

## Social Impact Assessment Under Land Acquisition Law

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### **Abstract:**

Social Impact Assessment (SIA) under Land Acquisition Law is the process of study of socio economic and cultural parameters (viz. demographic details, poverty levels, vulnerable groups, civil society organisations and social movements, land use and livelihood, local economic activities, factors contributing to local livelihood, living environment quality) and the impacts of a project on land, livelihood and income, physical resources, private assets, public services and utilities, health impacts, culture and social cohesion, impact at different stages of project, the nature and cost of addressing them and the impact of these costs on the overall costs of the project vis-a-vis the benefits of the project. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013 and The RFCTLARR (Social Impact Assessment and Consent) Rules, 2014 have made social impact assessment (SIA) the basis of the new legal process.

Earlier National Rehabilitation and Resettlement Policy, 2007 (NRRP-2007) mandated “Where large numbers of families (involuntary displacement of four hundred or more families en masse in plain areas, or two hundred or more families en masse in tribal or hilly areas) are affected, **it must be mandatory to do social impact assessments.**” Under RFCTLARR Act, 2013, SIA is mandatory for all projects involving land acquisition except those under urgency provisions, irrigation projects wherein an Environment Impact Assessment Study is required and exempted legislations in Schedule IV of the Act. Rules are made under Section 109 of the said Act.

The Ordinance of 2014 and Amendment Bill of 2015 exempted SIA for Projects listed in Section 10A. Similarly Maharashtra State amendment exempted Projects listed in 10A from SIA. As per Section 105, there is exemption from undertaking Social Impact Assessment Study for State Acts specified in Fifth Schedule. Social Impact Assessment, rehabilitation and resettlement, compensation in cases of land acquisition, are so linked with each other that they cannot be implemented in isolation. The reason cited for exemption from Social Impact assessment was the delay in land acquisition. On the other hand SIA involves participation of affected people before land Acquisition process starts and will increase transparency and communication which will help in reducing the time/cost overruns due to conflicts, increase Project success due to plethora of knowledge gained during consultative process, for maintaining sustainable and economic development and ecological balance.

**Keywords** – Assessment, Management, Impact, Biophysical Human Environment, Exemption, Participation, Transparency, Communication, sustainable development.

### **1. Introduction**

Social Impact Assessment (SIA) under Land Acquisition Law is the process of study of socio economic and cultural parameters (viz. demographic details, poverty levels, vulnerable groups, civil society organisations and social movements, land use and livelihood, local economic activities, factors contributing to local livelihood, living environment quality) and the impacts of a project on land,

livelihood and income, physical resources , private assets , public services and utilities , health impacts , culture and social cohesion , impact at different stages of project, the nature and cost of addressing them and the impact of these costs on the overall costs of the project vis-a-vis the benefits of the project .

The origins of SIA largely derives from the environmental impact assessment (EIA) model, which first emerged in the 1970s in the U.S.

Social impact assessments are authorized and performed in concurrence with environmental impact assessments. SIA has been incorporated into the formal planning and approval processes; in several countries, in order to categorize and assess how major developments may affect populations, groups, settlements, environment social, cultural ,economic .

Acquisition of land for any activity by the Govt. as well as the private body makes it mandatory that all aspects of acquisition & consequences must be considered .<sup>i</sup>

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013 and The RFCTLARR (Social Impact Assessment and Consent) Rules, 2014 have made social impact assessment (SIA) the basis of the new legal process that seeks to establish a participative, informed, and transparent process of land acquisition for industrial and infrastructure development in India.

**FIGURE 1**  
**SOCIAL IMPACT ASSESSMENT -COMPONENTS**



**2. Historical Perspective**

**2.1. A National Policy on Resettlement and Rehabilitation for Project Affected Families 2003 (NPRR-2003)-**

A National Policy on Resettlement and Rehabilitation for Project Affected Families was formulated in 2003, and it came into force w.e.f. February, 2004.

Prior to it Some States and Central Ministries/Departments had their own Policies and Guidelines for Resettlement and Rehabilitation however a National Policy on Resettlement and Rehabilitation for Project Affected Families was not enunciated .

The Preamble enunciated that “ *Compulsory acquisition of land for public purpose including infrastructure projects...Apart from depriving them of their lands, livelihoods and resource-base, displacement has other traumatic psychological and socio-cultural consequences. The Government of India recognizes the need to minimize large scale displacement to the extent possible and, where*

*displacement is inevitable, the need to handle with utmost care and forethought issues relating to Resettlement and Rehabilitation of Project Affected Families. Such an approach is especially necessary in respect of tribals, small & marginal farmers and women. .... The difficulties are more acute for persons who are critically dependent on the acquired assets for their subsistence/ livelihoods, such as landless agricultural workers, forest dwellers, tenants and artisans....”*

Though the Policy does not mention the words “Social Impact Assessment” however it inculcates the ingredients thereof by setting out the objectives viz.

- a) To minimize displacement and to identify non-displacing or least-displacing alternatives;
- b) To plan the resettlement and rehabilitation of Project Affected Families, (PAFs) including special needs of Tribals and vulnerable sections;
- c) To provide better standard of living to PAFs; and
- d) To facilitate harmonious relationship between the Requiring Body and PAFs through mutual cooperation .

