

“Environmental Impact Assessment – A Legal Analysis”

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ABSTRACT

The modern trends of anthropogenic activities in the form of Industrialization have increased the rate of environmental pollution globally. The independent work of legislature, executive or judiciary in itself is not sufficient to address the problem on a narrower or wider scale. The practical solution for the same is to club all the three actions of the executive, legislature and judiciary in one set which gives rise to environmental impact assessment. The analysis of environmental impact assessment which has been distributed into procedures, principles models and predictions of the impact assessment has mitigated the problem of industrial effluent discharge, greenhouse emissions to a larger extent. The basis of EIA which is mitigation has not just selectively considered the approval for such projects which are environmentally friendly but has also set standards for their functioning and operation based on the ecocentric techniques and sustainable development. EIA has also clubbed the other principles of intergenerational equity together with the polluter's pay principle and sustainable development. The discrepancies of the legislative and executive framework have also been analyzed through the evolution of landmark judgments concerning EIA. The passing of the proposal, identification of issues and clearance by the government must coincide together to insist on a smooth flow between development among other generations and thus abiding by the sanctions imposed by the government.

1. INTRODUCTION

Industrialization is the key to modern civilization. With the rapidly increasing population and advancement in technology, industrialization was inherent. Industrialization is the process in which an economy is dependent upon agriculture and labor-intensive methods of production to a more mechanized capital intensive method of production. Industries, especially one involved in manufacturing discard a large number of pollutants in the environment. Air emissions such as respiratory particles, sulfur dioxide, and nitrogen oxides cause climate change and are a deterrent to the ozone hole whilst increases desertification (TOMAR, APRIL-JUNE 2008). Wastewater, land pollution, hazardous materials, Marine and coastal pollution are just some examples of pollutants emitted by industries. Environmental laws have globally introduced multiple methods to promote equity and ensure an Eco-centric approach to the environment. The existing

legislative methods in the form of pollution combating laws restrict themselves to the imposition of fines, penalties or punishments and do not address the concern at a global level.

The pedestal on which business organizations are incorporated is to turn the money in, more often by spending the least. The objective may not necessarily be immoral or moral by itself. (LEELAKRSHNA, OCTOBER- DECEMBER 1992) Accumulating pieces of evidence constantly indicate that the translation of the existing industries into the eco-industrial network for successful implementation of green approaches provides a viable solution to preserve the natural resources of the region which can correctly enhance the regional economy on a substantial basis. The concept of Corporate Social Responsibility which was introduced in India by the companies act, 2013 expands beyond charity and public welfare and requires business organizations to operate ethically. The idea revolves around the notion that corporations along with focusing on profit maximization and increasing Stakeholder value should also be accountable for the social problems around the corporation's activities. It is explained through various judicial pronouncements that irrespective of whether a company is involved in such a process that causes the degradation of the environment, its activities should be socially responsible towards the environment. It is therefore expected that each company must take steps to make sustainable use of resources, establish a healthy and safe working environment, maintain ecological balance, take proactive steps to minimize waste generation and preserve the environment.

The United Nations through its various conferences and conventions depicts the similar goal of environmental protection and directs companies and business organizations to engineer their activities in such a manner that comes please with the environmental regulations prescribed and furthers the work towards sustainable development goals. Environmental protection is not categorically defined in the Charter of the United Nations but while undertaking the gravity of the problem, the organization has become the leading director and advocate of activities directed towards the improvement and sustenance of the environment. The UN conference on the environment (Stockholm, 1972) and the UN conference on the environment and development (Rio de Janeiro, 1992) has adopted principles that have guided environmental protection activities of the UN and the member states.

2. ENVIRONMENTAL IMPACT ASSESSMENT

In modern business practices, it is unforeseeable that a company would take an initiative without accessing the financial aspects relating to a project. The cost to be incurred, time for completion, analysis of the economic costs, benefits, technical feasibility and cost is ascertained. Likewise, the concept of Environmental Impact Assessment dictates to calculate the impact of a project on the environment.

It is pertinent to observe that environmental effects are not only produced by physical projects such as manufacturing plants, but also by the policies in effect, the legislation governing environmental practices, regulations all of these also have an impact on the environment. Tools such as taxation may provide incentives or act as a deterrent for industries to adopt environmentally damaging practices. The concept of 'Environmental Impact Assessment' therefore, denotes a planning tool, which is a method of incorporating environmental costs and consideration into the earliest stages of the planning process.

