

“Critical Appraisal of Environmental Impact Assessment (EIA) Draft Notification, 2020 Pertaining Environment Law”

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ABSTRACT

Safeguarding the use of natural resources is very crucial for ensuring sustainable development and the Environmental Impact Assessment (EIA) is a key tool for corroborating the same. EIA is a basic instrument that helps to interpret the probable ramification which may be caused due to the development of certain kinds, apart from this, it also propounds relevant modus operandi to mitigate the unfavourable outcomes which may arise out of various developmental activities. The first EIA draft was issued in 1994 under the Environment (Protection) Act of 1986. However, in 2006, an altered model was introduced to replace it. The current EIA draft, 2020, was founded with the aim of integrating all 55 amendments that have been made so far, as well as 230 office memorandums that have been disseminated since 2006. The authors of this research work have attempted to describe the essential aspects of EIA Draft 2020, along with the loopholes it carries with itself.

Keywords: Environment Impact Assessment, Environment Protection, EIA Draft, 2020.

INTRODUCTION

The shielding of the environment is an indispensable requirement for the protection of ecology and the health of human beings at the same time. Economic growth and environment are connected to each other in one way or the other, when we talk about issues in relation to individuals' well-being, and health safety.¹ Improvement in the quality of the environment has become a major concern with the rapid increase in globalization and industrialization.

With each passing day, the environment is deteriorating thereby affecting wildlife, forest, the quality of air, and water, and above all Human health.

Environment Impact Assessment (EIA) plays a very crucial role in terms of protecting the environment from ever-increasing industrialization and its harmful impact. EIA simply involves a procedure where before proceeding with a plan of action in relation to any development, an environmental assessment is performed in order to examine the adverse

¹Lutz, Robert E., Ibrahim Shihata, David Wirth, Philip Alston, Stephen C. McCaffrey, and John Porter. "Environment, Economic Development and Human Rights: A Triangular Relationship?" Proceedings of the Annual Meeting (American Society of International Law) 82 (1988): 40–63. <http://www.jstor.org/stable/25658414>.

effects that may be caused due to the initiation of such development. The basic principle of such an assessment is to corroborate whether or not to continue with a project, keeping in mind the environmental implications that may arise due to such development.

As per International Association for Impact Assessment (IAIA), an environmental impact assessment is “the 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”². The UN Environment Programme (UNEP) defines Environment Impact Assessment (EIA) as “systematic framework for identifying, predicting and evaluating the environmental effects of proposed actions and projects”³.

The uniqueness of EIA lies in the fact that it does not require policymakers to adhere to a particular or predetermined environmental outcome, rather requires the policymakers to make decisions in the light of comprehensive environmental assessments along with public welfare in relation to possible environmental impacts. In simple words, EIA can be understood as an instrument that is used to enumerate the adverse environmental impact which is likely to be caused due to various construction projects or developments.

A new draft of Environment Impact Assessment, 2020 (EIA draft, 2020) has been released by the Ministry of Environment, Forest and Climate Change (MoEFCC) in March 2020. The reductions in the period allocated for public hearings, the extension of the time allotted for compliance report submission, and the regularisation of projects by “post-facto approval” are some of the major issues immersed in this new draft that is being deeply scrutinized in this research work.

EIA DRAFT, 2020: AN ANALYSIS

Under Environment (Protection) Act, 1986, the first EIA notification was released in the year 1994. However, the same has been replaced by an amended draft in the year 2006. As stated by Union Minister Prakash Javadekar, the new EIA draft, 2020 has been made with the motive of consolidating all the 55 amendments which have been made so far, as well as amalgamating 230 office memorandums that have been released since the year 2006⁴.

² International Association for Impact Assessment (IAIA), “What Is Impact Assessment?”, https://www.iaia.org/pdf/special-publications/What%20is%20IA_web.pdf.

