

EIA – INDIFFERENCE TOWARDS ENVIRONMENT AND OSH

Investments including most Foreign Direct Investments for projects, require environmental clearances from the government. Debates on ‘environment’ versus ‘investment’ are ongoing. Many claim that foreign companies are transferring production to India in order to avoid the stricter environmental legislation at home. Others claim that TNCs are the main agents of change in host economies, often bringing better technologies and products particularly to developing countries like ours. Most who insist on ushering in development, proclaim that ‘long overdue reforms in environmental and labour laws’ are very good places to start by taking ‘advantage of this crisis’ posed by the Covid-19 pandemic. Such reforms will come at the cost of devastation, disease and displacement. Small price, ‘most’ feel, since development said to be for ‘all’.

TIPS OF THE ICEBERGS

Majority of the industrial accidents do not ‘happen’, they are ‘caused’. Environmental pollution ‘outside the factory’ and occupational accidents and diseases ‘inside the factory’, are in most cases, the two sides of the same coin. Like icebergs a very small portion of the actual accidents or diseases are ‘visible’ and an even smaller portions are reported. Let us recall a few prominent and reported ‘accidents’ caused by indifference towards environment and occupational safety and health (OHS) during the last few months:-

- *May 07, 2020: Leak of styrene gas at a chemical factory owned by LG Polymers plant in Visakhapatnam ... 11 deaths, hundreds hospitalised ... project did not have all the environmental clearances.*
- *May 27, 2020: 2,000 people have been evacuated as state-owned Oil India Ltd (OIL) after a massive eruption or blowout from one of its producing wells in Baghjan oilfield in Upper Assam’s Tinsukia district. The leak has contaminated water bodies that flow into the Maguri Motapung Beel, a large wetland, and the Dibru-Saikhowa National Park.*
- *June 03, 2020: Blast at the Yashasvi Rasayan Pvt Ltd in the Dahej Special Economic Zone in Gujarat’s Bharuch District ... 3 deaths and 32 injured.*
- *June 29, 2020: Leak of benzimidazole gas in the Visakhapatnam pharmaceuticals unit of Sainor Life Sciences Pvt Ltd, in the city’s Parwada area ... 2 deaths four hospitalised.*
- *July 1, 2020: Boiler blast at the thermal power station of central government-owned Neyveli Lignite Corp India Ltd in Tamil Nadu’s Cuddalore 180 kilometres from Chennai ... 6 deaths 17 injured.*

Though recent, most of us probably do not recall most of the above accidents? Few care much about these ‘insignificant’ accidents since they are considered to be ‘inconsequential’ in the altar of industrial development. These accidents too are caused since many of these factories did not have environmental clearances! However we have learnt to ignore death-disease-displacement in order to dream of big time development?

Some of us might not have heard about the **Bombay Docks Explosion (1944 – 800 deaths)** and maybe the **Chasnala Mining Disaster, near Dhanbad (1975 – 372 deaths)**. However most have heard about the terrible **Bhopal Gas Disaster, Madhya Pradesh (1984 – 5295 death)**. Only after the Bhopal gas disaster India had a proper law for environmental protection.

Most of the time governments have pushed large projects at the cost of the environment, workers health and the marginal people. Lip services about environment acts coexisted with effectively ignoring it on the ground level. No wonder industrial accidents are perennial. A variety of those which had made the headlines during the last ten years are as follows:-

Korba Chimney Collapse, Chhattisgarh (2009 – 45 deaths); Jaipur Oil Depot Fire (2009 – 12 deaths); Mayapuri Radiological Accident, Delhi (2010 – 1 death); Visakhapatnam HPCL Refinery Blast (2013 – 23 deaths); Nagaram GAIL pipeline explosion, East Godavari, Andhra Pradesh (2014 – 23 deaths); Bhilai Steel Plant Gas Leak, Chattisgarh (2014 – 6 deaths); Tughlakabad Gas Leak, Delhi (2017 – 450 affected); Kanpur Shivrajpur Ammonia Gas Leak (2017 – 5 deaths); Bhilai Steel Plant Pipeline Blast, Chhattisgarh (2018 – 9 death).

