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India's Environment Impact Assessment Draft 2020: Issues and Challenges

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The Ministry of Environment, Forest and Climate Change (MoEFCC) released a new draft Environment Impact Assessment (EIA) 2020 on March 12, 2020. Several inputs have been received from the public on the draft. Concerns have been raised on issues such as reduction in the time period allotted for public hearings, the extended time given for submission of compliance reports, and regularisation of projects through 'post-facto clearance'. The government has assured that it will strive to strike a balance between the environmental and developmental concerns. As and when the EIA is finalised, it is expected to incorporate the perspectives of multiple stakeholders in a balanced manner.

The Ministry of Environment, Forest and Climate Change (MoEFCC) released a new draft Environment Impact Assessment (EIA) 2020 on March 12, 2020 and sought comments from the public, till August 11.¹ The ministry received around 1.7 million comments from the public. This draft EIA will replace the 2006 EIA notification.

EIA Genesis

The UN Environment Programme (UNEP) defines an EIA as "an examination, analysis and assessment of planned activities with a view to ensuring environmentally sound and sustainable development."³ The 'environmental movement' that arose in the US in the 1950s and early 1960s against the reckless exploitation of natural resources was a major driving force that laid the foundation for the development of EIA.⁴ The US Congress in 1969 implemented the National Environment Policy Act (NEPA), which required federal agencies to produce a statement of environmental impact.

Since then, several countries have adopted mandatory EIAs to evaluate development projects. The commitment to the norms of EIA have not only spread 'horizontally' to other states but have also spread 'vertically' influencing the development of EIA norms within international organizations. For instance, to avail loans and grants from international financial institutions such as the World Bank, compliance with EIA norms are required.

Non-compliance may have an adverse impact on possible loans agreements. For instance, In July 2019, the World Bank backtracked on the agreed \$300 million loan for the Amaravati Sustainable Infrastructure and Institutional Development Project in Andhra Pradesh, following complaint from farmers.

While the aim of the EIA is to protect the environment, analysts point out that its impact appears to be limited.⁸ The UNEP in its 2018 evaluation of national EIA legislations suggested that there was an attempt to weaken the EIA process in some countries in order to speed up the development process.

Draft EIA Notification, 2020

Under the Environment (Protection) Act of 1986, the first EIA notification was issued in 1994. Later, it was replaced by a modified draft in 2006. Union Minister Prakash Javadekar stated that the reason for the draft notification on EIA 2020 was to consolidate all the 55 amendments and 230 office memorandums issued since 2006.¹⁰ The Secretary of MoEFCC, S.K. Gupta pointed out that while industries are essential to help in the country's development, clearance to establish them should be "expeditious but...with a proper scrutiny."¹¹ Industrial bodies like the Federation of Indian Mineral Industries (FIMI) have welcomed the new draft.¹² The major proposals of the 2020 EIA draft are appraised below.

Public Participation

Under the mechanism of EIA, generally four steps are followed: screening, scoping, public participation and appraisal. Public participation has been widely recognised as an

essential element of EIA. This is recognised in the 1992 Rio Conference on Environment and Development, which stated that “environment issues are best handled with the participation of all concerned citizens at the relevant level.”

By an amendment to the 1994 EIA notification in 1997, India adopted the principle of public hearing for Environmental Clearance (EC). However, the process has been undermined by several factors, including poor quality of information, lack of a mechanism to ensure effective involvement of local communities, and blanket exemption on certain categories of projects for public consultations.¹⁴ As a result, on several cases, the Indian judiciary had to intervene and re-interpret the procedural aspect of public hearing. For instance, between May 2012 and May 2016, 31 judgments on the aspect of public hearing were delivered.

One of the major proposals made in the 2020 draft is reduction of the notice period for public hearings from 30 days to 20 days. Javadekar explained that the shorter window was “in tune with the times”, given the growth of internet and mobile telephony.¹⁶ Several environmental activists and organisations have instead argued that even the 30 day timeframe was inadequate as information failed to reach the stakeholders residing in remote and inaccessible terrains.

