Chapter 4
Turning Policy into Law: A New Initiative on Social Impact Assessment in India

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Abstract No assessments of the social impact of development projects were carried out until recently in India. If ever the affected people pointed out social impacts from development projects, they were ignored. SIA began to be conducted along with the environmental impact assessment (EIA) much later. A major development occurred when SIA became part of the National R&R Policy issued in 2007. The policy prescribed that SIAs be conducted for all projects that cause significant displacement. In 2013, the government promulgated a more strengthened policy, making SIA compulsory. In recent years, SIA has become a highly contentious issue. In this situation, it is difficult to predict what the final outcome of this debate will be.

Keywords Unintended effects • Scope and coverage • Public disclosure • Significance interconnectivity resourcing process • Paucity of data • Retrospective assessments • Administrative and political pressures • No guidelines • Interfacing social costs with financial gains

Essentially, a social impact assessment is the most fundamental of assessments for all development, infrastructure or commercial projects and activities. It endeavours to assess the impact that any project or activity is likely to have on society. In a sense, it goes beyond mere outputs and assesses the possible social outcomes.

This is particularly important because most projects and activities have costs, benefits, and unintended side-effects. Correspondingly, they affect people differently; there are some who directly bear the costs, there are others who directly benefit from projects, and still others who end up as their unintended victims. Therefore, a social impact assessment seeks to determine what the costs and benefits are, what the possible unintended effects are, and who will benefit and who will lose.

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Looking at it from this perspective, social impact assessments subsume a lot of other assessments, specifically economic impact assessments, environmental impact assessments, health impact assessments and the assessment of other such impacts.

Historical Context

Till recently, whatever social assessment of development projects was done, it was carried out as part of the environmental impact assessment (EIA) that has been carried out since the late 1970s. In India, the requirement of getting environmental clearances and therefore conducting an environmental impact assessment was introduced only in 1978 and that also more as a matter of policy than a statutory requirement. Most major projects were required to get an environment clearance from the Department of Science and Technology (DST), before they could be posed for investment clearance to the Planning Commission. The DST accorded environmental clearances based on an environmental impact statement (EIS) prepared by or on behalf of the project proponents and assessed by the National Committee on Environmental Planning and Coordination (NCEPC).

In 1980, the Department of Environment was formed and the responsibility of according environmental clearances was transferred to it. In the same year, the Forest (Conservation) Act was notified, and under this act any diversion of forest land for non-forest purposes, which included dams, had to be cleared by the Government of India. From 1980 till 1985, the Department of Forests and Wildlife in the Ministry of Agriculture had the responsibility of according forest clearances for forest lands to be submerged or otherwise diverted for any non-forestry purpose.

In 1985, the Ministry of Environment and Forests was set up and both the Department of Environment and the Department of Forests and Wildlife became a part of this new Ministry. Since 1985, it is this ministry which has the responsibility of carrying out an environmental impact assessment and giving both the environment and the forest clearances.

The Ministry of Environment and Forests (MoEF) issued, from time to time, guidelines for environmental impact assessment of various types of projects. These guidelines contained, perhaps for the first time in India, a requirement to assess some of the social impacts of a project, especially where human populations were to be displaced. For example, Section 8 of the *Environmental Management of Mining Operations*[1] deals with 'human settlement problems' and lists many of the

[1] Department of Environment, Government of India, 1982

safeguards that must be taken while carrying out mining activities. It also prescribes various facilities and services for the affected human populations.[2]

It became a statutory requirement only in 1994, with the necessary notification[3] under the Environment (Protection) Act (EPA) of 1986, covering a wide variety of development, infrastructure and commercial projects. The notification, while prescribing the composition of the expert committees for environmental impact assessment (Schedule III), mandates the membership of an expert in social sciences/rehabilitation. It also mandates the preparation of a comprehensive rehabilitation plan, if more than 1000 people are likely to be displaced, and a summary plan, if there are less. These plans were to be presented and discussed in the public hearing called (or, as per the notification, 'could be called') for projects involving large displacement of people or having 'severe environmental ramifications'. However, in 1998, public hearings were made mandatory by an amendment of the EPA's rules.