Competent authorities have gone into a spree of issuing virtual online clearances to projects in eco-sensitive regions taking advantage of the recent Lockdown: (1) The National Board for Wildlife okays usage of land belonging to the Dihing Patkai Wildlife Sanctuary covering tracts of rainforest in Dibrugarh, Tinsukia and Sivasagar districts for extraction of coal by Coal India Limited; (2) Uranium survey and exploration in the Amrabad Tiger Reserve in the Nallamala Hills, Telangana, by the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy has been allowed; (3) Talks are on to ask the Centre to exclude 15% of the eco-sensitive area in the Western Ghats to allow mining and industrial activity, in the Dodamarg-Sawantwadi forests, an important elephant and tiger corridor along the Maharashtra-Goa border; (4) Karnataka Forest Department has granted permission to Karnataka Power Corporation Limited to carry out survey and geotechnical investigation by drilling inside the Sharavathi Valley between Shivamogga and Uttara Kannada; (5) MoEFCC issued virtual clearances for two projects passing through the Bhagawan Mahavir Wildlife Sanctuary and Mollem National Park in Goa – a four lane highway and laying of a 400 KV transmission line in the Western Ghats, one of the 8 biodiversity hotspots of the world and part of the UNESCO World Heritage Site.

ENVIRONMENTAL (PROTECTION) ACT (EPA) 1986

India signed the Stockholm Declaration (1972) on Environment, and soon enacted laws to control water (1974) and air (1981) pollution. After the Bhopal Gas Leak Disaster in 1984, India legislated the Environment (Protection) Act which was passed in 1986. It was called an ‘umbrella act’ because it gave the Central Government power to take all measures it deems necessary for protection and improving the environment and preventing, controlling and abating environmental pollution, in coordination with all the different States. According to the EPA, the term environment includes water, air, land and the interrelationship which exist among and between water, air, land and human beings, other living creatures, micro-organism, plant and property.

Under this Act, the Central Government has restricted or prohibited the location in the industries. Restrictions have been imposed on various activities in fragile areas like Doon Valley in UP, Aravali Regions in Alwar, Rajasthan, Coastal zones and ecologically sensitive zones, etc.

ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

India notified its first Environmental Impact Assessment (EIA) norms in 1994, setting in place a legal framework for regulating activities that access, utilise, and affect (pollute) natural resources. Every development project has been required to go through the EIA process for obtaining prior environmental clearance ever since. This EIA notification was replaced with a modified draft in 2006. In March 2020, the government has redrafted it again to incorporate the amendments and relevant court orders issued since 2006, and to make the EIA process “more transparent and expedient.”

EIA is a process of evaluating the likely environmental impacts of a proposed project or development, taking into account inter-related socio-economic, cultural and human-health impacts, both beneficial and adverse. UNEP defines Environmental Impact Assessment (EIA) as a tool used to identify the environmental, social and economic impacts of a project prior to decision-making. Properly conducted EIA also lessens conflicts by promoting community participation, informing decision makers, and helping lay the base for environmentally sound projects.

The basis in global environmental law for the EIA is the ‘precautionary principle’. Environmental harm is often irreparable and it is cheaper to avoid damage to the environment than to remedy it. We are legally bound to this ‘precautionary principle’ under international treaties and obligations, as well as by Supreme Court judgments.

EIA WORLDWIDE

Till 1970, there was no EIA but today, it is practiced in more than 100 countries as a mandatory regulatory procedure. It originated in the US (1969) followed by Canada, Australia, and New Zealand (1973-74) and even some ‘developing’ countries adopted it soon like, Columbia (1974) and Philippines (1978). By 1989, the World Bank adopted EIA for major development projects, in which a borrower country had to undertake it under the Bank's supervision.

EIA IN INDIA

The Indian experience with EIA started in 1976-77 when the Planning Commission asked the Department of Science and Technology to examine the river-valley projects from an environmental angle. This was subsequently extended to cover those projects, which required the approval of the Public Investment Board. Till 1994, environmental clearance from the Central Government was an administrative decision and lacked legislative support.

On 27 January 1994, the Union Ministry of Environment and Forests (MEF), Government of India, under the EPA 1986, promulgated an EIA notification making Environmental Clearance (EC) mandatory for expansion or modernisation of any activity or for setting up new projects. Since then there have been 12 amendments made in the EIA notification of 1994. The 2006 notification makes it mandatory for various projects such as mining, thermal power plants, river valley, infrastructure (road, highway, ports, harbours and airports) and industries including very small electroplating or foundry units to get EC.

THE EIA PROCESS

In gist the various steps of the EIA Process that has to be followed by anyone seeking EC in accordance with the EPA 1986, can be summarised as given below: site selection; conduct EIA with the help of an environment consultant; apply for NOC; PCB arranges for public hearing; project proponent apply for environmental clearance; review by environmental appraisal committee of experts; change suggested for the project or it can be rejected or accepted.

