

ENVIRONMENT IMPACT ASSESSMENT: CHANGES AND CRITIQUES

Written by *Shantanu Gupta*

3rd Year B.A.LLB Student, Institute of law Nirma University, Ahmedabad, India

INTRODUCTION

Around the world, many countries are competing in the rat race of development.ⁱ To maintain a position and to be in pace with developed countries, developing countries putting efforts to flourish in terms of urbanisation, industrialization and infrastructure development. In a journey to be a developed country, government become oblivion of its people, their rights and protection of the environmentⁱⁱ. Articles 48A and 51A(b) of the Indian constitution emphasized the obligation of the state to protect the environment and duty of the citizens toward environment respectivelyⁱⁱⁱ. Before 1980, issues relating to environment and forest was the concern of the department of science and technology and ministry of agriculture then responsibility shifted to the department of environment established under within the ministry of agriculture. Later on, in 1985, the ministry of environment and forest(MoEF) started handling this department.^{iv} Development is an ever-growing process, thus accelerating its impact^v.therefore in the process of it, there is a huge impact on environment consequently affecting the lives of the people.so there are laws which use preventive approach by taking a prior cognizance of impact by ^{vi}different projects on environment.one such law is environmental impact assessment(EIA). So EIA aims to predict future changes by projects and to evaluate its impact on the environment also Guiding to make informed trade-offs among conflicting aspects of environmental quality and between environmental quality and other societal objective^{vii}.

BACKGROUND OF ENVIRONMENT IMPACT ASSESSMENT

The development of EIA started with the advent of national environmental policy act 1969 in U.S^{viii} for the first time EIA was introduced in India in 1980 when some industrial project has to take clearance from the environment perspective. The further various project was assessed

under environment impact assessment from time to time. However, environment protection rules 1986 Was enacted. The central government power conferred under S.3(1) and S.3(2) of environment protection act 1986 and under rule 5(3)(a) issued a draft notification in 1992^{ix}. further in 1994, a new EIA notification was issued^x with amendments. Thereafter a new notification was issued in 2006, following this, a new notification under the power conferred in environment protection act 1986 and under rules is issued which is a current notification environment impact assessment 2020. The crux of EIA notification is that it requires a pre-determined set of projects to obtain an environmental clearance before construction in case of new projects or initiating expansion or modernisation or in case of an existing project from authorities powered under the notification.^{xi}

CHANGES IN EIA FROM 1992 TO 2020

Draft notification 1992-

Under 1992 notification, projects were divided into schedule I and schedule II consist of 24 industries and 45 industries respectively.^{xii} Therefore any expansion or modernization of existing project or the inception of new projects listed under two schedules will have to take environment clearance from central government and state government respectively before an operation. Further, those who desire to undertake new project or expansion or modernization of existing project shall submit an application, which includes Environment impact assessment report and an environment management plan according to the guidelines prepared by the central government.^{xiii}

(IAA) Impact assessment agency will give clearance based on the data furnished by project authorities and by visiting sites and interaction with affected people and monitoring done by IAA of the half-yearly report given by project authority.

Draft notification 1994-

The final notification came in 1994^{xiv} With some alteration in previous notification 1992. Earlier in 1992 notification, projects required clearance from central and state government substituted to one, whereby only clearance will be required from central government. Summary

feasibility report has to be submitted instead of the EIA report and EMA report. The public will have access to EIA and EMA summary at the IAA headquarter.

Further, the notification was amended in May 1994. IAA will no longer is bound to visit factories or any site neither need to interact to affective population.

Draft notification 2006-

Some significant changes came after amending 1994 notification.^{xv}

Projects were categorised into two categories A & B. Projects under category A have to take clearance from central government on the recommendation of environment appraisal committee constituted by the central government. B category project has to take clearance from the state/union territory environment impact assessment authority (SEIAA) on the recommendation from state/union territory expert appraisal committee (SEAC).

There will be 4 stages prior to environment clearance (EC). Screening, scoping, public consultation, appraisal committee.^{xvi}

Category "A" will be exempt from screening. Category B will be divided into two sections. If any project requires environment impact assessment report shall term as category B1 and remaining as B2. Category B2 will be exempt from public consultation.