The putting together of all the impacts and costs and holistically looking at them in terms of their impact on the society was not mandated till very recently. The first national policy making social impact assessments mandatory, though not statutorily, was in 2007, with the formulation and adoption of the National Rehabilitation and Resettlement Policy of the government of India (GOI 2007).

The requirement to carry out SIAs was made a legal requirement only in 2013 with the passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, by Parliament (GOI 2013). The salient features of the policy and law, insofar as they pertain to social impact assessments, are described below.

The Policy

The National Rehabilitation and Resettlement Policy came into effect on 31 October 2007. Chapter IV of the policy is on social impact assessments (SIAs) of projects. It specifies that the appropriate government (central or state) will ensure that an SIA study is carried out whenever a new project or the expansion of existing projects displaces 400 or more families in the plains or 200 or more families in tribal or hilly areas and other special areas (Section 4.1). It specifically exempts Ministry of Defence projects involving emergency acquisition from conducting an SIA study (S. 4.7).

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[2] There are similar references in *Environmental Guidelines for Communication Projects*, Ministry of Environment and Forests (1989); *Environmental Guidelines for Rail/Road/Highway Projects*, Ministry of Environment and Forests (1989); *Environmental Guidelines for Airport Projects*, Ministry of Environment and Forests (1989); and *Environmental Guidelines for Ports and Harbour Projects*, Ministry of Environment and Forests (1989).

[3] Notified on January 27, 1994, with mandatory public hearings, and amended on May 4, 1994, making public hearings optional.

It lists out the various types of impacts that need to be taken into consideration by an SIA. These include impacts 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, and plantation; and public utilities such as post offices and fair-price shops. Also listed for consideration are impacts on food storage, electricity supply, healthcare facilities, educational and training facilities, places of worship, land for traditional tribal institutions and the burial and cremation grounds (S. 4.2.2).

It specifies that if an EIA is also required, both the SIA and the EIA will be carried out simultaneously (Section 4.3.1). Also, the report of the EIA shall be shared with the expert group conducting the SIA and vice versa (S. 4.4.2). The public hearing for the EIA shall also cover issues related to the SIA (Section 4.3.2). However, even where there is no EIA, a public hearing will be organised around the SIA report (S. 4.3.3).

The policy specifies that the SIA report will be examined by an expert group which has at least two non-official social science and rehabilitation experts (S. 4.4.1). It states that an SIA clearance will be mandatory for all the projects for which SIA is mandatory, and the conditions laid down in the SIA clearance shall be 'duly followed by all concerned' (S. 4.6). However, the procedure for according clearances has not been specified and the policy just states that it may be as prescribed in the rules (S. 4.5).

The Law

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (R&R Act) got Presidential assent on 26 September 2013. Chapter II of the R&R Act is titled 'Determination of Social Impact and Public Purpose'. This chapter lays down the scope, process, significance and interconnectivity of social impact assessments.

Part A of Chapter II of the act deals with what it calls 'Preliminary Investigation for Determination of Social Impact and Public Purpose'. It starts by specifying that before a government acquires land, it must consult the local panchayat or municipal body and carry out a social impact assessment study in consultation with them (S. 4(1)). It must publicly announce the commencement of the SIA study, ensuring that representatives of panchayats and municipalities are appropriately involved in the SIA process and that the process is completed within 6 months from its commencement (S. 4(2)).

There are strong provisions regarding proactive transparency of the SIA process and documents at various stages. Specifically, the SIA study report (S. 4(3)), the proposed social impact management plan (S. 6(1)), the recommendations of the expert group set up to evaluate the SIA report (S. 7(6)) and the decision of the appropriate government on the recommendations of the expert group (S. 8(3)) will be made proactively available to the local people, in an appropriate form and in the

local language. There is also the requirement to hold a public hearing (S. 5) to both inform the local people and consult them.