The Kyoto protocol (McCallum, 1976) legally compelled a major part of the industrialized countries to lower their greenhouse gas emissions by 8 % until 2012. The protocol has been prolonged until 2020. Today, the industry stands for 20 % of the world's greenhouse gases (IPCC, 2007). Energy-intensive industries such as the steel industry have not developed much and best practice has at most 10-30 % potential to decrease energy usage. (ANNUAL REOPRT 2011)

The methods for environmental protection and preservation arose for the first time in the Stockholm conference of 1972 which challenged the existing trends of environmental exploitation, but the main legislative framework was introduced during the Rio conference of 1992 wherein better techniques including polluter's pay principle, intergenerational equity, and environmental impact assessment were introduced. Among the former techniques, Environmental impact assessment collectively combined all the above ones in one set. As per the definition of European commission on the environment, Environmental Impact Assessment is a mitigatory procedure that considers the environmental implications of an area before approving any anthropogenic activity or project in that area. In other words, an analysis is done both at the central and state levels to assess the impact of any anthropogenic activity on the environment. The analysis does not only table the negative outcomes but also specify the positive outcomes on the environment. In the definition of the United Nations environment program environmental impact assessment includes analysis of both the positive and negative impacts of a project or activity on the environment. The origins of this evaluative program started back in the 1960s in the united states when a proposal for the evaluation of river valley projects for the environment was introduced which further led to the codification of this scheme in 1969 under the National environmental policy act.

The cumulative analysis therefore defines Environmental Impact Assessment (MohanaR.Turaga, JUNE 2016)as a process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made.

3. INDIAN ENVIRONMENTAL LAW

With legal developments and through judicial pronouncements, environmental protection is a mandatory accessory to the enjoyment of human rights. The two concepts have developed synergy between them and are now interdependent. In fact, some hold it strongly that there is an evident relationship between environment, economic development, and human rights. (No.12) EIA was introduced in India as an administrative measure in 1978–79, initially for river valley projects that were later extended to industrial projects.

An economy in need of investment chooses to ignore the environmental aspects related to industrial development and expansion. This choice often comes with certain irreversible damages which are only later realized that checks on emissions and environmental costs of these projects should have been accounted for. India learned the lesson in a crude manner in 1984 from the Bhopal Gas Disaster. The demand for stricter regulations increased mostly due to public backlash. It was the amalgamation of these scenarios which led to the enactment of the Environmental Protection Act, 1986 and the Public Liability Insurance Act, 1991. The object of the Public Liability Act was to the provision of immediate relief to the persons who are injured or affected in an accident by the handling of any hazardous substances. Before the enactment of legislation such as the Environmental Protection Act, the dictating law for regulating any disregard for the environment was combated by the penal laws or the project-specific laws.

After the new environmental regulations, the forum for adjudication of matters relating to the legislation was with National Environment Tribunal, 1995, and the National Environment Appellate Authority Act, 1997, which have now been repealed by the National Green Tribunal Act, 2010.

EIA was notified in India in 1994 under the powers delegated to the government through the Environment Protection Act, 1986. Since then it has undergone 21 amendments, the latest being in 2006. A new amendment is also proposed in 2020, the zero drafts of which is already released to the public for discussion. The frequency and volume of these amendments cast two perspectives, one being constant efforts of the government to revise the policy and to make constant developments to clear any grey areas and the other perspective being that failure of such instruments to provide a comprehensive guideline for analyzing the environmental cost.

The EIA notification of 1994, classified industries and infrastructure projects and directed them to undertake an EIA study. The study shall be forwarded to the government which may give the required clearances. The EIA report shall be submitted to the central Ministry of Environment and Forests (MoEF) which will after the review of the report grant the environmental clearances. The EIA study has to be prepared by every enterprise which is planning for the construction of a new project or if any expansion/modernization/renovation of any existing project is proposed to be made.

4. PRINCIPLES OF ENVIRONMENTAL IMPACT ASSESSMENT

As per the first principle of environmental impact assessment, the states must not hereby authorize or undertake any project or environmental activity without prior consideration of the nature extent or location of the proposed activity. In the leading case of ¹*Mc Mehta vs U* (MC MEHTA Vs UNION OF INDIA, 1987) *union of India* the subunits of Shriram foods and fertilizers were notified to be shut by the Delhi administration on grounds of threat to the community of people due to leakage of chlorine. The petitioner contended that shutting down of the industrial operation was the only alternative left behind for cutting the risk of threat to the people. The court, however, rejected the petitioner's claim and allowed the industries to carry the operations provide, there would be regular mitigation of the industrial operations by an expert committee, chief inspector, chairman, and managing director. The roots remain inoperative in this case as the assessment is conducted after the pronouncement of industrial operations and not before the opening of the industries. In another case of ²*A.P Pollution control board vs My Nayudu* (27 January, 1999, 1999), a prior assessment by the pollution control board to red list the industry on grounds of a location factor of non-operation of industries within an area of 10 km of the reservoir was done. The court rejected the arguments put forward by the respondents for safeguarding the reservoir within a 10 km area as it held that there could be some harm or technical error resulting in damage to the reservoir bodies. The consideration of public health also becomes a vital priority of the environmental impact assessment as and therefore grant approval or assessment of any project must be in consideration with the health standards of people and the environment. In the case of ³*Ratlam vs Vardhichand* (Municipal Council, Ratlam vs Shri Vardhichand & Ors, 1980), the Supreme Court realized that it becomes an important obligation for the state to realize public health as one of its primary obligations.