Furthermore, by classifying a number of projects into A, B1 and B2 (in terms of risk to the environment), a host of projects are exempted from public scrutiny. Projects under Category A and B1 require mandatory EC. Category A projects are appraised by central agencies while Category B1 projects are appraised by state agencies. Category B2 projects, meanwhile, do not require mandatory EC

The major grievance of a number of environmental experts and activists as well as by state governments like Chhattisgarh, is that by limiting public consultation, the draft is not in consonance with protecting the rights of tribals, among others.

The new draft also proposed that projects having implication for ‘national defence and security’ or having ‘strategic consideration’ will be determined by the central government and are exempt from public hearing. Additionally, all ‘linear projects’ like pipelines and highways in border areas, “falling within 100 kilometers aerial distance from the Line of Actual Control” are exempt from public hearing.

Analysts note that by this provision, the government shall have discretion to designate any project as being of strategic importance.²⁰ Activists in states with crucial resources like uranium, as in Meghalaya, have also opposed this provision.

Environment ministry officials affirm that sensitive projects “should not be held up for procedural reasons” but rather executed in a timely manner.²² Indeed, subsequent to the recent military clash between the Indian troops and Chinese PLA in the Ladakh region, improvement in infrastructure development along border areas to avert the growing security challenges has come into greater focus.

Post-Clearance Compliance

Post-clearance compliance implies that once a project gets approved by the concerned authority, the proponent projects are required to adhere to certain rules laid down in the

EIA report in order to ensure that no further environmental damages take place. There are several cases where the proponent projects have substantially failed to comply with the rules. The NGT, for instance, imposed fines for non-compliance with environmental conditions on Jindal Power Limited (JPL) and Coal India South Eastern Coalfields (SECL), in March 2020.

The 2016 report by Comptroller and Auditor General of India (CAG) on 'Environmental Clearance and Post Clearance Monitoring'²⁴ cited several short-comings in following the conditions of the EC. These included non-obtaining of permission from competent authority for cutting trees; no separate head of account and embarking of funds for Environment Management Plan (EMP); irregular use of ground water; change of scope of work after obtaining the EC; non-construction of rain water harvesting structures and residential facilities for workers; irregularities in relief and rehabilitation; violation in handling of hazardous waste materials; and shortfalls in development of green belt.

The new draft EIA, contrary to the 2006 notification — which required submission of the compliance report every six months, proposes annual reports. Environmental experts are of the view that allowing a longer period for filling the compliance report will give an opportunity to project proponents to hide disastrous consequences, which could go unnoticed.²⁵

Meanwhile, submission of the compliance report will be solely prepared by the project proponents itself, which, without oversight and review, may lead to inaccurate information submitted on the project. One of the effective tools to strengthen the monitoring and compliance system is allowing the affected communities to participate in monitoring activities.

In July 2020, a bench headed by NGT Chairperson, Justice Adarsh K. Goel, observed that the mechanism for monitoring environmental norms was inadequate and hence, required the MoEFCC to monitor EC clearance conditions “on periodical basis, at least once in a quarter.”²⁷

Post-facto Clearance

Another major proposal in the draft 2020 is granting 'post-facto clearance' where a project that has been operating without environmental clearance, can be regularised or allowed to apply for clearance. The judiciary has held — as in the case of Alembic Pharmaceutical vs. Rohit Prajapati in April 2020 that “environment law cannot countenance the notion of an ex post facto clearance.”

Firms found violating the terms of their establishment, if they have to get the clearance, however, will have to pay a penalty.²⁹ Expressing apprehension on this provision, environmental lawyers argue that it is likely to “encourage industries to commence operations without bothering clearance and eventually get regularized by paying the penalty amount” and likely “open a floodgate of violations ...

Conclusion

The EIA 2006 notification was not a sufficient condition for protecting the environment. Several provisions in the latest draft seem to tilt the scale in favour of 'easing the norm' for doing business. In the 2019 'Ease of Doing Business' report by the World Bank, India

has steadily risen from 142nd ranking in 2014 to 63rd ranking in 2019.^{[31](#)} India, however, has steadily declined on Environment Performance Index, from 141st rank in 2016 to 168th rank out of 180 countries in 2020.^{[32](#)} The government has assured that it will strive to strike a balance between the environmental and developmental concerns. As and when the EIA is finalised, it is expected to incorporate the perspectives of multiple stakeholders in a balanced manner.

Views expressed are of the author and do not necessarily reflect the views of the Manohar Parrikar IDSA or of the Government of India.

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