The R&R act recognises the linkages between the SIA and the EIA and specifies that EIAs must be simultaneous (S. 4(4)) and a copy of the SIA report be made available to the agency conducting the EIA (S. 6 (2)).

Section 4 (4) of the R&R act lays down some of the issues that must be covered in an SIA. These include assessing:

- Public purpose
- Number of affected and displaced families
- Extent of area, including land, and public and private property, likely to be affected
- Whether land proposed to be acquired is the minimum required
- Social impact of the project
- Nature and cost of addressing such impacts
- The final cost–benefit ratio of the project, after incorporating all costs

In addition, Section 4 (5) lists some of the impacts that the SIA must take into consideration. These include impacts on:

- Livelihoods of affected families
- Public and community properties
- Assets and infrastructure, specifically roads, public transport, drainage, sanitation, sources of drinking water, sources of water for cattle, community ponds, grazing lands and plantations
- Public utilities such as post offices, fair-price shops, food storage godowns, electricity supply, healthcare facilities, educational and training facilities, anganwadis, children's parks, places of worship, land for traditional tribal institutions and burial and cremation grounds

There is also a requirement to prepare a social impact management plan listing the required ameliorative measures, which should be at least at par to government schemes and programmes operated in the area (S. 4 (6)).

Surprisingly, Section 6 (2) excludes all irrigation projects where EIAs are required to be conducted, from carrying out SIAs. Also, it authorises the appropriate government to exempt acquisition of land under urgency provisions from conducting an SIA (S. 9). In addition, Section 105 (1) specifies that '...the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule'. The Fourth Schedule specifies the following:

1. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958)
2. The Atomic Energy Act, 1962 (33 of 1962).
3. The Damodar Valley Corporation Act, 1948 (14 of 1948)
4. The Indian Tramways Act, 1886 (11 of 1886)
5. The Land Acquisition (Mines) Act, 1885 (18 of 1885)
6. The Metro Railways (Construction of Works) Act, 1978 (33 of 1978)
7. The National Highways Act, 1956 (48 of 1956)

8. The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, I 962 (50 of I962).
9. The Requisitioning and Acquisition of immovable Property Act, 1952 (30 of 1952).
10. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (60 of 1948)
11. The Coal Bearing Areas Acquisition and Development Act, 1957 (20 of 1957)
12. The Electricity Act, 2003 (36 of 2003)
13. The Railways Act, 1989 (24 of 1989)

Section 105(3) specifies that the applicability of this law could be extended to cover displacement under one or more of the laws listed in Schedule Four, if the government so notifies within 1 year of the law becoming operative. Unfortunately, the provision of the law that mandates the conducting of SIA is not covered under this provision.

Part B of Chapter II of the law is titled 'Appraisal of Social Impact Assessment Report by an Expert Group.' Section 7 (1) mandates that the SIA report will be evaluated by an independent, multidisciplinary, expert group constituted by the appropriate government. Such a group will include two non-official social scientists, two representatives of panchayats or municipalities, two experts on rehabilitation and a technical expert in the subject relating to the project (S. 7 (2)).

This expert group, if it determines that the project does not serve any public purpose or that the social cost and adverse social impacts of the project outweigh the potential benefits, shall recommend the abandonment of the project, with detailed written reasons, within 2 months from the date of its constitution. However, if the appropriate government nevertheless wants to persist with the project and the acquisition of land, then it shall ensure that its reasons for doing so are recorded in writing (S. 7 (4)).

Where the expert group feels that the project will serve public purpose and potential benefits outweigh the costs, it would give a view on whether the proposed acquisition of land was the bare minimum required for the project and whether no other less displacing options were available. This would also be with detailed written reasons and within 2 months (S. 7 (5)).

It would be the responsibility of the appropriate government to ensure that there is public purpose, greater benefits than costs, and minimum acquisition of land and that no earlier acquired and unutilised land is available. It must also ensure that there is minimum displacement, minimum disturbance to the infrastructure and to the ecology and minimum adverse impact on the individuals affected (S. 8 (1) and (2)).