For the said purpose Survey and census was to be carried out viz declaration of affected Zone of the Project in local vernacular newspaper , survey for identification of the persons and their families likely to be affected by the project, village-wise information of the project affected families etc. The Administrator shall ensure that the Project Affected Families may be settled preferably in group or groups and such sites should form a part of existing gram panchayat as far as possible. The Administrator for Resettlement & Rehabilitation shall draw up a list of lands which may be available in any existing Gram Panchayat for resettlement and rehabilitation of project affected families consisting of Government waste lands and any other land vesting in the Government , land to be acquired for the purposes of resettlement and rehabilitation scheme/plan. **However, the Administrator for R&R should ensure that such acquisition of land should not lead to another list of affected families.** Draft plan for R& R to be prepared in consultation with representatives of Project Affected Families including women, Chairpersons of elected Panchayati Raj Institutions within which the Project area is situated. Every draft Scheme shall contain particulars as mentioned in Para 5.18 , Chapter V of the Policy . R&R Benefits For Project Affected Families provided In Chapter VI Thereof .

The Policy was made applicable to Projects displacing 500 families or more enmasse in plain areas and 250 families enmasse in hilly areas, Desert Development Programme (DDP) blocks, areas mentioned in Schedule V and Schedule VI of the Constitution of India.

Desirability and justifiability of each project will be judged by implementation of Policy , through a careful quantification of the costs and benefits that will accrue to society at large and the adverse impact on affected families - economic, environmental, social and cultural- needs to be assessed in a participatory and transparent manner. A national policy must apply to all projects where involuntary displacement takes place. Where large numbers of families are affected, it must be mandatory to do social impact assessments and provide all required infrastructural facilities and amenities in the resettlement area. More particularly, where the Scheduled Tribes people are being displaced in sizeable numbers, a well thought out Tribal Development Plan must be put in place. Furthermore, such a policy must specify clear timeframes within which the implementation of the rehabilitation package as well as utilization of the land shall be accomplished. Also, it should lay down an effective monitoring and grievance redressal mechanism.

Land Acquisition Act (LAA) of 1894, did not have any provisions for rehabilitation. Hence NPRR had no statutory sanctity . In the words of Abhijit Guha “*Decision-makers produced a policy document without the backing of any legislative or statutory powers. This is apart from other weaknesses in the*

*policy such as the neglect of pragmatic aspects of implementation, and the omission of compensation for common pool resources, sharecroppers and migrant agricultural labourers”.*<sup>ii</sup>

## **2.2. National Rehabilitation and Resettlement Policy, 2007 (NRRP-2007)**

**(published in the Gazette of India on 31<sup>st</sup> October 2007) -(Chapter IV ) –**

**The Preamble inter alia mentioned ,** *“1.5 Where large numbers of families are affected, it must be mandatory to do social impact assessments and provide all required infrastructural facilities and amenities in the resettlement area. More particularly, where the Scheduled Tribes people are being displaced in sizeable numbers, a well thought out Tribal Development Plan must be put in place.”*

The provisions of the National Rehabilitation and Resettlement Policy, 2007 (NRRP-2007) provide for the basic minimum requirements, and all projects leading to involuntary displacement of people must address the rehabilitation and resettlement issues comprehensively. The State Governments, Public Sector Undertakings or agencies, and other requiring bodies shall be at liberty to put in place greater benefit levels than those prescribed in the NRRP-2007. The principles of this policy may also apply to the rehabilitation and resettlement of persons involuntarily displaced permanently due to any other reason.(Pl refer Para 1.7).

### **Salient Features –**

Whenever it is desired to undertake a new project or expansion of an existing project, which involves involuntary displacement of four hundred or more families en masse in plain areas, or two hundred or more families en masse in tribal or hilly areas, DDP blocks or areas mentioned in the Schedule V or Schedule VI to the Constitution, the appropriate Government shall ensure that a Social Impact Assessment (SIA) study is carried out in the proposed affected areas in such manner as may be prescribed.

\* While undertaking a social impact assessment, the appropriate Government shall, inter alia, take into consideration the impact that the project will have on public and community properties, assets and infrastructure; Particularly, ‘roads, public transport, drainage, sanitation, sources of safe drinking water, sources of drinking water for cattle, community ponds, grazing land, plantations; public utilities, such as post offices, fair price shops, etc.; food storage godowns, electricity supply, health care facilities, schools and educational/training facilities, places of worship, land for traditional tribal institutions, burial and cremation grounds, etc.

\* Where it is required as per the provisions of any law, rules, regulations or guidelines to undertake environmental impact assessment also, the SIA study shall be carried out simultaneously with the Environmental Impact Assessment (EIA) study.

\* In cases where both EIA and SIA are required, the public hearing done in the project affected area for EIA shall also cover issues related to SIA. Such public hearing shall be organised by the appropriate Government.

\* The SIA report shall be examined by an independent multi-disciplinary expert group constituted for the purpose by the ‘appropriate Government.

\* The Ministry of Defence, in respect of projects involving emergency acquisition of minimum area of land in connection with national security, may be exempted from the provisions of this Chapter, with due institutional safeguards, as may be prescribed, for protecting the interests of the affected families and achieving the broad objectives of this policy.

**Analysis -**

As per para (4.4.1.) the SIA Report shall be examined by an independent multi-disciplinary Expert Group. However the Independence of the Expert group is undermined as it is constituted by the Appropriate Govt. , comprised of the Govt.officials , and a representative of the requiring body and only two non officials .

