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# Environmental Impact Assessment and Social Impact Assessment in Case of Displacement Relating to SEZs and Infrastructure Projects

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## ABSTRACT

*Over the past 15 years, there has been a massive increase in the construction of infrastructure projects and Special Economic Zones in India. Prior to the creation of the New Act, the Land Acquisition Act of 1894 governed the major infrastructure projects while the SEZ Act is responsible for managing Special Economic Zones. After the recent enactment of the Land Acquisition and Rehabilitation and Resettlement Act, 2013, the legislature has introduced the process of Social Impact Assessment in projects where a big mass of people are displaced. The environmental impact assessment is also completed at the same time. The paper examines the laws and case laws like the Narmada Bachao Andolan case in the light of displacement and evaluates the issues relating to the building of Special Economic Zones and Infrastructure Projects.*

*There were two issues. Private lands in rural areas typically suffer an impact from large projects. These rural residents lack the necessary legal documentation to demonstrate the true cost of the private land. Their way of life is also disturbed by the displacement. The need of the rural population must therefore be balanced, especially in cases of displacement brought on by SEZs. For this reason, environmental and social impact assessments are necessary.*

*As State has the right to acquire any private land for public purposes under eminent domain, the landowners cannot stop the state from taking the land. But presently there is a good mechanism where fair compensation is paid to the persons whose lands are used and they are rehabilitated. The problem is the actual implementation of the social impact assessment process and also carrying out proper environmental impact assessment.*

**Keywords:** *Special Economic Zones, Land Acquisition, Social Impact Assessment, SEZ, SIA.*

## I. INTRODUCTION

In India over the past 15 years, a huge number of Special Economic Zones and Infrastructure

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Projects have been developed. A dynamic piece of legislation with multiple goals has been put into place as of February 10th, 2006 by the Special Economic Zones Act, 2005 and Special Economic Zones Rules, 2006.

- i. the production of new economic activity.
- ii. fostering the export of goods and services.
- iii. encouraging both domestic and international investment.
- iv. the development of job opportunities.
- v. Construction of infrastructure facilities.

The government is working to create an environment where exports can compete on a global scale. SEZ Policy was announced by India in April 2000. Listed below are the goals of the SEZ Policy.

Providing integrated infrastructure for export production while removing taxes and duties from goods and services.

Establish a quick approval process and a set of incentives to entice both domestic and international investment in support of export-led growth.

From 1.11.2000 SEZs in India were operational to 9.2.2006 fiscal incentives were made available through the provisions of applicable statutes under the terms of the Exim Policy/Foreign Trade Policy.

- Development of Infrastructure:

According to the Global Competitiveness Report, India ranks 76th in terms of infrastructure facilities.

The goal of the SEZ policy is to upgrade the infrastructure. As a result, the definition of infrastructure development within SEZ has been very broad.

It refers to all infrastructure required for the creation, management, and upkeep of an SEZ, such as commercial, industrial, and public facilities like buildings, roads, sewerage and effluent treatment facilities, solid waste management facilities, ports, airports, and railroads, as well as infrastructure for the production and transfer of energy sources like electricity and gas, as well as telecommunication and network systems.

It also refers to facilities for social interaction and entertainment, such as clinics, motels, schools, office buildings, and so forth.

Only larger multi-product SEZs can help in this situation. Small, dispersed SEZs do not

contribute to infrastructure development.

According to the Ministry of Commerce, approximately 35% of the land inside the SEZ is to be used for processing, and approximately 40% of the land is to be reserved for open space, drainage, sewerage, etc. Housing for habitation, a hospital, a school, a recreational facility, etc. Occupy the remaining 25% of the land, which will be developed. Due to the nature of the proposition, multi-product SEZs involve significant property development.

Due to the boom in IT-related businesses, more than 60% of the approved SEZs fall under the IT category, according to the sector-by-sector breakdown of the SEZs. The land requirements for IT SEZs was fixed at 10 hectares as compared to large stretches of land required for multi-product SEZs.

However, because they are vulnerable to market and cyclical shocks, sector-specific small and fragmented SEZs might not be viable business option in the long run. Range of the misuse Non-SEZs only move to SEZs to benefit from them The Special Economic Zone Policy has as its goal the creation of new investment and employment. As a result, only vacant land may be used to establish SEZs, according to the SEZ Act and Rules. However, there is a lot of misuse by industries from outside SEZ zones. To benefit from SEZ, those industries can move to the SEZ region.

The status of SEZs in India can be compared with China.

