Green Gavel: Environment Impact Assessment and Indian Courts

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Abstract: Industrialisation is the anchor upon which countries seek to achieve their economic growth, however in that process, many of them left the harbour of protecting environment, and little did they realise, that they found themselves swirling in a whirlpool of climate change and environmental destruction. With the countries marching towards higher levels of growth in per capita, also realised the greater need to formulate, adopt, and implement sustainable practices in their growth agenda. One of such, is the Environmental Impact Assessment (EIA) which though originated in Stockholm conference, was incorporated in Indian legal framework in the form of EIA Notification in Environmental Protection Act, 1986. In here, we will navigate into the origins of EIA and its incorporation in Indian context. It delves into assessment process, examining stages and frameworks, particularly in relation to various projects such as multipurpose ventures and those in industries. Initially seen as a boon, EIA, soon became controversial within major industries due to its perceived hindrance to commercial interests. This led to scepticism regarding the credibility of EIA reports. The paper also analyses on the judiciary's intervention which was critiqued as causing delays and halting industrial projects, while also highlighting the courts efforts to strike a balance. This project mainly focuses on the Indian courts approach in recognising the significance of EIA and their consistent attempts in trying to establish the Environmental Impact Assessment as the Green Gavel.

Keywords: *EIA, Stages, Judicial Approach, National Green Tribunal, Challenges Ahead*

1. Introduction

The story of man and his quest with nature, time and again revealed the heights of development and scale of growth. The genius of mind which started by rubbing of two stones to produce fire, now is in a position that has already set the entire planet on fire. Consider it like this, a person 'A' went to watch a film in a theatre, he was rich and affluent was seated in the premium class ticket. And in the economy class, people with low incomes were seated. Suddenly, fire broke out, and there was huge hue and cry in the hall. Those in Premium class

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felt that that fire could not spread straight to their seats and didn't act, only to realise that soon their seats caught fire.

Now, consider this, with the plight of those in economy class with that of developing and under developed countries, and those in premium class with developed nations. When the industrialisation heralded economic growth, it also echoed environmental degradation. Developed nations, reaped the fruits of growth, and the rest continues to bear the brunt. Communities which lived in harmony with nature where displaced for industries and production. Having natural resources abundantly, but unable to tap them is not a viable option either.

However, it is strongly argued that there needs to be a balanced approach to foster growth and protect environment. This can be approached through, EIA, Environmental Impact Assessment. It is considered as a potential tool which can foster sustainable development by assessing the potential impact, of the proposed industrial activities on environment, communities and economy as a whole. It is viable as it can predict and mitigate the plausible impact of the projects. The legal framework is inferred through the Environment Protection Act, 1986 however its effect is reflected through the active and persistent role of courts. By virtue of this project, we shall delve into the significant judicial interventions that have influenced EIA policies and functions in India, drawing a reflection upon international standards.

Assessment (EIA) process involves assessing and projecting how proposed projects, programmes, or policies will affect the environment's quality in the future. EIA assists administrative agencies in making the best decisions among the different possibilities for making environmentally sound decisions by guiding to make informed trade-offs among conflicting aspects of environmental quality and between environmental quality and other social objectives. EIA is a tool not only for identifying potential damage but also for probing methods of preventing such damage. The process is rooted in the principle that prevention is better than cure and carries the warning 'look before you leap".[1]

2. Analysis of EIA since its Inception:

The Department of Environment (DoE), established in 1980, was in charge of providing

[1] Rama Mohana R. Turaga, 'The Politics of Formulation of Environmental Impact Assessment Regulation in India' (Journal of Environmental Assessment Policy and Management), Vol. 18, No. 2 (June 2016), pp. 1-30 < https://www.jstor.org/stable/10.1142/enviassepolimana.18.2.03> accessed on 20 September 2023.

