



**The Chanakya Law Review (CLR)**  
Vol. I Issue I, July-Dec. 2020, pp. 94-103



**EIA- JUSTICE FOR ENVIRONMENT**

*-Dr. Harish Kumar Sharma<sup>1</sup>*

**INTRODUCTION**

Environment Impact Assessment (EIA) is still a challenging factor in developing nations like India. In the context of a developing country, EIA represents the ongoing battle to strike a balance between economic growth and ecological integrity<sup>2</sup>.

The Environment Protection Act, 1986, which incorporates several section on assessment methodology and procedure, provides legal support for many draughts based on environmental impact in India. Till 1994, ecological freedom from the Central Government was a regulatory choice and needed administrative help. Be that as it may, On 27 January 1994, the then Union Ministry of Environment and Forests, under the Environmental (Protection) Act 1986, proclaimed an EIA notice making Environmental Clearance (EC) obligatory for development or modernization of any movement or for setting up new ventures recorded in Schedule 1 of the notice. The Ministry of Environment, Forests and Climate Change (MoEF&CC) told new EIA enactment in September 2006. The notice makes it compulsory for different activities like mining, nuclear energy stations, stream valley, foundations (streets, parkways, ports, harbours and air terminals) and ventures including tiny electroplating or foundry units to get climate freedom. Nonetheless, not at all like the EIA Notification of 1994, the new enactment has put the onus of clearing projects on the state government relying upon the size/limit of the task.

The Ministry of Environment, Forestry, and Climate Change (MoEF&CC) released the Draft EIA notification 2020 in March 2020, intending to replace the existing EIA notification, 2006,

---

<sup>1</sup> Associate Professor of Law, D.S. College Aligarh, Uttar Pradesh.

<sup>2</sup> Nupur Chowdhury, Environmental Impact Assessment in India: Reviewing two decades of jurisprudence, 5 IUCNAEL EJournal, available at: <https://www.iucnael.org/en/documents/1140-environmental-impact-assessment-in-india-reviewing-two-decades-of-jurisprudence/file>. (Last visited on 30<sup>th</sup> Aug. 2021).

under the Environment (Protection) Act, 1986<sup>3</sup>. Though there have been criticisms directed against EIA, 2020, and it has been accused of being "anti-environment" and pro-corporate lobbying, which rejected the notion of Environment as an original asset<sup>4</sup>. The EIA Draft 2020 not only makes it simpler for corporations to acquire environmental permits, but it also disregards many basic environmental management principles<sup>5</sup>. It is an attempt to undermine environmental legislation while also have a repressing effect on people. The proposal appears to benefit industry while ignoring the balance between sustainable growth and environmental preservation. The Union administration, on the other hand, claims that the revised draft would increase accountability and expedite the process<sup>6</sup>. The author through this article analyses the jurisprudential aspects and fundamental changes brought by EIA 2020 and focused to evaluate the efficacy/inefficacy of the same, whether it is mere a written law or living law.

## **POST-FACTO CLEARANCE**

The EIA revised draft 2020 accepts ex-post-facto clearance under Clause 22. It implies that even if a project was developed without environmental safeguards or without obtaining environmental clearances, it could carry out operations under the provisions of the new draft EIA 2020, which is bad law in the Indian Legal system since the Supreme Court of India has ruled against similar conduct in several circumstances.

This is unfortunate because we already have several projects that are in operation lacking EIA clearances. An example is the LG Polymer Plant in Vishakhapatnam, where the styrene gas leak happened on May 7, 2020. It was discovered that the plant had been running for over two decades without clearances. A similar unpleasant occurrence occurred on May 27, 2020, when the natural gas of Oil India Limited in eastern Assam's Tinsukia district blew out and caught fire due to inadequate adherence to environmental standards. This wreaked havoc on the livelihoods of people living in a biodiverse zone. According to the Assam State Pollution

---

<sup>3</sup> G. Ananthakrishnan, The Hindu Explains, What are the key changes in the Environment Impact Assessment Notification 2020? The Hindu, August 02, 2020. Available at: <https://www.thehindu.com/sci-tech/energy-and-environment/the-hindu-explains-what-are-the-key-changes-in-the-environment-impact-assessment-notification-2020/article32249807.ece>. (Last visited on 30<sup>th</sup> Aug. 2021).