Though the NPRR, 2007 too had envisaged a mandatory SIA study, the same was applicable only beyond a threshold (where displaced people exceeded 400 in the plain areas and 200 in the hilly areas)

**Rehabilitation & Resettlement (R&R) Policy (June-2010)-****2.3. The considered opinion of the NTPC regarding the land acquisition as reflected in its R&R policy (June, 2010) is as follows:**

The land that is acquired for power projects is for a public purpose and necessitates Rehabilitation and Resettlement (R&R) of PAPs, a task often accompanied by socio-economic adjustment. The PAPs have to involuntarily face the new social set up (NTPC R & R Policy June 2010: [Section 1.1.1](#)).

In the preamble of its R&R Policy (issued in June 2010) the NTPC declares as follows:

"Government of India had a National Policy on R&R (NPRR-2003) since February 2004 and the NTPC had earlier revised its R&R policy in June 2005 to make it in line with NPRR-2003 and in light of the experience gained over the years, now the National Policy on Rehabilitation and Resettlement of Project Affected Families (**NRRP-2007**) has been issued on 31st October, **2007** by Ministry of Rural Development and Department of Land Resources, Government of India, which aims at laying down basic norms and packages for Project Affected Families (PAFs). The NTPC proposes to review and modify its R&R policy to make it in line with the **NRRP-2007**."

The R&R policy will be implemented in close cooperation with the concerned State Authorities as may be set up as per the NRRP-2007 or otherwise and to the extent that the endorsement by the State Government is warranted, NTPC will seek to obtain such endorsement. This policy will be implemented within the framework of local applicable law. Though this policy takes into account NTPC's past experiences and good practices adopted in R&R alongwith making it in line with NRRP-07, any practices and policy measures required / outlined by NTPC / Government agencies specific to any state / sector in future will be incorporated.

**Under Principles and Strategies –**

1.2.7.2 **Social Impact Assessment (SIA)** Whenever it is desired to undertake a new project or expansion of an existing project, **which involves involuntary displacement of four hundred or more families** enmasse in plain areas or **two hundred or more families** enmasse in tribal or hilly areas, DDP blocks or areas mentioned in the Schedule V or Schedule VI to the Constitution, a Social Impact Assessment (SIA) alongwith Environment Impact Assessment (EIA) will be carried out in such manner as may be prescribed. Guidelines on the same as and when prescribed by the Government will be followed. Alternately the EIA will continue to cover the Social aspects as well as per the existing practice.

**4.3 . An audit of the R&R Plan shall be conducted by the Project/Regional Headquarter (RHQ) in the form of a Social Impact Evaluation (SIE) study/survey** on completion of the plan in consultation with Corporate R&R Cell. Evaluation could be done through the development of a Standard of Living Index (SOLI) and the same will be evaluated pre and post acquisition of affected Vs unaffected villages. The external agency may be considered, if felt necessary. Audit will also evaluate whether all activities identified in the R&R Plan have been completed satisfactorily and will give

recommendation for necessary modification/ corrective measure, if any, for the future projects. Individual PAP-wise data will also be compiled for comparison of his pre and post acquisition status and restoration of livelihood .<sup>iii</sup>

### **3. Provisions Of Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act 2013 Relating To Social Impact Assessment**

Section 4 to 9 deal with Social Impact Assessment Study -

A notification is issued by the appropriate Government for commencement of consultation and of the Social Impact Assessment study which is made available to local bodies mentioned therein and published in the affected areas and uploaded on the website of the appropriate government . The study is to be completed within 6 months and shall be made available to the public. The assessment is done as to whether the proposed acquisition serves public purpose; estimation of affected families and the number of families among them likely to be displaced; extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition; whether the extent of land proposed for acquisition is the absolute bare- minimum extent needed for the project; whether land acquisition at an alternate place has been considered and found not feasible; study of social impacts of the project, and the nature and cost of addressing them and the impact of these costs on the overall costs of the project *vis-a-vis* the benefits of the project:

The Authority shall prepare a Social Impact Management Plan, listing the ameliorative measures required to be undertaken for addressing the impact of the Project . Public hearing is conducted . Social Impact Assessment study report and the Social Impact Management Plan are then published . It is then evaluated by an independent multi-disciplinary Expert Group, as may be constituted by the appropriate government . The Expert Group shall make a recommendation within two months from the date of its constitution ,whether the Project serves public purpose or not , whether the social costs and adverse social impacts of the Project outweigh the potential benefits or vice versa , whether the extent of land proposed to be acquired is the absolute bare-minimum extent needed for the project and whether there are no other less displacing options available.The appropriate Government shall examine the report of the Collector, if any, and the report of the Expert Group on the Social Impact Assessment study and after considering all the reports, recommend such area for acquisition which would ensure minimum displacement of people, minimum disturbance to the infrastructure, ecology and minimum adverse impact on the individuals affected. In case of acquisition for public private partnership projects, private companies for public purpose, the prior consent of affected families is also required and the process of obtaining the consent shall be carried out along with the Social Impact Assessment study. Where land is proposed to be acquired invoking the urgency provisions under section 40, there is exemption from undertaking the Social Impact Assessment study, Also exemption from undertaking the Social Impact Assessment study in case of irrigation Projects where an Environmental Impact Assessment is required. As per Section 14 , Where a preliminary notification under section 11 is not issued within twelve months from the date of appraisal of the Social Impact Assessment report submitted by the Expert Group under section 7, then, such report shall be deemed to have lapsed and a fresh Social Impact Assessment shall be required to be undertaken ,prior to acquisition proceedings under section 11 subject to the power of the appropriate govt . to extend the same . As per Section 15 , the findings of the Social Impact Assessment report can be objected to by the person interested in the Land .As per Section 105 , there is exemption from undertaking the Social Impact Assessment study in respect of the enactments relating to land acquisition specified in the Fourth Schedule.<sup>iv</sup>

According to the RFCTLARR Act, 2013 the study (to be completed in 6 months) would aim at assessing the veracity of public purpose in the proposed land acquisition, impact of the acquisition on the human and material costs imposed and if it outweighs the projected benefits.

