
Environmental Impact Assessment in India: An Analytical Study

Dr. Seema Sharma¹

¹Associate Professor, Department of Law, MMH College, Ghaziabad, CCS University, Meerut, UP.

Abstract

Environmental Impact Assessment in India is statutorily backed by the Environment Protection Act, 1986 which contains various provisions on EIA methodology and process. Environmental Impact Assessment (EIA) is an important management tool for ensuring optimal use of natural resources for sustainable development. It is basically, a decision-making tool to decide whether the project should be approved or not. It is an effort to anticipate measure and weigh the socio-economic and bio-physical changes that may result from a proposed project. It covers developmental sectors such as industries, thermal power projects, mining schemes etc. EIA systematically examines both beneficial and adverse consequences of the project and ensures that these effects are taken into account during project design. It helps to identify possible environmental effects of the proposed project, proposes measures to mitigate adverse effects and predicts whether there will be significant adverse environmental effects, even after the mitigation is implemented.

Keywords: Environmental Impact Assessment, sustainable development.

Introduction

Environmental Impact Assessment (EIA) is an important process for evaluating the likely environmental impact of a proposed project. It makes a scientific estimate of the likely impacts of a project, such as a mine, irrigation dam, industrial unit or waste treatment plant. It is a process whereby people's views are taken into consideration for granting final approval to any developmental project or activity. It assists decision-makers in considering the proposed project's environmental costs and benefits. Where the benefits sufficiently exceed the costs, the project can be viewed as environmentally justified.

Environmental Impact Assessment is a relatively new planning and decision making tool first enshrined in the United States in the National Environmental Policy Act of 1969. It is a formal study process used to predict the environmental consequences of any development project. EIA thus ensures that the potential problems are foreseen and addressed at an early stage in project planning and design. Environmental Assessment is taken up in this exercise as a rapid assessment technique for determining the current status of the environment and identifying impact of critical

activities on environmental parameters. Based on this analysis we can draw up an Environmental Management Plan that would ensure impact monitoring and mitigation planning.

This paper tracks the evolution of EIA in our country and its role to ensure sustainable development. It endeavours to find out the loopholes in the present system of EIA and concludes with suggestions. In India, the environmental action formally started with the participation of late Smt. Indira Gandhi in the UN Conference on Human Environment in Stockholm in 1972. A National Committee on Environmental Planning & Coordination (NCEPC) was established to be the apex body in the Department of Science and Technology. The term `Environment figured for the first time in the Fourth Five Year Plan (1969-74) which recorded that `harmonious development is possible only on the basis of a comprehensive appraisal of environmental issues. The Tiwari Committee (Committee on Review of Legislative Measures and Administrative Measures), in its report in 1980, recommended creation of a Department of Environment as a nodal agency to ensure environmental protection, to carry out environmental impact studies of proposed development projects, and to have administrative responsibility for pollution monitoring and control. The department came into being in 1980 within the Ministry of Science and Technology under the charge of the then Prime Minister. In 1989 the subjects of wildlife and forestry were added to the list and a new Ministry of Environment and Forests was created with the Prime Minister holding its charge. Since its inception the Department (under the Ministry) has issued various guidelines major legislative measures for the purpose of environmental clearance. The role of EIA process was formally recognized at the Earth Summit in Rio Conference in 1992.

In 1994 when specific notification was issued under section 3 and rule 5 of the environment protection Act , 1986 called the “Environment impact Assessment Notification 1994”, EIA gets its authority. The first step in seeking environmental clearance for a development project is to determine what statutory legislations apply to the particular project. The notification made it obligatory to prepare and submit an EIA, an Environment Management Plan, and a Project Report to an Impact Assessment Agency for clearance.¹ The MOEF was designated as the Impact Assessment Agency and was required to consult a multi-disciplinary committee of experts. Under the January 1994 notification any member of the public was to have access to a summary of the Project Report and the detailed EMPs. Public Hearing was mandatory. Public Participation was built-in as far as the EIA was concerned. Public Participation provided local people and unrepresented interests with an opportunity to be heard and to participate in the decision making of the project that affected their environment and livelihood.² This represented India’s first attempt at a comprehensive EIA scheme.

