



## Environmental Impact assessment: A critique on Indian law and practices

Dr. Vikrant Sopan Yadav

Assistant Professor, Modern Law College, Pune, Maharashtra, India

### Abstract

The Environmental Impact Assessment (EIA) process is an interdisciplinary and multistep procedure to ensure that environmental considerations are included in decisions regarding projects that may impact the environment. This paper contains the analysis of concept and object of Environmental Impact Assessment. It also contains a brief overview of international law providing for Environmental Impact Assessment. Author has also done a critical study of laws and governmental policies relating to Environmental Impact Assessment in India.

**Keywords:** environmental impact assessment, law and practices

### Introduction

Environmental Impact Assessment (Hereinafter referred to as EIA) is a term used to describe the total process of assessing the environmental effects of a development project.

An EIA concentrate on problems, conflicts and natural resource constraints which might affect the viability of a project. It also predicts how the project could harm to people, their homeland, their livelihoods, and the other nearby developmental activities. After predicting potential impacts, the EIA identifies measures to minimize the impacts and suggests ways to improve the project viability<sup>[1]</sup>.

In a nut shell EIA is just an information gathering exercise carried out by the developer and other bodies which enables a Local Planning Authority to understand the environmental effects of a development before deciding whether or not it should go ahead.

This research project is an attempt to critically analyse the statutory provisions relating to Environment impact Assessment and implementation of same in India. Researcher has also done a brief analysis of relevant judicial and quasi judicial pronouncements.

### Aim/object of EIA

The aim of an EIA is to ensure that potential impacts are identified and addressed at an early stage in the projects planning and design<sup>[2]</sup>.

According to Morgan<sup>[3]</sup>, following are the aims of EIA;

- Its basic purpose is to anticipate important possible effects of proposed activities on the natural system (water, soil, air, biological system, human health), anthropogenic systems (settlements and infrastructure), social and economic systems (work, education, recreation, health services) and cultural systems (beliefs, art, literature)
- The process is formally sanctioned by a legislative or bureaucratic framework set within a national and local policy context. These policies influence the character and

direction of the EIA process in a given country and a given setting.

- Opportunities to Raise Environmental Issues

Due to the public nature of the EIA process (interested groups have an opportunity to raise concerns and see them addressed) people or interested persons, institutes, organizations can come forward and contribute, raise their concerns and share information for expert analyses. Public input can bring up environmental issues for review and help prioritize environmental impacts and mitigation measures. An example demonstrating the importance of public participation is a Ukrainian project where the public brought 20 points of concern over a local oil and gas development, which were then addressed in the final assessment<sup>[4]</sup>.

### The EIA process also provides an opportunity,

- To scrutinize the projects and products
- To ensure adherence to legislative regulations
- To protect public interest
- To protect flora and fauna
- To ensure and promote sustainable development, etc.

### Stages/process of EIA

1. **Identifying and Defining the Project or Activity:** it includes the description of project, its objects, its nature and other relevant info like management, control etc.
2. **Screening:** The screening determines whether a particular project warrants preparation of an EIA. Preliminary assessment: This involves sufficient research, review of available data and expert advice in: If screening does not clear a project, the developer may be required to undertake a preliminary Assessment order to identify the key impacts of the project on the local environment, predict the extent of the impacts and briefly evaluate their importance to decision makers<sup>[5]</sup>.
3. **Scoping:** It identifies the key environmental issues that are

required to be addressed in EIA. It provides an opportunity to public and environmental organizations/ institutions to get acquainted with the project and to raise their voice, if required. In scoping the EIA team identifies the primary issues to be dealt with.

