

**THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES,  
KOCHI**

**DISSERTATION**

*Submitted in partial fulfilment of the requirement for the award of the degree of*  
**MASTER OF LAW (LL.M)**



(2020-2021)

ON THE TOPIC

**CRITICAL APPRAISAL OF ENVIRONMENTAL IMPACT  
ASSESSMENT; INTERNATIONAL AND NATIONAL PERSPECTIVE**

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## **CERTIFICATE**

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## **DECLARATION**

I declare that this Dissertation titled “Marital Rape and the institution of marriage” is researched and submitted by me to the National University of Advanced Legal Studies, Kochi in partial fulfilment of the requirement for the award of Degree of Master of Laws in Constitutional Law and Administrative Law, under the guidance and supervision of Dr. Aparna Sreekumar, and is an original, bona fide and legitimate work and it has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other University.

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## **ACKNOWLEDGEMENT**

I take this opportunity to express my profound respect and deep sense of gratitude to **Dr. Aparna Sreekumar**, my guide and supervisor, for her support, guidance and encouragement throughout the course of my research work. She was always approachable, respected my ideas and gave me clear, cogent and meaningful suggestions, which has aided me profusely in completing this dissertation.

I would like to extend my gratitude to the Vice-Chancellor **Prof. (Dr.) K.C Sunny** for his constant encouragement and support. I express my sincere thanks to **Prof. (Dr.) Mini. S**, Director of Centre for Post Graduate Legal Studies for her support and encouragement extended during the course.

I would like to further extend my deep-felt gratitude to the faculty of **NUALS** for their constant encouragement.

Words fall short of expressing love, appreciation and gratitude to my dear family and friends for their constant encouragement.

With genuine humility, I am thankful to The Almighty for all his uncountable bounties and blessings.

**LEKSHMI RENGAN**

## ABBREVIATIONS

### Abbreviation- Full Form

- i. E.I.A: Environmental Impact Assessment
- ii. C:Century
- iii. Pvt.: Private
- iv. U.S: United States
- v. U.K: United Kingdom
- vi. NEPA: National Environmental Policy Act
- vii. EIS: Environmental Impact Statement
- viii. OECD: Organisation for Economic Co-Operation and Development
- ix. UN: United Nations
- x. UNFCCC: UN Framework Convention on Climate Change
- xi. CBD: Convention on Biological Diversity
- xii. SEA: Strategic Environmental Assessment
- xiii. UNEP: United Nations Environment Programme
- xiv. WHC: World Heritage Convention
- xv. UNCLOS: United Nations Convention on Law of Seas
- xvi. WSSD: World Summit on Sustainable Development
- xvii. S.: Section
- xviii. Art: Article
- xix. SC: Supreme Court
- xx. HC: High Court
- xxi. EC: Environmental Clearance
- xxii. EMP: Environmental Management Plant
- xxiii. NGO: Non- Governmental Organisation
- xxiv. SEIAA: State Environment Impact Assessment Authority
- xxv. SEAC: State Expert Appraisal Committee
- xxvi. MoEF: Ministry of Environment and Forests
- xxvii. ToR: Terms of References

- xxviii. NGT: National Green Tribunal
- xxix. UoI: Union of India
- xxx. EARP: Environmental Assessment Review Process
- xxxi. PIL: Public Interest Litigation

## LIST OF CASES

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- *Sterlite Industries (India) Ltd. v. Union of India* 2013 AIR SCW 3231.
- *Vellore Citizens Welfare Forum v Union of India* 1996 5 SCR 241
- *Utkarsh Mandal vs Union Of India* Writ Petition (Civil) No. 9340 of 2009.
- *Navlakh Umbre Parisar v. Union Of India*, Public Interest Litigation No. 115 of 2010
- *Gau Raxa Hitraxak Manch and Gaucher Paryavaran Bachav Trust, Rajula v. Union of India and Others* Appeal No. 47/2012
- *Centre for Social Justice v. Union of India* AIR 2001 GUJ 71
- *Adivasi Majdoor Kisan Ekta v. MoEF And Others* Appeal No. 3/2011 (T) (NEAA No. 26 of 2009)
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- *TN Godavarman v. Union of India* Writ Petition (Civil) No. 202 of 1995.