³ United Nations Environment Programme UNEP, Environmental Impact Assessment Training Resource Manual, https://wedocs.unep.org/bitstream/handle/20.500.11822/26503/EIA_Training_Resource_Manual.pdf?sequence=1&isAllowed=y.

⁴Vishnoi, A. (2020, August 17). *Draft EIA in line with Green Rules, court rulings: Prakash Javadekar, environment minister*. The Economic Times. Retrieved April 20, 2022, from https://economictimes.indiatimes.com/news/politics-and-nation/draft-eia-in-line-with-green-rules-court-rulings-prakash-javadekar-environmentminister/articleshow/77578695.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpps

The secretary of MoEFCC has stated that industries are important for the development of our country but it must be done with proper scrutinization.⁵ The major changes which have been made in the EIA draft, 2020 can be listed as:

A. Appraisal Committee

The EIA draft, 2020 provided for two bodies, a central and a state body, which was also known as Central Expert Appraisal Committee (EAC) and State Expert Appraisal Committee (SEAC). According to the EIA 2006, the projects were divided into two categories: category A and category B. EAC clearance is required for category A projects, while SEAC clearance is required for category B projects. The composition of the central, as well as state bodies, has been defined in a detailed manner under the new EIA Draft, 2020 draft which includes details in relation to the membership and chairman bodies, qualification for the same, and term of the office, etc. On the other hand, the 2006 draft hasn't provided any such information in detail. Apart from that, there is the addition of the District Level Expert Appraisal Committee (DEAC), it's a step toward decentralization.

B. Environmental Clearance

As per the EIA draft 2020, EIA Cycle now includes four stages: screening, scoping, public hearings, and appraisal. Further, there is a classification of projects under the EIA draft, 2020 in Category A and B, category B is further divided into Category B1 and B2. Category A and B1 projects mandatorily require Environmental Clearance (EC). Unlike Category A and B1 projects, Category B2 projects do not require a compulsory EC. However, the EIA Draft, 2020 makes it mandatory for the Category B2 projects to acquire prior Environment Permission (EP), though not required to be presented before the Appraisal Committee for EC.

C. Amendments with respect to Definitions

Both the 1994 and 2006 notifications lacked in the area of providing definitions of certain important components. The EIA draft, 2020 deals with this quite seriously by providing a list of definitions of all the major facets that are embedded in the EIA process. This step is considered to be a positive one as it would assist courts in interpreting the laws adequately with the help of definition clauses and would ultimately lead to efficient decision-making.

D. Time-limit for grant of EC

As per rule 17 of the EIA draft, 2020, the timeline for granting or rejecting the Environmental Clearance or Environmental Permission as the case may have to be within 90 days of the submission of the final application. It is pertinent to mention here that there has been a reduction of fifteen days from the previous EIA notification. Earlier there was a time limit of

⁵ The Indian Express, 'Longer time for clearance doesn't mean regulations being enforced', August 11, 2020, <https://indianexpress.com/article/india/environment-impact-assessment-eia-draft-prakash-javadekar-rameshwar-prasad-gupta-6549545/>

one hundred and five days from the date of submission of the final application. This would help for speeding up the process.

E. Appeals in relation to EC or EP

An appeal can be filed by an aggrieved project promoter having issues with the grant of environmental clearance or environmental permission. As per Rule 25 of the new EIA draft 2020, the appeal shall be filed before the National Green Tribunal within thirty days of the regulatory authority's decision. This would prevent the use of arbitrary powers by regulatory authorities because the aggrieved party can appeal for the same and this would further ensure the Rule of Law.

F. Public Consultation

Public Consultation is basically a platform made for the analysis of the adverse effects that may be caused to the environment due to any project or development getting clearance by the Appraisal Committee. This implies that the opinion of the public about the project and development would be gathered and would be factored into the equation. Earlier in EIA, 2006 the time limit given for public consultation was 30 days, however, there has been a reduction of 10 days and now the time limit provided for public consultation is 20 days in the EIA draft, 2020.

