EIA SCAMS : DECAYING THE EIA LEGAL REGIME IN INDIA

Parna Mukherjee
Institute of Law, Nirma University, Ahmedabad, Gujarat (INDIA)
E-mail : parnamuk@gmail.com

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ABSTRACT
In the era of climate change, environmental good governance is *sine qua non* for achieving sustainable development. For sustainable development, it is absolutely necessary to have effective environmental policy design with in-built control mechanisms such as Environmental Impact Assessment (EIA), to minimize the hazardous impacts of the developmental activities on the environment. According to the principle 17 of Rio Declaration (1992), the concept of EIA has been adopted as an environmental management tool to minimize the potential adverse impacts on the ecology often caused by any socio-economic developmental project. However, the few instances of EIA scams that have occurred in recent years in India have raised serious concern over the implementational efficacy of the existing EIA laws. Thus, the said EIA scams have now posed greater challenges for all the stakeholders of EIA. Bearing this complex situation in mind, this paper aims to critically analyse the existing EIA mechanism in India and its procedural lapses.

Key Words: Sustainable development, Environmental Impact Assessment, Environmental impact assessment scams, Stake holders of environmental impact assessment

INTRODUCTION
Man is the creator and moulders of his environment. In this context the term environment means, the bio-physical environment within which all the life forms on earth are sustained. Since the dawn of human civilization, man has made tremendous progress in all spheres of life. The human society has evolved tremendously from the prehistoric nomadic society to agrarian society and from agrarian to industrial society and further to a contemporary, technologically advanced society. In each of the said stages of transformation of human society, the socio-economic developmental activities had gradually started affecting the environment adversely. The unplanned growth and lack of ecological concern in the designing and implementation of the developmental policies are often said to be responsible for the degradation of the natural environment of earth. As a result of which we are already experiencing several such spill-over costs of our so-called growth and development across the globe. Here, the environmental degradation is viewed above all as a moral problem, its origins lying in the wider acceptance of ideology of materialism and consumerism, which draws human away from nature even as it encourages wasteful lifestyles. It was for the first time in the Stockholm Conference of 1972, that the need for the preservation of the environment and its prevention from further degradation was considered at global level.

However, the Stockholm Conference remained only successful in creating the awareness towards the environmental challenges as well as defining and conceptualizing the philosophy of sustainable development proposed in the Burtland Report. Thereafter, the actual credit for preparing the blueprint for the implementation of the mantra of sustainable development in practice goes to the Earth Summit held at *Rio de Janeiro* in 1992.

The principle 15 and 17 of the said Rio Declaration respectively spelled out the need for integration of the environment and development by adopting tools like precautionary principle, polluter pays principle and Environmental Impact Assessment (EIA). It is increasingly recognized that the environmental assessment- a collective term for forms of appraisal that address the environmental consequences of policies, plans, programs, and projects- is at defining point in its development. Thus, EIA was perceived as a tool which concentrates on the problems,
conflicts and constraints on natural resources, which in turn might affect the viability of any developmental project. Thereafter, in Agenda 21, which is considered as the most significant outcome of the Rio Conference, the concept of green productivity was also proposed to achieve sustainable development effectively. Lastly, the Aarhas Convention, 1989 has been signed for strengthening the participation procedures for EIAs, but to achieve this level of improvement, it will depend upon the states that how they interpret the ideals of the said convention and its further incorporation into their respective domestic legislations.

In this context, we must add the role which India's plays realm of environmental protection and prevention. The article 253 of the Constitution of India, mandates that India shall play an active role as a global partner in the all major environmental initiatives in the world. In this regard, India has also adopted the philosophy of sustainable development and its essentials tools like precautionary principle, EIA, etc by incorporating them into its municipal laws.

AIMS AND OBJECTIVES

The objective is to review the cause effect analysis of the implementational inefficacy of the EIA norms in India. This paper intends to highlight the loopholes through few EIA scams. The aim is also to closely scrutinize the crucial role played by the stake holders of the EIA procedures. For seeking the environmental clearance, the blueprint for the compliance with the existing EIA norms, is prepared by the consulting firms on behalf of the project proponents for any developmental project. Accordingly, the hypotheses drawn for this study are as follows:

1. EIA legal regime in India has been ineffective by and large.
2. The role played by the various stakeholders has been inadequate and faulty.
3. The strengthening of the existing EIA system is sine qua non for effective implementation in practice.