environmental clearance for development projects prior to the EIA Notification, 1994. The DoE's Impact Assessment Division (IAD) assessed the EIA reports provided by the project proponents with the aid of an inter-ministerial expert appraisal group. Based on environmental factors, the committee had the power to propose or reject the projects' relocation. Originally introduced in 1994 as an executive notification under the EPA, the EIA procedure for projects has undergone considerable changes in the twenty years of its formal existence.[2] The EIA notification of 1994 that formally brought to fore the necessity for focused regulatory action towards assessing social and ecological impact of a project before permission to proceed is granted to it by public agencies, bringing together existing dispersed administrative requirements. The responsibility on MoEF as an impact assessment agency was institutionalized through this notification, where the project proponent was required to file an impact assessment report, an environment management plan and a project report before the MoEF, while an application for grant of environmental clearance is sought. The decision to grant clearance was expected to be taken only after an assessment of the impact to the environment, taking into consideration the aforementioned documents and importantly (for the current enquiry) a mandatory public hearing.

2.1 EIA Under 2006 Notification:

The current legal framework governing EIAs are conducted under notification made under the EPA, and it was notified in 2006 amid great controversy. The announcement reaffirmed that any scheduled project's work can only begin after receiving approval from the relevant impact assessment agency through a favourable EIA, while the beginning of land acquisition is permitted before such a clearance is granted. In order to obtain a green clearance, applicants must submit an environmental impact assessment (EIA) to either the MoEF or the state level environmental effect assessment authority (SEIAA), depending on whether the project is classified as category A (under the MoEF) or category B (under SEIAA). This classification is based on a matrix that takes into account the proposed activity's capacity, product mix, location, and site's area, as well as the nature of some of the activities that are listed, such as mining, oil and gas exploration, industries, infrastructure and construction projects, thermal, hydro, and nuclear.[3]The Expert Appraisal Committees (EAC) advise the

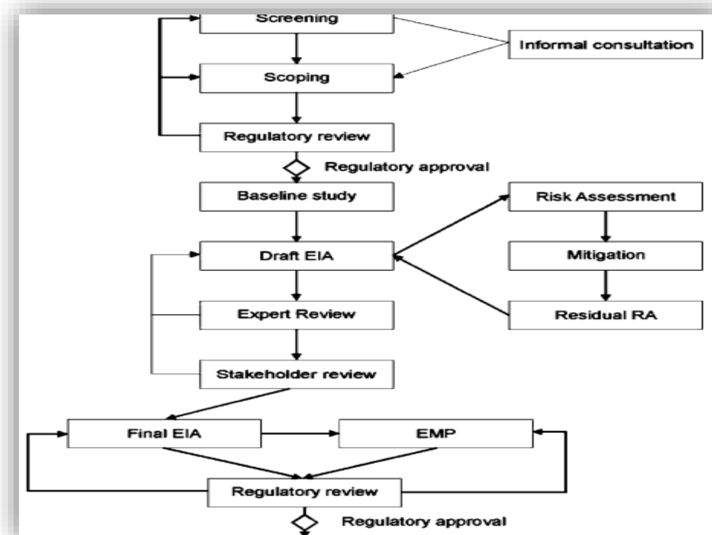
[2] *ibid.*
[3] Padmaparna Ghosh, "Draft EIA notification favours Industry over Environment" Down to Earth, Sep.30, 2006; Staff Reporter, "Greens allege dilution of Key notification on Environment" The Hindu, Aug. 30, 2006; Leo Saldanha, Abhayraj Naik et. al ' Green Tapism: A Review of the EIA Notification, 2006 (Environment Support Group, Bangalore, 2007); Manju Menon and Kanchi Kohli, "Environmental decision-making: Whose Agenda?" 42 EPW 2490- 2494 (2007).

MoEF or SEIAA regarding the clearance of projects seeking permission, and are constituted for a term of three years. The committees are expected to be composed of experts from fields related to the impact assessment, and usually have an official from the MoEF (or the concerned state administration, as the case may be) appointed as the member secretary.