5. MODELS OF ENVIRONMENTAL IMPACT ASSESSMENT

5.1 MANDATORY MODEL

The mandate for every anthropogenic project to pass through an assessment lights the mandatory model of environmental impact assessment. The compulsion for making every project go through the mandatory phase is seen as a prime requirement as the public, in general, has the right to information about the structure, mechanism and its effect on the environment. The mandating authority which may be the executive or the competent legislature may thus demand the submission of the environmental impact statement report before granting any license or permit for a required project. The arbitrariness of the authority in deciding whether whose involvement is a necessity is a feature of this model. In the case of ⁴*Adivasi Majdoor Kisan Ekta*

¹ M. C. Mehta v. Union of India 1987 SCR (1) 819, AIR 1987 965

² A.P. Pollution Control Board (I) Vs. Prof. M.V Nayudu (1999(2) SCC 718)

³ Municipal Council, Ratlam v. Shri Vardhichand & Others, 1980 AIR 1622, 1981 SCR (1) 97

⁴ Adivasi Majdoor Kisan Ekta Sangthan and Anr. Vs Ministry of Environment and Forests M.A. NO. 36 OF 2011

Sangathan and another vs Ministry of environment and forest and others, (Adivasi Majdoor Kisan Ekta Sangthan and Anr.Vs Ministry of Environment and Forests, 2011) the opinion of the people who voiced their opinion against the model of environmental impact assessment was not taken into consideration. The model may also set upon certain extremities either prohibiting any activity fully or allowing it to pass under certain regulations. In another case of *One earth, one life vs Ministry of environment and forest* the court held that the activities conducted on the quarrying land must either be conducted under strict rules and regulations or must be prohibited fully. The environmental impact statement report under the purview of a competent expert covers all outcomes of the desired project which it can create on the environment. The language of the report, however, remains technical in its nature and an expert.

The statutory mandate which is the mandatory model, to make an environmental impact assessment compels the public or private agency to initiate a proposal and to apply its mind into the various factors for an environmentally sound project and to prepare an environmental impact statement (EIS). (Cite ...194 pdf). In the mandatory model the legislature chooses to place the responsibility of preparing EIS on the proponent of development primarily for the practical reason that at the time when the project is designed, the developer is best equipped with the knowledge relating to the project. (Cite B.J. Preston, "Third Party Appeals in Environmental Matters in New South Wales", 60 Australian Law Journal 216 (1986).)

5.2 DISCRETIONARY MODEL OF ENVIRONMENTAL IMPACT ASSESSMENT

The discretionary model of environmental impact assessment entails the executive authority of a country to formulate laws relating to the approval of a developmental project or rejection of the same on grounds of the listed standards. The grounds of competency of executive action are however subjected to certain grounds outside which they are subjected for a review by other competent authority. In the case of ⁵*Sterlite Ltd Industries Vs Union of India*, (Sterlite Industries (I) Ltd. Etc. ... vs Union Of India And Ors. Etc. Etc , 2013)the competency of executive action for environmental clearance was subject to the grounds of judicial review by the authority. In the discretionary model of environmental impact assessment, the legislative circumvention is not taken into consideration as the administration is the sole decision-maker regarding major environmental decisions. In ⁶*Deepak Kumar vs the State of Haryana and others*, (Deepak Kumar Etc vs State Of Haryana & Ors.Etc, 2012) the court held the view of the committee on minerals and stated that the state government is exempted from granting any license or mineral lease to a plotless than 5 hectares of land so to devoid any discrepancies in the process of sustainable development. The rules, however, depend from country to country as the model designed for each country is different. The administrative authority allows for them the approval of those projects which are economically beneficial to the public at first sight keeping into consideration