METHODOLOGY

The research methodology adopted for this study is the combination of both the analytical as well as doctrinal research methodology to facilitate for the discussion and analysis on the said topic. The researcher has referred both the primary and secondary sources data. In primary sources the relevant legislative instruments like, the Stockholm and Rio declarations, Constitution of India, 1950, 4th Five year plan, EIA Notifications of 1994, 2006 and 2009, etc has been referred. However, this research paper being based on various case studies related to the EIA Scams in India, the relevant references has been made to the various sources of secondary data, including from various literatures, texts, articles, news archives, etc. The various case studies have been used as illustration for highlighting the pitfalls and challenges of the EIA norms with regard to its effectiveness. However, the scope of this paper is restricted to analysis the legal regime of EIA in India with more emphasis on the implementational aspects of the EIA norms in India.

RESULTS AND DISCUSSION

Defining existing EIA policy in India

Although the inception of EIA as a decision making tool was done in the United States of America during 1960s. In India the NCEPC was set up, to focus on a paradigm shift in the area of environmental clearances for the various developmental projects. Initially even the EIA mechanism had limited scope and was exclusively applicable to the river valley projects for which clearances were to be given by the MoEF. It was in then in the year 1994, when the EIA Notification was framed within the scope of delegated power under the necessary and proper clause, for seeking the environmental clearance of the developmental projects within India. Since then, the EIA Notification in India has come a long way and have been tailored and reengineered through several amendments.

Among the other environmental policy initiatives, the EIA notification is considered to be an important milestone towards achieving environmental good governance in India. However, the legal regime of EIA in India is said to have developed through three important phases namely, phase I consisting of the pre-1994 era, phase II consisting of 1994-2006 era and phase III consisting of post 2006 era respectively. Since its inception the scope of EIA norms in India, has gone through massive transformation, for example in pre 1994 it was only applicable to government projects and thus it can be said that,
till 1980s most of the developmental projects in India were implemented with very little environmental concern. In nutshell the existing scope of the EIA policy in India in brief includes EIA as a study of the probable changes in the various biophysical and socio-economic attributes of the environment, which result from any proposed project. Whereas an EIS\textsuperscript{13} is a report based on the above study, disclosing the likely or certain environmental consequences of the proposed project, thus enabling the stake holders of EIA such as the decision-makers, the regulators and the affected people to minimize the environmental risks involved. This also enables them to take more informed decisions like grant or reject or grant conditional clearance to the proposed project. Thus the sole objective of the assessment before any decision is taken, must be based on the future impact of the consequences of the decision for the quality of the total human environment\textsuperscript{14}.

**EIA Scams : Case Studies**

The focus of this paper is to draw attention to the gaps between the existing laws EIA and its implementational ground realities in India. Hence we need to shift the focus our discussion from what the law ought to be, to what the law is in reality. The method adopted for the discussion is based on case studies, illustrating gross violations of the existing EIA norms and hence these cases have been rightly termed as EIA Scams. Way back in 1750, Jean Rousseau in his discourse maintained that Arts and Science have brought corruption to mankind. Be that as it may, truer it is that Arts and Science brought environmental corruption\textsuperscript{15}. The first case for our discussion is related to the Dandeli hydropower project of on river Kali in Karnataka state. Where the Murdeshwar Power Corporation (MPC) was the project proponent and the international consulting firm Ernst & Young (E&Y) was responsible for preparing the EIA report. It was alleged that E&Y had prepared the said EIA report by cutting and pasting data from another project located over hundreds of kilometers away in the same state\textsuperscript{16}. In August-September, 2000 a local NGO known as Environment Support Group, Bangalore exposed the matter. It further discovered that even The Energy and Resources Institute (TERI), which was asked to redo the said EIA study, ended up filing a hurried and inadequate\textsuperscript{17} EIA report for seeking the said environmental clearance. At the end it is satisfactory to know that on account of the said exposure the environmental clearance was withheld. Now the question remains, whether there is any scope of holding MPC, E and Y and TERI legally accountable or not? Also if there any scope of penalizing them on account of such lapses, still remained unanswered.