Issue	China	India
Size	Large SEZs e.g. Shenzhen is spread over 49,300 hectares	Small, fragmented SEZs e.g. the largest SEZ in India, the Reliance Navi and Maha Mumbai SEZ is spread only over 14,000 hectares
Location	Near Ports	Not much attention paid to location, numerous SEZs are land locked.
Labour Laws	Relaxed	Inflexible, at least on paper
Policy Regime	Experimentation of liberal policies in specified areas	Based on fiscal sops
Investors	Mostly foreign	Mostly local

Number	Less in number but large in size, 6 major SEZs: Shenzhen, Zhuhai, Shantou, Xiamen, Hainan and Pudong	Large in number (around 200 approved) but small in size
Tax Holidays	Present	Longer and steeper than in China

The primary issue with building SEZs and infrastructure projects in India was the lack of agricultural land. Assessments of the social and environmental impacts were raised as a result. So the paper had given information about the law and the challenge of implementation of the laws for the best interest of the displaced groups and rural masses.

#### **(A) Review of Literature:**

The major pieces of literature that were referred to includes Piyush Joshi, *Law relating to Infrastructure Projects*, 2nd Edition. Lexis Nexis, B Pranay Chaturvedi and Ankur Dalal, *Law of Special Economic Zone*, National and International Perspective, Eastern Law House, Kolkata, New Delhi; Hitendra Mehta, *Taxmann's Law & Practice Relating to Special Economic Zones*, Published by Taxmann Allied Services (P) Ltd., New Delhi, India, 2007, Butterworth Publication, 2003; Dr. Souvik Chatterji, *Laws of Infrastructure Development in India*, Published by YS Books International Limited, India, 1st Edition, Volumes 1 and 2, 2014; and Dr Souvik Chatterji, *Competition Law in India and interface with sectoral regulators*, Thomson Reuters South Asia Publication, 1st Edition, 2018.

While Piyush Joshi's book looked into the social aspects of SEZs there was less discussion about the Law. Both *Law of SEZ Book* and *Taxmann's Law and Practice relating to SEZ* have highlighted the theoretical merits of setting up SEZs. *LID in India*, Vol 1 and 2, and Dr Chatterji's Book "*Competition Law in India and interface with Sectoral Regulators*" brought out the challenges faced when private lands of rural people are taken up for SEZs and Infrastructure Projects. The LARR 2013 Act is reviewed and both environmental impact assessment and social impact assessment relating to the displaced tribes are examined.

#### **(B) Research Gap Identified:**

The foundation of the entire research is based on doctrinaire research. Major Books, Acts, papers, and articles were reviewed. There is no empirical data to substantiate the answers to the challenges.

**(C) Objectives of the Study:**

The study's main goal is to determine how development can occur through the establishment of SEZs and infrastructure projects, while also taking into account the interests of the general rural agricultural mass. Justice for the displaced tribes can be achieved through appropriate social impact assessments and environmental assessments.

**(D) Theoretical Model:**

If possible, the ecological balance should not be disturbed during the environmental impact assessment. A serious social impact assessment is also necessary per the LARR Act of 2013. Farmers should receive just compensation from the appropriate government, and problems with rehabilitation and resettlement should be resolved. If they lose their livelihood, it should be replaced.

**(E) Hypothesis Framed:**

The environmental impact assessment and social impact assessment in displacement cases relating to creating SEZS and infrastructure projects are inadequate in India.

**(F) Methodology:**

The entire research is dogmatic in nature. The most notable instances where the establishment of SEZs sparked a farmer group uprising were used as case studies. The causes were investigated, and the new, amended laws were examined. The law is in its proper place. The implementation is the main obstacle.

**II. DATA ANALYSIS AND FINDING**

The Ministry of Commerce estimates that approximately 35% of the land inside the SEZ will be used for processing, and approximately 40% of the land will be set aside for open space, drainage, sewerage, etc. Housing for dwellings, hospitals, schools, recreation, etc., are to be developed in the remaining 25 percent of the land.

Therefore, huge property development is involved in the multi-product or specific product SEZs due to the nature of the proposition and the real estate activities will boom in the initial phase of the development of SEZs.

Although the proposed SEZs in sensitive areas that could negatively affect forestry, wildlife, or the environment as a whole are not mentioned in the guidelines, it appears from the Courts' various rulings that the government may not be willing to allow the SEZs in such sensitive areas.