4. **Preparing Terms of Reference:** It is an important process as it encompasses the issues and impact that the project is likely to have on the environment. A draft Terms of Reference may be made available for public review and comment which provides a key opportunity to ensure that the EIA is properly framed and community concerns are addressed properly.
5. **Draft EIA:** Based upon the terms of reference, a draft EIA is prepared. It is prepared as per the standards of laws and regulations of a country wherein the project is about to be initiated.
6. **Public Participation/Contribution:** engagement of the public at numerous points throughout the process of EIA is considered as a best practice. It may be done by way of meetings, public hearings or comets, objections or suggestions in writing.
7. **Finalizing the EIA:** after preparation of draft and inviting the comments of public to the same, the important step of finalising the EIA report is initiated. It will contain the summary of suggestions of public and other stakeholders.
8. **Decision:** Depending upon the final report of EIA, the decision whether to approve or reject the project is taken by concerned government agencies. The decision of approval may be absolute or subject to certain conditions.
9. **Judicial review:** the decision of approving the project, process of EIA report or the project itself may be challenged within the ambit of relevant laws and constitutional boundaries.
10. **Implementation of project:** Subject to compliance with all legal regulations and conditions, the project may finally be implemented.
11. **Monitoring:** Monitoring serves three purposes:
  1. Ensuring that required mitigation measures are being implemented;
  2. Evaluating whether mitigation measures are working effectively; and
  3. Validating the accuracy of models or projections that were used during the impact assessment process

#### **EIA under International Law**

At international level role for EIA was formally recognized at the Earth Summit held at Rio in 1992. Principle 17 of the Rio declaration states that –

*“EIA as a national instrument shall be undertaken for the proposed activities that are likely to have significant adverse impact on the environment and are subject to a decision of a competent national authority”.*

Agenda 21 <sup>[6]</sup>, which was also as a result of this convention, proposes that governments should:

*“Promote the development of appropriate methodologies for making integrated energy, environment and economic policy decisions for sustainable development, inter alia, through environmental impact assessment (9.12(b))*

*Develop, improve and apply environmental impacts*

*assessment, to foster sustainable industrial development (9.18)*

*Carry out investment analysis and feasibility studies including environmental assessments for establishing forest based processing enterprises.*

*Introduce appropriate EIA procedures for proposed projects likely to have significant impacts upon biological diversity, providing for suitable information to be made widely available and for public participation, where appropriate, and encourage the assessment of impacts of relevant policies and programs on biological diversity (15.5(k))” <sup>[7]</sup>.*

UN Convention on climate change and Biological Diversity (1992) cited EIA as an implementing mechanism of these conventions (article 4 and 14 respectively).

d) Doha Ministerial Declaration encourages countries to share expertise and experience with members wishing to perform environmental reviews at the national level (November, 2001).

e) UNECE (Aarhus) Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (1998) covers the decisions at the level of projects and plans, programs and policies and by extension, applies to EIA and SEA.

f) United Nations Conference on the Environment in Stockholm 1972.

#### **EIA under Indian Law**

EIA in India was first started in 1977-78 with evaluation of river valley projects. This was later extended to mining, Industries, thermal power, port and harbors, atomic power, rail and road highways, bridges airport and communications, etc. In January 1994, the Ministry of Environment & Forests (hereinafter referred to as MoEF) issued a Notification on EIA <sup>[8]</sup> of Development Projects. This Notification listed 30 projects that required environmental clearance from the Central Government. It also included - for the first time – Public hearing as a pre-requisite for clearing large projects <sup>[9]</sup>. The notification made it obligatory to prepare and submit an EIA, an Environment Management Plan (EMP), and a project report to MoEF which had the option to consult a multi-disciplinary committee of experts.

In India, many of the developmental projects till as recently as the 1980s were implemented with very little or no environmental concerns. The environmental issues began receiving attention when a national committee on environmental planning and coordination was set up under the 4<sup>th</sup> five year plan (1969- 1978). Till 1980, the subjects of environment and forests were the concern of the Dept of Science and Technology and Ministry of Agriculture respectively <sup>[10]</sup>.

#### **The Role of the Ministry of Environment & Forests (MoEF)**

In India, the Ministry of Environment and Forest, Government of India is the body responsible for Environmental Clearance. Ideally EIA should provide information to decision makers at early stage of the project planning cycle.

