



The emergence of Environmental Impact Assessment in India

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Ancient India had few environmental regulations that can be read in Kautilya's 'Arthashastra' and on the fifth pillar edict of Emperor Ashoka. In the era before Indian independence in 1947, though there were no laws, there were cultural boundaries and respect for nature in the hearts of people of all ages and gender.

The common practices among most of the Indian parents were to tell their kids the stories of forest animals from books like 'Panchtantra Ki Kahaniya' (stories of Panchtantra) and those kids grew up watching their grandparents worshipping trees or/and animals and they followed the same traditions, which shows that the concern for environment/nature was very organic among the people and was inherited from their ancestors. Soon after independence in 1947, with the focus on economic growth and development, India started building industries, dams, highways etc., which awakened the concern of the general public on the impact of such projects on the environment.

Recognising these concerns, India participated in the Stockholm Conference or the First Earth Summit, in 1972. Consequently, in 1976, the 42nd amendment to the Indian Constitution was made by the introduction of Article 48 A, which binds "states to protect and improve the environment and to safeguard the forest and wildlife of the country".

Environmental Impact Assessment was introduced in India in the late 1970s to analyse the environmental impacts of river valley projects. In 1992, industries were categorised as red, orange and green to frame and implement regulations accordingly. The administrative model of EIA was followed in India until 1992, with no legal backing. The central administration decided on the necessity of impact assessment for projects. Environmental Impact Assessment (EIA) got global recognition after all nations were obligated to "use EIA as a tool for informed decision-making towards sustainable development" after the Rio declaration in 1992. Later, the statutory model of EIA was enacted in India which made it mandatory for assessment of environmental impacts under an enacted law or delegated legislation.

To implement significant environmental legislations in India like the Wildlife Act (1972), Water Act (1974), Forest Act (1980), Air Act (1981), and Environment (Protection) Act (1986), the Department of Environment was established in 1980 and the Ministry of Environment and Forest (MoEF) was created in 1985. Between 1980 to 1989, a series of nine small booklets were published by MoEF to guide planners and decision-makers about the environmental impacts of certain large projects. It was mandatory for 11 categories of projects (or mega projects) like river valley, major irrigation, hydropower, thermal power, mining, ports and harbour, tourism, industrial and human settlements to obtain Environmental Clearance under the Environment (Protection) Act, 1986. However, there was a lack of clarity on procedures or methodology, lack of trained EIA practitioners and EIA



guidelines. Thus, the Ministry of Environment and Forest (currently known as Ministry of Environment Forest and Climate Change) notified the first EIA Notification on 27th January, 1994 under Rule 5 of Environment Protection Act, 1986 to push for a more sustainable industrialisation process in the country. Under the EIA Notification 1994, there were a total of 29 categories of projects like mining, thermal and nuclear power plants, township and hospitals that were listed under Schedule I of the Notification for which EIA was mandatory before their establishment.

Table 1: Overview of EIA Notification, 1994.

S. No.	Benefits	Flaws
1.	Environmental Clearance (EC) was made mandatory for expansion or modernisation of any activity or proposed new projects listed in Schedule I of the Notification	Several projects (e.g., electroplating) with significant environmental impacts were not listed in Schedule I of the Notification
2.	Developed five stages for EC: Screening; Scoping; Selection of alternatives; Mitigation measures; and Submission of Environmental statement	Conflicts and consents of local people were notified at a later stage of project clearance
3.	An on-site survey of large projects such as mining, pit-head thermal power stations and hydro-power was assigned to the central government to decide on the proposed site	The Impact Assessment Agency (IAA) of Central Government lacked people with expertise to evaluate the environmental impacts of such large-scale projects
4.	If necessary, the Impact Assessment Agency (IAA) decided after a public hearing in the region around the project	The terms of reference (ToR) was completely decided by the proponent without any public consultation
5.	Automatic rejection of the project-found guilty for misrepresentation and concealing of factual data and submission of wrong information, reports, decisions and recommendations	Exemption of low investment projects from the Notification

A total of 13 amendments were made to EIA Notification 1994 between 1994 and 2006 to develop an effective decision-making tool based on updated legal and procedural regulations.