Draft notification 2020-

Project listed in the schedule will be categorised in A, B1 and B2 from starting, unlike 2006 notification. Category "A" projects will be required to take clearance from ministry. All Project under category B1 excludes, who full fill general condition defined under sub-clause (30) of clause 3 of 2020 notification will require EC from SEIAA or UTEIAA. Further, projects under the B1 category and those who full fill general condition require EC from ministry.^{xvii}

All project under category B2 will be placed before the appraisal committee shall require EC from SEIAA or UEIAA. Further, all projects under category B2 other than projects specified under subclause 5 shall require EC from SEIAA or UEIAA will be exempt from the appraisal committee.^{xviii}

Projects concerning national defence, security or involving other strategic consideration will require EC and information about these will not be disclosed to the public.

All B2 Category projects will be exempted from public consultation.

CRITIQUES OF 2020 NOTIFICATION

Decentralized system - Many objections were raised that the state government has given the power to give clearance to many projects without checks and counter-check by any upper authorities. So there will be situations, where projects will be passed discriminately because the state sometimes involves indirectly seeking investment^{xxix}. But Under section 3 of the environment protection act 1986, Central Government has vested with extensive power to take all such measures to protect and improve the quality of the environment and preventing controlling and abating environmental pollution.^{xx} Therefore it can whittle down the power of state government by including the project under its power and can also increase the workload on state government^{xxi}. such a basis of division may also violate the 11th and 12th Schedules to the Constitution because of no involvement of local government.^{xxii}

Post facto approval- In March 2017, union ministry issued a notification with the one-time chance that provided industries to regularise projects that started construction or undertook expansion and modernisation without prior environment clearance^{xxiii}. Now draft 2020 became a permanent way that if the commencement of any project has done without taking prior clearance can be legalised when 2020 notification will come into effect.^{xxiv} One case related to this is, In April 2020, a coal mining project was approved in the Dehing Patkai Elephant Reserve Forest through video conference. And then a penalty of Rs 43.25 crore was levied by the Assam Forest Department for devastating the Dehing Patkai Reserve by illegal mining for 16 years from 2003^{xxv}. This point of post-facto approval in the notification is heavily criticised because projects which are not legal can also get benefited by just submitting a remedial plan and by giving some penalty, which is far less than what it earned.^{xxvi}

Public consultation- All B2 category projects such as irrigation, building construction and area development, elevated roadways and flyovers are exempted from public consultation.^{xxvii} Thus there will be apprehension in the mind of the people that expansion and modernization of projects under the B2 category will carry out without oversight. Also, the notice period for the public hearing has been cut from 30 days to 20 days.^{xxviii} The rationale behind introducing public consultation in the EIA process is to ensure communication between EIA Team and the persons, who are likely to be affected by any project^{xxix}. There can be some conditions if

fulfilled can have the substantive impact of the public hearing on the EIA project. first, the affected and interested person should have access to information about the proposed project. second, they should have an opportunity to raise their concern, third, their statements and doubts should be recorded with the response of project proponent.^{xxx}The quality of public consultation is very poor that it even not reflect the true views of the public.

CONCLUSION

Those who chase for industrialization without pondering about the gravity of its impact on the environment see EIA as a procedural obstacle. These projects may have an untold environmental damage.^{xxxi}Despite that EIAs are not given that much importance and conducted in a short period to give a green signal. The main motive behind issuing these notifications is to promote environment conservation but it seems like, it promotes only investment. People who are immediately connected to any projects and get affected by it should be taken into consideration by the involvement of responsible member in the workgroup of that committee and record their statement as views of the whole committee. The EIAs reports sometimes are less credible because these reports are made by the consultant hired by the proponent on fees payment and can trivialize its bad impact. The new draft rules seem to favour the interests of the project proponent by whittling down public consultations, accepting flawed and faulty EIA reports resulting from external influences, and ignoring the non-renewable nature of resources. Combining all flaws of project proponent as well as of government results in poor EIA report and thus get clearance on that basis, cause environmental degradation along with the adverse impact on human life.