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## **CHAPTER 1**

### **INTRODUCTION**

Environment is the most inevitable part of any living being. As time changes, the situations of environment has also gradually changed; from a healthy condition it has worsened to face some of the highest rates of degradation till date. When the reason for the instant situation is tried to be identified, the most obvious answers point to the impacts of the fast paced developmental activities as a result of rapid globalization. To predict these impacts before the developmental activity takes place became a need rather than a want in the late 60s. This gave rise to the concept of Environmental Impact Assessment (EIA). In simple EIA is an assessment of the quality of human environment so as to predict & thereby reduce the harmful impacts on the environment and paves way for other alternatives to the decision-makers.

The instant research paper looks forward to look into the deeper aspects of EIA as it is a vital topic that into the long term effects of development on the environment. Inorder to have a structured research on any topic, the foundation of the same should be properly based and this is possible when the researcher addresses the important questions to be asked under the topic of study, that is, what, how and why of the study procedure.

This introductory chapter looks forward to give a basic framework of the study that is intended to be covered under the instant topic of research, that is, Critical Appraisal of Environmental Impact Assessment; International and National Perspective.

#### **Research Scope & Significance**

One has come across the saying '*Prevention is better than Cure*' at least once in their lifetime. This saying is the most appropriate saying under the instant research topic. Moving on to the "what" part of the study; we know that the relationship between humans and their environment has been a topic of much importance from time immemorial. As years passed, man's dependence on his environment led to the gradual depletion of the resources. The situation later turned into a growing concern amongst the international and national paradigms. In simple understanding, this

process was introduced to predict the possible outcomes of developmental project plans that might adversely affect the environmental conditions. When looked at in a more profound sense, the topic reveals its broader scope, which helps in the regeneration of the ecosystem by enabling the decision-makers to study the proposed development plan's effects.

The paper proposes to look into the effectiveness of this scenario, albeit the admirable goal set by the same. The intention is to improve the prevailing environmental situation, but it faces different problems such as practical difficulties involving the right amount of public participation. Instead of limiting the research to the basic understanding of the concept, the paper intends to further the scope of research by giving attention to the practical implications of the topic in the current day, the challenges faced and procedures adopted in different jurisdictions.

The research intends to understand these assessments' effectiveness, both nationally and internationally, to understand its current legal position. Present-day presents many environmental issues of which at least some of them can be prevented before the actual harm is caused, and it is in this context, the vitality of the instant topic of research lies.

### Research Objective

In the instant topic of study, following are the objectives looked forward to be achieved:

- 1. To understand the relevance of Environmental Impact Assessment in present day.**

EIA is an emerging concept across the globe in the 21<sup>st</sup> C. The immense rates of depletion of environmental resources voice the relevance of the instant concept but at the same time, even though EIA has huge potentiality, it is not achieved due to the presence of gaps in the practices & perceptions. To understand the relevance of the instant topic in order to utilize in its full potential, these anomalies are also to be acknowledged.

The major goal supposed to be achieved through the research process is to develop an understanding of the relevance of the vital topic of discussion in the current times keeping these factors in mind.

## **2. To understand how the implementation of EIA takes place in international and national scenarios.**

Ever since EIA took birth in its initial forms, it has been internalized in different manners in the various decision making procedures regarding environmental matters thereby attaining a customary status in the international legal arena.

.Globally, efforts are put into the upbringing of statutory backup to the EIA procedures. The same is adopted nationally too. The aim of the instant study is to develop a below- the- surface study on the extent to which this is practically implemented in the international and national backgrounds. The study takes up this as an objective to develop a deeper understanding into the actual status of the situation in hand.

## **3. To learn the effects of EIA on developmental activities; to understand if it has more merits or demerits in developmental context.**

As humans are moving into the era of technology and thereby opening our doors to development, it is essential to provide necessary attention to the consequential effect on the environment. Since both the aspects of environmental conservation and developmental activities are necessary for a human in the current times to move forward with his or her normal life according his or her time & needs, it is crucial when this particular dilemma comes under the framework of EIA.

It is seen that EIA laws are often attacked by critical perspectives as it stands in the way of economic development at times. In this background, it becomes necessary to look into the regulatory limitations set by EIA and simultaneously focuses of its contribution to democratization of power over development. EIA tries to preserve the cultures or the non commodity values like diversity against the powers of the State and other Pvt. Corporations that promotes economic development. The study tries to draw an observation on whether EIA has been advantageous or difficult when it is looked at from the developmental perspective.