The official process of public consultation is the primary mechanism for members of the affected community to express their objections to a project proposal. According to the current protocol, consultation will take place when the EACs and SEACs have finished their scoping EIA investigations. For all relevant categories of projects, the state pollution control boards are in charge of facilitating and managing public discussions. In order to ensure an unbiased evaluation of the project, the National Green Tribunal (NGT) has ordered that no state pollution control board officers may participate in the SEIAAs.[4]

The public consultation requirement itself is intended to take place over two stages. The public hearing is only intended to elicit concerns and responses from "local affected persons," while "written responses" can be forwarded to the appropriate regulatory agency by "other concerned persons having a plausible stake in environmental aspects of the project or activity.[5]

3. EIA Process



[4] Rayons-Enlighting Humanity v. Union of India, Application No. 86, 99 and 100 of 2013, National Green Tribunal, July 18, 2013, available at <http:/ /www.greentribunal.gov.in/ judgment/ 86201 3(App)_ 18July2013> accessed on 20 September 2023.

[5] Samarth Trust v. Union of India (2010) 117 DRJ (113) Del

In India, the EIA process has four main stages: screening, scoping, public consultation and appraisal.

a) **Screening:** Whether an EIA is necessary for the proposed project is decided at this point. After the notification's revision in 2006, only Category B projects in India require screening. The (SEAC) will determine whether the proposed project falls under Category B1 or B2 based on the specific location. The EIA procedure is only necessary for B 1 projects.[6]

b) **Scoping:** The terms of reference (TORs) would be prepared at the scoping stage, by the Expert Appraisal Committee (EAC) for Category A projects or by the SEAC for B1 projects. If needed, site visits can be made and local people can be consulted by the EAC and SEAC in the course of their preparation of TORs.

c) **Public Consultation:** The State Pollution Control Board (SPCB) or the Union Territory Pollution Control Committee (UTPCC), whose purview the project falls under, will consult the public before approving the project's environmental clearance. The public hearing should be conducted within 45 days from receipt of the EIA report. The date and time of the public hearing must be communicated to the people one month before the date of the hearing by publication in two newspapers with a wide circulation in the relevant area.[7]

d) **Appraisal:** The appraisal will be completed by the EAC or SEAC within 60 days of the receipt of the final EIA report. After review of the report, it will be put before the final competent authority with recommendations and, within the next 45 days, the authority will take the final decisions regarding granting of environmental clearance. If it fails to do so, the project proponent may start the project considering it as deemed environmental clearance.[8]

e) **Enforcement:** Although, the law is strict in letter but alleged violations of EIA continue to persist. The Supreme Court clearly laid down in Sterlite Industries v. Union of India[9] “the specific grounds upon which a public authority can be challenged by way of judicial review are the same for environmental law as for any other branch of judicial review, namely on the grounds of illegality, irrationality, and

[6] Murthy, A. and Patra, H.S. 2005. "Environment Impact Assessment Process in India and the Drawbacks". Available at https://elibrarywcl.files.wordpress. com/2015/02/environment-impact-assessment-process-in-india-and-thedrawbacks-i.pdf accessed on 23 September 2023.
[7] *Ibid*
[8] Madhuri Parikh, 'Critique of Environmental Impact Assessment Process in India' (2019) 49 Envtl Policy & L 252.
[9] Sterlite Industries (I) Ltd. Etc v. Union of India and Ors. Etc, 2013 AIR SCW 3231.

procedural impropriety". Thus, if an environmental clearance is clearly outside the powers of the granting authority, the High Court could quash the environmental clearance on the ground of illegality. If the environmental clearance is based on a conclusion so unreasonable that no reasonable authority could ever have come to the decision, the environmental clearance would be said to suffer from "Wednesbury unreasonableness"[10] and the High Court could interfere on the ground of irrationality. And, if the environmental clearance is granted in breach of proper procedure, the High Court could review the decision of the authority on the ground of procedural impropriety.

4. The Green Gavel in Environment Protection V. Economic Development:

Section 3 of the Environment Protection Act, 1986 (EPA) under which the EIA notification has been issued, authorizes the Central Government to take measures for, "protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution." Thus, when the Environment (Protection) Rules, 1986 refers to the public interest it is obviously in that context. Despite the fact that there is no legally recognised right to development, this right restricts how the right to the environment is used. Probably more than any other nation, India has promoted a thorough and cutting-edge body of environmental law. EIA is seen as another regulatory hurdle and anti-development. Since 1994, EIA had been amended seven times, and every time the changes brought in only, diluted the significance and made it only as a formality in environmental clearance procedures.