FIGURE - 2

SIA STUDY AND REPORT -STEPS



More importantly, the study has to assess if the land proposed is the bare minimum and if all available alternatives have been considered. The process of seeking consent in scheduled areas and private/public private partnership projects is also to be undertaken during the SIA. The SIA Study is to be appraised by

a seven member Expert Committee (comprising two social scientists, representatives of affected local bodies, two rehabilitation experts and one technical expert) within two months of its constitution. However, the appropriate government is empowered to overrule the recommendations of Expert Committee and go ahead with acquisition.

Under RFCTLARR Act, 2013, SIA is mandatory for all projects involving land acquisition except those under urgency provisions, irrigation projects wherein an Environment Impact Assessment Study and exempted legislations in Schedule IV of the Act.

#### **4. Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement (Social Impact Assessment And Consent) Rules, 2014**

**Rules have been made by the Central Government** in exercise of the powers conferred by clauses (a), (c), (d), (t) and (u) of Sub-section (2) of Section 109 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013)

As a precursor to Land Acquisition under Section 4 of 2013 Act, Social Impact Assessment Study is a must .

A Notification by Appropriate Government is issued within thirty days after the deposit of the processing fee for carrying Social Impact Assessment by the Requiring Body. The Social Impact Assessment shall be conducted in consultation with concerned Panchayat, Municipality or Municipal Corporation, at village level or ward level in the affected areas, followed by a public hearing at the affected areas. Thus participation and provision of opportunity to be heard are key elements of the study .

The Social Impact Assessment Report is to be submitted within 6 months . The Social Impact Management Plan listing the ameliorative measures required to be undertaken for addressing the impact of the project shall also be submitted alongwith the Report . Both the Report and the Plan shall be made available in the local language and also uploaded on the website of the appropriate Government.

The appropriate Government shall identify or establish Social Impact Assessment Unit which shall undertake tasks mentioned in Rule 4 and selection of Social Impact Assessment team(Rule 6) not having any connection with the requiring body . The Expert Group is constituted by the Appropriate Govt . under Sub-section (1) of Section 7 of the Act to evaluate the Social Impact Assessment Report. However here independency is undermined as the Appropriate Govt. is having direct hold on establishment of Social Impact Assessment Unit which in turn is having direct hold on Social Impact Assessment team and on Expert Group.

Rule 7 provides the process of conducting the Social Impact Assessment and Rule 8 provides the process for conducting public hearings. The Rules provide that draft Social Impact Assessment report and Social Impact Management Plan shall be published in the local language three weeks prior to the public hearing. The Requiring Body may also be served with a copy of the draft report. Public hearings shall be conducted in all Gram Sabhas where members are directly or indirectly affected by the acquisition of the land. Representatives from the Requiring Body and designated land acquisition and Rehabilitation and Resettlement functionaries shall also attend the public hearing and address the questions and concerns raised by the affected parties.

The Rule 13 provides that appropriate Government shall create a dedicated, user-friendly website that may serve as a public platform on which the entire work flow of each acquisition case will be hosted.

Further as per Rules 15, to ensure acquisition of minimum amount of land and to facilitate the utilisation of unutilised public lands, the appropriate Government shall prepare a district level inventory report of



waste, barren and unutilised public land, and land available in the Government land bank and shall be made available to the Social Impact Assessment team and Expert group.

nature of the land, present use and classification of land and if it is an agricultural land, the irrigation coverage for the said land and the cropping pattern; (i) the special provisions with respect to food security have been adhered to in the proposed land acquisition;

As per Rule 7(iii) Social Impact Management Plan shall include interalia measures that have been specified in the terms of Rehabilitation and Resettlement and compensation for all the categories of affected families as outlined in the Act. This shows that Social Impact Assessment, Rehabilitation and Resettlement and compensation are indivisible and cannot be read in isolation. Exemption from Social Impact Assessment for certain projects will make unsteady the social and economic balance.

The objective of Social Impact Assessment are manifold –

\* conclusive assessment of adverse social impacts and social costs and benefits of the proposed project and land acquisition, including the mitigation measures,

\* assessment as to whether the benefits from the proposed project exceed the social costs and adverse social impacts that are likely to be experienced by the affected families or even after the proposed mitigation measures, the affected families remained at risk of being economically or socially worse, as a result of the said land acquisition and resettlement.