The MoEF or the Impact Assessment Agency (IAA) (which is constituted by MoEF) receives the Project application along with the EIA Report from the Proponent for review and

decision making. It also receives the minutes of the Public hearing along with the NOC from the concerned SPCB.

### **The Role of the State Pollution Control Boards (SPCBs)**

The SPCBs are expected to approve the site that the proponent has chosen and to conduct & forward the minutes of the public hearing to MEF. Instead of limiting themselves to the role of a policing authority they should also take up the role of guiding new and existing industries to meet the regulations.

### **National Environment Appellate Authority (NEAA)**

The NEAA was established in 1997 after the enactment of the NEAA Act to hear appeals as an independent body against orders granting environmental clearance. The Authority has a chairperson, vice-chairperson and can have up to three members.

### **2006 Notification on EIA <sup>[11]</sup>:**

- The notification has some improvements in terms of a scoping stage, TOR by authorities, public consultation with draft EIA report and devolution of power to the SPCBs.
- The notification still has some flaws such as: scoping stage without public consultation, exemption of certain projects from EIA and public consultation and a unimproved monitoring system
- The notification has regressed in certain areas making the EIA process weak mainly by excluding NGOs and environmental groups from the public consultation, extending the validity period for clearances, exemption of projects inside industrial estates and the provision to cancel public consultation.
- Key improvements required are: key role for the local public in scoping TOR and monitoring, need for integrated information regarding the sustainability linkages from the area under scrutiny, greater transparency in the clearance process and dissemination of all documents for public scrutiny.

### **Problems in EIA System in India**

- Even though some of the industrial set ups do not require EIA as per the statutory norms, they might involve certain technological processes which could be harmful to the environment, as a result of which such enlisted industries could have potential impacts on the environment and on public health.
- It is a well established fact that the small scale industries are contributing more pollution with respect to the major projects.
- Lack of awareness about role of public in EIA process.
- Public comments are not taken into account in initial stage, which often leads to conflict at the later stage of project clearance. This has been a common picture. It results in delaying the implementation of project.
- Absence of respect to the indigenous knowledge of local people. indigenous knowledge of local people is a vital source of important data with respect to geographical challenges and impact of project on the same.
- Often, for strategic industries such as nuclear energy

project, the EIAs are kept confidential for political and administrative reasons.

- The quality of EIA reports has always remained a question in India. The reports are generally incomplete and provided with false data.
- Environmental clearance is granted despite public objection / rejection, the reasons for the same are not conveyed to all those who have sent in written objections and/or attended the public hearing. There are very few ways to get information regarding project clearances.
- The regional offices of the MoEF are to monitor the compliance of these conditions and prepare the reports. However the local people/organizations do not even know of these conditions and are not a made a part of its monitoring. It is not known if project authorities reflect the true status of compliance in their reports to the MoEF.
- The present redressal mechanism meant exclusively for the challenging environmental clearance is extremely weak and limited in its scope. The National Environmental Appellate Authority has heard only 15 cases between 1997-2005.

### **Judicial Review of EIA in India**

In *Sterlite Industries (India) Ltd. v. Union of India* <sup>[12]</sup> the Supreme Court discussed the specific grounds on which administrative action involving the grant of environmental approval could be challenged. The grounds for judicial review were illegality, irrationality and procedural impropriety. Thus the granting of environmental approval by the competent authority outside the powers given to the authority by law would be grounds for illegality. If the decision were to suffer from *Wednesbury unreasonableness* <sup>[13]</sup>, the Court could interfere on grounds of irrationality. Last, an approval can be challenged on the grounds that it has been granted in breach of proper procedure.