### Research Problem

The instant study intends to find answers surrounding the following research problems:

1. *What is the current position of Environmental Impact Assessment in the legal scenario?-*

Legal arena is the one which undergoes changes according to the time and needs of the citizens of all countries. Environmental impact assessment was brought into this legal picture way back in the '60s. Humans have moved forward a lot since this time period and so did law. Hence it is essential that to understand the current status of EIA in the legal background.

2. *How successful is this mechanism in terms of curbing environmental depletion?-*

Environment is the topic of discussion of the current era. Way too many question are been considered under the heading of environmental depletion. The problem formulated in the instant study is concerned with the EIA aspect regarding environmental depletion. The study intends to ponder upon the “how” part of the topic of EIA taken in the environmental depletion background, that is, how the process of EIA is able to fight against the eco-depletion.

3. *How effectively is EIA balancing the developmental and anti-development aspects?-*

As mentioned earlier, EIA is a complicated procedure when looked at from the developmental perspective because of its preventive character. The instant study thus intends to find the merging point of development and anti-developmental aspects related to EIA and try to understand to what extent both these aspects are balanced by the topic.

Research Hypothesis

1. Environmental impact assessments have, to an extent been able to curb the negative impacts of developments in the environment.
2. Though it plays a very helpful role to the society and despite being discussed in the international paradigm, the implementation is weak.

### Methodology of Study

Researcher employs Doctrinal method of research in order to establish the hypothesis in the best suitable way.

### Chapterisation

The study chapterises its contents in the following manner:

Chapter 1: Introduction

Chapter 2: Concept of EIA

Chapter 3: International perspective of EIA

Chapter 4: Position of EIA in Indian scenario

Chapter 5: Public interest-based approach of EIA

Chapter 6: Conclusion and Suggestions

The first chapter of the dissertation is an introductory chapter. It contains the contemporary significance of the topic, objectives of the study, the research problems, hypothesis of the study and methodology adopted for the study.

The second chapter titled ‘Concept of EIA’ opens the discussion on what exactly is Impact Assessment of environment. The chapter also traces the origin and development part of the instant topic. The chapter also goes forward to discuss the essential basis of relevance of the topic in the current times.

The third chapter titled ‘International perspective of EIA’ tries to bring out the different shades of the topic of EIA under the jurisdictions of important countries including the US and UK by looking into the various statutes and other provisions prevalent there.

In the fourth chapter on ‘Position of EIA in Indian scenario’, various laws regarding the implementation of proper assessments for saving the environment from destruction in the Indian legal background is been looked into. EIA has been a heated topic of discussion in India with debates surrounding the potentials of the very recent topic of EIA 2020.

The next chapter on Public interest-based approach of EIA is based on the search to answers in order to understand the vital bond between environmental laws and public. The chapter attempts to examine as to why the public participation is important when it comes to environmental impact assessment.

Last chapter of this dissertation deals with conclusion arrived at after the study through the various aspects of EIA through a long journey of the aforementioned chapters and it ends with suggestions for a better practically-equipped implementation of this complex process of environmental impact assessment which is more beneficial to a larger mass of population.

## CHAPTER- 2

### CONCEPT OF EIA

#### Basic Concept

Man is always a creature of the environment. For man to grow and sustain his existence, he should maintain his environment along with the development he seeks. As years and centuries passed, the concept and pace of man's development also changed. The world saw a drastic transition from agriculture for feeding oneself to industrialization to earn more. Environmental system, as we are aware of, is never static. The dynamic nature of the ecosystem is a fact of truth and this in the current era; it is being accelerated beyond the normal levels due to man's various activities. All these activities gradually led to the evolution of EIA as a topic.

#### What is EIA?

Environmental Impact Assessments are those assessment procedures conducted to probe into the likely impacts of a proposed project or plan before it is being implemented and put into action. Put into other similar words, the concept tries to stop and leads to the introspection on these industrial projects on whether they are suitable for a society and its environment. EIA, as the name suggests, assesses and tries to foresee the possible outcomes of these projects or plans. The International Association for Impact Assessment has defined it as *"the process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals before major decisions are being taken and commitments made."*<sup>1</sup> The environment is a very sensitive and relevant area that requires much attention and care because an ecosystem has certain limit of tolerance. Beyond this particular limit, the chances are high for

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<sup>1</sup> Pierre Senécal, Bernice Goldsmith, Shirley Conover, *Principles Of Environmental Impact Assessment Best Practice*, IAIA Organisation( Feb 19, 8:04 PM), <https://www.iaia.org/uploads/pdf/Principles%20of%20IA%2019.pdf>



the system to collapse; that is, it cannot undertake too many burdens together at a time. This means that the ecosystem cannot take developmental activities simultaneously beyond a certain limit at a given point of time. For predicting or learning about the likely impacts to an environment by a developmental activity, it is essential to understand the nature of the environment and the rate of natural change that it goes through on a normal level which helps to understand and thereby calculate how the a proposed developmental activity could be coped up by a given environment at a given environmental conditions at a given point of time. Assessments of the environmental impacts are site and time-specific.