Case: *Halar Utkarsh Samity v. State of Gujarat*, Civil Application No. High Court of Gujarat in Ahmedabad rendered decisions in cases 1778, 5476, and 5928 of 2000 based on 3.8. 2000. The legality of the Gujarat State Government's authorization allowing the Chief Wildlife Warden and Chief Conservator of Forest to approve Bharat Oman Refineries Ltd's request to lay a pipeline through an ecologically sensitive area that has been designated as a Marine Sanctuary from Single Point Mooring (SPM) in the high seas to the Crude Oil Terminal (COT) at Vadiner was in question in this case.<sup>3</sup>

In the case of *Narmada Bachao Andolan v. Union of India* AIR 2000 SC 3715 - The Supreme Court ruled that in the event that for any reason the project's work does not proceed or is never completed, all oustees who had undergone rehabilitation must have the option to remain in the area where they had undergone rehabilitation.<sup>4</sup>

Additionally, if the area where they were evicted remains habitable, they are free to return there. They must not be held financially or in any other way accountable for their eviction.

An adverse impact on the environment can have disastrous consequences for this generation and generations to come.

The best people to decide whether to approve a project must first have the chance to collect and evaluate all the information required to do so. Otherwise, the Court cannot grant approval for the project.

The States have been persuaded to establish Grievance Redressal Authorities, and it will be their duty to see that those displaced as a result of the project receive appropriate relief and rehabilitation.

In *Bombay Dyeing Mfg. Co. Ltd. v. Bombay Environmental Action Group Case*, AIR 2006 SC 1489, it was held that projects involving public interest should be examined after the following factors are examined,

- i. consideration of ecology,
- ii. the interest of workers,
- iii. The interests of organizations in the public sector and other financial institutions,
- iv. interest and rights of owners,

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<sup>3</sup> *Halar Utkarsh Samity v. State of Gujarat*, Civil Application No. 1778, 5476 and 5928 of 2000, High Court of Gujarat at Ahmedabad, decided on 3.8.2000

<sup>4</sup> *Narmada Bachao Andolan v. Union of India*

- v. a sick and closed industry's interests, etc.<sup>5</sup>

The laws governing the relocation of displaced tribes have changed as a result of the Land Acquisition and Rehabilitation Resettlement Act of 2013. The new Act advocates for both equitable compensation and resettlement and rehabilitation. The implementation of the Social Impact Assessment is a challenge.

According to Section 4 (1), whenever a project would result in the forcible relocation of 400 or more families from tribal or hilly areas, DDP (Desert Development Program) Blocks or areas mentioned in the Fifth or Sixth Schedule to the Constitution are desired, the appropriate government must make sure that a social impact assessment study is conducted in the proposed impacted regions in the way required,

(2) The Appropriate Government should examine the impact of the project on public and community properties, assets, and infrastructure, including roads, public transportation, drainage, sanitation, sources of drinking water, and so on while conducting a social impact assessment.<sup>6</sup>

U/s 9 (1) where the appropriate Govt. is convinced that the purchase of land would result in the involuntary relocation of a considerable number of people, then the State Govt. shall by notification appoint in respect of the project, an officer not below the rank of District Collector to be the administrator for Rehabilitation and Resettlement.<sup>7</sup>

(2) The Administrator for Resettlement and Rehabilitation will be aided by officials and staff appointed by the State Government.

The social impact assessment report shall be submitted to the appropriate government for its examination by an independent multi-disciplinary expert group, as may be notified by the Appropriate Government.

The following individuals will make up the expert group:

- i. Two independent social scientists and rehabilitation experts will be chosen by the relevant government ,
- ii. the Secretary of the relevant government department. A person who is interested in the welfare of the Scheduled Castes and Scheduled Tribes or his representative

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<sup>5</sup> *Bombay Dyeing Mfg. Co. Ltd. v. Bombay Environmental Action Group Case*, AIR 2006 SC 1489,

<sup>6</sup> Section 4 (1) of the Land Acquisition, Rehabilitation, Resettlement Act, 2013.

<sup>7</sup> Section 9 (1) of LARR Act 2013



- iii. a representative of the requiring body, to be nominated by the appropriate Govt.

In accordance with Section 10(3), the Administrator for Resettlement and Rehabilitation must carry out the tasks listed below.