Dr. Preeti Das Jain says – *“Essentially, the mandate for social impact assessment signifies a paradigm shift in the domain of land appropriation for public purpose, through the recognition of the landowners' 'Right to be Informed' and the 'Right to be Heard'. The consultative approach with negotiated settlement of benefits to landowners and livelihood-dependent people, as part of the SIA process, is a well thought out mechanism to abandon the path of confrontation in favour of conciliation.”*<sup>v</sup>

## **5. Provisions Of Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement (Amendment) Ordinance, 2014 (No. 9 Of 2014) Relating To SOCIAL IMPACT ASSESSMENT**

**Acquisition of the land for the Projects listed in Section 10A (i.e. (a) infrastructure Projects (b) affordable housing or housing for poor people (d) industrial area or industrial estate (d) industrial corridors ) and the purposes specified therein shall be exempted from provisions of first proviso to that subsection meaning exemption from consent of the affected families.**

**Those Projects listed in Section 10A are also exempted from the provisions of Chapter II meaning exemption from Social Impact Assessment Study.**

**In case of 13 Acts included in Schedule IV, there is exemption from Social Impact Assessment Study.**

## **6. RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (2nd AMENDMENT) BILL, 2015 RELATING TO SOCIAL IMPACT ASSESSMENT**

The Bill enables the government to exempt five categories of projects from the requirements of: (i) social impact assessment, (ii) restrictions on acquisition of multi-cropped land, and (iii) consent for private projects and public private partnerships (PPPs) projects.<sup>vi</sup>

These five categories of Projects viz. (a) infrastructure, Projects (b) affordable housing or housing for poor people (d) industrial area or industrial estate (d) industrial corridors are not defined in the 2013 Act or the Bill and hence can be interpreted in various ways.

Also, one of the categories of projects exempted in the Bill is “infrastructure projects *including* projects under PPPs where ownership of land continues to vest with the government.” There is ambiguity regarding whether this exemption is for all infrastructure projects or it is applicable only for PPP projects in which the government continues to own the land. (i.e., the word “includes” is exhaustive).

It is pertinent to note that this Bill was passed in Lok Sabha with 9 amendments on March 10, 2015 which included inter alia –“ *Social Infrastructure under PPP, not anymore in exempted category*” however the bill was blocked by Rajya Sabha and was sent to Parliamentary Committee. Thereafter RFCTLARR (Amendment) Second Ordinance, 2015 was promulgated on 30/05/2015 and Ordinance expired on 31/08/2015. However on 30<sup>th</sup> August 2015 Department of Land Resources, Ministry of Rural Development issued an executive order to use powers under the Section 113 of the parent Act-“removal of difficulties”. A press release of the Government said:

*“It is proposed to issue an order under the removal of difficulties section 113 (1) of the RFCTLARR Act, 2013 for extending the provisions of compensation, rehabilitation and resettlement as mentioned in First, Second and Third Schedules to the Acts mentioned in the Fourth Schedule of the RFCTLARR Act, 2013.”<sup>vii</sup>*

## **7. Provisions Of Maharashtra Amendment Act To Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act , 2013**

### **EXEMPTING**

### **SOCIAL IMPACT ASSESSMENT**

**A New Section 10A has been introduced according to which provisions of Chapter II relating to Social Impact Assessment are not applicable in respect of certain projects specified therein viz.**

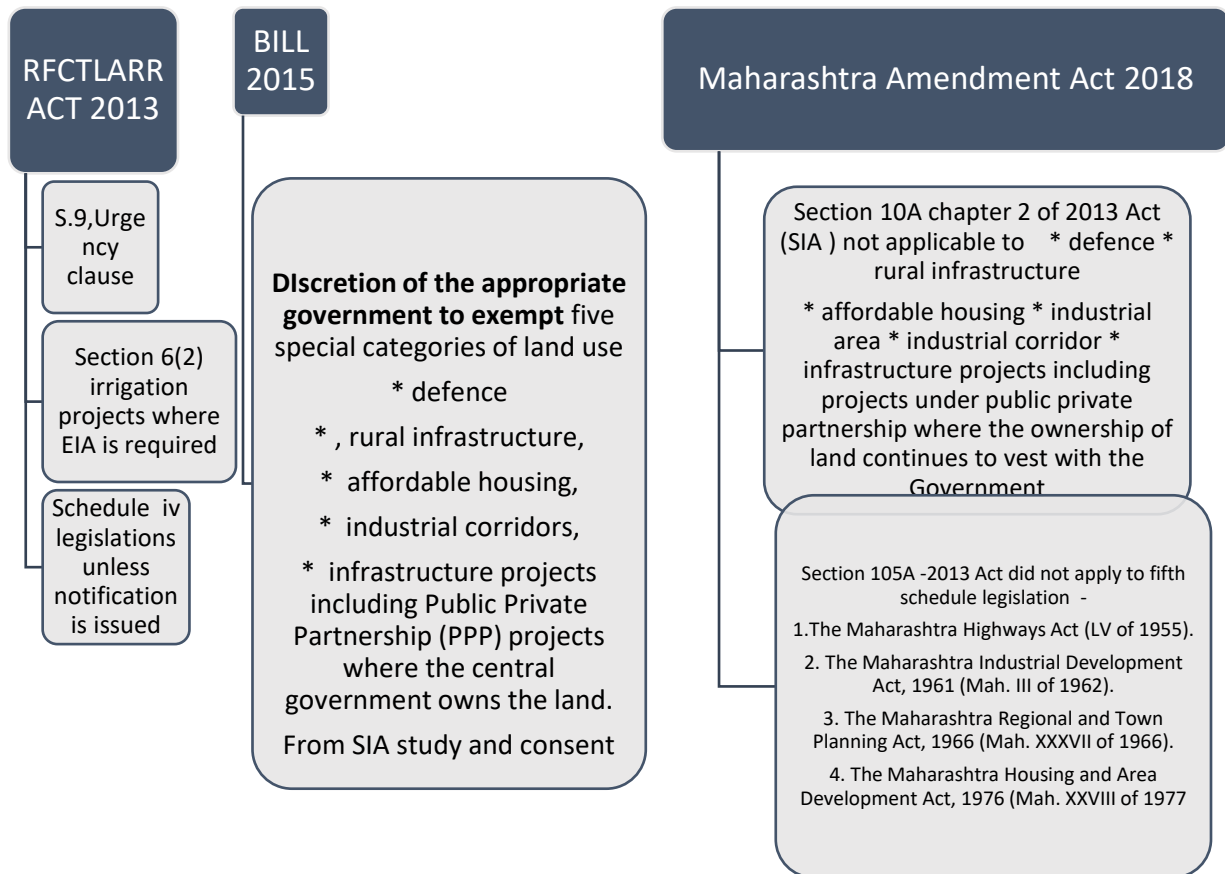
(a) such projects vital to national security or defence of India and every part thereof, including preparation for defence or defence production ; (b) rural infrastructure including irrigation and electrification ; (c) affordable housing and housing for the poor people ; (d) industrial area or industrial estate set up by the State Government and its undertaking ; (e) industrial corridor set up by the State Government and its undertaking (in which case the land shall be acquired up to one kilometre on both sides of designated railway line or roads for such industrial corridor) ; and (f) infrastructure projects including projects under public private partnership where the ownership of land continues to vest with the Government :