Evaluating the Policy and Legal Framework for SIA

In order to evaluate the policy and legal framework relating to social impact assessments in India, perhaps five specific aspects must be evaluated. These are:

1. *Scope and Coverage* : how comprehensive is the requirement for an SIA in terms of the types of projects and activities it covers and in terms of what it assesses

2. *Significance*: what is the influence that an SIA study has on project identification, location and assessment of viability and whether the findings of the SIA are binding
3. *Interconnectivity*: whether the SIA process is linked with other assessment processes related to the same activity of project
4. *Resourcing*: whether there are adequate financial and economic resources to ensure a proper SIA and to fund the recommended measures for prevention and amelioration of adverse impacts
5. *Process*: how credible, transparent, participatory and independent is the process for conducting an SIA

1 Scope and Coverage of the Law and Policy

The National Rehabilitation policy of 2007 declares that SIA will be carried out for all new projects or for the expansion of existing projects where 400 or more families are being displaced in plains area or 200 or more families in the hills or in special category areas. It exempts defence projects where an emergency acquisition of land has been decided upon, from conducting an SIA.

The R&R Act 2013, however, while not laying down the minimum number of families that must be displaced before an SIA becomes mandatory, again restricts it to only displacement and excludes most irrigation projects. It further excludes those projects where people are being displaced under various other laws listed in Schedule Four of the R&R Act.

In short, policy and law in India at the moment envisage that an SIA would be conducted only where families are displaced and that also for certain types of projects and under certain specific laws. It does not envisage the need for an SIA for activities or for projects which do not physically displace families.

In terms of the subjects covered under the prescribed SIA, though both the policy and the law give a similar list and the list is comprehensive in terms of the most obvious deprivations that could possibly occur when families are displaced, the focus remains very narrow. The policy and law do not distinguish specifically between the various types of stakeholders, especially those who are indirectly affected, sometimes living far away from the site of the project.

Often remote communities are also adversely affected by projects. Some of the well-recorded cases are those who use, or live near, roads on which traffic significantly increases because of a project, either temporarily or permanently. There are often migratory communities whose access to resources or their migratory routes are temporarily or permanently disrupted because of projects. In short, focusing just on displaced families, and only on those directly affected, while conducting an SIA, is a very narrow focus.

2 Significance

The policy specifies that the findings of the SIA would be mandatory. However, the law allows the appropriate government to overrule the findings as long as they give reasons in writing. Therefore, in effect, the SIA becomes an advisory instrument which can be ignored by the appropriate government.

3 Interconnectivity

Both the policy and the law recognise the relationship between a social and environmental impact assessment. Accordingly, it is specified that where any EIA is also required, it should be carried out concurrently or simultaneously with the SIA. However, the law and policy do not spell out the many interrelations and interdependencies between the SIA and the EIA. There is no mention of other types of assessments, especially cost–benefit assessment and the assessment of economic viability. However, there is a suggestion that if, after an SIA, it is found that the costs are greater than the benefits or that alternate project designs or locations are available that involve no displacement or less displacement, the project could be recommended for abandonment. Similarly, the amount of land being acquired can be cut down if found to be more than what is required. Unfortunately, such recommendations can be overruled by the appropriate government.

4 Resourcing

Neither the law nor the policy lays down either the specific source of funding for the conduct of the SIA or the quantum of funds to be made available. This is a major problem, as has been observed in the conduct of EIAs.

A proper SIA can be expensive, depending on the type and quantum of problems involved. Very often a way of ensuring that the SIA is not very thorough is to give inadequate resources for its implementation. This is also a danger in the currently described system. If SIA studies are to be done at the cost of the project proponents and their cost added to the project cost in the calculations regarding the economic viability of the project, there would be a tendency to try and do them as cheaply as possible, thereby cutting corners and compromising on quality.

The project proponents are interested in getting their project cleared as soon as possible and with the least costs. Consequently, there is pressure on project consultants to produce a report that either shows no adverse social impacts or suggests very cheap (and, consequently, ineffective) methods of mitigating these impacts. As the consultants are hired and paid for by the project proponents, they often find it difficult to stand up to such pressures.