<sup>4</sup> Soumya Shekhar, Draft Environmental Impact Assessment (E.I.A) Notification, 2020: Silver Linings and the Bottom Line, August 18, 2020. Available at: <https://rsrr.in/2020/08/18/environmental-impact-assessment-eia-notification-2020/>. (Last visited on 30<sup>th</sup> Aug. 2021).

<sup>5</sup> Shripad Dharmadhikary, The EIA Draft 2020 needs to be restructured, idronline.org, May 15, 2020, <https://idronline.org/the-eia-draft-2020-needs-to-be-restructured/>.

<sup>6</sup> Abhijit Mohanty, why draft EIA 2020 needs a revaluation, Down to Earth, 06 July 2020. Available at: <https://www.downtoearth.org.in/blog/environment/why-draft-eia-2020-needs-a-revaluation-72148>. (Last visited on 30<sup>th</sup> Aug. 2021).

Board, the oil factory has been functioning for more than 15 years without prior permission from the board. As per EIA (Notification) 2020, Projects can begin operations without an EC and subsequently pay a monetary fee to legitimize the project, i.e., get an EC after beginning work rather than before: this contradicts the core purpose of the legislation. As a result, it encourages projects to begin operations without an EIA, public hearing, or EMP, posing serious dangers to the environment as well as people's health and safety. Recently, in an order of April 1, 2020<sup>5</sup>, in a matter unconnected to the EIA Draft 2020, the Supreme Court has laid down the same opinion of a post-facto EC, saying that it is in derogation of the fundamental principles of environmental jurisprudence, is detrimental to the environment, and could lead to irreparable degradation<sup>7</sup>.

The system suggested by the EIA draft notification 2020 will not only support the "pollute and pay principle" but also gave the license to existing and new projects for setting up the entity without caring about the environmental law and regulations. We do understand the policy of balancing the environment and industrial growth, as to put an end to the long-run industry will cause large scale unemployment and development loss in the competitive market, but allowing it all at the cost of environmental degradation will not only against sustainable development it will violate the fundamental right of citizen i.e., "pollution free environment"<sup>8</sup>.

In *Sterlite Industries (India) Ltd. V. Union of India*<sup>9</sup> the SC discussed the specific grounds on which administrative action involving the grant of environmental approval can be challenged. An approval can be challenged on the grounds of unreasonableness, lack of procedure, suffers from **Wednesbury unreasonableness**<sup>10</sup>, without any application of mind in granting such environmental approval as held in *Gram Panchayat Navlakh Umbre v. Union of India and Ors*<sup>11</sup> under this context, application of mind indicates that the decision-making process of those authorities must be transparent and culminate in a reasoned conclusion that reflects proper application of mind and speaking order. EIA 2020 is supposed to be a modification over EIA 2006. If it is not rejected in practice by the judiciary as that of EIA 2006.

---

<sup>7</sup> Shripad Dharmadhikary, The EIA Draft 2020 needs to be restructured, idronline.org, May 15, 2020. Available at: <https://idronline.org/the-eia-draft-2020-needs-to-be-restructured/>. (Last visited on 30<sup>th</sup> Aug. 2021).

<sup>8</sup> SUPRA note 4.

<sup>9</sup> *Sterlite Industries (India) Ltd. V. Union of India*, Special Leave Petition (C) NOs.28116-28123 OF 2010.

<sup>10</sup> Wednesbury principle is a principle of administrative law where the court sits as a judicial authority over the local authority to see if the local authority has acted in a manner that exceeded its powers, and not as an appellate authority to override a decision of a local authority

<sup>11</sup> *Gram Panchayat Navlakh Umbre v. Union of India and Ors*, (High Court of Punjab And Haryana), Civil Writ Petition No. 8411 of 1990 | 13-11-2002.