The next illustration in this context is of multinational bauxite mining company Ashapura Minechem Ltd., in the Ratnagiri district of Maharashtra state, which had applied for a lease of 74 years and submitted its EIA report for seeking environmental clearance prepared by yogiraj industrial consultant, a Pune based firm. But thereafter, a right to information application was filed by a local NGO, which helped to discover that certain portion of the said EIA report was copied in parts from another bauxite mining project located thousands of miles apart in Russia. A further close scrutiny revealed that the technical lapses such as the species of the flora-fauna that was mentioned the said EIA report, could possibly be found only in a completely different geographical conditions such as the Northern temperate climatic regions of Russia or Norway or Alaska, etc\textsuperscript{18}. Further it was very aptly remarked that Unless, by some amazing coincidence, mineralization in the Barja river in India and the Vorykva river in Russia both peak at 452.95 mg/liter during the summer months, then the water quality information in the Indian EIA report for the Ashapura project in Ratnagiri is fraudulent\textsuperscript{14}.

Another controversial EIA report was highlighted in the case of Pulichintala project, which was to come up between the Nagarjunsagar Sagar and the Srisailam project. The locals were agitating that after construction of the proposed Nagarjunsagar Sagar and Srisailam project the Pulichintala project was not required. The said project was also condemned as it would cause submergence of around 50 villages in its surrounding areas having a population of 0.1 million approximately. It was also discovered that the environmental clearance was granted without a proper EIA report and public hearing. Finally, it was due to the judicial intervention of the local Andhra Pradesh High Court, an injunction was issued to prevent the commencement of work without seeking proper environmental clearance.\textsuperscript{19} Similarly, in another case in the state of
Uttaranchal the EIA report of the Pala Maneri hydel electric project in uttarkashi district was also found to erratic. When the said EIA report was placed for public hearing on September 3rd 2004, prime facie it was found to be another cut paste and messy job. For example on pages 17-18 of the report, entire portions had been copied from another report where the name of original project was concealed by using whitener and the projects name Pala Maneri was written over it by hand. It was shocking that the authorities ignored all such glaring errors and still granted the conditional clearance to the said project. The project also geologically hazardous was seismologically in zone II, which had already faced an earthquake measuring 6.7 on the Richter scale, in 1991. One may completely fail to understand that how the authorities could grant conditional clearance to the said project which was only capable of withstanding shock of intensity 4 on the Richter scale. Last, but not the least the said EIA report was also found to be conflicting with respect to the issue of adverse impact on the local natural vegetation. Thankfully, the project was called off and later a noted environmentalist M.C. Mehta stated that the Central Government’s decision of stopping the Pala Maneri and Bhaironghati hydel projects on the Bhagirathi river as steps in the right direction and has strongly advocated for the cancellation of all projects on the Ganga. In such scams, the onus truly lies on the regulators as expressed by the former president of the Central Pollution Control Board (CPCB), Paritosh Tyagi a major chunk of pollution control efforts can be achieved if the CPCB employees do their respective work with sincerity and honesty.

In continuation to our discussion of the lapses in EIA norms, the next case is of Parbati-3 hydropower project located in the state of Himachal Pradesh. In this case, the most premier environmental research organization of India, NEERI was held responsible for making glaring mistakes while preparing the EIA report for seeking environmental clearance. For example, the facts and figures mentioned in the report with regard to the availability of water, were for the Jhelum river in the state of Jammu and Kashmir, which was geographically inaccurate. This is not the only project, where NEERI was held responsible of committing such errors. Even in case of the Karcham Wangtoo hydropower project of Kinnaur district of Himachal Pradesh, NEERI was held responsible for making several errors while redoing the EIA report. This case is also a classic example of public non-participation as only members of the local Himachal Pradesh State Pollution Control Board and the project proponent had arbitrarily played dominant role. The locals had expressed their concerns, which was also undermined. Further their right to information was also violated by denying them copies of the said EIA report in Hindi. Despite of all these lapses, the public hearing was scheduled by the authorities of the said pollution control board. The locals also agitated as the project proponent did not obtain any No Objection Certificate from the local Gram Shabha, before the public hearing took place. This clearly shows that how often the EIA norms are violated in practice. This clearly shows that the EIA norms and its procedural rules are often violated in most of the developmental projects to seek environmental clearance. Thus, rendering the whole exercise as a mere formality, to be only fulfilled on paper, while it is grossly violating on the ground.