ENDNOTES

ⁱ Shivaji Bhattacharya, *Environmental Impact Assessment: A Review*, 3 NALSAR STUD. L. REV. 19 (2007).

ⁱⁱ *Id.*

ⁱⁱⁱ INDIAN CONST. art 48-A & 51A(b).

^{iv} Sunita Dubey, *EIA: The foundations of failure*, INDIA TOGETHER, <http://www.indiatogether.org/eiafail-environment> (last visit Aug.31,2020).

^v Bikram Kumar Dutta & Sanhita Bandyopadhyay, *Environmental Impact Assessment and Social Impact Assessment - Decision Making Tools for Project Appraisal in India 5* INT. J. HUM. & SOC. SCI. (2010).

^{vi} Bhattacharya, *Supra* note 1.

^{vii} P. Leelakrishnan, "Environmental Impact Assessments: Legal Dimensions," 34 J. INDIAN. L. INST. 543 (1992)

- viii George Cyriac & Shamik Sanjanwala, *Environmental Impact Assessment in India: An Appraisal*, 10 STUDENT ADVOC. 74 (1998).
- ix *Id.*
- x Dubey, *Supra* note 4.
- xi Shibhani Ghosh, *Demystifying the environment clearance process in India*, 6 NUJS. L. REV. 433 (2016).
- xii Cyriac, *Supra* note 8.
- xiii *Id.*
- xiv Dubey, *Supra* note 4.
- xv Nupur Chowdhary, *ENVIRONMENTAL IMPACT ASSESSMENT IN INDIA: REVIEWING TWO DECADES OF JURISPRUDENCE*, 5 IUCN. ACAD. ENV'T. L. J. (2014).
- xvi S.O. 1533(E) Ministry of Environment and Forests, Government of India (14/09/2006.)
- xvii NOTIFICATION, MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE (March. 2020), http://environmentclearance.nic.in/writereaddata/Draft_EIA_2020.pdf.
- xviii *Id.*
- xix Manju Menon & Kanchi Kohli, *EQUATIONS' Critique on Environmental Impact Assessment Notification, 2006*, *EQUITABLE TOURISM*, <http://equitabletourism.org/documentation/equations-critique-environmental-impact-assessment-notification-2006> (last visit 1 Sep. 2020).
- xx The Environment (Protection) Act 1986, No. 29, Act of Parliament, § 3.
- xxi Ghosh, *Supra* note 11.
- xxii Leo F. Saldanha et.al., *Green Tapism: A Review of the Environmental Impact Assessment Notification – 2006*, *STATIC. ESGINDIA*, http://static.esgindia.org/campaigns/Greentapism/Book_GT.pdf (last visit 1 Sep. 2020).
- xxiii Mayank Agarwal, *Government pushes for post facto environment clearances while apex court disapproves*, *MONGABAY* (April 6, 2020) <https://india.mongabay.com/2020/04/government-pushes-for-post-facto-environment-clearances-while-apex-court-disapproves/>.
- xxiv Ansh Dubey, *EIA DRAFT 2020: A BOON OR CURSE!!*, *BUSINESS FORTNIGHT* (AUGUST 9, 2020) <https://www.businessfortnight.com/featured/eia-draft-2020-a-boon-or-curseby-ansh-dubey/cid1179577.htm>.
- xxv Sara Suresh, *Explained: The Curious Case of India's Draft EIA Notification 2020*, *THE QUINT* (AUGUST 11, 2020) <https://www.thequint.com/explainers/explained-the-curious-case-of-india-draft-environment-impact-assessment-notification-2020>.
- xxvi *Id.*
- xxvii Explained: What is EIA 2020? How does it water down the existing policy?, *The week* (August 10, 2020) <https://www.theweek.in/news/biz-tech/2020/08/10/explained-what-is-eia-2020-how-does-it-water-down-the-existing-policy.html#:~:text=But%20what%20is%20so%20>.
- xxviii *Id.*
- xxix Bhattacharya, *Supra* note 1.
- xxx Ghosh, *Supra* note 11.
- xxxi Bhattacharya, *Supra* note 1.