Environmental Impact Assessment Notification 2020: A Critical Study

V.S. Yadav

National Institute of Construction Management and Research, Hyderabad 500 101, India

(Received 28 June, 2023; Accepted 27 August, 2023)

ABSTRACT

The process of Environmental Impact Assessment (EIA) is a scientific methodical approach to recognize, forecast, and assess the potential environmental consequences of proposed developmental activity and projects. Pre project EIA enables the stakeholders to assess and mitigate the adverse environmental impact likely to result from a project or developmental initiative. The implementation of the Draft EIA Notification 2020 by India’s Ministry of Environment, Forest and Climate Change has sparked numerous discussions due to its contentious implications. This paper is an attempt to critically evaluate the latest EIA notification and propose suggestions for the possible gaps in the notification. Some of the prominent recommendations includes extended period for public consultation in tribal and forest area, abolition of ex post facto clearance, uniformity in EIA norms and practices etc.

Key words: Environmental impact assessment, Issues, Challenges, Stages, India

Introduction

The Environmental Impact Assessment (EIA) is a process used to evaluate the potential environmental impacts of a proposed project or development before it is carried out. The primary goal of EIA is to identify and assess the likely environmental consequences of a project and to incorporate measures to mitigate any adverse effects. The process typically involves the following stages:

1. Screening: Determining whether a project requires a comprehensive EIA or can be exempted based on predefined criteria.
2. Scoping: Identifying the potential environmental impacts that should be considered in the assessment and establishing the boundaries of the study.
3. Baseline Assessment: Collecting data on the existing environmental conditions in the project area to serve as a basis for comparison with future impacts.
4. Impact Prediction: Evaluating and predicting the potential environmental effects of the project based on the identified scope and baseline data.
5. Mitigation Measures: Proposing measures to avoid, minimize, or compensate for adverse environmental impacts.
7. Decision Making: Considering the EIS, public feedback, and other relevant factors to make an informed decision about the project.
8. Monitoring and Follow-up: Implementing the proposed mitigation measures and monitoring the project’s actual environmental impacts. The objectives of current research work are,
1. To identify the common issues and challenges faced in process of EIA
2. To compare the identified issues with EIA notification, 2020 India, for identifying the gaps in the notification.
3. To propose recommendations for gaps found in EIA notification, 2020

Research Methodology

This research paper employs qualitative research method and does a literary survey of existing resources to find out common issues and challenges faced during the process of EIA. A comparative doctrinal analysis of how these challenges are reflected in to the recent Indian EIA notification of 2020 is done. Based upon the findings of qualitative enquiry, author has proposed the recommendations for filling the gaps in the 2020 notification.

EIA 2020: Issues and challenges

Inadequate Scoping

EIA reports are only as effective as the scope they cover. Inadequate scoping can lead to crucial environmental aspects being overlooked or not properly assessed. This may happen due to time constraints, lack of expertise, or limited data availability. Lack of proper scoping may result in missing several environmental consequences and incomplete or inaccurate assessments, potentially leading to unforeseen negative impacts on the environment and communities. (Snell and Cowell, 2006; Glasson and Therivel, 2013).

Limited Stakeholder Engagement

Stakeholder engagement is essential to EIA success, as it helps in identifying concerns and potential impacts. However, limited stakeholder involvement may occur due to difficulties in accessing all relevant groups, lack of transparent consultation processes, or power imbalances. (Sadler, 1996) When stakeholders, such as local communities, non-governmental organizations (NGOs), and other interested parties, are not adequately involved in the EIA process, their valuable insights, concerns, and knowledge may not be taken into account. This can result in ineffective mitigation measures, lack of public support, and potential negative impacts on the environment and affected communities.

Predicting and Assessing Cumulative Impacts

Projects may have cumulative impacts when combined with other existing or planned developments. Assessing and predicting these cumulative effects can be challenging due to data gaps, methodological limitations, and the complexity of interactions. (Hegmann, et al., 1999). The 2020 notification lacks the required emphasis on cumulative impact.

Insufficient Baseline Data

Accurate baseline data is crucial for evaluating project impacts. However, obtaining comprehensive baseline information may be challenging, particularly in remote or data-poor regions, leading to uncertainties in impact predictions (Wood, 2014). The 2020 notification in India exempts the projects from covering all season data. This may result in lack of full disclosure of data and make the process of EIA less reliable.

