsure about what to do at the sites. There was also considerable concern about food security since many households did not produce enough rice and relied on a variety of other livelihood sources, including from the forest and rivers. Being aware of this challenge, the company ensured that there were ample materials and tasks at hand upon arrival at the new sites.

Some of the immediate activities that resettlers engaged in on their own initiative were unpacking and physically moving into their new residences. This included setting up a cooking area under the house and reconstructing a kitchen, rice barn and animal sheds from leftover wood and iron sheeting brought from the old locations.

The project provided food/money for work programs that consisted of putting up fencing around the compounds and fields. Seedlings of various fruit trees and vegetable seeds were also provided to each household for planting in home plots. A number of workshops on growing vegetables, nutrition and land management were conducted at the demonstration centres, and, most importantly, staff visited each household regularly to discuss specific issues, making sure that minor problems were solved quickly and did not linger to become major concerns.

Some positive signs that indicated that resettlers were accepting their new surroundings first emerged a month or so after the physical resettlement was completed. The most obvious one was the improvements and extensions to the basic houses provided by the Company. The most common extension was a raised kitchen linked to the terrace. Another common characteristic was to wall in the lower floor for those houses on stilts, using the area for safe storage of motorcycles, tractors or other equipment. Over the years, more and more houses became two-storey dwellings. Considerable amount of time was also spent putting the compounds in order by allocating areas for different uses: vegetable gardens, fruit trees, animal pens, washing areas, social areas, etc. Since all the resettlement moves occurred in the dry season (January-May), most households immediately planted crops and seeds in the new fields before the start of the heavy rains.

Keeping people busy and preoccupied with improving their immediate surroundings and coping with the stream of small problems and complaints that arose in an efficient manner, helped in most cases. The most vulnerable groups and families lacking sufficient labour required additional attention and this was achieved by assigning certain staff responsibilities for follow-up on a daily basis and encouraging families to engage in activities and making sure they were aware of their rights and benefits.

The Company had to intervene on a number of occasions when more wealthy and powerful families attempted to assert control over poorer ones who previously had worked as labourers on their fields. Because the resettlers were all entitled to the same package of benefits with some modifications for those having assets of a greater value (a few households were provided with larger houses or limited additional cash compensation), the resettlement process levelled the socio-economic inequalities of the old societies. Poor, landless groups

no longer had to work for land owners and the latter resented this and tried to reassert their dominance. This included claiming outstanding debts in the form of materials and equipment the Company had provided to households, even dismantling parts of houses or rice barns. The police had to be called in to stop these activities but none were arrested or prosecuted.

d) Lingering attachments

One of the greatest challenges for resettlement is continued attachment to old territories, and this was also a challenge for THXP to some extent. However, it was also about claiming as much land and resources - not giving up what one had to since survival was dependent on weather pattern, fluctuating prices at local markets and unpredictable influences from outside. Two incidents illustrate this point for THXP.

The first episode related to the first stage of resettlement, the moving of the two villages closest to the construction areas (Zone 4a on the above map) that could be inundated by the coffer dam in the rainy season. After the water levels had subsided, the land was empty for all to see. Knowing that the area would eventually be inundated there was a rush from the previous owners and surrounding villages to harvest as much remaining timber and Non-Timber Forest Products (NTFPs) from the area, and to plant cash crops, including cassava, corn and high-value vegetables. There were two problems with this: although these activities contributed to the income of the resettlers during the crucial adjustment period, they were distracted from working on the new lands. The latter was more challenging since it involved clearance, unfamiliar soils and uncertainty about results. So it became arduous for the agricultural staff at the resettlement sites to make significant progress in the first years. Full attention was only given to the new resettlement lands after full inundation when the old lands were no longer available.

The other problem was access since the only way to the old fields was through the construction site. This raised concerns about safety and potential claims by the contractors for delays due to traffic back and forth while heavy trucks and equipment were moving to and from the dam site and new powerhouse excavation site. The scheduling of visits and provisions for mini-buses to transport people through the site did not work out as villagers were not used to a strict timing of visits to the area and basically showed up when they wanted to. In the end, an alternative route was carved out of the mountain around the construction site, enabling the site to be closed to non-project traffic and temporary access for villages.

