

Assessing Indian EIA Law in the context of EIA Draft Notification 2020

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(Received 1 April, 2021; Accepted 27 May, 2021)

ABSTRACT

The Environment Impact Assessment (EIA) law is a cardinal rule of sustainability and ecological equity. The salubrious arrangements of social effect, natural arranging, and formal proceeding mirrored the EIA system. The contamination control instrument, biological cycle evaluation, and social legacy preservation are likewise a portion of the highlights of Indian EIA law. As a branch of the Environment Protection Act, 1986, the EIA is a subordinate enactment. The evolution and development of the EIA law through *EIA Notification, 1994*, *EIA Notification, 1997* and *EIA Notification, 2006* and *EIA Notification, 2020* seen a likely piece of manageability law and soothsaying of natural equity in India. The EIA law requires an evaluation of its failures and successes from 1994-2020. The legal and judicial assessment necessitated for the refinements in theory and methodology to serve the end of sustainable development and environmental justice.

Key words : EIA Law, Legal evolution, Judicial assessment, Sustainable development, Ecological Equity.

Introduction

The Constitution of India, 1950; Environment (Protection) Act, 1986 and EIA Notification, 2006 gives the Environmental Impact Assessment (EIA) law's legitimate system. The lawful statute and legal principles try to ensure and improve the climate by conceiving ecological safeguards to the projects dependent on screening, checking, surveying, and assessing impacts and formative ventures. The public arrangements on the National Policy on Pollution Abatement, 1992 (NPPA) and the National Conservation Strategy, 1992 (NCS), Policy Statement on and Development Environment, 1992 (PSED), and National Environment Policy, 2006 fill in as core

values for the social and vital effect evaluation in EIA law. These policies are not judicially enforceable, the void filled by the judicial pronouncement of Silent Valley, Tehri Dam, and Narmada Dam EIA flagrant violation of EIA norms in India. The *EIA Notification, 1994* owes a great deal to the *Bradford Morse Committee Report, 1992* on the EIA Narmada Valley Project [Writ Petition (C) No. 319 of 1994]. The evolution and development of the EIA law through *EIA Notification, 1994*, *EIA Notification, 1997* and *EIA Notification, 2006* and *EIA Notification, 2020* invariably accorded great importance to the public participation. The paper examines the Indian EIA law in the light of its historical and modern evolution from a sustainable development perspective.

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Materials and Methods

EIA's evolution and development globally and nationally offers valuable materials and methods spread over four decades (Robinson, 1991). It serves as experimenting grounds with sobering trends and challenges at Indian environmental law. The theoretical and legal refinement and the continuing emergence of variants often raise the EIA effectiveness and evaluation (Morgan, 2012). The EIA viewed as parallel evolution with the implementing agencies and institutional capacity and the formulation of legislation and regulations (Banham *et al.*, 1996). The essential remaking of the climate and reasonable advancement shaped EIA Notification, 1994-2020 in consistent experimentations at legal, innovative, and procedural refinements for compelling natural administration in India (Nomani, 2019). However, the national and federal practices reveal constraints of inaccessibility of information and hindrances of serious public engagement with little consideration of environmental impact (Sinclair *et al.*, 2000). The void seems to be filled by the judicial interpretation of EIA jurisprudence by minimisation of adverse impact on the environment (Chowdhury, 2014).

Results

The development of EIA law traces back to the EIA Draft Notification, 1992, which contained the arrangement that the extension or modernisation of existing ventures to adjust to environmental clearance central and state Governments [SO 85 (E) dated 29.1.1992]. The EIA Report elaborates an ecological management plan (EMP), environmental impact statement (EIS) for the effective compliance and enforcement of EIA laws. One of the EIA cycle seminal constituents is the public's involvement in consultation and hearing to reach environmentally sound decision-making. The ecological examining and checking of the undertaking fortify the essential revamping of the climate and manageable turn of environmental governance.

EIA Notifications, 1994-2006 : The *EIA Notification, 1994* adumbrated an Impact Assessment Agency (IAA) for the environmental appraisal of the scheduled industries under Section 3 of the Environment (Protection) Act, 1986 and Rule 5 of the Environment (Protection) Rules, 1986 [SO 60 (E) dated

27.1.1994.]. The industries are exceeding Rs. Fifty crore investments, subjected to EIA by the central authority, whereas industries having investment Rs. 50 crore or less subject to approval by the state. The small scale industries have been exempted from EIA requirements either by central or state authorities. The EIA Notification, 1997[SO 318 (E) dated 10.4.1997] fused social effect evaluation (SIA) by formal reviews. The Summary Feasibility Report (SFR), EIA Report, Technical Assessment, Executive Summary subjected public scrutiny. The State Pollution Control Board (SPCB), District Collector, Local Bodies, and Citizen provided arrangements for public cooperation in ecological dynamic [18]. The EIA Notification, 2006 supplanted the 1994 and 1997 and re-designed environmental clearances by scoping, forecasting, monitoring and approval [SO 1533 Part-II Dated New Delhi fourteenth September, 2006]. The significant shift manifested under potentiality rather than financial of the project for environmental approval. The review procedures re-organised through the State Level Environment Impact Assessment Authority (SEIAA). And State Level Expert Appraisal Committee (SEAC) for threshold investment projects. The SEAC and the Expert Appraisal Committee (EAC) suggestions are conclusive in the endorsement of the EIA undertaking (Nomani, 2011).