A preventive tactic is brought about by these impact assessments whereby the planning aspects of these developmental projects are tackled at the very initial stages itself, which is, actually the most crucial time as far as environmental management is concerned. This is because if environmental planning is conducted or initiated at this primary stage itself, that is, before the designs and financial aspects have been planned or set by these industries looking forward to carry out the developmental projects, they will have enough time and opportunities to make the necessary changes that allow these projects to go forward in an environmentally friendly manner. We stand at a point of time where the acknowledgment of the existence of this concept of environmental impact assessment related to the evaluation of the possible effects of the projects of these various developmental activities is gradually but steadily gaining momentum in the international scenario.

EIA, as a concept, has grown since 1969 after its introduction in the form of the National Environmental Policy Act in U.S. EIA laws are being adopted as part of environmental laws in other countries of the world as well. Albeit the approaches by these countries being different, most of them are striving to incorporate the core concept as such. Mostly, this consists of a central statement of environmental policy, which is then backed up by some action-forcing procedure that is meant to further the particular policy that is set. These procedures are brought about to actually advance and link the set environmental policies meant for protection of the environment from the consequential impacts, with the developmental projects and its plans undertaken by the private actors or the government. Often in these situations, the formal documents concerning the same needs to be prepared as part of the requirement, and in most cases, these are known as the EIS or the environmental impact statement.

EIA brings with it several duties and responsibilities that include many steps. It brings in steps like inclusion of the collection of information, relevant in nature, regarding the proposed project, taking into account the position of governmental norms to check whether these are being considered by the earlier mentioned proposed projects, most importantly, considering the impact on society, and also, acknowledging and considering the opinions of the public. It is seen that EIA is utilized as a technique to involve actions from the government in order to avoid any unfavorable negative effects.

According to the Environmentalist, David P. Lawrence, EIA is defined as a systematic process of:

*“ Process that comprises within itself determining and managing(which necessarily includes identification & measurement, process of describing & prediction, combination of processes of interpretation, integration & communication) the impacts; which can be either the potential or real impact,(also necessarily includes, direct & indirect, individual & collective probability of occurrence) of the proposed human actions like the programmes & projects and any viable alternatives on the environment”.*<sup>2</sup> He tries to bring in connection between the concept of EIA to the various aspects of physical, biological and chemical environment with attention also being given to the cultural, economic, social, health factors and the interrelationship amongst them.

Since this concept is a very vital one, it is seen and understood in different kinds of perspectives and thus defined differently by the various organizations.

As per the texts of Convention on Environmental Impact Assessment in a Trans boundary Context, also called the Espoo Convention) ‘Environmental impact assessment’ is interpreted as a procedure of national standards present for finding out the approximate estimate of the most likely or possible outcome on the environment in question due to the activity proposed to be conducted.<sup>3</sup>

Activity that tries pin-pointing, foreseeing and communicating the interpretations thereof from the proposals that will be put in action in the future that is likely to have some noteworthy

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<sup>2</sup> David P.Lawrence ,*Environmental Impact Assessments; Practical Solutions to Recurrent Problems*,7( John Wiley & Sons, Inc., Hoboken, 2003)

<sup>3</sup> Convention on Environmental Impact Assessment in a Transboundary Context,NY & Geneva art. 1 clause (vi), Feb 25,1991.

impacts on the health and well-being factors of the people; including significant reforms on the lands and major engineering works, is what describes the concept of environmental impact assessment according to Munn.<sup>4</sup> EIA is a concept that is “*applied universally and which was developed to facilitate objective, evidence-based decision-making and to deliver greater accountability*”<sup>5</sup>

Environmental impact assessment is basically understood as a process adopted nationally or internationally to evaluate impacts that are likely to happen as part of a proposed activity on the environment. Lynton Caldwell had commented that “*EIA should not be understood as a ‘technological fix’ or a cure-all for environmentally ruthless decisions.*”<sup>6</sup> He goes on to put forth the idea that EIA should necessarily be envisioned and understood as a step towards reformation and that it was basically intended to be of some application in the administrative- decision making process. To put all these in practicality is not a simple task and according to Lynton, the success behind putting these in practical situations depends and can be understood looking at the political attitude of each nation.