The concept of EIA and its significance was stressed much under the precautionary principle in Indian Context while examining the issue whether mining activity in an area up to 5km. from Delhi-Haryana border on the Haryana side of the ridge and in the Aravali hills causes environment degradation, the apex court in a PIL in M.C. Mehta v. Union of India[11],held that the precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment. The precautionary principle has been again affirmed and well explained by the Supreme Court in Andhra Pradesh Pollution Control

[10] Associated Provincial Picture Houses Ltd v. Wednesbury Corporation (1948) 1 KB 223. The Wednesbury principle means that only an administrative decision that is unreasonable to an extreme degree can be brought under the legitimate scope of judicial review. The principle is generally considered as a reason for courts not to interfere in administrative body decisions. Non applicability of the principle would imply that courts will be less hesitant in interfering in such decisions

[11] M.C. Mehta v. Union of India AIR 2004 SC 4016.

Board v. M. V. Nayadu[12]. Environment protection should not only aim at protecting health, property and economic interests but also protect the environment for its own sake. The precautionary duties must not only be triggered by the suspicion of concrete danger but also by way of (justified) concern or risk potential. The principle suggests that where there is identifiable risk or serious irreversible harm, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment. Justice Bharucha in his dissenting opinion in Narmada Bachao Andolan v. Union of India[13] case highlighted the importance of EIA of the Narmada Sagar Project in absence of which he judged that the construction work on the dam should cease. Perhaps, this is one of the first explicit and elaborate judicial recognition of EIA wherein it conveys that EIA should not be run on the discretion of the administrative branches of the government because it derives its strength from the law itself.

5. Challenges in implementation and Way Forwards:

Lack of baseline data and, even when it does exist, data that is either unreliable or not in a meaningful form, are two main issues with EIAs. This not only slows down the process of evaluating the project's potential effects but also raises the price of doing so. These issues simply serve to highlight the Ministry of Environment and Forests' (MoEF) lack of enthusiasm for carrying out these studies, as they merely give these industrial projects' potential effects the bare minimal attention. This is evident from the fact that the original notification proposed that the comprehensive EIA be carried out from information gathered over a period of a year. However, subsequently, the MoEF amended this requirement, stating that a comprehensive EIA was not required for the clearance of such projects, but a diluted assessment where only data compiled over a single season would be adequate to compile a Rapid EIA. Further, a detailed report was not required to pass these clearances, but a summary report would be considered adequate. There is also the severely criticized notion of conditional clearance, which allows approval for most major projects despite the absence of ecological clearance.[14]

One of such glaring examples is that of Sardar Sarovar Project (SSP) on River Narmada. The Sardar Sarovar Project is the biggest and most ambitious river valley project to date and is also by far the most controversial. The project involves the construction of a dam

[12] Andhra Pradesh Pollution Control Board v. M. V. Nayadu AIR 1999 SC 812
[13] Narmada Bachao Andolan v. Union of India AIR 2000 SC 3751
[14] Shivaji Bhattarcharya, 'EIA: A Review' (2007) 3 NLSR 19 SCC Online Blog.

approximately 111 metres high, creating a reservoir that will submerge lands in the three states of Gujrat, Maharashtra and Madhya Pradesh. The dam can submerge 37,000 hectares of land and divert 9.5 million acre-feet of water to drought prone areas of Gujarat. More than 100,000 people mostly tribals in 245 villages and lands are submerged. Despite all these, there was no comprehensive EIA with respect to project. Despite the fact that guidelines have been issued by the Central Water Commission (CWC) since 1975, that insist that all major hydro-electric and irrigation projects are to be subject to comprehensive EIAs, not one project in the last 31 years has followed the guidelines.[15] A project of such magnitude has been granted a conditional clearance to go ahead with the project, without addressing the critical environmental issues of the project.