In *Gram Panchayat Navlakh Umbre v. Union of India and Ors* <sup>[14]</sup>, the Court held that the

*“decision making process of those authorities besides being transparent must result in a reasoned conclusion which is reflective of a due application of mind to the diverse concerns arising from a project such as the present. The mere fact that a body is comprised of experts is not sufficient a safeguard to ensure that the conclusion of its deliberations is just and proper.”*

*Samata and Forum of Sustainable Development v. Union of India & Ors* <sup>[15]</sup> the NGT held that

*“In order to demonstrate [the] threadbare nature of discussions while considering a project for giving its recommendation, it is essential that the views, opinions, comments and suggestions made by each and every member of the committee are recorded in a structured manifest/ format.”*

In *Deepak Kumar v. State of Haryana and Ors* <sup>[16]</sup>, referring to the recommendations of the Committee on Minor Minerals <sup>[17]</sup>, the court underlined that, *state governments should be discouraged from granting a mining license/lease to plots less than five hectares so as to reduce circumvention and ensure sustainable mining. Further, where land is broken up into smaller parcels, prior environmental approvals should be sought from the MoEF.*

In *Adivasi Majdoor kisan Ekta Sangathan and Another v. Ministry of Environment and Forest and Others* [18] the evidence of persons who voiced their opposition to the project was not recorded and no summary of the public hearing was prepared in the local language nor was it made public. Therefore the Court declared the approval invalid.

*T N Godavarman v. Union of India*. Order of the Supreme Court on January 6, 2014 [19] court held that, “*present mechanism under the EIA Notification ... is deficient in many respects and what is required is a Regulator at the national level ....which can carry out an independent, objective and transparent appraisal and approval of the projects for environmental clearances and which can also monitor the implementation of the conditions laid down in the Environmental Clearances.*”

### Outcomes/Suggestions

Following are few some suggestions to address these identified problems;

- EIA shall be made compulsory for all projects.
- Indigenous knowledge of local people shall be considered in process of EIA.
- Primary focus of the EIA process shall be to consider the environmental projects as against conveying the importance of project.
- Past track of project investor be considered (previous projects and adherence to EIA and environmental laws/regulations).
- Conditions imposed while granting the permission shall be published in at least one newspaper which is published in local language of the area in which the project is going to be implemented.
- More number of regional MoEF centers be established (at least one per state) in order to speed up the evaluation of EIAs, permission and monitoring of projects.
- No industrial or large scale developmental activity should be permitted in ecologically sensitive areas. Indigenous knowledge of local people shall be taken into consideration while determining the ecologically sensitive areas.
- Capacity building of government agencies, communities, NGOs and the judiciary with regard to the implementation of the existing EIA notification.
- Establishment of Independent Environmental Impact Assessment Authority (IEIAA) headed by a judicial officer and having representatives of public, environmentalists, NGO's working in field of environment shall be constituted.
- Statutory ADR mechanism shall be provided for speedy redressal of disputes with regard to EIA. A panel of experts in environment and retired HC/SC judges may be formed in this regard.
- MoEF monitored information desk for providing status of clearance of projects be created. A statutory time limit may be provided for providing information.

### Conclusions

EIA certainly has a crucial role to play in addressing

environmental issues surrounding project development and especially power projects. The integration of environment into development planning is the most important tool in achieving sustainable development. Environmental protection and economic development must thus be dealt with in an integrated manner. EIA process is necessary in providing an anticipatory and preventive mechanism for environmental management and protection in any development.

EIA is an important tool in assuring that projects and plans will not give an adverse impact on the environment. The use of EIA has developed throughout the world and may different applications exist. The hypothesis of this research project i.e. Implementation of environment impact assessment suffers from many defects and requires a relook in order to achieve better environment protection, has been proved completely. In order to achieve the target of environment protection and sustainable development as enshrined in Agenda 21, Rio declaration and different environmental legislation in India, it is pertinent to implement the revamped EIA system in India. The outcomes/suggestion given in this research is important in this regard.

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decisions. Non applicability of the principle would imply that courts will be less hesitant in interfering in such decisions.

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