¹Warner North and F. Yoise Terry F., “Risk Assessment:What it is; How it works”, 13 EPA J. 13 1987
²Sahasranaman P.B., Handbook of Environmental Law, 80 (Oxford University Press, 2009).

EIA Notification 2006

The EIA Notification 1994 gave way to a notification in 2006. There was a fundamental change. Both the Central agency and the state agency were given power to make impact study for projects of separate types with threshold limits. Ministry of Environment and Forests and the State Environment Assessment were the regulatory authorities to render clearance at the center and the states respectively. The notification provided for prior environmental Clearance before undertaking projects and activities scheduled therein. Expansion or modernization of existing projects or activities required clearance.

The projects or activities were characterized as “A” and “B” in the schedule. The categorization was based on the spatial extent of potential impact and potential impact on human health and natural and manmade resources. Category ‘A’ projects and activities require clearance from MOEF on the recommendations of an expert appraisal committee constituted by central government. Category B projects and activities require prior clearance by SEIAA on the recommendation of state expert appraisal committee. These state authorities were constituted by central government. However in the absence of duly constituted SEIAA or SEAC category regarded as Category ‘A’ requiring Clearance from Central Govt.

Three significant changes were initiated through the 2006 amendment³ that superseded the 1994 notification. First, the decentralization of regulatory functions to State level Environment Impact Assessment Agencies (SEIAAs). SEIAAs were to oversee smaller scale projects (Category ‘B’) and the MOEF would continue to regulate larger scale projects (Category ‘A’). Second, although the final regulatory approval would be decided by the MOEF or the concerned SEIAA, they in turn were to base their approvals on their commendations of the State Expert Appraisal Committee (SEAC) and the Expert Appraisal Committee (EAC) functioning in the MOEF. Third, the State Pollution Control Boards (SPCB) or the Union Territory Pollution Control Committee (UTPCC) was given the responsibility for conducting the public hearing, taking responsibility away from the project proponents. These three changes were designed to make the appraisal process more streamlined, transparent and independent of politicking.

Several points of contention regarding the changes that were proposed to the EIA notification 1994 remained unaddressed in the 2006 notification. Firstly, the most critical concern about the notification remained the process by which it has come to being. Consultations on the draft notification were held only with representatives of industry and central government agencies, as per the Ministry’s own submission. State governments, Panchayats and municipalities, NGOs, trade unions and local community groups were partially or completely kept out of the process.⁴

³Sahasranaman P.B., Handbook of Environmental Law, 80 (Oxford University Press, 2009).

⁴Abstract of ‘EIA notification 2006: A critique’, by Manju Menon and KanchiKohli, <<http://www.kalpavriksh.org/campaigns/campeia/campaignsEIAnote>>

The categorization of projects in the notification, into A and B, has been done based on “spatial extent of potential impacts on human health and natural and manmade resources”. Category A projects are to be clearance by the MoEF while Category B projects are to be cleared by the State Environment Impact Assessment Authority. (SEIAA)The handing over of the responsibility of granting clearance to a large number of projects to the state governments without any system of checks and counterchecks is not acceptable. In many instances, the state government was directly involved in seeking investments. Handing over the entire function of environment regulation into their hands meant that projects were cleared indiscriminately.

The New Draft EIA Notification 2020

The new draft has been proposed with the aim of making processes more transparent and expedient. But in effect, the draft proposes the removal of several activities from the purview of public consultation. The notification envisages two kinds of approval-prior environment clearance (EC) with the approval of expert committees and environmental permission or provision (EP) without the approval of expert committees.⁵

One of the main causes of concern is that the draft has exempted almost 40 different projects such as clay and sand extraction or digging wells or foundations of buildings, solar thermal power plants and common effluent treatment plants are exempted from prior EC or prior EP. Undoubtedly, the public outcry is over apprehensions that the exemption from EIA and public consultation for listed B2 category activity and expansion and modernisation projects will seriously affect the environment, since these will be carried out without oversight.