The other issue involved the remaining villages and their former lands which were only partially inundated and with islands and outcrops above the water

level. There were many advantages of retaining claims to this area even though the Company and the government had agreed to create a forest protection area above the reservoir on these former lands. There was concern that there were not enough grazing areas for large livestock: traditionally, animals were free-ranging but the resettlement sites encourage penned livestock and cut-and-carry fodder arrangements. Staking claims to fishing areas also provide an attractive source of income, as did growing upland rice and other crops in lands that were familiar. There were not enough resources to enforce restrictions on access to these areas even after demarcation of land for the protected area. Efforts were made to make the new fields productive so that it would be more attractive and less time-consuming to travel to the old lands. However, this was a long process and went against the mentality of "not putting all your eggs in one basket", that is to have as many options as possible given the nature of eking a living off the land.

e) Food security and livelihood challenges

The greatest long-term challenge of any resettlement program is sustainable livelihoods. Livelihood development was initiated one year before physical resettlement in the form of demonstration areas where all crop types were trialled and seeds and seedlings produced in large numbers for resettlers. Work was also conducted on improving livestock management and domestication of forest products. Elements of the traditional livelihood system were combined with new crops and methods with the emphasis on more permanent and intensive agricultural systems and an end to rotational swidden farming.

Discussions with many resettlers during the early months of transition revealed that there was some anxiety about being in the new location and not knowing what to do, where the fields were located and what areas they could harvest from the natural environment, whether fishing in communal ponds or gathering timber for fuel or NTFPs for sale. One lady after six months said that "now I know where to go and where the forest is", implying that she was confident about having access to resources as would have been the case in the old village.

Establishing a viable and self-sufficient livelihood system would take time and it was reckoned that at least five years would be a reasonable estimate based on experience in the area. Initially, there was some cause for optimism since the first-year harvests were satisfactory. However, this was a time when rice support was provided. The second-year harvest results were mixed. Some crops continued to produce good yields, such as corn and vegetables, while rice harvests were low as swidden could not be undertaken on the same land twice and the paddy were not fully working. Application of fertilizer was not easy as farmers were not experienced with enriching soils and the temptation to sell fertilizer in the market existed.

The word for rice and food is the same in the Lao language (khao). So asking somebody whether they have eaten is the same as asking if they have eaten rice. Growing rice is the first priority of any traditional rural household in the country, and the project had to make provisions for this even though it would not be the most economical alternative. The assessment of needs concluded that one hectare of paddy (rain-fed) or even less if irrigated would be more than sufficient to meet food security needs, that is enough rice for the household and surpluses in some years (based on average household size of 5.5 people).

Figure 6: New Houses and Home Plots, and Rice Support Programs
(Photos: Stephen Sparkes)

The original assumption in resettlement planning was for resettlers to start immediately to cultivate rice on their new fields and that there would be no need for providing rice supplements. This turned out to be too ambitious as resettlers needed more time to settle in and become familiar with their new surroundings before they would become efficient growers of rice. In addition, there was an expectation both among government officials and some resettler leaders that the company should or must provide rice to affected households regardless of the livelihood package, demanding two years' worth. After prolonged negotiations on this matter, the Company agreed to provide one year of rice to each household and to monitor needs after that period. Those rich families who actually had ample rice, proceeded to sell the sacks of rice by the Company provided in the market. However, most families did benefit and it helped to reduce concerns about food security.

In addition, there were cases of failure or very poor results, as nearly always the case with resettlement and rapid socio-economic development. Some farmers had experience and others managed to master the new techniques and understand the demands of local markets. Repeated efforts to grow peanuts were not successful due to poor seed, untimely application of fertilizer and more than average moisture in the dry season. Some gave up and resorted to

swidden in the surrounding areas or in the former village territories adjacent to the reservoir. However, there were also some positive developments in that a number of farmers took initiatives on their own and learnt to take advantage of the land available by growing vegetables, pineapple and cassava or investing in pig and poultry raising. After two years of this transition period, the picture was mixed but far from desperate: more time and effort were be needed to finally end up with sustainable livelihoods.