⁵ Sterlite Industries (India) Ltd. v. Union of India, (2013) 4 SCC 575

⁶ Deepak Kumar Etc vs State Of Haryana & Ors.Etc (2012) 4 SCC 629

public welfare in the first place. The model, however, excludes the participation of any environmentalist or other authority from assessment as there arises no scope

6. PROCESS OF ENVIRONMENTAL IMPACT ASSESSMENT

6.1 SCREENING: The process sets out certain requirements meeting which would lead to the conduction of environmental impact assessment. The requirement varies from county to country based upon the norms and policies of a specific nation. In certain nations the screening is done by the financial institutions like banks and warrant for assessment is granted to the projects meeting a certain financial capacity, while in others the screening is done based upon the size whether a specific project but at last the outcome is to check the degree of impact that a project can create on the environment. In the judgment of the Supreme Court in the case of⁷ *T N Godavarman vs union of India* (T.N. Godavarman Thirumulpad vs Union Of India & Ors , 1947)the supreme court concluded that for the requirement of a regulatory at the national level is required for the transparent appraisal and clearance of a specific project.

Some projects relatively smaller in size may not require screening at all while some major ones might have to pass for further screening to check the gravity of their impact on health, public safety, and the environment. The outcome of the process of screening would result in one of the four outcomes:

- No further environmental impact assessment is required to be done
- An environmental impact assessment on a limited scale is required to be done
- A full environmental impact assessment is required to be done
- A further study required to determine the level of environmental impact assessment is to be done.

6.2 SCOPING: The process of scoping identifies the specific and important issues which are needed during the environmental impact assessment. The process of scoping covers not only issues to be covered in the assessment of the project but also covers the time and space requirements of a particular proposal so that efforts in the future are wasted upon identifying and planning the issues. The process of scoping is immediately carried after the screening process and terminates at the fulfillment of the terms of reference document. The document defines the scope of the resources required on which the assessment is to be carried and most importantly it defines the area of study required to be conducted in the process of assessment. The process of scoping itself may vary depending upon the policies of different countries, while some countries may allow for the participation of the public into the process while others may not them. The other object of scoping is to define the time and space of a specific project and set out what the

⁷ T.N. GODAVARMAN THIRUMULPAD V. UNION OF INDIA, MANU / SC / 0028 / 2014

boundaries within which the resources for a particular project can be utilized. The perspective of scoping to provide for an alternative methodology for assessment making is also seen in certain cases but not all of them. One of the important features of scoping in the stages of environmental impact assessment is to bring about changes in the early stages compared to later ones as the modification in the issues and process to be carried out can become hectic and irreversible in certain cases. The methods of carrying out the process of coping may include the following namely:

Conducting workshops and facilitating discussions

- Arranging discussions with stakeholders.
- Inviting the opinion of the public through public discussion and comments.

7. PREDICTIONS OF ENVIRONMENT IMPACT ASSESSMENT

In the prediction stage of impact assessment the outcome of the assessment is predicted based on certain methodologies carried out by the experts. Among certain methodologies carried out by the experts, quantification is the key tool where the outcome of a project is predicted based on the quantified and numerical data. The requirement of an expert is required as the data and analysis of the outcomes through numeric tools may not produce accurate results every time and which may, therefore, require other methods of professional judgment or model-based research. The methods for environmental impact assessment as illustrated are carried for the objective of predicting whether a particular project is suitable for the execution phase or whether it should be reverted to the scoping phase and tested for further development of issues. In the prediction stage itself, other aspects of duration extent and location are also considered.

7.1 MITIGATION PHASE: The subpart of the prediction phase includes the Mitigation phase within which experts are appointed to decide and calculate the effects of a particular project on the environment. The experts aim to create a Mitigation model, machinery method or technological design in such a form to minimize the adverse effect of a project suggested under the scoping phase.

8. CONCLUSION

It is a conclusive fact that industrialization and unchecked growth of population has deteriorated the environmental quality which in turn affects the living organisms of the planet. The importance of the natural forces should not be undermined and all efforts shall be made for its preservation and restoration.

Environmental Impact Assessment was an initiative developed by the United Nations to ascertain the impact of any project proposed to be built by any enterprise on the environment. Any project, especially a commercial concern, will utilize and exploit certain resources available in nature.

EIA directs the developer to undertake a comprehensive study of the project and its impact on the environment. For that purpose, it covers all the relevant aspects such as waste generation, emissions, use of resources and the volume in which it will be used, among others.

The study or the report is subsequently forwarded to the government for the grant of 'environmental clearances'. This enables the government to make a decision, whether the projects are in compliance with the environmental regulations and collectively are in line with the determined environmental goals. Therefore, the EIA is an important tool for curbing industrial pollution while providing a ground for sustainable economic development.