In consultation with the requesting body,

1. reduce the number of people who must be relocated and find non-displacing or minimally displacing alternatives.
2. consult the affected individuals while developing a resettlement and rehabilitation scheme or plan,<sup>8</sup>
3. ensure that the interests of the adversely affected persons of the Scheduled Tribes and weaker sections are protected while formulating the rehabilitation and resettlement plan,
4. create a rehabilitation or resettlement scheme or plan,
5. prepare a budget including the expenditure of various components of acquisition of land, rehabilitation, and resettlement activities in consultation with the representatives of the affected families,
6. arrange land for rehabilitation and resettlement of the affected families, allot land for the displaced groups.

Many protesting farmers referred to a Supreme Court decision that rejected Reliance Industries' special leave petition—which asked for a stay on land acquisition proceedings for its Special Economic Zone (SEZ) in Raigad district of Maharashtra—as the "highpoint" of their four-year struggle.<sup>9</sup>

The court's refusal to stay the land acquisition process that otherwise had to conclude by June 8, 2009, meant the project is close to being scrapped because of the failure to acquire land within the stipulated period. Only 2,151 hectares of the company's necessary over 10,000 hectares have been acquired.

In order to purchase land from local farmers for the SEZ, the Maharashtra government implemented Section 4 of the Land Acquisition Act 1894 two years ago.

Provisions in this section stipulate that land acquisition must be completed within a year. It can be extended for another year, but if the acquisition is still not complete after two years the process lapses.

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<sup>8</sup> Section 10 (3) of LARR Act 2013

<sup>9</sup> Reliance Case relating to SEZ in Maharashtra in Raigad District, 2009.

Reliance argued for a stay on the grounds that the farmers' compensation had not been passed within the allotted two years from the date of notification of the acquisition, which was June 8, 2007.

It contended that if the consent awards had not been passed by this date, the entire acquisition proceedings would lapse causing grave financial loss to the company that had already invested Rs 600 crore in the project.

The Maharashtra government though is unlikely to come to the rescue of Mumbai SEZ Ltd. Maharashtra Revenue Minister and former Minister for Co-operation, Relief and Rehabilitation Patangrao Kadam said the government would not interfere in the acquisition process between the buyer (Reliance) and the owners of the land. The company had obtained power of attorney from a few farmers and was offering compensation of Rs 20 lakh per hectare. The techniques were allegedly unlawful, according to activists. "There have been complaints that the majority of the farmers who have granted Reliance Industries power of attorney are fake. They are not the true landowners, according to activist Vaishali Patil who is opposed to the SEZ.

U/s 1A – the provisions of the Rehabilitation and Resettlement Act, 2013, shall apply in respect of the acquisition of land by the appropriate Govt. under this Act.

U/s 3 (b) person interested includes

1. all persons claiming an interest in compensation to be made on the account of the acquisition of the land under this Act,
2. tribals and other traditional forest dwellers, who have lost any traditional rights, recognized under the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006,
3. a party with an interest in a land-related easement.
4. individuals with tenancy rights under state law, etc.<sup>10</sup>

U/s 17A (1) the State Government shall for the purpose of speedy disposal of disputes relating to land acquisition compensation establish an authority called Land Acquisition Compensation Disputes Settlement Authority.<sup>11</sup>

The Authority will have two to three members, including a chairperson who will be chosen by the state government.

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<sup>10</sup> Section 3 (b) of LARR Act 2013.

<sup>11</sup> Section 17 (A 11) of LARR Act, 2013.

A person cannot join the Authority unless he has (a) served as a Supreme Court judge.

(b) a state government officer. Not a District Collector, but not below that.

(c) a state government official. Not below the rank of a Director in the Law Department.

The Collector is required by Section 11B to use the following standards in assessing and figuring out the market value of the land<sup>12</sup>

1. the minimum amount required by the Stamps Act of 1899 as stated in the Sale Deeds for the vicinity where the land is located
2. The typical selling price for similar land in the village or its vicinity, as determined by at least 50% of the sale deeds registered in the previous three years where a higher price was paid,
3. the average of the sale price, ascertained from the prices paid or agreed to be paid for not less than 50% of the land already purchased for the project where a higher price has been paid.

According to Section 17(I), the Authority must make a decision on applications for the settlement of land acquisition compensation within six months of the date of reference.

The Center will establish a Land Acquisition Compensation Dispute Settlement Authority in a similar manner.

The Authority's members must meet the same qualifications as the Authority in the State, and it must have the same authority and responsibilities.

U/s 13, the Central Govt. shall in the case of existing SEZs, within 6 months from the date of commencement of this Act, by notification, constitute a Committee for every SEZ, to be called Approval Committee.<sup>13</sup>

According to Section 14, each Approval Committee may carry out its duties and use its authority in relation to the following areas:

- i. consent to the importation or purchase of goods from the Domestic Tariff Area for use in the SEZ's authorized Developer operations.
- ii. give their approval for a service provider from outside India to perform services in order for the Developer to conduct the authorized operations in the SEZ.