f) Lessons learnt from resettlement implementation phase of THXP

In retrospect everything is clearer and more logical. When you are in the middle of such an intense process like resettlement with huge amount of activities and programs and multiple stakeholders, one has to make decisions based on the experience of the team and the information that is available. Hence, the following lessons learnt only become apparent after much reflection and analysis:

1. **Rice and dependency:** There was an attempt to avoid cash payments and handouts so that resettlers received as many of the benefits and entitlements in kind and would become dependent on the project for supplements. The risk of dependency in such a traumatic situation, as resettlement, is particularly high since motivations may be low. Due to expectations and lack of time to fully engage in agricultural activities, the Company reluctantly agreed to one year of rice support. Village leaders and some households fought hard to have this extended - financial benefit to these rich villagers who were already self-sufficient were obvious. Some had figured out the connection between low yields and the possible continuation of support. In the end, another compromise was reached in the form of food-for-work arrangements. This ensured that rice supplies were not misused and those who truly needed more support would be able to work for it. In hindsight, it would have been better to acknowledge the expectation and establish a policy of conditions for support for the onset - it turned out to be too big of a change in relation to how things were traditionally done and did not take into account the complexity of settling in.
2. **Rice paddy development:** At least three years would be needed to achieve good productive paddy lands, from initial swidden cultivation of dry rice in the first year, to gradually establishing bunds and soil texture that will hold water. Supplementary irrigation systems were constructed where feasible to ensure additional water supply in the wet season. However, many farmers expected their rice fields to be ready and good yields from outset and the project was not clear in communicating the process of establishing rice paddy. Some were disappointed and a few refused to cooperate, stating that they would only agree to work fully established fields or cash alternatives. In the end, most families started paddy production while a

few families in one resettlement village insisted on cash. One needs to be very careful communicating the details of entitlements and tasks to be undertaken by resettlers to avoid misunderstandings.

3. **Land requirements:** The initial land assessments turned out to be too optimistic in that some areas were later found out to be less than suitable for paddy production due to very poor soils or poor drainage. Sufficient areas were cleared by the Project for the resettlers but it became apparent that more land was needed to replace the unsuitable areas. In the meantime, host villagers had "reclaimed" land that was originally given to the Company but not been cleared, making it difficult to obtain replacement lands or to redistribute lands. Hence, obtaining more land that what is needed is a good approach for resettlement since land is a premium commodity and one can never be sure that you have the right type of land (soils) until people are cultivating them. At least 10 percent more land should have been obtained.
4. **Labour restraints:** One needs to be very careful not to overestimate the number of tasks to be undertaken by resettlers. One need to remember that this is a highly stressed situation and worries and concerns are likely to influence how people make decisions and carry out tasks. The confusion of the initial settling in and establishing a new, functioning household and getting one's bearings distracts from the ability to fulfil tasks and participate in programs in an efficient manner. Resettlers are also drawn back to former territories and may be dissatisfied with the new site in some way. It appears that there were too many tasks initially and it was unrealistic to expect resettlers to engage fully in agricultural and other livelihood activities just after arriving in their new settings.
5. **Focus on poor and vulnerable:** In accordance with good international practice and as incorporated into the THXP policy, efforts were made to identify poor and vulnerable households and ethnic groups. Additional assistance was provided to these groups, either in the form of rice and food supplements and tailored solutions, such as more tree seedlings that required less labour. Due to the original socio-economic inequalities of the villages, the more affluent farmers resented this and used their political influence to pressurise the Company to provide support for all resettlers. Compromises were reached as explained in the section above, but it would have been more beneficial to anchor this approach with the villagers and made it clear to all resettlers from the outset even if some groups would most likely to have resisted what they described as "favoritism".
6. **Power relations:** An assessment of all the difficult stakeholders was completed as part of the RAP and staff were fully aware of powerful groups

and patron-client relationships within the village and district. Many more wealthy and influential villagers and village leaders worked to take advantage of any opportunity or lack of clarity in the resettlement policy. One example was collusion between village leaders in four middle reservoir villages and district land authorities in an attempt to extract more compensation money from the Company. After careful examination of these claims, the documents turned out to be fake and the matter was cleared up. However, it should be noted that procedures that did not leave gaps would have perhaps prevented or limited such acts.