Vide Section 105A the provisions of 2013 Act shall not apply to acquisition of land under the enactments specified in the Fifth Schedule, meaning there is exemption from undertaking Social Impact Assessment Study in case of land acquisition under said State Enactments and also follow lenient provisions of the State Acts ., These State Enactments are four in number enumerated as follows –

1. The Maharashtra Highways Act (LV of 1955).
2. The Maharashtra Industrial Development Act, 1961 (Mah. III of 1962).
3. The Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966).
4. The Maharashtra Housing and Area Development Act, 1976 (Mah. XXVIII of 1977).<sup>viii</sup>

FIGURE 3

EXEMPTION FROM SOCIAL IMPACT ASSESSMENT -CENTRAL AND STATE LAW (MAHARASHTRA )



• Provisions In Other State Amendment Acts Exempting The Social Impact Assessment And Thus Diluting The Rfctlarr Act 2013 -

Exemption from Social Impact Assessment is found in various State Acts for. Eg. Andhra Pradesh, Gujarat, Haryana, Maharashtra, Tamil Nadu, Telangana, JHARKHAND . Orissa State has withdrawn the Bill in March 2023 which exempted *social impact assessment studies for certain Projects* . Orissa State *Legislative* Assembly reintroduced and passed on September 27, 2023 Bill by which Govt. is empowered to exempt “*strategic and development Projects*” from Social Impact Assessment study and provisions for protecting food security . In the statements of object and reasons for eg. In Gujarat Act it is mentioned that 2013 Act has very stringent provisions for acquiring the land, land acquisition has become a very lengthy and difficult proposition so it was considered necessary to make the procedural part of the land acquisition smooth and easy without interfering with the rights of the persons whatsoever whose lands are acquired hence it was proposed to exempt certain projects from the application of the provisions of the Chapter II of the Act which relates to determination of social impact and public purpose.

By virtue of these amendments waiver of SIA is becoming the Rule rather than the exception . SIA is the basis of LARR Act 2013 which is connected with the provisions of rehabilitation and resettlement

for all stakeholders in the land that is proposed to be acquired and for maintaining sustainable and economic development and ecological balance.

#### 8. Parliament Of India Lok Sabha House Of The People(16<sup>th</sup> Lok Sabha ) Debates

In December 2014, an Ordinance was promulgated to amend the 2013 Act. The Ordinance was repromulgated in a modified form in April 2015, and again in May 2015. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015 was introduced in Lok Sabha on May 11, 2015 to replace the April Ordinance and was referred to a Joint Parliamentary Committee for detailed examination.<sup>ix</sup>

In Parliamentary debates HRI C.N. JAYADEVAN has termed the Ordinance 2014 and Bill 2015 as Draconian and opposed the same as follows -

*“The decision to do away with the social impact assessment for the projects is likely to create further ambiguity on the issue of rehabilitation and resettlement. The social impact assessment was meant to identify the people and their assets impacted by the acquisition of land. Based on this assessment, they were to be provided not only compensation but also packages for rehabilitation and resettlement. The assessment was to be carried out by an independent party, not the district administration or the project developer. **But by exempting the public and private sectors by this Ordinance, it has effectively turned the clock back. It has returned the power of discretion back into the hands of the local administration in line with the colonial-era Land Acquisition Law, 1894.**”<sup>x</sup>*

The grounds on which the Bill was opposed (covered the points relating to Social Impact Assessment) can be summarised as below –

- (1) right of a property being taken away totally without affording any opportunity of a hearing inspite of the urgency provision under Section 9 of the Parent Act .
- (2) *“What is the social impact? The social impact is three-fold. Firstly, everybody should tell the views, that is, at the people’s representative level, Panchayat, municipality and also at State levels and if a view is there, then that view would be taken into consideration. What is the second impact? If the view has come, then is it really having a utility for public purposes or not? This is being taken away. Thirdly, the valuable right of the farmers is being taken away.”*{( Shri Kalyan Banerjee (Sreerampur)}
- (3) The basic structure of the Act is being changed

#### 9. Case Law On Sia

**(A) Supreme Court of India in Narmada Bachao Andolan vs Union Of India And Others , 18 October, 2000,Bench: B. N. Kirpal, Dr. A. Anand has observed -**