Environmental Impact Assessments can be viewed as a mixture of art and science that considers both the technical side of the topic and the practical effects of the topic in the process of decision making. The normative working of EIA is very purposeful and ultimately adds to the wellness of the environment. The objectives set by different jurisdictions are different, and so are their mode of operation and implementation.

### Origin and Development

As we are aware, after the occurrence of the Second World War, the world saw an age of rapid economic activities and an increasing number of industries and related activities. All these consequential activities started contributing to the depletion of the quality of the environment. So, as a consequence of all these happenings, worries among people arose about their health and safety in the background of the worsening condition of the environment. The situation called for

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<sup>4</sup> R.E. Munn, *Environment Impact Assessment: Principle and Procedures* 135 (1979)

<sup>5</sup> Cashmore, M, T Richardson, T Hilding-Ryedvik and L Emmelin , “*Evaluating the effectiveness of impact assessment instruments: Theorising the nature and implications of their political constitution*”, *Environmental Impact Assessment Review* 371, 373 (2010)

<sup>6</sup> Lynton K. Caldwell, *Environmental Impact Analysis (EIA): Origins, Evolution, and Future Directions*, *Taylor&Francis Journal* 75, 75 (2012)

an immediate solution that is, to find an operational tool for proper environmental planning and management.

The seriousness of the situation grew by the late 1950s and early '60s, which saw a variety of environmental accidents happening in the forms of nuclear accidents of radioactive clouds and oil spills. Formulation of guidebooks and different kinds of procedural manuals were the very early responses in the context of the environmental decision-making regarding these issues, which were, infact, mostly precepts. This meant that actions could not be formally compelled in these issues. Around this time, laws as such were more focused on bringing up issues surrounding public sanitation, food, and drugs, but all these were not exactly seen in an environmental framework or seriousness. It can be also seen that around this time of the 50's, the introduction of anti-pollution laws to improve the air and water qualities in general can also be witnessed which was not again very much efficient since the approach of these laws were more medium centric, like water or air and not exactly pollutant-focused.

This basically led to the birth of various environmental movements towards 1960s. It was around this time that EIA started taking shape. Initially, under this concept, only technical evaluations were made, which meant that the decision making process was mostly objective in nature. Nevertheless, growth in this aspect is visible; gradually, this technical-objective model was moulded into a system where assessments and other processes were slowly introduced. The concept as such started getting a proper base and the seriousness it deserves when it was given a legislative standpoint for the first time in 1969, when U.S. introduced the National Environmental Policy Act of 1969, that is, the NEPA in the U.S. This is infact, the first nation that brought about a strong legislative intent behind highlighting this concept of environmental impact assessment in society.

Lynton Caldwell, the chief architect of this Act, had commented that NEPA "*became law because of an undeniable groundswell of public demand in the late 1960s for government 'to do something about the environment'*"<sup>7</sup> From the reading of specific provisions, it becomes more evident that the Act had its origin to further the environmental protection in the direction of sustainable development.

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<sup>7</sup> Caldwell LK, Shrader-Frechette K., *Policy for Land: Law and Ethics* 146 (1993)

Section 101(a) states that “Congress after recognizing the intense impact of activity of man on the ...,... natural environment,..and,... critical significance of restoring and maintaining environmental quality,... declares that it is the continuing policy of the Federal Government ... to use all practicable means and measures,... to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans”<sup>8</sup>

This is very evident in sub-clause(1) of clause (b) of the section, which goes on to state that it is essential to “fulfill the responsibilities of each generation as trustee of the environment for succeeding generations”<sup>9</sup>

NEPA in US can be viewed as the Magna Carta of the whole concept of environmental impacts and their assessments. This trend was followed soon after by other countries, especially those countries which were in good position in terms of the income like Australia, Canada and New Zealand which introduced EIA in their national system by 1973-1974. Amongst these countries, Canada and New Zealand, in the initial phase introduced EIA through administrative based procedures whereas Australia had legislated the same. Also, there occurred the introduction of the concept by the then developing industrial nations like Philippines by 1978 and Columbia in 1974. It could be seen that EIA came into Netherlands by 1978 in an informal, quite experimental manner. It could also be understood that certain countries brought up this concept in their territories in a one step at a time manner. Say, Ireland brought certain parts of EIA into role, that is, the part of including impact statement as a vital part of the process of application for planning commission.