7. **Institutions:** Establishing new village institutions was the responsibility of local government but there was clearly a lack of capacity or willingness to fully commit to this requirement. Having a former village leader or leaders of resettlement villages and a village leader of the host village is potentially a volatile situation that can cause serious disruption to a resettlement process. After many rounds of negotiations with the various interested parties and the Company, the latter agreed to fund certain actions to ensure a reasonable process of electing leaders and sharing power came about. Again, one cannot expect that local institutions are capable of carrying out new tasks without support and that needs to be included in the plan from the start - no use making a party legally responsible as per a License Agreement when it has no means to carry out the tasks.
8. **Budget increases:** The RAP provided a budget estimate based on the information available in 2006-07. The project was approved in late 2008. It became apparent that there would be a need to resort to contingency even before construction commences due to additional demands from the government and lenders, as well as some issues not identified in the initial study. As the project progressed, the demands for wood, roof sheeting, concrete, rebar and other items increased, driving the prices upwards. In addition, four resettlement sites had to be added due to the fact that the political boundaries were changed and the government's insistence of resettling only within a district. This resulted in a very expensive additional site at the tail-end of the reservoir where access was through hilly area. The important lesson learnt was to never underestimate budgetary requirements and to always have a considerable contingency to deal with inflation and unforeseen circumstances.

Restoration Phase

Project construction was completed successfully at the end of 2011 and power is being produced for export (440 MW to Thailand) and for local consumption (60 MW for the Lao grid). This change from construction to operation is an important milestone for the project. Resettlement completion on time allowed for full

inundation of the reservoir in the 2011 rainy season. However, restoration work continues and there was no real, immediate change in the scope of work for SED staff working with resettlers in the new village settings. According to Scudder (2005: 36-37), this is Stage 3 or "Community Formation and Economic Development" and is dependent on behavioural change by resettlers, a growing sense of community and obtaining long-term solutions that are sustainable. Few hydropower projects achieve these results. In THXP, the process is still ongoing and the following aspects discuss activities being undertaken and the remaining challenges.

The immediate challenge was to secure ample funding for the operation phase so that environmental and social programs could continue uninterrupted. A handover from the contractors, owner's engineer and construction supervision team to an operational team was complex and took place over one year. Responsibilities also change for the SED, in that government affairs, hydrology and other activities were handed over to other sections of the company. For resettlement, there were several areas that required considerable efforts in livelihood restoration and the ultimate goal of achieving sustainability and handing over to local people and local government.

a) Continued livelihood challenges

Livelihood restoration is extremely challenging since it is often a long series of trial and error experiences wherein the advisors can only transfer a limited amount of knowledge and support with training - the farmers have to achieve the results themselves and become confident about using new methods and materials on their own. All the elements need to be in place for this to happen, including the right materials and the right knowledge.

The greatest obstacle to achieving good harvest and production results in the first years were the different qualities of the soils. As much as half of the soils in the resettlement sites turned out to have high levels aluminium toxicity and this could only be treated by adding lime. Related to this were the varying amounts of organic matter in the soils and in some cases drainage. After attempts at using organic solutions and producing fertilizer at the demonstration centres from local materials, it was decided that chemical fertilizers were necessary to for the initial enriching of the soils. Harvests had not been improving, and there was concern that farmers may lose interest. After the application of lime and fertilizers harvests have steadily increased. The initial soil assessments were flawed and did not identify these shortcomings.

Figure 7: Livelihood Development: Penned Livestock and New Fields

Outside factors have also played a key role in the livelihood restoration process. The was weather with floods, temperature variations and droughts both having negative effects on production. Other factors were changes in market demand and prices for goods. Attempts to introduce new products met with varying success with some products providing good income, like mushrooms, but others not really contributing to incomes, such as local textile production.