*“The issue of community re-settlement is stated to be not merely an issue of community facility but is a more fundamental issue. The issue is really one of preserving social fabric and community relation of the oustees which, it is alleged, is being destroyed due to dispersal of the community who are being resettled at different sites.”<sup>xi</sup>*

**(B) High Court of Bombay,[Full Bench], (MANJULA CHELLUR, C.J. AND N.M. JAMDAR AND G.S. KULKARNI, JJ.),Mehtab Laiq Ahmed Shaikh and another ... Petitioners;Versus State of Maharashtra and others ... Respondents.W.P. Nos. 2827 of 2014, 1783 of 2008 and 6728 of 2015, October 13, 2017, 2017 SCC OnLine Bom 8841**

Crux- Social Impact Assessment Study is not required if the land is to be acquired under the MRTP Act. The Hon’ble Court held-

*“67. As mentioned earlier, the MRTP Act has its own machinery for identifying the public need and ascertaining what is good for the society. The expression “Development” has been defined in wide*

terms under the MRTP Act which is relatable to planned development. The Act contemplates both, Regional and Development plan as well as the Town Planning Scheme. ...

**68.** In view of the above position, the applicability of sections 4 to 15 of the RFCTLARR Act is hardly necessary in MRTP Act. Since the Social Impact Assessment study is required if the acquisition generally is to be made for a public purpose, the State Legislature thought it fit to clarify the position that such Social Impact Assessment study is not required when the land is to be acquired under the MRTP Act. ... By excluding the application of section 4 to 15 of the RFCTLARR Act, the legislature has merely clarified the existing position to remove any doubt. By enacting the proviso to section 125 of MRTP Act, the State legislature, therefore, has not brought in change in law, but to obviate any confusion, by way of precaution has merely restated the existing position. <sup>xvii</sup>

(C) **Social Activist Medha Patkar** filed a petition under Article 32 of the Constitution before the Hon'ble Supreme Court of India in 2018 challenging certain State Amendments made to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Amendments made to the Act are by the States of Gujarat, Andhra Pradesh, Telangana, Tamil Nadu and Jharkhand. The Supreme Court has issued Notices to these States on the validity of the Amendments made.<sup>xviii</sup>( which include exemption of Social Impact assessment. )

(D) (BENCH S.J. KATHAWALLA AND MILIND JADHAV, JJ.), **High Court of Bombay,**

Mariyayi Macchimaar Sahkarisanstha Maryadit, Navi Mumbai ... Petitioner;


Versus Department of Fisheries, Maharashtra, Mumbai and Others ... Respondents, W.P. No. 2016 of 2021, Decided on August 12, 2021, **2021 SCC OnLine Bom 1797**

In this matter , TCB III a proposed six lane bridge on the Sion -Panvel highway . Project Affected Fishermen are inhabitants of Thane Creek, and exercise their customary right to fish for a living in Thane Creek. The Petition states that construction of TCB will adversely affect their right to fish. Petition therefore seeks a direction against the Respondents inter alia "to frame a compensation scheme to protect socio-ecological interests of traditional fishermen in the State of Maharashtra on account of reclamation/damage/destruction of fishing areas for infrastructure projects."

It was held -

"27. Article 13(3) of the Constitution of India recognizes custom or usage as having force of law.... "

**63.** ... legislation such as The Maharashtra Project Affected Persons Rehabilitation Act, 1996, The Right To Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, are examples of the government's acceptance that project affected persons ought to be rehabilitated, and **social impact assessments** need to be conducted when the government undertakes construction of new infrastructure.

 **64.** Once a customary right to carry out an occupation for a means of livelihood is affected, the principles enshrined in Article 21 of the Constitution of India will be invoked. This forms the basis of the State's duty to compensate in such cases."<sup>xiv</sup>

(E) **THE HON'BLE BOMBAY HIGH COURT , Suresh Vakoji Mitake and Others** ... Petitioners; Versus State of Maharashtra and Others ... Respondents Decided on March 25, 2022-

In the present matter , after Social Impact Assessment Report was obtained in land acquisition proceedings for Sarfanala Medium project, abruptly, without taking these proceedings further, the Respondents issued Notification under Section 10A thereby exempting the provisions of Chapter II and III for the acquisition purposes.

It was held - “It appears that the lands under acquisition ... The same is meant for irrigation. The purpose for which the land is acquired is covered *under Section 10A of the Act, 2013.*”<sup>xv</sup>

(F) **High Court of Bombay**<sup>1</sup>-Pramod and Others ... Petitioners; *Versus*

State of Maharashtra, Through its Principal Secretary, Department of Urban Development and Others ... Respondents., Writ Petition No. 2127 of 2020, April 28, 2023-

In the said matter, Social Impact Assessment study had not been undertaken prior to publication of the preliminary notification under Section 11(1) of the Act of 2013

It was held -

“28. ...*A statutory avenue available to the petitioners to raise a grievance with regard to absence of any public purpose for acquisition or absence of any Social Impact Assessment study not having been availed, the petitioners cannot be heard after long lapse of the statutory period of sixty days to contend that filing of the present proceedings be treated as an objection to the preliminary notification under Section 15(1) of the Act of 2013.... Since we find that overwhelming public interest requires completion of the project in hand, we do not find it justified in larger public interest to set aside the award for absence of undertaking the Social Impact Assessment study.*”<sup>xvi</sup>

Though the award was not set aside, additional compensation was awarded “*with a view to balance the interests of both sides.*”

(G) It was observed by the Hon’ble Supreme Court in C.S. Gopalakrishnan etc. ... Appellants; *Versus* State of Tamil Nadu and Others ... Respondents, Decided on May 9, 2023 that,-