Bias and Conflict of Interest

In some cases, conflicts of interest may arise if the EIA process is conducted by consultants or individuals with ties to the project developers. This may lead to biased reporting, downplaying of negative impacts, or inadequate mitigation measures. (Beder, 1993). The unnecessarily excessive discretion given to the central government under the ‘strategic tag’ renders the entire notification a futile exercise. Governmental or administrative bias in such cases may result in heavy damage to the environment. Excessive discretion coupled with bias in application of strategic tag will lead to spoiling environmental strategies for sustainable development.

Poor Enforcement and Monitoring

Ensuring that proposed mitigation measures are actually implemented and effectively monitored is a significant challenge. Inadequate monitoring and enforcement can lead to projects not complying with environmental safeguards. (Frost, 1997). The erstwhile EIA guideline of 2006, required the six monthly progress report from the project promoters. This enabled the regulators to keep a timely check upon the proper implementation of EIA conditions. However, in order to afford more time to the promoters and avoid administrative hurdles, the new guidelines require the promoter to file compliance report annually. This will frustrate the purpose of the EIA process and make the monitoring vulner-
able. By the time report is filed, the possibility of irrevocable damage from violation of EIA cannot be denied.

**Excessive exemptions**

The 2020 notification grants excessive exemptions from EIA process to various projects. (See, clauses 5(6), 5(7), 12(1), 14(2), 19(1)(I), 20(4) and 26 of EIA Notification, 2020). All projects under the Category ‘B2’ (includes projects such as oil, gas, and shale exploration, small and medium size factories etc.) are exempted from EIA process. (Clause 14(2), of EIA Notification, 2020). The extensive exemption will spoil the precautionary principle and the very purpose of environmental protection.

**Ex Post Facto Clearance**

The new notification permits the ex post facto (post commencement of project) application for EIA approval. The purpose behind EIA process is to have early determination of possible adverse environmental impact. This very purpose is spoiled due to recognition of ex post facto clearance (Jolly and Singh, 2021). ‘The precautionary principle’ advocated by the Supreme Court of India in *Vellore Citizens (1996)* is the foundation upon which EIA process is based.

**Time and Cost Constraints**

Limited timeframes and budgetary constraints can compromise the thoroughness and quality of the EIA process, leading to incomplete assessments (Glasson and Therivel, 2013). The 2020 notification reduces the time frame of public consultation under EIA to only 20 days (as against 30 days in previous notification of 2006). The primary objective behind this reduction of time frame is to speed up the overall process. However, it may result in denial of fair opportunity to some sections in the society particularly in case of tribal and forest dwellers.

**Recommendations**

In order to overcome the above mentioned issues and challenges, author proposes following solutions:
- Stringent penalties and punishments should be prescribed for inappropriate scoping,
- All season baseline data should be mandated for more informed decision making,
- For projects in eco sensitive zone and with potential of higher risk to the environment, the timeline for compliance report should be six month only. Current annual report filing system may be retained only for projects outside eco sensitive zone and posing lesser risk for environment.
- Instead of granting total exemption, the cases of projects under exempted category may be referred to the committee of experts. Only projects approved for exemption by the expert committee may be exempted.
- Reduction in public consultation time frame to 20 days shall be restricted in its application to the tier 1, 2 and 3 cities. For projects in rural and tribal areas, the timeline for public consultation may extend to minimum 30 days.
- *Ex post facto* clearance should be abolished. Such clearance directly violates the ‘Precautionary principle’ which has been advocated and considered as fundamental to the idea of environmental protection by the Indian judiciary.
- Harmonisation of EIA regulations and processes across the world will achieve both objectives of environmental protection and development.

**Conclusion**

In conclusion, the Environmental Impact Assessment (EIA) process is an essential and effective tool for ensuring sustainable development and protecting the environment. Throughout this paper, we have explored the significance of EIA in assessing potential environmental impact of projects and policies, providing decision-makers with crucial information to make informed choices that balance economic, social, and environmental considerations.

Key findings from this paper highlight the issues and challenges faced in process of EIA and how the same is reflecting in the recent 2020 EIA notification of the Government of India. The outcome of the paper is the recommendations given by the author to counter these challenges and to fill the gap in the 2020 notification of India. Recommendations such as, abolition of *ex post facto* clearance, increasing public consultation timeline for tribal areas, penalties for non-disclosure or incomplete disclosure etc. will make the EIA legislation in India more effective, eventually resulting in better environmental protection.

In conclusion, the Environmental Impact Assessment process plays a pivotal role in fostering sustainable development and safeguarding our natural environment. By upholding the principles of precaution, participation, and science-based decision-mak-
ing, EIA empowers us to create a more resilient and harmonious relationship between human activities and the environment we depend upon.

References


Common Cause v. Union of India.