6. EIA and its Implementation models

6.1 Mandatory Model:

The mandatory model denotes the compulsory need to make impact assessment before development proposal is approved, industrial licence or permit granted or project sanctioned. If they do, EIA of those projects has to be made. The statutory mandate to make an environmental impact assessment compels the public or private agency initiating a proposal to apply its mind into the various factors for an environmentally sound project and to prepare an environmental impact statement (EIS). In the mandatory model the legislature chooses to place the responsibility of preparing EIS on the proponent of a development primarily for the practical reason that at the time when the project is designed, the developer knows better than anyone else.[16] The environmental impact statement which should contain all matters including the cumulative and indirect effects and a short summary of information, guarantees right to information to the public. A thorough analysis is thus possible before the authority decides whether or not the project is acceptable and if acceptable, whether or not it should be with any modification. The substantive and procedural standards laid down in the law pave the way for judicial review which act as a check against arbitrary or whimsical exercise of discretionary powers. Obviously, judicial review of EIA helps establishing uniform standards for preparing environmental impact statement.

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[15] Dams, Rivers and People", http:/www.sandrp.in/drp/april may2006.pdf as last accessed on 10th July, 2007. See also Morse, B. Et al., "Sardar Sarovar: The Report of the Independent Review", (1992) Resource Futures International.

[16] B.J. Preston, "Third Party Appeals in Environmental Matters in New South Wales", 60 Australian Law Journal 216.

6.2 Criticism to Mandatory Model:

The main criticism against the mandatory model is that the environmental impact statement is so lengthy and cumbersome, that only an expert can understand the true impact of a proposed project, that the general public whose participation is applauded as a significant gain shall never get at the intricate questions in the statement and that their participation in the impact process shall be neither informed nor useful. It is criticized as a procedural burden rather than recognized as an opportunity to improve decision-making; the environmental impact statement may hardly throw any light on the alternatives when a private developer proposes a project as he may be inclined more to justify the design than to highlight the alternatives[17].

6.3 Administrative Discretionary Model:

The discretionary model derives strength not from any law but from the discretionary powers of the administration. It may also be that certain countries do have a legislation referring to environmental impact assessment but the law gives wide discretion to the executive in the matter. In India there is no specific legislation mandating environmental impact assessment of projects having significant effects on the environment. However, the approval of the Ministry of Environment and Forests and the Planning Commission is necessary for execution of a few major projects.[18] Interestingly, the administrative discretionary model may vary from country to country, but all of them repose faith in the discretion of the executive or the administrative agency empowered to make the assessment irrespective of the fact that there is a legislation dealing with environmental impact assessment. This discretion extends to a wide range- from whether or not to make an assessment to what mode of inquiry is to be adopted.[19]

The administrative discretionary model exhibits flexibility in decision-making considering the needs of society and the exigencies for approving a particular project as it is free from the pressure and tension imposed on the administrative process by an enacted law or judicial dictate.[20] Consequently, quick, expert and timely decision may become the trump card of this model. A government may have its own policies in the areas of planning, development, and energy. Formulation of policy is entirely different from the techniques with which approval

[17] 4. Eric L. Hyman Daniel Mazmanian and David Morell, "The NIMBY' Syndrome: Facility Siting and the Failure of Democratic Discourse" in Norman J. Vig and Michael Ë. Kraft. Environmental Policy in 1990s 129 (1990)

[18] Raj Anand and Ian G. Scott, "Financing Public Participation in Environmental Decision- making" 60 Canadian Bar Review, 86 (1982)

[19] Ibid.

[20] P. Leelakrishnan "Land and Sustainable Development in India", Journal of Energy and Natural Resources Law (1991) 193.

of specific project is given. The discretionary model is sufficiently viable to balance these two techniques.[21]

Despite its merits, it also has its fair share of demerits. Experts within the government need not always agree in environmental questions; they may fall prey to political expediency and influence of pressure groups orientation. The data on which their decisions are made may not be disclosed; relevant criteria may be discarded; interests of weaker or vulnerable groups and regions overlooked; alternative opinions expressed outside the realms of administrative process remain unnoticed and are not considered; and the law may be misapplied or not applied. Under the discretionary model there is a danger that the government may commence the project without EIA. On demand from environmentalist or social action groups the government may issue orders for the assessment when the project is half way through.