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<sup>12</sup> Section 11B of the LARR Act, 2013.

<sup>13</sup> Section 13 of LARR Act, 2013.

- iii. keep an eye on how goods, services, warehousing, trading, etc. Are used in the SEZ.<sup>14</sup>

The Central Government is responsible for administering Section 20 of the Act. May, through notification, designate any officer or organization to conduct surveys or inspections to ensure that a developer or business owner is adhering to the rules of any Central Act.

This officer or organization is required to provide reports on verification and compliance.

Using Section 23 of the Act, the State Gov. One or more courts may be chosen by the court where the SEZ is located.

- i. to judge all civil cases that arise in the SEZ.<sup>15</sup>
- ii. to try to notify offenses committed in the SEZ.<sup>16</sup>

According to section 3(b) of the Act, an "affected family" is defined as

1. a family whose primary residence, other property, or source of livelihood is adversely impacted by the acquisition of land for a project or by an involuntary relocation due to any other reason.
2. Any tenure holder, tenant, lessee, or owner of other property, who as a result of the acquisition of land in the affected area has been forcibly evicted from such land or other property.
3. Any agricultural or non-agricultural laborer, landless person, rural craftsman, small trader, or self-employed person who has been continuously engaged in trade, business, occupation, or vocation for a period of not less than five years in the affected area prior to the date of declaration of the affected area.

In accordance with Section 4 (1), whenever it is desired to launch a new project or expand an ongoing project that will result in the forcible relocation of 400 or more families in tribal or hilly areas, DDP (Desert Development Program) Blocks, or areas mentioned in the Fifth or Sixth Schedule to the Constitution, the appropriate government shall ensure that a social impact assessment study is conducted in the proposed affected areas in the manner that may be prescribed.

(2) The appropriate government must take into account, when conducting a social impact assessment, how the project will affect public and community infrastructure, including roads, public transportation, drainage, sewage systems, sources of drinking water, etc.

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<sup>14</sup> Section 14 of LARR Act, 2013.

<sup>15</sup> Section 20 of LARR Act, 2013.

<sup>16</sup> Section 23 of LARR Act, 2013.

The social impact assessment report must be submitted to the appropriate government for review by a diverse, independent expert group, as the appropriate government may notify.

The following people, specifically, shall make up the expert group-

- i. Two independent social scientists and rehabilitation experts who will be chosen by the relevant government,
- ii. The Secretary of the relevant government department. Inquisitive about the well-being of the Scheduled Castes and Scheduled Tribes, or his representative.
- iii. a representative of the requesting body, to be selected by the relevant government.

### **III. CONCLUSION**

It can be concluded that the laws are in place. Implementation presents the biggest difficulty. The minimum amount of land required for a multi-product SEZ is 1000 Ha. Jammu and Kashmir, Goa, and the Union Territories are small states with insufficient expanses of arid land to create multi-product SEZs. As a result, for these regions, 100 Ha of land is the minimum requirement. Additionally, sector-specific SEZs are eligible for the reduced land requirement.

With a very low minimum land requirement and a minimum build-up processing area of one lakh square meters, more than 50% of SEZs in almost all major states are in the IT/ITES sector. This necessitates the development of real estate for homes, offices, and other types of buildings.

According to regulations, developers of sector-specific SEZs may construct up to 7,500 homes, a 100-room hotel, a 25-bed hospital, and up to 50,000 square meters of office, retail, and multiplex space; developers of multi-product SEZs may construct up to 25,000 homes, a 250-room hotel, a 100-bed hospital, and up to 200,000 square meters of office, retail, and multiplex space.

The Ministry of Commerce estimates that approximately 35% of the land inside the SEZ will be used for processing, and approximately 40% of the land will be set aside for open space, drainage, sewerage, etc. Housing for a residence, a hospital, a school, a recreation center, etc. , which will be built on the last 25% of the land.

Due to the nature of the proposition and the fact that real estate activities will boom in the early stages of SEZ development, massive property development is involved in the multi-product or specific product SEZs.

The construction of hospitals, roads, and viable livelihood options on the lands of the displaced groups is something that the SEZs and infrastructure companies can do to truly advance

development. In order to ensure that the ecological balance is not upset by the creation of SEZs, there are numerous environmental regulators.

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