Table 2: Significant amendments of EIA Notification 1994

S. No.	Date	Details of amendments	Influence
1	April 10, 1997	Public hearing and a public hearing committee was incorporated in the EC procedure	The transparency in EC procedure will lead to better policy development
2	June 13, 2002	Industries that had investment less than Rs 100 crore for new projects and less than Rs. 50 crore for expansion/modernisation projects had been exempted from the EC procedure	Low-investment projects can have many social and environmental impacts. Thus, such projects should not be exempted from the EC procedure
3	May 7, 2003	An expansion in the list of developmental activities such as river valley projects (including hydel power projects), major irrigation projects and their combination including flood control projects (excluding maintenance projects)	Many dangerous projects could be identified and prohibited in the process of seeking EC by project proponents
4	August 4, 2003	The projects located within 15 kilometres radius of the boundary of reserved forests, ecologically sensitive areas, which include national parks, sanctuaries, biosphere reserves; and any State, must take environmental clearance from the Central Government	Many big projects located beyond 15 kilometres radius of protected areas have the potential to pollute
5	September 2003	Projects like greenfield airport, petrochemical complexes and refineries must have site clearance. However, a public hearing was exempted for off-shore exploration activities to be happening beyond 10 km from the nearest human settlements and ecologically sensitive areas	Off-shore exploration 10 km beyond any human settlement can be dangerous for marine life, thus, also disturbs the livelihood of local communities



6	July 7, 2004	Construction and industrial estate are included in the list of projects for which EIA is mandatory	Necessary to highlight the lack of environmental concern in urban planning
7	July 4, 2005	A relaxation from prior EC for projects such as expansion or modernisation of nuclear power, river valley project, ports and harbours, airports, thermal power plants and mining projects with a lease area of more than 5 hectares by Central Government and a temporary permit to operate for a period of two years during which the proponent has to obtain environmental clearance which is now called post-facto clearance	Post-facto clearance is used as a green card by industries and such provisions undermine the idea of conservation and improvement of the environment in our country (Article 48 A), as it allows the developmental activities to construct and operate even if they do not receive EC for their project proposal

On the basis of a review of bottlenecks in EC procedure by Indian branch of a global consultancy group Environmental Resources Management (ERM) to recommend "Good Practices" to MoEF and the report of Govindarajan committee, "set up by the Cabinet Secretariat in September 2001 to recast the government's investment approvals and regulations framework", a note titled 'Reforms in the Grant of Environmental Clearances' was prepared. This note was circulated during the meeting organised by MoEF on November 29, 2004 to address the modified recommendations on reducing the "delay" in granting EC to projects. In 2004 and 2005, open letters were sent to the Prime Minister by a group of citizens to critique the EC process, which was used to make the draft of a new EIA Notification, published on September 15, 2005. The draft was kept open for online public comments for 60 days and it was published only in the English language. Therefore, not a single comment from local communities and panchayat committees were received, who are mostly the frontline communities that face the brunt of the damages caused by these developmental activities. As an outcome of the meeting with apex industry associations on May 22, 2006, and comments received from central government ministries, the draft was finalised and the re-engineered EIA Notification was published on September 14, 2006.

Later, between 2014-2019, more than 40 Office Memorandums were published by the Union Environment Ministry to bring amendments in EIA Notification, 2006. It was observed that most of these amendments were made to assist speedy clearance mechanisms for projects.

The recently published draft EIA Notification, 2020 plans to further dilute provisions of EIA Notification 2006 by reducing transparency, further shrinking the space for



public engagement and so on. The inputs on this draft were originally sought from citizens between April 11, 2020, to June 11, 2020, when most of the people were struggling to make ends meet during the strict lockdown. After a petition in the Delhi High Court, the last date for comments was extended to August 11, 2020. In an Order dated 30th June 2020 the Delhi High Court ordered the central government to publish draft EIA Notification, 2020 in 22 local languages, within next 10 days. However, an RTI revealed that the draft was translated into only 3 languages-Marathi, Nepali and Odia, until 10 days before the last date for sending comments. People from different walks of life have utilised the online resources like national consultation, campaigns etc., to understand the dangers posed by the amendments proposed to EIA Notification 2006. Consequently, around 17 lakh comments were received by the Union Environment Ministry through emails and online petitions, demanding to scrap the draft EIA Notification 2020.

Despite the fact that many research works have uncovered the rising burden on India's public health and the ecosystem due to pollution, groundwater depletion, destruction of eco-sensitive zones etc., as well as, deprival of communities from social and environmental justice, it is unfortunate that in most cases the well-being of the environment and people are never at the centre of decision making in our country.