6.4 The Need for Mandatory Model:

The World Commission on Environment and Development recognises the need to tailor environmental values in development process and aim at sustainable development - the economic growth without disturbing the existing resource base but meeting the aspirations of the present without compromising the ability to meet those of the future.[22]The environmental impact assessment process is a means not only of identifying potential impacts but also of enabling the integration of the environment and development. In a country with an enlightened judiciary and environmentally conscious people an environmental impact assessment legislation will be a leap forward in evolving substantive and procedural norms and in disciplining the administrative behaviour in tune with the needs of environmental justice. Sound financial back up and environmental Expertise are the two factors that helped evolution of EIA process in the United States. They are lacking in India.[23]

In this background an action-forcing impact legislation is found necessary - a legislation that shall compel entrepreneurs, whether they are in the public sector or in the private sector, project authorities, ministries, and departments to prepare an EIS and to make an EIA in light of the comments from the public before major development projects are approved for execution. Such a legislation will create circumstances for an open environmental impact inquiry process guaranteeing effective public participation and maximum utilization of

[21] Suraphol Sudara, "EIA Procedures in Developing Countries' in Brian D. Clark, et al (eds.), Perspectives on Environmental Impact Assessment 88-89 (1984)

[22] R.G.H. Turnbull, "Environment Impact Assessment in the United Kingdom" in M.Clark, et al, (eds), The Role of Environmental Impact Assessment in Planning Process (1988)

[23] Before he looks at the possibility of introducing the NEPA type legislative model in India with some modification, the author makes an exhaustive examination of the positive and negative aspects of EIA under NEPA. He also dealt with the empirical studies on its working.

environmental expertise within the government and outside. A meeting of experts, held in 1987, went into the scope of the Environment Act and recommended steps for institutionalisation of environmental impact assessment, periodic and timely of environmental information and sufficient financial support for public participation. These measures can well be taken by framing rules under the Environment (Protection) Act 1986.[24]

7. Judicial Gavel Filling the Gaps:

Traditionally, courts in common law countries do not enter into the substantive domains of executive discretion unless its exercise is mala fide against law or based on irrelevant factors. They can never tolerate procedural irregularities and lapses in the field of administrative processes. In order to prevent damage to the environment the Indian courts did intervene in environmental decision-making processes. They did so on the obvious reason that there was no specific statutory mandate for EIA

The proposal for the hydro-electric project in the Silent Valley, alleged to bring, if implemented, adverse impact upon climatic conditions, bio-diversity in the forest and the ecology of the area, was stalled not by a decision of the court but by a political decision rightly made by the then Prime Minister Indira Gandhi. The project was in fact challenged before the court with the preponderance of evidence on the environmental dangers that might happen, should the project be carried out. The Kerala High Court held that those questions were all examined by the government at the time of designing the project and were not to be reopened before a judicial forum. However, the judicial activism of later years, fostered through public interest[25].

The right to a clean and healthy environment - the new dimension to the right-to-life concept in article 21[26] of the Constitution - compelled the courts to have a hard look at the environmental processes. In a few cases the Supreme Court appointed commissions to study the environmental impact of mining activities for which licences were already granted. In one

[24] The preamble of Environment (Protection) Act 1986 says that the Act is to provide for the protection and improvement of the quality of environment. S. 3 (1) confers on the Central Government the power to take * 'all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment." Ss. 6 and 25 give the rule-making power to the Central Government in respect of these matters.

[25] S.P Gupta v. Union of India, 1982 SC 149s at 192, "If public duties are to be enforced and social collective 'diffused' rights and interests are to be protected, we have to utilise the initiative and zeal of public-minded persons and organisations by allowing them to move the court and act for a general or group interest, even though, they may not be directly injured in their own rights. It is for this reason that in public interest litigation ... any citizen who is acting bona fide and who has sufficient interest has to be accorded standing.