The new draft allows for post-facto approval for projects. It means that the clearances for projects can be awarded even if they have started construction or have been running phase without securing environmental clearances. This also means that any environmental damage caused by the project is likely to be waived off as the violations get legitimised. In addition, the notice period for public hearing has been cut from 30 days to 20 days. This will make it difficult to study the draft EIA report, more so when it is not widely available or provided in the regional language.

Similarly, for project modernisation and expansion, the norms require only those involving more than 25 per cent increase requiring EIA, and over 50 per cent attracting public consultation. The validity period of environmental clearance has been increased for mining, river valley and other projects. The EIA Notification 2020 excludes reporting by the public of violations and non-compliance. Instead, the government will take cognisance of reports only from the violator-promoter, government authority, Appraisal Committee or Regulatory Authority. Such projects can then be approved with conditions, including remediation of ecological damage, which, again, will be assessed and reported by the violator (and not an unconnected agency), although Central Pollution Control Board guidelines must be used.

⁵http://environmentclearance.nic.in/writereaddata/Draft_EIA_2020.pdf

In short, the new draft rules might 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.⁶

Role of judiciary towards EIA

The Supreme Court of India in *M. C. Mehta v. Union of India*⁷ has also emphasized the need to evolve a national policy for this purpose in the following words:

“We would, therefore, suggest that a High Powered authority should be set-up by the Government of India in consultation with the central board for overseeing functioning of hazardous industries with a view to ensuring that there are no defects or deficiencies in the design structure or quality of their plant and machinery, there is no negligence in maintenance and operation of the plant and equipment and necessary safety devices and instrument are installed and are in operation and proper and adequate safety standards and procedures are strictly followed”.

The Courts have subsequently expanded upon and deepened the impact of these changes through their decisions which developed key aspects of the EIA process. The Apex Court of India has very brilliantly explained the concept of this Principle in *Vellore Citizens case*,⁸ successfully applied the same in *Taj Trapezium case*⁹ and quite categorically stated in *M.V. Nayudu case*¹⁰ that “it is better to err on the side of precaution and prevent environmental harm than to run the risk of irreversible harm”.

The Apex Court in case of *Lafarge Umiam Mining Private Limited v. Union of India*,¹¹ held that public consultation was a mandatory requirement of the environmental clearance process for an effective forum for a person aggrieved by any aspect of any project to register and seek redressal of their grievances. In *Sterlite Industries (India) Ltd. v. Union of India*¹² 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. In *Association for Environmental Protection v. State of Kerala*,¹³ the Supreme Court held that commencement of projects without obtaining prior EC (environmental clearance) is a

⁶<https://www.downtoearth.org.in/blog/environment/draft-eia-notification-2020-is-it-contra-legen-to-international-conventions-judicial-verdicts-73858>

⁷AIR 1987 SC 965.

⁸*Vellore Citizens Welfare Forum v. Union of India* (1996) 5 SCC 647.

⁹*M.C. Mehta v. Union of India* (1997) 2 SCC 353 (*Taj Trapezium Case*).

¹⁰*A.P. Pollution Control Board v. M.V. Nayudu* AIR 1999 SC 812.

¹¹(2011) 7 SCC 338

¹²(2013)6 SCR 573

¹³AIR 2013 SC 2500

violation of the fundamental right to life guaranteed under Article 21 of the Constitution. In *Alembic Pharmaceuticals Ltd v. RohitPrajapati and others*,¹⁴ the Supreme Court struck down and condemned ex-post facto environmental clearance (a concept which, surprisingly, the new draft EIA proposes to regularise). It stated, “The concept of an ex-post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January 1994...”

Conclusion

The modern technological state intensify the conflict between environmental values and developmental needs. Legal Strategies are necessary to reconcile the conflict, and to augment sustainable development. Environmental Impact assessment should be an instrument for reconciliation of these conflicting interests. The concept of an ex-post facto EC given in the EIA 2020 is in derogation of the fundamental principles of environmental jurisprudence and sustainable development. Draft EIA 2020 has many shortcomings thereby disturbing the environmental jurisprudence developed by our judiciary. It is suggested that EIA 2000 should be amended thereby considering the interests of all stakeholders by giving top priority to environmental concerns and environmental jurisprudence.

¹⁴(2016) Civil Appeal No 1526 (SC)