It might be better to prescribe a system by which the financing of SIA studies can be done by an independent institution like the Planning Commission and debited on a fixed percentage basis to project cost, thereby freeing the project consultants from the conflicts that arise when they are hired and paid for by the project proponents.

Though the law does lay down that there must be a social impact management plan which lists out the ameliorative measures that are required to prevent or minimise adverse social impacts, there is no mention of who would fund such a plan and how much resources would be available. This again creates a major problem in the effective implementation of such a management plan.

5 Process

The policy and law do not lay down the details of the process to be followed in conducting an SIA. In fact, Section 109 (2) of the R&R law specifies that the appropriate government would make rules relating to the manner and time for conducting SIAs. This appears to be an error as the technical aspects of SIA are not widely understood. It would have been much better if professional institutions would have been involved and manuals developed which could have been made mandatory under the law.

Fortunately, both the policy and the law stress that the process of conducting an SIA must be transparent. The law prescribes that starting from the intent to conduct an SIA, through public hearings, and in the final results and outcomes, there must be a strong process of public disclosure. Also, the law prescribes that there be consultations with various local bodies prior to and during the conduct of the SIA. There is also a requirement, in the policy, for a public hearing.

Some of the major problems anticipated with the laid-down process are listed below:

(a) Paucity of Reliable and Appropriate Data

There is a general paucity of data, especially credible independent data, on social aspects relevant to the assessment of projects. There are revenue and land-use records maintained by the local administration, which, along with the Panchayati Raj institutions, also maintain data regarding the various common property resources. Different departments like the Public Health Engineering Department and the Electricity Department maintain data about the use and distribution of water and electricity respectively. However, this information is not always accurate, adequately detailed or appropriate for the purpose of carrying out an SIA.

Once a project has been announced, it becomes difficult to collect accurate data, as various vested and powerful interests tend to distort information and even distort the reality. Many instances have been recorded where landholding data has been manipulated or where land has been bought by outsiders, after a project has been announced, in order to get the benefit of the rehabilitation package.

As SIA studies are time bound (6 months), there will be a tendency to hurry them along so that the SIA clearance and the consequent completion of the project are not delayed. Considering that data have often to be collected from scratch, this could result in the use of unscientific methodologies and a resultant inadequate assessment.

Unfortunately, no system exists by which basic social parameters are studied much before the project is posed for clearance or as soon as potential sites for projects have been identified.

(b) Lack of Retrospective Assessments

There is no provision in the relevant policy or law for a mandatory retrospective assessment after the completion of the project. As it is, thousands of projects have been constructed all over the country with little or no social impact assessment and some social management and rehabilitation plans. A scientific retrospective assessment of these would have given the nation very valuable lessons in what works and what does not and how accurate and reliable earlier SIAs had been. The lack of such assessments makes the task of assessing the overall impacts of projects on society very difficult. It is also a wasted opportunity to learn from past experience. Consequently, even today, many of the impacts assumed and the ameliorative measures planned have little experiential basis.

Even now, there is no prescription, or a budget, to conduct such retrospective assessments, and therefore, it would be impossible to learn from the mistakes and successes of successive projects. Though it might no longer be possible to fully assess many of the adverse impacts, especially those on the poorest of the poor who have migrated away or otherwise disappeared, many of the other impacts could be assessed even today. However, no effort has been envisaged towards this end.

(c) Political and Administrative Pressures

The process of environmental impact assessments has been subjected to political and administrative pressures almost from the start. Pressure is brought upon the professional project consultants to prepare EISs in a manner such that the project is cleared. Pressure is brought upon the environmental appraisal committees (EAC) to recommend the clearance or rejection of projects. Also, the MoEF or the Government of India rejects recommendations of the EAC, without assigning any reasons. In all likelihood, SIA studies will face similar pressures, unless institutional and procedural methods are devised to immunise them.