CENTRAL GOVERNEMENT PUBLISHES DRAFT EIA NOTIFICATION 2020 FOR PUBLIC FEEDBACK

The Central Government published the Draft EIA Notification 2020 (henceforth to be referred as DRAFT) vide S.O. 1199(E) dated the 23rd March, 2020 in the official gazette dated 11th April, 2020, for the information of the public likely to be affected for making any objections or suggestions within 11th June. The Ministry received several representations for extending the notice period owing to Lockdown and decided to extend the notice period up to 10th August 2020. However the Minister set the new deadline to 30th June. Activists moved Delhi High Court which extended the date till 11th August 11. Objections or suggestions on the draft EIA proposals may be forwarded in writing to the Secretary, Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhawan, Jor Bagh Road, Aliganj, New Delhi-110003, or send the same on the e-mail address: eia2020-moefcc@gov.in.

DANGEROUS LOOPHOLES IN THE DRAFT 2020 EIA NOTIFICATION

The DRAFT released for public comments on 23rd March, interestingly right before the day of nationwide lockdown, is one of the several amendments that the state is making to laws whose central objective on paper is to protect and care for the environment in all its aspects. Far from an improvement, the DRAFT is a regressive departure from the 2006 version it seeks to replace. The new draft includes certain problematic and contentious changes in rules and has several dangerous loopholes. The following is a gist:

1. The DRAFT tries to dismantle the core idea that an assessment should be done before a project starts. One of the provisions of the new draft is that projects that have come up illegally, that is, projects without environmental clearances, can actually be legalized even after it has been commissioned. Projects according to the DRAFT, can receive '**post-facto clearance**'. The Supreme Court had held "ex post facto environmental clearances is contrary to law" and said that "this would be contrary to both the precautionary principle as well as the need for sustainable development." Where ex-post-facto clearances were being granted previously, the courts cracked down on them as illegal. **So now** the suggested changes in the draft EIA Notification is probably for sidestepping the courts
2. Any EIA has to apprise the public about what the project is going to do and then the Pollution Control Board is supposed to record what the public has to say. Public hearing is of much importance as it ensures widest possible public participation for discussion on very many issues of the proposed projects including specific queries, objections, and likely impact on livelihood, public health, nature and environment. Public hearings are no longer mandatory for several projects according to the DRAFT and hence **public trust doctrine is being abandoned**.
3. The **notice period for public hearing has been reduced** from 30 days to 20 days. For project-affected people, who are frequently forest dwellers or other marginalised sections of the society with limited access to information and technology the public consultation process is being deliberately shortened.
4. **Project expansion rules have been eased**. All linear projects like inland waterways projects and expansion or widening of national highways and pipelines and canals will be exempt from prior clearance and public consultation. These include roads that cut through forests and dredging of major rivers.
5. DRAFT virtually **legitimises the wrongdoings by industries**. For late applications, a developer will have to cough up Rs. 2,000-10,000 per day for the period of the delay. Consider the impact of this penalty on an illegal sand-miner who takes out several truckloads of sand every day.
6. **Monitoring requirements have been slackened**. The DRAFT halves the frequency of reporting requirements from every six months to once a year. It also extends the validity period for approvals in critical sectors such as mining.
7. Government authority or the **violators themselves are to disclose, suo moto** about the violation of environmental clearance norms. There is no scope for any public complaint against such violations.
8. Projects can now be proposed in dangerously **close proximities of boundary of protected and eco-sensitive zones**. The manner in which this pandemic broke and spread, makes us wonder about whether nature requires us to retrace our steps and understand how we reached a situation. However the ministry of environment, forests and climate change has been in a rush to clear projects and dilute environmental restrictions.
9. While defence and national security installations were always understandably exempt, a vague new category of projects in the DRAFT referred to as "**involving other strategic considerations**" will also now be free from public consultation requirements and no information on "such projects shall be placed in the public domain".
10. The DRAFT also **exempts most building construction projects** of built-up area up to 1,50,000 sq. m. from full assessment. The Environment Ministry's issued a similar notification in December 2016 that was set aside by the National Green Tribunal in December 2017. The government moved the Supreme Court but was denied relief. 1,50,000 sq. m. is the size of an airport! Earlier buildings of 20,000 sq. m or above required clearance. Construction has a direct bearing on air pollution in major cities. If passed the draft will benefit the real estate industry.
11. The 'border area' is defined in the DRAFT as "area falling within 100 kilometres aerial distance from the Line of Actual Control with bordering countries of India." That would cover much of the North-eastern States, the repository of the country's richest biodiversity. **Public consultation will be exempted for all projects falling near the border area**.
12. Ambiguous nature of the DRAFT raises a strong possibility that large **hydel-projects may be split on paper** in Himalayan region or in the Western Ghats into smaller ones of 25MW, thereby escaping environmental scrutiny. Himalayan region is already highly vulnerable to high-intensity quakes, landslides, flash floods and so on besides being eco-sensitive and under forest cover.
13. In general the DRAFT **bolsters the government's discretionary power** while limiting public engagement in safeguarding the environment.
14. The DRAFT proposals disables, shrinks and **removes whatever teeth the EIA Notification 2006 had**.
15. Most of the coal is in the central Indian forests. Government feels that it will now **face less resistance to mark coal mining projects as "strategic"**, waive the EIA, and get more rail lines in and the coal out when the DRAFT is passed.

