

# Indian Constitutional Aid Association



## ANALYSIS

Environmental Impact Assessment [Draft] 2020

Author: Aashna Bhatia  
Indian Constitutional Aid Association

## What is EIA?

- ▶ An environmental impact assessment (EIA) is a critical step in determining a project's potential environmental impact. It calculates the possible effects, such as a mine, irrigation dam, manufacturing plant, or waste treatment system, using science data. It is a method for determining whether or not a project should be authorised.
  
- ▶ The Environment (Protection) Act of 1986 established an environmental impact evaluation mechanism to prohibit industrial and infrastructure developments from getting approval without adequate supervision. This procedure guarantees that any proposal is subjected to the EIA review to secure prior environmental consent.

## Apprehension of the new draft

- ▶ Environmental Impact Assessment (EIA) notification 2020, published by the Ministry of Environment, Forest and Climate Change (MoEF&CC), seeks to replace the current information that goes back to 2006 under the Environment (Protection) Act, 1986.
- ▶ The new draft is created to make procedures more open and efficient. However, it recommends excluding several events from the scope of public consultation. The notice allows two types of consent: prior environment clearance (EC) with expert committee approval and environmental permit or authorisation (EP) without expert committee approval.
- ▶ It seems to favour industries while generally ignoring the balance between long-term growth and environmental conservation. The Union government claims that the new draft will increase transparency and speed up the process.
- ▶ The EIA mechanism relies heavily on public engagement, which has aided groups in obtaining knowledge about the proposals. The current draft seeks to control communities by reducing the space open for a general meeting and abandoning public confidence.
- ▶ In case of violations, what a violator has to do is come up with two measures for remediation and resource enhancement that are 1.5-2 times the "ecological harm measured and economic gain gained as a result of the violation."

## Limitations in the Draft

- ▷ The public hearing notice time has been reduced from 30 to 20 days. This will make it more challenging to understand the draught EIA report, mainly if it is not publicly available or written in the regional language.
- ▷ With the number of days required to complete a public hearing reduced from 45 to 40, all key stakeholders may be denied access to information. Instead of every six months, companies can now submit compliance reports only once a year.
- ▷ All "strategic" defence and national security projects and activities can get approval from the MoEF without seeking public input or making it available in the public domain.
- ▷ For project modernisation and expansion, only those involving more than a 25% rise need an EIA, and those involving more than 50% need public consultation. For mines, river gorge, and other schemes, the validity period of environmental approval has been extended from 30 years to 40 years.
- ▷ Another concern is the distance from the border, which allows any project within 100 kilometres of the border to proceed without requiring an EC or public approval. Since most biodiversity is located within a 100-kilometre radius of the border, the Northeast will be potentially eligible.
- ▷ Several schemes are excluded from public consultation, including all B2 projects, drainage, halogen processing, chemical fertiliser manufacturing, acid manufacturing, biomedical waste treatment facilities, building construction and area expansion, elevated roads and flyovers, highways, and expressways.
- ▷ The draft also allows Post-Facto Clearance. It means that a project can operate under the new EIA 2020 draft provisions even if it had been established without environmental safeguards or without receiving ecological clearances.

## Problems with the Post-Facto Clearance

EIA covers mining coal or other resources, infrastructure construction, solar, nuclear, hydropower plants, real estate, and other industrial projects. The projects are evaluated based on their possible environmental effects. A panel of experts grants or denies environmental approval based on the assessments.

- ▷ The clause in the notice that provides for post-facto environmental clearances is seen as a mechanism that corporate groups could use to sidestep ecological issues effectively. Once in effect, the provision would enable industries to avoid the EIA procedure.
- ▷ The Supreme Court expressed its criticism of industrial ventures that operate without environmental clearances, stating that approving such a practice would harm the environment. It also noted that the Union Government must approach development with an "ecologically rational perspective."
- ▷ Allowing post-facto clearance can be disastrous. Many plans are still in progress without EIA approval. The LG Polymer Plant in Vishakhapatnam, for example, experienced a styrene gas leak on May 7, 2020. The plant had been operating without permits for more than two decades.
- ▷ A similar incident occurred on May 27, when the natural gas of Oil India Limited in eastern Assam's Tinsukia district blew out and caught fire due to a lack of attention to environmental regulations. This issue wreaked havoc on the livelihoods of people in the biodiverse setting
- ▷ The Union environment ministry has submitted nearly 1.8 million complaints and feedback in response to the proposed Environment Impact Assessment 2020 notice. Still, it is unlikely to reverse the post-facto approval clauses unless there is a compelling legal reason for doing so.

## Non-compliance with International Agreements

India's environmental governance has improved dramatically since its involvement in the United Nations (UN) Conference on Human, Climate, and Development in Stockholm in 1972 and then at the Rio Summit in 1992. There has also been allegiance with United Nations Framework Convention on Climate Change (UNFCCC) and Kyoto Protocol and has also taken a lead role in renewable energy in the International Solar Alliance. EIA's role as a tool in achieving sustainable development has been endorsed by the United Nations Environment Programme (UNEP) in its guidelines of EIA.

- ▷ India is in a state of cognitive dissonance after pledging allegiance to these international environmental frameworks and then proposing to weaken its domestic EIA system. India's role as a global leader in environmental governance and climate politics would be cut by non-compliance with commitments made at international negotiations and agreements.
- ▷ This new draft contrasts India's status at numerous international conventions, including the UNFCCC and the CBD, among others. It also goes against several domestic rules and judicial decisions.
- ▷ The World Bank, which has been financing solar projects in India, needs a thorough EIA. The World Bank-funded Rewa Solar Park in Madhya Pradesh was completed after a comprehensive assessment. The EIA report revealed that the project would substantially affect the drainage system, and it suggested ways to mitigate the issue. The environment ministry's decision to exclude solar projects – and others on the list – from the new notification is inconsistent with best international practices and may even discourage investment.
- ▷ Private or related government-assisted programmes, on the other hand, can be commissioned without an EIA and suffer fewer repercussions.

## Violation of National Environmental Laws

- ❑ The Environment Protection Act of 1986, passed under Article 253 of the Constitution in the aftermath of the controversial Bhopal Gas Tragedy, became India's umbrella law for environmental protection.
- ❑ Section 3 of this legislation is where India's EIA regulations come from. It empowers the Union government to take environmental protection and improvement steps.
- ❑ On the other hand, the new draft goes entirely against the intention of this section and the Act as a whole. This point is backed by the fact that it weakens the public consultation mechanism, requires ex-post facto approval, removes some sectors from the EIA process, and, most significantly, allows environmental breaches to be commercialised.

## Possible Solutions

The current EIA draft needs to be challenged to retain the critical requirement to do an environmental impact assessment before project operation and exclude any project that does not have a suitable EIA.

- ▶ Biodiversity evaluations conducted by expert personnel must be multi-faceted and more reflective of the project's environmental impacts, including indirect consequences of biodiversity loss.
- ▶ The Judiciary must establish an independent agency to investigate the environmental impact to measure the effectiveness and results. This will allow for a collaborative discussion of a project that will benefit all.
- ▶ Rather than just pointing out issues or battling for authority, there should be solution-oriented approach. If any concerns are discovered, answers to the problems associated with the projects should be proposed. This will benefit all of the region's stakeholders.
- ▶ The Union government should also develop an accreditation scheme for practitioners in order to make the process more open and efficient, as well as to ensure that consultants are made responsible.



# References

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