“39...*Pertinently, this Court observed that, ordinarily, the equality clause enshrined in Article 14 of the Constitution cannot be invoked in the matter of enforcement of a State legislation vis-à-vis Parliamentary legislation and/or legislation of another State....*

42. *No doubt, the scheme of the new LA Act advocates timely measures being adopted in implementation of the acquisition and such general temporal restrictions would benefit the land owners, (viz. time period for Preliminary Notification under Section 11 of New LA Act, as per proviso to Section 26(1) of the new LA Act, linking of market value to date of such notification, social impact assessment etc.) but the absence of such restrictions in the Highways Act may not be reason enough to invalidate it, as the very premise on which the Highways Acts was enacted by the State of Tamil Nadu was to cut down on time-consuming processes.*<sup>xvii</sup>

The reason cited for exemption from Social Impact assessment was the delay in land acquisition.

## 10. Necessity Of The Social Impact Assessment Study

The most important procedural change in the new land Acquisition Act of 2013 is the SIA. The study is must to all land acquisition projects initiated for a public purpose. So that the affected people shall express their concerns before the start of the land acquisition process.

The project authorities are apprehensive that this will delay the process, the nature of social cost benefit analysis undertaken and the process thereof, the affected families destroying the process, the administrative delays etc. The extended pre-notification process may encourage outsiders to purchase land in the area and hence the benefits will not reach to the affected families. Focus on aggregate costs and benefits from the Project has resulted in the the poverty of the displaced people and they could not be resettled. This loss of displaced and affected families is not considered.

The SIA clearance shall be accorded as per the procedure and within the time limits as may be prescribed.

The Ministry of Defence, in respect of projects involving emergency acquisition of minimum area of land in connection with national security, may be exempted from SIA Study , with due institutional safeguards, as may be prescribed, for protecting the interests of the affected families and achieving the broad objectives of this policy.

Under RFCTLARR Act, 2013, SIA is mandatory for all projects involving land acquisition except those under urgency provisions, irrigation projects wherein an Environment Impact Assessment Study and exempted legislations in Schedule IV of the Act.

Project affected persons tend to get overshadowed by the larger benefits offered by the project. The transparent Social Impact assessment study mitigates issues like -

- (a) Development of original data where “available” data are not sufficient.
- (b) Existing land-owners will get aware of their own rights under the new Act and the accruable benefits. Therefore forced sell of lands to the persons who are aware of the planned project in any area , will reduce .
- (c) Also, on a universal plane, the transparent Social Impact Study is likely to help the land acquisition process and ensure that the opposition to good intentional development programmes does not thwart the development process.
- (d) Earlier the Land losers could not participate effectively in the land acquisition process because of the opaqueness of existing legislative framework of land acquisition . This lack of transparency and inadequate communication mechanisms coupled with extremely small compensation norms were the greatest source of disgruntlement among the land losers. The first individual notice that goes to the land owner is after Section 9 i.e. a final declaration is issued by the government. This would change with Social Impact Assessment Study which involves affected people participation as communities will come in the centre of planning, prior to commencement of land acquisition process.

**(e) BENEFITS OF SIA-**

- (a) A definite likely outcome of the SIA would be the reduction in the quantum of land acquired, search of land for lesser displacing options by utilising available unutilised land and most importantly reduction in the time/cost overruns due to conflicts.
- (b) Early consultation with the affected people so they can have confidence that their concerns and perspectives are being considered early in the assessment. This helps in developing trust .
- (c) It improves project acceptability, planning and design.
- (d) “understanding and considering the livelihood and wellbeing of Aboriginal communities beyond cultural impacts. *“In the Coronation Hill SIA, Lane and colleagues (June, pages 89–98) show how aboriginal people participated in the process and helped the decision-maker to understand how their knowledge of the impact area raised questions about future project success. These researchers conclude that the articulation and integration of indigenous values, beliefs and world views must be included in the decision process ”.*<sup>xviii</sup>
- (e) enabling a tailored approach, so the assessment is proportionate to the social impacts of a project.”<sup>xix</sup>
- (f) Affected people have a chance to be involved in the Project development .
- (g) Shared values and benefits
- (h) By monitoring progress of the Project , predetermined targets can be achieved , which is also helpful in securing future funding from the financial institutions
- (i) *“Social impact assessment provides qualitative and quantitative evidence of changes in the human community as the result of a proposed action. The two processes (Public involvement and Social Impact*

*Assessment) work together, one leading to effective public consultation on a proposed action and the other (based on previous studies) providing evidence as to how the proposed action will change the lives of individuals and the affected community.*<sup>xxx</sup>

## 11. Conclusion

Social Impact Assessment , rehabilitation and resettlement , compensation in cases of land acquisition , are so linked with each other that they cannot be implemented in isolation .

Exemption from Social Impact Assessment in the Ordinance , Bill and State Acts , dilutes the RFTLARR Act, 2013 which has the potential of bringing about land conflicts and will be detrimental to the sustainable development .

As stated by ANUJA TARINI MISHRA *“Thus social impact assessment and the need to act on their recommendations and indicators are of paramount importance to the development narrative in a democratic way, which ensures people’s rights to live in their own homes in their natural ways of living do not get trampled upon, thus ensuring a holistically developed society as a whole, and therefore conserving the image of a welfare state.”*<sup>xxxi</sup>

SIA is an essential attribute to successful policy development and project implementation.

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