What could be seen in the initial period of its introduction was that most EIA related works of literature were focused on giving importance more to methodological issues, and this is clearly evident from the conceptual innovations in the methodologies of EIA around the time. As a matter of fact, books that discussed about EIS preparation were published were increasingly focused not just on the methods but also looked into impacts on the environment at individual

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<sup>8</sup>National Environmental Policy Act, Congressional Declaration of National Environmental Policy, Pub. L. 91-190, 42 U.S.C. 4321-4347, Sec 101(a) (1969)

<sup>9</sup> Id Sec.101(b)(1)

levels like the dispersion model for pollutants. As time passed, focus shifted and attention was slowly given to the other EIA aspects that came under the decision making process.

The Recommendations on the Assessment of Projects with Significant Impact on the Environment by Organisation for Economic Co-Operation and Development (OECD) can be traced back to 1979, which was brought forth to promote the private actors to include environment-oriented assessments for projects, especially regarding the infrastructure and other facilities of the project.<sup>10</sup> Some of the main goals in 1968 behind Sweden's suggestion of convening an international conference regarding sorting problems surrounding human environment, were to "*create a basis for comprehensive consideration within the United Nations of the problems of human environment*" and to "*focus the attention of Governments and public opinion in various countries on the importance of the problem.*"<sup>11</sup> These goals were in actual sense considered and validated by the Economic and Social Council and the General Assembly in their resolutions relating to the convening of the conference.<sup>12</sup> The Stockholm Declaration on Human Environment that happened in 1972 discussed about the enhancement of the human environment and related aspects. This declaration was the one that had initiated the mechanism of Earth-watch to warn against major environmental crises through its action plan that promotes assessments of the environment.<sup>13</sup>

EIA as a progressive concept saw an increase in its adoption during the 1980s. The attitude of evaluation of every project brought in by the EIA has vital impacts on the resolution of environmental damages and related problems and, thus, was increasingly adopted by many jurisdictions. In 1984, EIA was made mandatory in Sri Lanka. By the mid-1980s, many member states of European Communities agreed and favored the idea of making the procedures of EIA mandatory. For example, member states of the European Communities as is evident in the Commission of the European Communities, 1985.

India has always been a country that tried to view its environmental flora and fauna as some of its important elements. Considering such importance being given to the environmental aspects,

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<sup>10</sup> Recommendation of the Council on the Assessment of Projects, Plans and Programmes with Significant Impact on the Environment, OECD ( Feb 17, 10.09 PM) <https://legalinstruments.oecd.org/public/doc/26/26.en.pdf>

<sup>11</sup> 45 U.N. F.COSOC, Annexes, Agenda Item 12 (Doc. E/4466/Add.\$) at 2 (1968).

<sup>12</sup> ECOSOC Res. 1346, July 30, 1968, 45 U.N. ECOSOC, Supp. 1 (Doc. E/4561) at 8 (1968); G.A. Res. 2398, Dec. 3, 1968, 23 U.N. GAOR, Supp. 18 (Doc. A/7218) at 2 (1969).

<sup>13</sup> Louis B Sohn, *The Stockholm Declaration on the Human Environment*, Harvard Int.LJ, Vol.14 No.3 1973

India had been a signatory to the 1972 Stockholm Declaration and had tried to bring forward legislations to keep pollutions in control. India had come up with the Water Act<sup>14</sup> and Air Act<sup>15</sup> way back in 1974 and 1981 respectively. Around 1986, when we look at the Indian scenario, we can see the concept is backed by the Environmental Protection Act. When we try to look at the pre-cautious attitude of Indian legislation when it comes to the topic of environmental preservation, the Hazardous Wastes (Management and Handling) Rules 1989 is noteworthy as it talks about conducting of environment impact study well before the proper identification of a waste disposal site.<sup>16</sup> Around the time of 94', an EIA notification was brought forth in the light of the emerging modernizing-developmental activities related to for bringing about mandatory Environmental Clearance by the then Ministry of Environment and Forests (MEF). At a later point in time, around 2006, the Indian Ministry of Forests and Climate Change stressed the subject of environmental impact assessments issuing a notification in 2006. It can be understood that the various policy documents of the country tries to highlight the goal of the these impact assessments on environment as primarily for pointing out the likely impacts, which can be either advantageous or disadvantageous, of proposed projects on the environmental, social and cultural concerns in the planning stage of the respective project.<sup>17</sup> Financing backing is very crucial for this process and India has been striving through the years to flourish the impact assessments of Indian environment.