## **PUBLIC PARTICIPATION/ PUBLIC CONSULTATION**

The Rio Conference on Environment and Development in 1992 recognised public participation, stating that “environment issues are best handled with the participation of all concerned citizens at the relevant level”<sup>12</sup>. The current document also attempts to take authority away from communities in 2 major ways. For starters, it decreases the space available for public engagement, therefore undermining public trust i.e., in the 2020 draught, the notice period for public hearings is reduced from 30 days to 20 days. Given the rise of the internet and mobile telephony, Mr Prakash Javadekar stated that the reduced timeframe was "in sync with the times"<sup>13</sup>, but the reduction in period is inadequate as such awareness takes time to spread and everyone is well experienced with its area ecology and the environment and not the internet and the mobile in India.

Secondly, there is no possibility for postponing public hearings. Public engagement has been critical in the EIA process, especially assisting communities to not only obtain information about projects being proposed in their regions but also to express their concerns about the projects. Clause 14 of the EIA (notice) 2020 provides a list of chosen projects that are excluded from public involvement. Modernization of irrigation projects (B1), all building construction and area development projects, national highway extension or widening projects, and all national defence and security programs, Furthermore, by categorizing several projects as A, B1 or B2 (in terms of environmental risk), the vast majority of projects are immune from public inspection. Category A and B1 projects are required to have obligatory EC. Central authorities assess Category A projects, whereas state agencies appraise Category B1 ones. Category B2 projects<sup>14</sup>, on the other hand, do not require obligatory EC<sup>14</sup>. Even the public consultation is limited to the district having National parks or Sanctuary etc. is located. The complete lack of participation of local communities and other interested organizations in EIA 2020 is a violation of citizens' fundamental rights under Articles 21, 14, and 19 of the Indian constitution. When the EIA is finished, their sole opportunity to respond is at the so-called public hearing, which directly impacts the survival of local ecosystems around project sites. Public hearings are

---

<sup>12</sup> “Report of the United Nations Conference on Environment and Development”, United Nations, August 12, 1992.

<sup>13</sup> “Draft EIA in line with green rules, court rulings: Prakash Javadekar, Environment Minister”, The Economic Times, August 17, 2020.

<sup>14</sup> Under the new draft, a list of 40 projects is included in Category B2. These include hydroelectric Projects up to 25 MW; irrigation projects between 2000 and 10,000 hectares; inland waterway projects. Expansion or widening of highways between 25 km and 100 km with defined parameters; micro small and medium enterprises (MSMEs) in dye intermediate, bulk drugs, among others.

usually ridiculous, are usually dominated by project promoters, and even in the best of circumstances, only provide a few hours for impacted people to voice their opinions on the EIA. People's engagement should always be encouraged because they are the most impacted communities and have the most in-depth knowledge of the local ecosystem and ecology<sup>15</sup>.

In *Ossie Fernandes v. Ministry of Environment & Forests*<sup>16</sup>, the National Green Tribunal (NGT) stated: "If the project involves presentation / clarification requiring intrinsic science and technical knowledge, the environmentalist / scientist may be invited to speak on the occasion in the presence of the public and submit views, in writing, on the subject." In another case of *Hanuman Laxman Aroskar v. Union of India*<sup>17</sup>, the Supreme Court states that 'local communities' knowledge is passed down through generations through auditory and visual traditions, which must be taken into account when these groups express concerns at a public hearing'. Thus, it is critical to transforming the EIA into a collaborative effort including professional consultants and local populations; and, once completed, to execute a process in which the EIA and EMP are presented to impacted communities in simple terms through camps and conversations. The public hearing(s) can be intertwined with such camps<sup>18</sup>.

## EFFECTIVENESS OF EXPERT APPRAISAL COMMITTEE

The Expert Appraisal Committee (EAC) is one of the most central parts of the Environmental Clearance process. It reviews the EIA and other material to assess the project's implications and makes a final decision to approve or, in rare circumstances, deny the proposal. In the case of *Rajula v. Union of India and Others*, it was stated that "appraisal is not a mere formality and requires detailed scrutiny by EAC and SEAC of the application as well as the documents filed, the final decision for either rejecting or granting an EC vest with the regulatory authority concerned, viz. SEIAA or MOEF, but the task of appraisal is vested with EAC rather than the regulatory authority"<sup>19</sup>. Every month, the EAC reviews a significant number of projects, around 10-12. However, no member of the EAC is a full-time member, as stated in clause 6 paragraph 2 of the EIA 202015: the tenure of the EAC must not exceed three years. As to how EAC is justified in conducting project assessments, given that each project includes papers that extend

---

<sup>15</sup> Shripad Dharmadhikary, The EIA Draft 2020 needs to be restructured, idronline.org, May 15, 2020. Available at: <https://idronline.org/the-eia-draft-2020-needs-to-be-restructured/>. (Last visited on 30<sup>th</sup> Aug. 2021).