G. Post Clearance Compliance

Post Clearance Compliance makes sure that after a project has been approved by the proper authority, certain guidelines mentioned under EIA are being followed by the project proponent. Unlike the 2006 draft, which required the submission of compliance reports every six months, the EIA draft, 2020 mandates the submission of reports annually. The compliance report would be prepared exclusively by the project proponents.⁶

H. Post-facto Clearance

Another major proposal made in the EIA draft, 2020 is to issue 'post-facto-clearance', which means that those projects which are functional without the environmental clearance would be allowed to be regularized or may apply for clearance as well. However, a fine will be imposed upon those firms which are found to be in violation of their establishment's term by not obtaining the environment clearance.⁷

⁶ Manju Menon and Kanchi Kohli, "Regulatory Reforms to address environmental non-compliance", June 7, 2019, Centre for Policy Research, <https://cprindia.org/wp-content/uploads/2022/03/Policy-Challenges-2019-2024.pdf>.

⁷ Hindustan Times, "Nothing disturbing in the clauses of draft EIA 2020", say R P Gupta", August 17, 2020, <https://www.hindustantimes.com/india-news/nothing-disturbing-in-the-clauses-of-draft-eia-2020-says-rp-gupta/story-FclDTDbTKIeIMB73tAD10H.html>.

CLIMATE CHANGE: A RED FLAG DUE TO EXCESSIVE INDUSTRIALISATION

In the atmosphere of Earth, the layer of Greenhouse Gases which includes Carbon dioxide (CO₂), methane, nitrous oxide, etc. serves as a defensive shield for the purpose of maintaining the planet's temperature and safeguarding the environment as well. Activities like the combustion of fossil fuels are resulting in higher concentrations of the above-named gases, and the same is causing a hike in Earth's average temperature as these gases trap additional heat which ultimately leads to climate change. Melting of snow and glaciers, rapid changes in the weather patterns and extreme rise in the events of natural disasters are nothing but the consequences of human activities leading to climate change.

It is true that industrialization is considered to be a fundamental instrument for attaining prosperity for any country, and has been proved to be providing employment to millions of people but at the same time, it affects the atmosphere adversely and contributes to climate change in one way or the other. It is thus, would be pertinent to mention here that industrialization provides opportunities but also brings tons of challenges with respect to the safety and maintenance of the environment.

CO₂ emissions are majorly caused by the release of carbon dioxide during blast furnaces, refining of iron ore as well as other base metals, and also during the smelting processes. Apart from all these, coal mining, oil refining, burning of fossil fuels for the purpose of heating, transportation, energy generation, and manufacturing are some of the reasons for acute emission of carbon dioxide which causes atmospheric carbon dioxide concentrations to rise. Further, deforestation and urbanization are also the major contributors to hiking up the CO₂ concentration in the atmosphere.⁸

Other greenhouse gases emitted during industrial processes such as cement manufacturing, waste management systems, refrigeration, foam blowing, solvent use, etc., are also the factors leading to the deterioration of the environment.⁹ Climate change carries with it extreme ill effects both for the health of the environment as well as individuals, extreme alterations in weather patterns, which are commonly associated with climate change, can affect the immune system, as well as cause the proliferation of disease vectors and increase pathogen resistance, in addition to causing physical discomfort.

Seasonality and variations in temperature, rainfall, and humidity impact many infectious disease agents such as viruses and bacteria, as well as vectors such as mosquitoes and rodents.¹⁰ Non-toxinogenic strains of microorganisms may also acquire the toxinogenic gene

⁸Johnson, I. and R. Coburn, 2010. Trees for carbon sequestration.

http://www.forestrycorporation.com.au/__data/assets/pdf_file/0006/438234/Trees-for-carbon-sequestration.pdf.