EIA Notifications on Bio-Diversity Protection: There is a parallel development of Bio-Diversity Protection and Heritage Conservation EIA Laws apart from the EIA Notification, 1994 EIA Notification, 1997 and EIA Notification, 2006. The Himalayan Bio-Diversity Protection Notification, 2000 [SO 916 (E) dated 6.10.2000] deals with the eco-delicate zone and local legacies across the Himalayan environment of the States of Arunachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, and areas of Dehra Dun, Haridwar, Almora, Pithoragarh, Chamoli, Pauri Garhwal, Nainital, Uttar Kashi, Udhampur, Rudra Prayag, Bageshwar, Tehri, Garhwal, and Champawat of Uttarakhand and Darjeeling locale of West Bengal (Nomani *et al.*, 2019). The MoEF & CC proclaimed for the full-scale EIA pattern of slope towns forbidding development in above 30° incline regions, peril zones, spring lines. The development allowed in 10° - 30° incline territories, spring re-energise regions, and old avalanche zones with some level of limitations and con-

tingency. The Bio-Diversity Protection Notification entails institutional structures for the risk zones, seepage channels, steep slants, and prolific land. The EIA Draft Notification for Protection and Improvement of Quality of Environment in the Himalayan Regions, 2000, Protect and Improve the Quality of Environment in the Himalayas by full-scale incorporation of EIA MoEF & CC [SO 1058 (E) dated 28.11.2000]. The legacy preservation laws harnessed for advancing fundamental EIA standards in biodiversity rich zones of the country (Nomani, 2021a).

EIA Notification, 2020 : The *EIA Notification*, 2020 seems a departure from the past normative conventions and needs a critical examination in the present context. the *EIA Notification*, 2020 passed during the COVID-19 pandemic for diagnostic and therapeutic projects' expeditious disposal (Nomani *et al.*, 2020a). The *EIA Notification*, 2006 classified A and B categories projects based on their spatial distribution and potential impact on natural resources. It laid out four successive stages in giving ecological clearances in the course of events. The main stage is screening and includes presenting a pre-practicality report with the proposed terms of reference (ToR) to the MOEFCC. The screening is to decide if the undertaking requires an EC or not. Those that require an EC move to the checking stage where an Expert Appraisal Committee (EAC), delegated by the service, either supports or rejects the undertaking and shows the specifics on the MOEFCC. The *EIA Notification*, 2020 placed all projects or activities in respect of bulk drugs and intermediates manufactured for addressing various ailments, have been re-categorised from the existing Category 'A' to 'B2' category to deal with the epidemic-pandemic situations. The sense of urgency was well covered under the global outbreak of COVID-19 but criticised the ground of environmental impact assessment (EIA), social impact assessment (SIA), and strategic environmental assessment (SEA). The *EIA Notification* 2020 exempted Category B2 Projects from Baseline data, EIA Studies, and public consultation (Dhar, 2020). The characteristic features of the amendment related to the shortening of the public hearings and environmental clearance. These industries' locations allowed in ecologically sensitive areas ignoring the adverse ecological, social, and epidemiological impacts. The legal expediency arose for reform in the environmental clearance process marred by the delay latches and technical inadequacies. The EIA and

SIA process applied across all kinds of projects and often encountered inaccessibility of information, lack of normative familiarity, institutional capacity, and public participation (Nomani, 2010a).

Discussion

The EIA is considered a concurrent and evolutionary development of an institutional capacity to coordinate and monitor the environmental policies and procedures to formulate and implement the necessary legislation and regulations (Dilay *et al.*, 2020). The EIA Law during 1996-2020 is legal experimentation and the constant struggle to balance economic development with ecological integrity in the legal and judicial process (Nomani, 2000). During five decades, the global assessment of EIA law often moots feasibility, effectiveness, and challenges in theory and practice.

EIA Notification, 2019 : The EIA Notification, 2019, directed to federalise the ecological administration at central area command enabling the District Magistrate (DM) as administrator of District Environment Impact Assessment Authority (DEIAA). The Union ministry of environment, forests, and climate change (MoEFCC) conceded clearances in 2016 for five to twenty-five hectares of sand and stone mining lease by the DEIAA (Nomani *et al.*, 2020b). The DM announced at standard with a specialist expert for ecological leeway of minor mining projects. The DM happens to 'Area Mining official' having the duty of executing mining permit deeds. The foundation projects that can altogether modify or affect timberlands, waterway bowls, or other environmentally touchy locales can look for consent from the MoEF & CC (Salahuddin, 2021). While master boards of trustees established by the MoEF & CC assess projects, those under a particular size to be assessed by State-level specialists called the State Environment Impact Assessment Authority (SEIAA). For the most part, the DM is an official who intended to gather incomes from mining exercises. The award of ecological leeway will be an irreconcilable patent situation. The naturalist believed that the DM does not have the specialised ability in climate and nature and associated with weakening the fundamental principles of EIA laws. The NGT had effectively remained the arrangement of DM as the administrator of DEIAA in December 2018. The MoEF&CC has engaged the Supreme Court in the stay request of the NGT. Under this unique circum-

stance, the EIA Notification, 2019, is viewed as a 'zero draft,' implying that it is at a phase where remarks requested from State specialists. The draft will be altered in the light of criticism and opened to public remarks.