<sup>16</sup> Orissa Mining Corporation v. Ministry of Environment & Forest & Others, WP (Civil) No 180 of 2011.

<sup>17</sup> Hanuman Laxman Aroskar v. Union of India, (2019) SCC Online SC 441, 16 Jan 2020.

<sup>18</sup> Shripad Dharmadhikary, The EIA Draft 2020 needs to be restructured, idronline.org, May 15, 2020. Available at: <https://idronline.org/the-eia-draft-2020-needs-to-be-restructured/>. (Last visited on 30<sup>th</sup> Aug. 2021).

<sup>19</sup> Rajula v. Union of India and Others, appeal No. 47/2012. Judgement of NGT on August 22, 2013.

into the hundreds of pages. EAC would require field visits as well as time for internal talks on an as-needed basis. The qualifying requirements in both the EIA Notification 2006 and the EIA 2020 (as per clause 6 Para (4) 16 specify that the Chairperson or Chairman might be a distinguished individual with experience in environmental policy problems, management, or public administration dealing with several developmental sectors. As a result, persons with no environmental competence can be selected as chairman. The National Green Tribunal itself has raised worry on such qualification measures. However, it proceeds. Probably, this is because the MoEFCC is keener on naming seats that acquire the ability to advance 'simplicity of working together, then ecological assurance. Specialists should be autonomous and even handed as the ability they are relied upon to bring to the table; they should be fair-minded and are led to evaluate the climate impacts for that no less than 50% of the individuals from the EAC ought to be full-time individuals. Furthermore, the EAC chairmen should be exceptional environmentalists or ecologists, or prominent environmental policy specialists who have made a significant contribution to environmental protection and sustainable development<sup>20</sup>.

## **POST-CLEARANCE COMPLIANCE**

The EIA (notification) 2020 is contrary to the EIA 2006 notification, which required the production of a compliance report every six months, or twice a year. In contrast, EIA 2020 recommends an annual report. It is a well-known fact that giving a longer-term for filling out the compliance report allows project proponents to conceal potentially devastating repercussions<sup>21</sup>. Post-clearance compliance means that once a project has been cleared by the relevant authorities, the proponent projects are obliged to follow specific regulations outlined in the EIA report to guarantee that no more environmental damage occurs. There have been many instances where the proponent projects have mostly failed to comply with the requirements<sup>22</sup>. "Report of the Comptroller and Auditor General of India on Environmental Freedom and Post Freedom Monitoring"<sup>23</sup> The 2016 report by (CAG) on 'Natural Clearance and Post Freedom Monitoring' referred to several deficiencies in the EC's states. For example,

<sup>20</sup> Shripad Dharmadhikary, The EIA Draft 2020 needs to be restructured, idronline.org, May 15, 2020. Available at: <https://idronline.org/the-eia-draft-2020-needs-to-be-restructured/>. (Last visited on 31<sup>st</sup> Aug. 2021 at 6:10 a.m.).

<sup>21</sup> "How draft environmental impact assessment notification dilutes green clearance norms", Northeast Now, 5 June 2020

<sup>22</sup> Dukalu Ram & Ors V. Union of India & Ors "National Green Tribunal, Government of India, 2020.