16. The DRAFT **paves the way for massive deforestation** while the latest scientific research says that new diseases are probably getting created because of deforestation.
17. For a massive number of projects the entire **process of EIA is diluted** by this DRAFT.
18. The DRAFT **blatantly favours the private parties** essentially facilitating privatization of natural resources.
19. As promoters engage consultants, there are high chances of **suppression of the negative impacts** in the EIA report.
20. DRAFT gives more **priority to the unsustainable 'grow now, sustain later' paradigm** followed by governments.

SHORTCOMINGS OF EIA AS IT EXISTS EVEN BEFORE NEW DRAFT

1. Most of the EIAs done today in India are dishonest 'cut-copy-paste' jobs rendering the environmental clearance process non-transparent, undemocratic, unjust and unaccountable. A façade of expertise and technicalities are adhered in order to obscure the process and make it into an enigma for the concerned ordinary public.
2. Many public hearings are stage managed by promoters who even manipulate public participation.
3. The basis in global environmental law for the EIA is the 'precautionary principle'. Environmental harm is often irreparable and it is cheaper to avoid damage to the environment than to remedy it. We are legally bound to the 'precautionary principle' under international treaties and obligations, as well as by Supreme Court judgments. The Government tries constantly to bypass this principle in favour of promoters of industries.
4. EIA is continuously villainised to prove that it is a stumbling block to the government's doctrine of 'ease of doing businesses and facilitating profit at the cost of environment, labour and the marginal population. Understandably developers complain that the 'EIA regime' dampened the spirit of liberalisation, leading to red tape and rent-seeking.
5. Though established to safeguard the environment, the EIA process often effectively achieves a façade of legal paperwork for a range of de facto concessions enjoyed by industries.
6. Reports on potential impact of projects on the environment, are frequently shoddy and consultant agencies that prepare those reports for a fee are rarely held accountable.
7. Lack of administrative capacity to ensure compliance often renders long lists of clearance conditions meaningless.
8. There are periodic amendments exempting one category of industries or the other from scrutiny.
9. Delay in project clearance during the UPA-II rule became an election issue yet things have gone from bad to worse.
10. Adverse environmental impact of a project is not just for lawyers, government, environmentalists, promoters or consultants to decide. People have a role and there should be enough democratic space for them to give opinion.

END NOTE

This is what happens when the State assaults the principles, practices, cultures, subjects, and institutions of democracy. Democracy is not a permanent achievement just because thumping elections are won. By attempting to rewrite the rules of the game, the relation between state and profit makers are reset clearly in the latter's favour. Increasingly, all spheres of existence are framed and measured by economic terms, to enhance profitmaking. The rule of Law becomes necessary only to enhance the capital value, competitive positioning, and credit ratings. 'Long overdue reforms in environmental and labour laws' is said to be essential for so-called 'development', eventually amounting to profit for a few, causing environmental devastation, disease and disability and death for workers and displacement for lakhs of marginalised.

WE DEMAND

1. Post facto environmental clearances should not be allowed to effectively sidestep court orders.
2. Public hearing which ensures widest public participation should remain mandatory.
3. Projects should not be allowed in, or even close to, eco-sensitive zones; forests and rivers should be protected.
4. Monitoring provisions should not be slackened.
5. No medium to large construction projects should be exempted from full EIA.
6. Public should be allowed to lodge complains against violations of environmental clearance norms.
7. The PCB itself, or an EIA body constituted by it, should prepare the EIA proposals and progress reports.
8. Projects should not be arbitrarily labelled as 'involving other strategic considerations' to exempt them from EIA.

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