[26]Protection of life and personal liberty - No person shall be deprived of his life or personal liberty except according to procedure established by law.

case the court directed stoppage of mining activities till a decision was taken on the report of the expert commission.

In a few cases the Supreme Court appointed commissions to study the environmental impact of mining activities for which licences were already granted. In one case the court directed stoppage of mining activities till a decision was taken on the report of the expert commissions[27]appointed by the court.[28] In another the court appointed commissions to assess the impact of mining activities. The commissions found that some of the activities caused ecological imbalance. The court ordered permanent stoppage of those activities.[29]When it was feared that a governmental scheme of pumping up ground water, if carried out, would lead to either salinization, or exhaustion of, water in coastal aquifers, a state High Court had no hesitation to order further study of the scheme[30].

The Supreme Court has time and again recognized and elaborated the necessity of having an effective environmental regime in the country.[31] These instances of judicial activism have included elaborations on the principles of polluter pays, strict and absolute liability, precautionary principle and the goal of sustainable development.[32]

For instance, in Aruna Rodriguez. Union of India[33], the Supreme Court appointed experts to examine environmental clearances on activities that citizens strongly felt entail grievous environmental harms, requiring these experts to bring to the court information and rationale that are independent of the government and the industry. Notwithstanding such inordinate exceptions, the general consensus is that the apex court has by and large refused any substantive examination of environmental issues that are ignored by technical regulators.[34]

The substantive jurisdiction of NGT allows considerable amount of independent scrutiny over grant of environmental clearances based on factors identifiable in impact assessment reports, public hearing, as well as post-clearance compliance and monitoring. The NGT has provided a salutary space through which the public has participated in the environmental clearance process, albeit post facto, and sometimes in revoking grants the Supreme Court

[27] Rural Litigation and Entitlement Kendra v. State of U.P. A.I.R. 1985 S.C. 652; M.C Mehta v. Union of India, A.I.R. 1987 S.C. 965; A.I.R. 1987 S.C. 1086; A.I.R. 1988 S.C. 1037; A.I.R. 1988 S.C. 1 1 15; Subash Kumar v. State of Bihar. A.I.R. 1991 S.C. 420;

[28] Tarun Bharat Sangh v. Union of India, A.I.R. 1992 S.C. 514

[29] Rural Litigation and Entitlement Kendra v. State of UP A.I.R. 1985 S.C. 652

[30] Attakova Ihangal v Union of India [1994] 1 SCC 206.

[31] Vellore Citizens Welfare Forum v. Union of India, AIR 1999 SC 2715.

[32] AP Pollution Control Board v. Prof. MV Nayudu, AIR 1999 SC 812.

[33] Aruna Rodrigues v. Union of India (2012) 5 SCC 331.

[34] The Sarpanch GramPanchayat v. Min of Environment Forests, Appeal No. 3 of 2011 Principal Bench NGT

rightly reminds us in the Lafarge Umiam Mining decision,[35] "the court / tribunal is basically an authority which reacts to a given situation brought to its notice whereas a regulator is a pro-active body with the power conferred upon it to frame statutory Rules and Regulations. The Regulatory mechanism warrants open discussion (including) public participation."

7.1 EIA Draft Notification

On 23rd March 2020, the Ministry of Environment, Forests and Climate Change (MoEFCC) delivered another draft EIA Notification and welcomed public remarks on it inside 60 days. Anyways, since the period for public remarks concurred with the public lockdown in lieu of the COVID 19 pandemic a few ecological gatherings requested for the remark time frame to be expanded. The MoEFCC possessed broadened the energy for public remarks till 30th June 2020.The Delhi High Court in Vikrant Tongad v. Union of India[36] has starting at now further expanded the date for sending remarks till eleventh August 2020.[37]

The draft EIA Notification 2020 re-arranges all the ventures and exercises identified with the creation of mass medications and intermediates for a few diseases from 'A' classification to 'B2' classes. The draft expresses that the ventures or exercises can get freedom post-facto. It infers that those undertakings can likewise look for leeway that disregard the Environment (Protection) Act, 1986. The new draft absolves different tasks from the EIA including the "essential" projects marked by Government, public thruways and inland streams projects. The Draft EIA states that such activities will be put in open space.[38]