After 2-3 years, it was becoming apparent that there were merging differences between farmers who managed to adapt to the new circumstances and those that lagged behind. Those who were doing well had achieved a good balance between traditional methods and new ones, combining rice growing for food security with cash crops, livestock raising and fruit and vegetable gardens. Pineapples, corn, wet-season vegetables and later cassava provided income. Many households had also diversified their income sources, combining wages with profits from the small shops, restaurants and market stalls. One particular ethnic group, the Hmong, was making good use of their kinship networks, linking producers with local business and market activities. Some had used profits to buy additional land from host households.

Of those that were only at the subsistence level or were struggling to make ends meet, there were two groups. One was clearly vulnerable (both households and small ethnic groups) and these required additional help and encouragement for several more years, tailoring solutions at the household level, such as less-intensive livelihood options (fruit trees) or planting of different crops (some groups preferred domesticate forest products). The other group consisted of households not able to or unwilling to adapt to new methods and crops. They consistently used only or mainly traditional means and the results were barely enough for subsistence. Those interested in cassava helped since most were familiar with this crop and it was easy to grow. A local company provided essential inputs and guaranteed a price. The results were encouraging but a great efforts were need to ensure that there was multi-cropping with legumes (beans or types of grasses), as repeated planting of

cassava leaches the soil and after three or four years there are little nutrients left in the ground.

Careful monitoring of livelihoods will continue until 2017 when a full review of status will be undertaken of resettlers. It is likely that some support will be needed for weaker or vulnerable households after this point.

b) Achieving development and income targets

In the License Agreement, income targets were defined based on the needs' assessment for the new resettlement sites. A list of development targets were also drawn up for monitoring general improvements for project affected persons. Since the resettlement process created new societies with all the amenities one would need for rural life in Laos, achieving most targets related to infrastructure and service improvement were completed (THPC, 2015).

- All resettlement sites have all-weather roads
- All resettlement houses have electricity, toilets and access to safe drinking water
- Since all households have piped water for domestic use, this has freed girls and women of the task of collecting water
- All resettlers have received 1000m^2 (house plot) and 1.5 ha of farmland - land documents were shortly be issued by the government, making them legal owners
- All resettlement sites have health centers (or access to the district hospital) and schools with qualified health workers and teachers

Targets relating to health required more time as these required efforts to improve nutrition and sanitation that necessitated behavioural change. Levels of diarrhoea in children under two years of age (7%; down from 16% but still short of the target of <5%) and anaemia (45%; down from 53% but still short of the target of <30%) are still higher among resettlers than host families but have improved compared to pre-resettlement statistics. Food security - the ability to grow sufficient rice to feed your family is also a target that is not yet achieved but one which may require rethinking as more income from non-agricultural sources (outside of the project's influence) are being recorded. Off-farm income indicates new opportunities from closer links to the market, improved education and mobility, all of which contributes to sustainability if managed properly through awareness and training.

Regarding income targets, at first glance, the statistics show that host families are doing significantly better than resettlers. In the table below, the first three columns show the host communities' income levels being above the income targets and the four resettler communities below targets by a good margin.