<sup>23</sup> "Report of the Comptroller and Auditor General of India on Environmental clearance and post clearance monitoring", Comptroller and Auditor General of India, Government of India Report No.39, 2016.

not obtaining authorization from the competent authority before cutting trees; no different record and setting out of assets for Environment Management Plan (EMP); sporadic utilisation of groundwater; change of scope of work after acquiring the EC; non-development of rainwater harvesting structures and private offices for labourers; inconsistencies in help and recovery; Infringement in the management of hazardous waste items; and disappointment in the development of the green belt. In the case of ***“Sandeep Mittal V. Ministry of Environment, forest Climate change<sup>24</sup>”*** Justice Adarsh K. Goel, Chairperson of the National Green Tribunal, presided over the hearing. In July 2020, noted that the method for monitoring environmental norms was insufficient and so ordered the MoEFCC to evaluate EC clearance circumstances "frequently, at least once a quarter."<sup>25</sup>

## **CAN PUBLIC FILE COMPLAINTS OF VIOLATION CASES?**

This EIA draft of 2020 leaves many ambiguities in various definitions and Clause 22 is one of them, under this clause, the draft outlines a procedure for post-hoc legalization. projects that begin construction and/or service before obtaining environmental approval as per Clause 22 Para (1) of EIA 2020, the cognizance of the violation shall be made on the suo-moto application of the Project Proponent; or Government Authority; or Appraisal Committee; or Regulating Authority<sup>26</sup>. The draft also outlined a procedure that violators would follow to continue operating lawfully. The Appraisal Committee will determine whether the project could be managed sustainably while adhering to environmental standards and providing sufficient environmental protections. If the response is no, it will demand that the project be terminated. If the response is yes, the project proponent would be required to determine the ecological harm and develop a remediation plan. It would require the project proponent to create a 'natural and community resource augmentation plan,' as well as an EIA survey. According to Clause 22, only the violators or an administrative or legislative body can bring the breach to the attention of the authorities. The warning does not state whether any other parties, such as interested persons, have a legal right to investigate violations<sup>27</sup>. This appears to be in contradiction with section 19 of the Environmental Protection Act of 1986, which allows anybody to register a

---

<sup>24</sup> Sandeep Mittal V. Ministry of Environment, forest Climate change, Original Application No. 837/2018 (M.A. No. 1549/2019).

<sup>25</sup> Opangmeren Jamir, India's Environment Impact Assessment Draft 2020: Issues and Challenges, Manohar Parrikar Idsa issue brief, February 08, 2021.

<sup>26</sup> MoEFCC, Environmental Impact Assessment Draft 2020, March 23<sup>rd</sup>, 2020.

<sup>27</sup> Rama Mohana R Turaga, EIA Draft needs a comprehensive relook, Business Lines, The Hindu, August 7, 2020.

complaint after 60 days' notice<sup>28</sup>. This clause should be clarified, as the two are unclear and do not complement and supplant one another.

## INDIA AND INTERNATIONAL COMMITMENTS

Many nations have made EIA a formal procedure, and it is now used in over a hundred countries. The story of global environmental conservation efforts began with the Stockholm declaration. India became a signatory to the Stockholm declaration in 1972, UN organized a meeting in Stockholm in Sweden as the first Global effort for environmental conservation as a signatory to the declaration, India enacted the Water (prevention and control of pollution) Act, 1974 and also the Air (prevention and control of pollution) Act, 1981, but later, the Bhopal gas leak disaster of 1984 forced the government into action to enact an umbrella act on environmental protection called as Environmental Protection Act, 1986. Since there was no explicit provision of Environmental Impact Assessment in the Environmental Protection Act of 1986. However, there were general provisions for environmental protection, and EIA is regarded as one of the tools for environmental conservation. So, EIA in India has statutory backing but no explicit provision back then. The concept of EIA finally was materialized at the global level in 1992, Rio Declaration, which says that environmental issue is best handled through the participation of all concerned citizen and states must provide an opportunity to citizens to participate in the decision-making process.