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[35] Large Umiam Mining Pvt. Ltd., T.N. Godavarman Thirumulpad v. Union of India (2011) 7 SCC 338, paras 22-23: There are three main sets of permissions that are required to be obtained: (i) The first set of permissions is at the State level. This set of permissions primarily has to do with pollution. In each State or a group of States, a Pollution Control Board issues consent/ permit. These consents or permits are granted from a pollution perspective. The scope of enquiry is limited to pollution impacts. Obtaining such consents and permits are essential but they are not a substitute for compliance with other environmental laws, (ii) The second set of permissions. . .is with regard to environmental clearance. The scope of environmental clearance is wider than a pollution control clearance. The authority granting environmental clearance will look at broader impacts beyond pollution and will examine the effect of the project on the community, forests, wild life, ground water, etc. which are beyond the scope of Pollution Control Board examination. The exercise of granting environmental clearance with regard to a limestone mining project of the present magnitude requires MoEF clearance, (iii) A clearance for diversion of forest under the 1980 Act which is granted by MoEF on the recommendation of the FAC should logically precede the grant of environmental clearance as the environmental clearance is broader in scope and deals with all aspects, one of which may be forest diversion/ See also, MoEF, Memorandum dated Apr. 26, 201 1, 'Procedure for consideration of proposals for grant of environmental clearance under the EIA notification, which includes forests.

[36] Cprindia.org. 2020. ‘The Draft EIA Notification, 2020: Reduced Regulations and Increased Exemptions Part I & II ‘Centre For Policy Research.

[37] Arvind Sharma & Shambhavi Goswami, 'Environmental Impact Assessment Rules, 2020: A Legal Medium to Ensure Transparency' (2021) 1 Indian JL & Legal Rsch 1

[38] The Draft additionally excludes up to 150,000 sq m development projects from the appraisal. These activities would now be able to acquire climate leeway after examination by state-level master evaluation advisory group.

The Draft EIA 2020 spots limitations on the EAC/SEAC to welcome extra examinations during the strategy for evaluation. The need to submit consistence reports is a yearly prerequisite inside the Draft EIA 2020. The Zero Draft of 2019 anyway requires a half-yearly accommodation of consistence reports as given in 2006 Notification.[39]

8. Conclusion

EIAs have often been criticized for having too narrow spatial and temporal scope. At present no procedure has been specified for determining a system boundary for the assessment. The main purpose of EIA is to facilitate the systematic consideration of environmental issues as part of development decision-making. It does so primarily by assembling and analysing information on the potential environmental effects of specific development proposals and how they can be best prevented or mitigated. The standard quality of EIA is achieved by Sustainability, utility, and integrity. EIA should give detailed statement on impact of proposals, any adverse effects, and alternatives if available and this should be made available to public. It should address environmental effects like cultural change, economic and fiscal effects, landscape visual effects. It gives a detailed account on the type, nature, magnitude, extent, timing, duration, uncertainty, reversibility, and significance of the Environmental impacts.

There is a pressing need to enhance public engagement, particularly involving communities most affected by industrial projects. This could be facilitated through the collaboration of Gram Panchayats, organizing meetings with developers. Additionally, there should be an increase in both the quantity and expertise of technical staff within the Ministry of Environment. Access to comprehensive reports should be made available in both English and local languages, ensuring ease of understanding for the general public. To propel the nation forward in this direction, it is imperative to heed the voices of marginalized communities and acknowledge the environmental damage. This can only be achieved by giving Environmental Impact Assessment the recognition it deserves.

Prior, the exclusion was conceded to development ventures of up to 20,000 sq. m or above. The 2020 draft notice has a statement devoted to definitions to a few terms identified with EIA.

[39] Sakshi Pandey & Shrinkhala Swaroop, 'Environment Impact Assessment in India & the Challenges Ahead' (2021) 4 Int'l JL Mgmt & Human 6215