(d) The Inability to Enforce and Monitor Conditions

There are no effective measures prescribed in the law or policy to monitor the proper implementation of a social impact management plan. Also, there is no provision that the project, at whatever stage it might be, could be halted and even scrapped if the requirements and obligations laid down in the management plan are not complied with.

Projects that are cleared are basically of two types.

First, there are those which are unconditionally cleared, which means that the project proposal, in terms of the anticipated social impacts and the proposed preventive and mitigative measures, is found acceptable.

The second (a large majority) are those where certain conditions are specified while clearance is being granted, and in that sense, the clearance is conditional.

For each of these types, it is essential to monitor that their social impacts are within the anticipated limits, that the preventive and ameliorative measures proposed by them or stipulated by the expert committee are being carried out properly and in time and that they are having the anticipated effects.

Where the project is found viable, it then has to be ensured that appropriate action plans are formulated and implemented in time to prevent and mitigate all that is preventable and mitigable.

The government must also have the willingness and capability to withdraw SIA clearance and thereby stop construction of projects, where the prescribed social conditions are not being complied with. It must also have the willingness and ability to scrap projects, even after their initiation, if they prove to be socially non-viable.

(e) No Prescribed Standards and Processes

There are no detailed guidelines for the conduct of the SIA, and the decision on how to conduct them, what methodologies to use and what sort of a report to write has been left to the appropriate governments. Considering these appropriate governments are usually the project proponents, this creates a huge conflict of interest.

To draw any final conclusion on the social impact of projects becomes difficult because there are no standards prescribed specifying what levels of social impacts are acceptable. How many people can be allowed to be adversely affected by a project? How much power or industry would justify such impacts? What is the weightage that needs to be given to impacts on different strata of society? For example, should there be much less tolerance for adverse social impacts affecting the poor and marginalised communities, the tribals, women and children? These questions have not yet been answered in India.

A lesson that should be learnt from the earlier Indian experience of conducting EIAs, relevant to the conduct of SIAs, is that there needs to be clear and transparent standards prescribed for the assessment of projects. In the absence of such standards, even where social impact assessments are carried out, the determination of the viability of the project becomes a matter of arbitrary opinion.

Whereas economic standards are easier to fix and one can assess whether an activity or project is viable from the point of view of economics, the same is not true for most other social parameters. For example, in economic terms it can be insisted that the 'project-affected persons' (PAPs) must not, with the project, be worse off, in any tangible measure, than they were prior to it. In fact, they must invariably be better off so that they are at least partly compensated for all the intangible and

non-quantifiable losses. It can also be ensured that whatever their status prior to the project, they must, in economic terms, be above the poverty line with the project. However, what about the less tangible social parameters?

It is not that standards cannot be fixed. For example, one can list the factors that contribute to social happiness, harmony, security, economic well-being and physical and mental health. However, in the R&R Act, there is an implicit demand to put economic and monetary values on these elements of social needs, despite the fact that there are many pitfalls in working with the assumption that all aspects of social impacts can be correctly valued in monetary terms.

Nevertheless, only once this is done can the social viability of a project be established, taking into consideration the monetary costs of ameliorative measures. However, as we have almost no experience and no acceptable methods for coming to this sort of a judgement, there is the danger of decisions being subjective, arbitrary or, what is even worse, motivated.

What Needs to be Done

What perhaps is required is a two-pronged approach. First, basic standards of social sustainability must be formulated. What defines a happy, harmonious and progressive society in the relevant cultural context?

Second, a trade-off mechanism needs to be designed. Subject to the basic standards already determined, the inevitable social disruption caused by a project must be compensated elsewhere by helping develop other elements of desirable social practices. Therefore, the loss of access to a natural landscape could be partly compensated by developing an extensive park which has the theme of the ecosystem left behind. The splintering of a traditional social group could, in part, be compensated by the providing of efficient and affordable communication and transport facilities so that erstwhile neighbours can still keep in touch.

In short, while it is difficult to quantify, monetise or replace many of the social institutions and processes, a sensitive approach can help develop, with the participation of the affected people, 'comparable social fabrics' to partly compensate for the lost ones.

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