Besides, our nation is a signatory of worldwide settlements/conventions, for example, the Bonn Challenge, the Kyoto Protocol, and the Paris Agreement. In a general sense, the EIA draft is not just contrary to the rules and responsibilities endorsed by the international associations yet, in addition, it subverting the essential protected methods of reasoning of law and order and co-employable federalism which were set somewhere around the Supreme Court of India and the National Green Tribunal (NGT) in their past point of reference cases. It also puts the fundamental right to a clean environment in jeopardy under Article 21, which deals with the Right to Life. Rather than the suggested changes, environmental legislation has to be strengthened by increasing baseline survey accuracy, building a better system of checks and

---

<sup>28</sup> Soumya Shekhar, Draft Environmental Impact Assessment (E.I.A) Notification, 2020: Silver Linings and The Bottom Line, August 18, 2020. Available at: <http://rsrr.in/2020/08/18/environmental-impact-assessment-eia-notification-2020/>. (Last visited on 31<sup>st</sup> Aug. 2021 at 6:50 a.m.).

balances, and making the mechanism more open and equitable for all stakeholders<sup>29</sup>.

International initiatives foster the principle of "Environmental Democracy" by ensuring careful and open consideration of the effects of their decision-making. EIA mechanisms, by educating and encouraging citizen participation in government policies affecting their communities, will facilitate the collective interaction and support required to ensure that planning decisions are politically and environmentally sustainable. We should adhere to what international initiatives stand for because only conservation of the environment would lead to a good future. Progress is important for a nation's development, but development just for the sake of expansion without regard for the consequences would lead to cancer cell ideology. It should not be our country's ideology.

## CONCLUSION – JUSTICE FOR ENVIRONMENT

The very first draft of EIA in 1994, was very much in favour of the Environment. The 2nd draft EIA 2006 was a blend of Industrial and Environmental policies. But EIA 2020 is more "Industrial Friendly" than the Environment. Several provisions in the latest draft seem to tilt the scale in favour of '*easing the norm*' for doing business. India has improved its ranking by 79 positions in five years (2014-19). According to the World Bank's recent Ease of Doing Business 2020 report, the country rose to 63rd place out of 190 nations. However, its ranking on the Environment Performance Index has progressively decreased, from 141st in 2016 to 168th out of 180 nations in 2020<sup>30</sup>. The government must assure that it will strive to strike a balance between environmental and developmental concerns. EIA 2020 is expected to bring several changes to the environmental governance in the country, which potentially compromise environmental safeguards while pro-industry<sup>31</sup>. The EIA 2020 goes against the guidelines laid down by the Supreme Court of India and the National Green Tribunal, undermining the basic constitutional philosophies of the rule of law and cooperative federalism. The best way to address EIA, climate change, economic development, biodiversity, and other problems is for

---

<sup>29</sup> Down to Earth blogs, Environmental Impact Assessment 2020, available at: <https://www.downtoearth.org.in/blog/environmental%20Impact%20Assessment> (Last visited on 31<sup>st</sup> Aug. 2021 at 07:00 a.m.).

<sup>30</sup> Arshad Khan, Eyebrows raised over India's ease of doing business ranking by world bank, Indian Express, Business page, 29<sup>th</sup> August 2020, available at: <https://www.newindianexpress.com/business/2020/aug/29/eyebrows-raised-over-indias-ease-of-doing-business-ranking-by-world-bank-2189787.html>. (Last visited on 31<sup>st</sup> Aug. 2021 at 7:30 a.m.).

<sup>31</sup> Opangmeren Jamir, India's Environment Impact Assessment Draft 2020: Issues and Challenges, Manohar Parrikar Idsa issue brief, February 08, 2021.

policymakers and people worldwide to collaborate, with the European Union acting as a blueprint by combining the environment and human rights. In India, Articles 48A and 51A (g) of the Indian Constitution, respectively, include the DPSP and the fundamental duty of every individual to protect and conserve the environment, but these provisions are merely symbolic. We need to move beyond just declaring that growth has an environmental cost and find new and inventive methods to develop with less negative environmental impact. The economic slowdown caused by the current coronavirus disease pandemic may appear to be a good reason to violate environmental rules, but the long-term effects of degrading natural ecosystems will only exacerbate our economic difficulties. We need to go beyond just proclaiming that growth has an environmental cost and instead create innovative and imaginative ways to expand that have a lower negative environmental effect. The economic slowdown caused by the current coronavirus disease pandemic may appear to be a good reason to violate environmental rules, but the long-term effects of degrading natural ecosystems will only exacerbate our economic difficulties.

\*\*\*\*\*