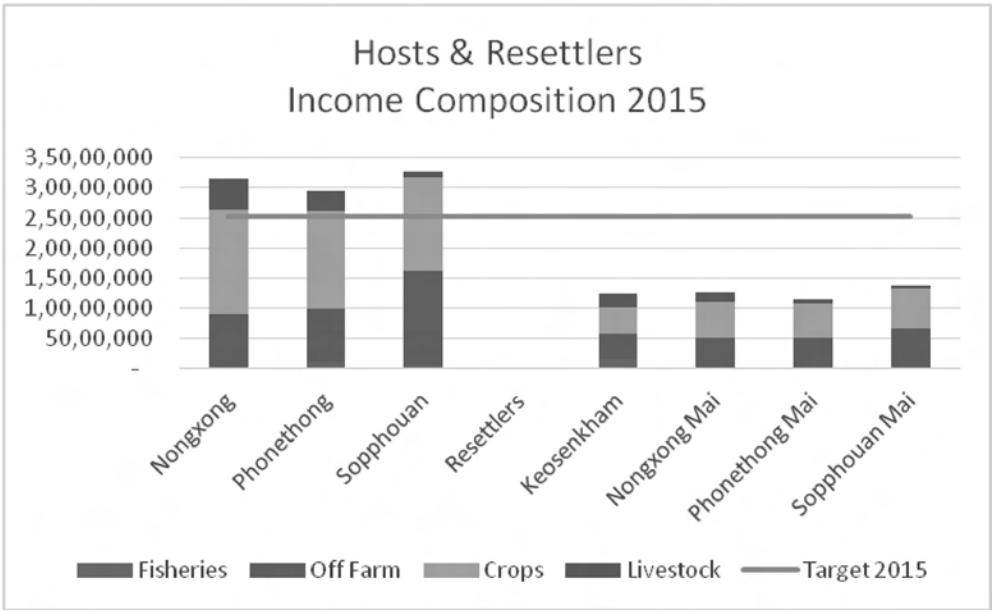

Figure 8: Income Levels and Targets
(2015 Draft Monitoring Report; THPC 2016:19)

However, a visit to these sites would raise some doubts as to the accuracy of these statistics. One can not only see the better living conditions of the resettlers but the abundant evidence of considerable income. Although, there has been some cash compensation, the amounts were not high, and they would certainly not explain the number of luxury goods, motorbikes and pick-up trucks. Because of the discrepancy, the Company conducted an expenditure/consumption survey in addition to their annual income survey in 2015 for the resettlement community of Nongxong, the first village to be moved out of the reservoir in 2009.

The preliminary results of this survey reveal that there is more than 50 percent underreporting of income, that is present expenditure and consumption are double or more than double reported income. If this is the case, and more work needs to be done to confirm this, then the resettlers are close to or exceeding the income targets and are more or less on a par with the host community.

It is notoriously difficult to collect income data due to the reluctance to declare actual income and reveal income sources. This is compounded after a resettlement process since resettlers may have become used to receiving benefits, such as compensation, rice support or other assistance, and are aware that this will come to an end when incomes are restored. In the case of THXP, compensation claims continued for some time, mostly from well-to-do households in collusion with district authorities, but there was also the issue of hidden assets and illegal activities that people did not want to declare or pay taxes on. Because staff were located at all

resettlement sites on a permanent basis to follow-up on issues and monitor developments, SED was aware of these matters. A number of households, for example, had fields outside the village that they cultivated themselves or leases to relatives or other farmers. Livestock was sometimes kept in forests or other territories, including at old village sites and many engaged in illegal timber and NTFP extraction. This would explain the discrepancy between income data and expenditure and consumption levels. Hence, a new strategy for achieving income targets needs to be considered or the targets will remain elusive and programs will never reach a successful closure.

c) Winding down and handing over

As part of the resettlement program, THPC has built 35 km of rural roads, provided electricity, constructed or refurbished health centres and schools, constructed and expanded on irrigation systems and built numerous community structures. Planning and implementation was carried out by SED in accordance with government preferences and designs prior to resettlers arriving at new sites. None of the original sites had good infrastructure and most lacked basic services and facilities.

The challenge now is ensuring that buildings and infrastructure are maintained in a responsible manner. This has been a challenge for development projects in general: maintenance just does not have the appeal that construction does - it is routine work without the excitement of planning and without large-scale mobilization and the attractions of large budgets. Local authorities seldom have the resources, experience, capacity or willingness to carry out maintenance. The approach that THPC is putting in place now will tackle this problem on a number of levels: local, district and project.

Local villagers are responsible for maintaining community buildings and village infrastructure. This entails training and supervision by the Project and authorities until routines are established and resettlers have the confidence and competence to carry out the work themselves. In order for this to happen, the village as a whole must understand their collective responsibility. Small committees for maintaining the school, village health centre, community hall and religious structures have been established in line with government regulations. There are also groups which are assigned the responsibility for cleaning the village, clearing ditches and run-off areas before the monsoon, maintaining irrigation canals and internal village roads. It is challenging for new villages where new village governments have just been set up since people are not used to working together and there needs to be time to establish trust. Hence, THPC staff continues to reside at resettlement sites to ensure committees meet, establish good accounting procedures and initiate work on the ground. When it comes to water supply and larger irrigation systems, Water User Groups (WUGs) have been established but THPC still retains a leading role in these groups and will

continue to play a prominent role in the near future, until villagers have proven well-functioning WUGs.