⁹ Chigbo A. Mgbemene, Chidozie C. Nnaji and Chekwubechukwu Nwozor, 2016. Industrialization and its Backlash: Focus on Climate Change and its Consequences. *Journal of Environmental Science and Technology*, 9: 301-316, <https://scialert.net/fulltext/?doi=jest.2016.301.316>.

¹⁰ Bai, L., L.C. Morton and Q. Liu, 2013. Climate change and mosquito-borne diseases in China: A review. *Global Health*, Vol. 9, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3605364/>.

from the environment, resulting in the emergence of new diseases. A rise in temperature may also have an effect on the spread of animal infectious diseases to humans by changing the range of animal hosts and insect vectors.¹¹

Projects and other developments taking place without proper monitoring leads to environmental deterioration and harms human health and the ecosystem in an unimaginable manner and by bringing EIA draft, 2020 an attempt has been made for mitigating the same.

EIA DRAFT, 2020: FULFILLING OR FRUSTRATING THE OBJECTIVE OF ENVIRONMENTAL PROTECTION?

EIA draft, 2020 proposes a long list of projects which would be exempted from complying with the essentials of the EIA mechanism. Any development or project that government considers to be a strategic one would fall under this category. Both inland waterways, as well as national highway projects, are included in the said list. Apart from that EIA would be waived for all building projects up to 150,000 square meters. This gives the government a lot of leeway in this sector and may eventually lead to the exercise of discretionary power by the government authorities.

Another thing to be concerned about is that the EIA draft, 2020 doesn't seem to solve problems embedded in the previous EIA draft such as the inadequate conduct of public hearings, and the lack of accountability in the finalization of EIA reports, etc. The inclusion of certain biased and regressive clauses in the EIA draft, 2020, has invited a lot of criticism and complaints from concerned people. Post-facto clearance is another feature included in EIA, 2020 which has attracted criticism greatly. It is because those projects which are functional without the EC would be allowed to be regularized or may apply for clearance as well. Further only government officials, delegates, and project proponents are permitted to report the violation according to the 2020 draft. This provision has explicitly stripped away the rights of people to report breaches or any violation of environmental protection norms, which has previously aided in preventing various authorities from going too far in violating such norms.

CONCLUSION

India has steadily improved its ranking in the World Bank's 2019 "Ease of Doing Business" index, rising from 142nd in 2014 to 63rd in 2019.¹² However, India's ranking on the Environment Performance Index has gradually declined, from 141st in 2016 to 168th out of

¹¹ Parkinson, A.J. and J.C. Butler, 2005. Potential impacts of climate change on infectious diseases in the Arctic, *International Journal of Circumpolar Health*, <https://www.tandfonline.com/doi/pdf/10.3402/ijch.v64i5.18029?needAccess=true>.

¹² The World Bank, "Doing business 2020: Reforms boost India's business climate ranking: among top ten improvers for third straight year" October, 2019. <https://www.worldbank.org/en/news/press-release/2019/10/24/doing-business-india-top-10-improver-business-climate-ranking>.

180 countries in 2020.¹³ The government has stated that it would make every effort to strike a balance between environmental and growth issues. The draft, however, appears to be biased and generally ignores the balance between sustainable growth and environmental protection.

To protect the environment and ensure that natural resources are accessible to those who need them most, we need even stricter legislation. Many people, such as Adivasis, peasants, and coastal and fisher communities, rely heavily on the condition of the environment to survive. Any significant improvements in EIA would have a direct impact on these people's living and working conditions, as well as the environment. Weakening the EIA mechanism is synonymous with stifling democracy and limiting public consultation effectively silences opinions that would otherwise be scarcely heard.

To conclude, implementing the EIA Draft, 2020 will add many more obstacles to the already existing long list of issues that everyone is dealing with in relation to environment. Many changes must be made before implementing this draft; only then can environmental protection be assured.

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¹³Environment Performance Index, "Environmental Performance Index 2020", June 2020, <https://epi.yale.edu/downloads/epipolicymakerssummaryr11.pdf>.

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