At this juncture it is worthy to note the judicial view on the ineffective implementation of EIA norms. For example, the honorable High Court of Gujarat in a landmark case, rightly observed that the executive summary which must be furnished by any project proponent, was often not available at the local level. Thus the scope of the local participation in the public hearings, for decision making becomes practically nil. It is only if the summary of such EIA reports in the local language are made available that there can be effective participation of the affected local people at such public hearings. Hence, it has been rightly suggested that the process of engaging the public is deficient and ineffective in its current form.

After the aforesaid discussion, we can observe that numbers of such EIA scams are constantly on rise, where there are efforts to seek environmental clearance either by way of forging data or putting irrelevant data without doing any ground study. Here, we need to acknowledge the role of the NGOs, who are mostly blowing the whistle in such cases. Hence they deserve, due recognition and support from, both the civil society and the government. Furthermore, the recent emergence...
of RTI as an effective tool to seek information, has played crucial role in unearthing such cases of procedural violations and lapses in following the EIA norms. Thus RTI has strengthened the green movement of the NGOs.

**The role played by the EIA stakeholders**

Among the various stakeholders of EIA regime, who should be blamed for the lapses? Whether it is the legislature for making ineffective laws or the executives (of the concerned departments like MoEF, CPCB, SPCB, etc) for their failure to ensure the effective implementation of the EIA norms, or the lobby of project proponents and environmental consultants who are only interested in seeking quick clearances at the cost of environment? Or is it the passive civil society who neither bothers to voice their concerns nor participates in any decision making exercises.

**CONCLUSION**

It has been critically remarked that India’s existing model for socio-economic development, which focuses heavily on certain material goods and services is profoundly unsustainable. As suggested major weakness of EIA is the general lack of follow-up after consent decision. The EIA scams are the result of the non-compliance and non-compliance has been termed as a symptom of failure of EIA. In the span of fourteen years of its existence the EIA norms have been amended for almost fourteen times and mostly to favour the project proponents and rarely for the sake of the environment. Thus we need to put a check on the constant dilution of any legislative norms by way of successive amendments, which ultimately renders them ineffective and futile. The occurrence of the EIA scams has by and large defeated the very intention of the legislature and the purpose of such enactment. There must be strict liability imposed on all the defaulters whether they are the project proponents or the regulators (either from the SEAC/SEI AA) or the consulting firms. There should be nothing less than imposition of strict penal actions like exemplary fine and banning the violators for future course. The judiciary has also issued several ultimatums against such violations of the EIA norms. In the Janvikas case it even gave a caution saying that public participation in environmental decision making is now desideratum.

However, a small ray of hope has emerged, when the MoEF, has took few small, though positive steps by proposing that from 2011 the environmental clearances will be granted only when the EIA report is prepared by accredited consulting firms. Further it has been reiterated by the MoEF that as per the mandate of the EIA notification of 2006, without the prior environmental clearance no project proponent is allowed to start construction or any kind of development on the site, except for a boundary for preventing encroachment. In case of any violation strict penal action has been suggested. Thus, we need to learn from these EIA scams as guiding factors, to evolve more effective policy on EIA. We also need to pledge, that there will be neither any deviation nor any dilution in the laws in the name of promoting economic growth and development. Achieving the goal of sustainable development by striking the balance between the environment and development, should be our prime objective. We must remember that saying ‘no’ to environment means that we are choosing the degradation of the environment and consequentially the very existence of mankind on earth may be wiped out. Hence there will be neither any need, nor any scope for future development, if we continue with our current trend of unsustainable development.

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