Local government (district and provincial authorities) often lack resources, funds and capacity to carry out many maintenance tasks. THPC has been working closely with these authorities throughout the implementation phase and gradually handing over responsibility while at the same time providing essential inputs such as vehicles and equipment. The approach here can be described as a gradual reduction in direct support when resources, funding from provinces and capacity are confirmed. In most cases, though, there will be a continuing role for THPC in terms of support and quality control. At present, district health and education offices are functioning well and the Lao Women's Union has started implementation of Savings and Credit scheme.

The long-term role of THPC is also an important element in terms of sustainability. Because additional funds from central authorities have not yet been secured to maintain the new infrastructure and services adequately, THPC will have to continue support in a number of critical areas until the situation changes. This is very much the case for the maintenance of new rural roads and large irrigation systems. A system of partial support is being finalised where THPC will repair rural roads once a year (after the monsoon) and work with improving district capacity for other maintenance activities during the rest of the year for at least five years when capacity can then be reassessed. Regarding irrigation schemes, THPC staff will gradually hand over responsibility based on ongoing assessments of performance and management. It is envisaged that THPC technical teams will have a role of advisors and that the Company will provide some funding for major repairs during the concession period.

d) Lessons learnt from restoration phase of THXP

The most important lesson learnt from the ongoing operation phase of the project or restoration of resettlers it that this phase is just as demanding - in a different way - than the other phases. In some ways it is the most challenging given the sense that there is a looming closure and winding down process and pressure from both the Company and the government to reach a conclusion on what has been a complex, resource-demanding process. From the point of view of the Company, achieving closure is the final measure of success of the resettlement program. In the case of THXP, lessons learnt regarding the ongoing restoration phase include:

- Need to make the owners and management fully aware of the challenges of this phase and the extent of resources, time and funding required, may be up to 25 percent of the final E&S budget and require up to 10 years of follow-up activities.

- Need to work out the details of the closure process in advance and to adjust targets after physical resettlement, taking into account markets and trends beyond the project influence, such as increase in cash-crops, improved market access, out-migration and remittances, etc.
- Ensure that all parties, company, government, lenders and other stakeholders have a shared understanding on what are the targets and how they can be verified, if necessary by a third party.
- Link markets with resettler communities as soon as food security is achieved since opportunities for off-farm income sources are likely to increase as land resources will be limited especially since populations increase. One needs to actively promote these ties.
- Education is a long-term investment and will ensure improvements in the standard of living and diversity of income sources, as well as out-migration.
- More attention should have been paid to institutional development sooner as local governments did not have the resources to follow-up and training. Ultimately, resettler communities, together with hosts need to able to contribute to upholding services and infrastructure, such as maintaining roads, water supply systems and community services.

Conclusion

To summarise, it is easy to underestimate the amount of time, effort and resources that are required in order to carry out a resettlement successfully. In terms of time, the planning phase requires 2-3 years, especially for a meaningful consultation process and achieving some sort of consensus with the resettlers on location, livelihoods and the actual physical move. The logistics of actually resettling a large number of people are overwhelming in terms of staff numbers, equipment, materials and expenses. And the follow-up on adjustment and the long-term restoration process is both time-consuming and full of unexpected twists and turns. Dealing with people, and here we are talking of people in a stressed situation, is open-ended and complicated. It is challenging to take into account concerns, worries and expectations while remaining within the strict framework of a legal agreement or project schedule.

The establishment of sustainable communities will take about ten years due to the challenges of all the changes and disruption caused by the resettlement process. THPC is committed to seeing this process through until targets are achieved - beyond this ten-year period, if necessary. There will be a need for THPC to have a small full-time Social and Environmental Team to work with authorities and villagers on health, education, vulnerable support, livelihoods and maintenance in order to ensure standards and positive development trends. These targets are legally binding commitments enshrined in the Licence Agreement and Resettlement Action Plan. Both the Government of Laos and the lenders will verify results and an independent Panel of Experts will be the final verifying entity.

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