EIA Notification, 2020 : The EIA Notification, 2020 set to replace the EIA Notification, 2006 in the light of the 15 years of functionality and experiences. The EIA Notification, 2006 set enormous ventures under Categorized A and compulsorily required clearances from the MoEFCC. Classification B projects additionally isolated into two sub-classifications: B1, which need to look for endorsement from the particular State Environmental Impact Assessment Authority (SEIAA), and B2, excluded from any clearances. The EIA Notification, 2020 underlines the calamitous modern mishaps. The current proposition has its beginning in the LG Polymers plant in Visakhapatnam and the fire at Oil India Limited's Baghjan oil well in Assam. The legal expediency also owes to the Covid-19 pandemic, national lockdown and development of vaccines and medicine to save people's lives (Nomani *et al.*, 2020c). A breach of ecological norms often mars the pre and post-EIA monitoring. The Environmental Impact Assessment notification, 2020, seems to reform the environmental clearance process by a slew of novel methods. However, the granting clearances appear to incorporate sweeping relaxations antithetical to the Environmental Impact Assessment foundational values (Nomani *et al.*, 2021b). The draft Environmental Impact Assessment, 2020 legitimises post-facto approval after ecological damage by an expeditious mechanism. The expanded legitimacy of the environmental clearances for mining projects (50 years versus 30 years as of now) and stream valley projects (15 years versus 10 years right now) raises the danger of irreversible ecological, social and virtue of the EIA (Nomani *et al.*, 2020d). It symbolises a sense of urgency and emergency to set new terms for the EIA, SIA, and SEA in India.

Coastal EIA Laws: The Coastal Regulation Zone (CRZ), 1991, receives EIA standards by denying the foundation and extension of risky ventures and oil-based commodities. The fish preparing units, unloading debris, land recovery, packaging, or upsetting the regular seawater's regular course are also considered precluded enterprises. The mining of sand rocks and the withdrawal of groundwater restricted in CRZ [SO 114 (E) dated 16.8.1994,

31.1.1997, 9.7.1997, and SO 944 (E) dated 15.12.1990]. The development between low tide and elevated tide lines under CRZ-I territories prohibited under CRZ Notification. In public stops, marine parks, asylums, save backwoods, untamed life environments, mangroves, coral reefs, familiar and authentic landmarks, and legacy destinations, nonexclusive variety no development can occur. The exclusion of the native occupants of Sundarban from the beachfront stretches of Andaman, Nicobar and Lakshadweep islands under CRZ-IV remains a cause for concern in the realisation of their conventional standard rights safeguarded (Nomani, 2010b). The Guidelines for Permitting Restricting Industries in Dahanu Taluka Thane District in Maharashtra, 1991, incorporated an EIA cycle, which incorporates the all-inclusive strategy, local arrangement, and checking board of trustees in an eco-touchy zone of Dahanu Taluka Thane District in Maharashtra. The plantations situated in ancestral regions and ecologically delicate regions will notice a cradle zone of 25 km [SO 416 (E) dated 20.6.1991]. The Dahanu Taluka Guidelines receive the Doon Valley EIA model by and large. The industry not falling in green orange declared red classification supposedly dirtying enterprises. The choice about endorsement is to be taken by the state or local government. The state government will endorse projects, have three crores, and focal endorsement is vital to cost more than Rs. Three crores.

Conclusion

The EIA gives the essential reconstructing of the climate and ecological improvement under the Constitution of India, 1950; Environment (Protection) Act, 1986 and EIA Notification, 2006 with consistent methodological refinements. The case law developments in India's environmental impact assessment process reflect the constant struggle to balance economic development with ecological integrity in a developing country. The EIA clearances set to pragmatic approval by the MoEFCC, on 27th March 2020, came out with the EIA Notification, 2020, during the COVID-19 pandemic. The proposed Environmental Impact Assessment Notification, 2020 set to replace the EIA Notification, 2006, in light of the gainful experiences and expedite the environmental clearance process. The slew of reform borders around the four critical areas, including SIA in the name of the economically sensitive areas" and expe-

ditious approval of mining projects. Under the Environment (Protection) Act, 1986 from 1994 to 2006, the EIA's mandatory character softened the environmental clearance process towards economic gains than the ecological priorities.

Acknowledgement

The author would like to acknowledge the Indian Council of Social Science Research, New Delhi for its funding of Minor Research Projects on Role of International Biodiversity Law in Developing Legal Framework for Access and Benefit Sharing (ABS) Regime in India 2019-20.

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