By 1988, the Directive on EIA came into force which initiated national legislation within the European Union and other process developments which is uneven among the member states. By 1989, even the World Bank had adopted this concept to check on the action plans of the developmental projects of those countries that borrow from it. The EIA process is also developing in Africa, though nations like Rwanda, Botswana and Sudan have certain experiences of the concept.

By the 1990s, EIA became a requirement of consideration of trans-boundary effects under the Espoo Convention. When looking at the international scenario, impact assessment was

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<sup>14</sup>Water (Prevention And Control Of Pollution) Act, 1974 <https://legislative.gov.in/sites/default/files/A1974-6.pdf>

<sup>15</sup> Air (Prevention And Control Of Pollution) Act, 1981 <https://legislative.gov.in/sites/default/files/A1981-14.pdf>

<sup>16</sup> Hazardous Wastes (Management and Handling) Rules 1989, r. 8 (2).

<sup>17</sup> Government of Uttar Pradesh, Tehri Dam: Detailed Project Report Vol. I, 121 (1983).

acknowledged and recognized in Rio de Janeiro at the UN Conference on Environment & Development 1992. Principle 17 voices EIA through the following words:

*“Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.”*<sup>18</sup>

EIA is supported by the Earth Summit of 1992 through its signatory countries of the conventions on biological diversity and climate change. From this period onwards, EIA started to find itself being applied in a widespread manner to the various increasing activities of development. More developing countries started to adopt this technique of assessment through various ways including for major loan related decisions for primary project plans.

EIA can be seen now as *“the most widely emulated environmental policy innovation of the twentieth century”*<sup>19</sup>. The spread of the concept is evident from the signing of over 170 countries of the Rio Declaration which puts focus on the concept through the Principle 17 through which the idea that EIA can be utilized as a tool for looking into the prominent impacts has been put forth. It is seen that expansion of EIA has happened around the globe to the point where, by 2011 it was mandated in almost all countries except North Korea and South Sudan.<sup>20</sup> At later points, when we look at this scenario, it can be seen that EIA is found in the legislation of these two countries also, from which it can be understood that the concept now is more universally accepted than initial days of its introduction.<sup>21</sup> Yang also comments that *“the EIA norm has also become a general principle of law, a part of public international environmental law”*.<sup>22</sup> The adoption of EIA in different countries varies. Albeit the basis of legality been different in various jurisdictions, there exist similarity in the basic steps followed by them. The rate of its implementation and operation is different in all jurisdictions. By now, more than hundred countries have EIA embedded in their national systems.

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<sup>18</sup> Report of the United Nations Conference on Environment and Development, N.Y., P.17, June 3, 1992

<sup>19</sup> Bradley Karkkainen, *Taking Stock of Environmental Assessment Law, Policy and Practice*, 45( 1<sup>st</sup> edn Jane Holder and D McGillivray 2008)

<sup>20</sup> Morgan RK, *Environmental impact assessment: the state of the art*, *Impact Assessment and Project Appraisal*, Taylor & Francis Journal 5, 9 (2012)

<sup>21</sup> Yang, T, *The Emergence of the Environmental Impact Assessment Duty as a Global Legal Norm and General Principle of Law*, *Hastings Law Journal*, 525 (2019)

<sup>22</sup> Id at 569



The development of this concept happens from the grass-root levels. Take, for example, the situation in India, the country has a huge rural population. A large number of developmental activities take place in the rural sector and in most practical situations, the people residing in these places find themselves at weak points when it comes to voicing their opinions in the various decision making processes; this calls for planning of impacts, may it be social or environmental, at grass-root level. The development of the environmental impact assessment as a concept is happening gradually at all levels, nationally as well as internationally.

### Relevance of EIA

In the background of rapid industrialization and the growth of adversary effects on the environment, this topic gains more significance day by day. One can understand the most proximate aim of this concept is to see that these industrial developments and other growth-related activities go forward in a fairly acceptable manner.

It is quite apparent and evident that assessments of impacts, in general, are under pressure in this century. Impacts of different kinds are being made by the scholars and policy makers across the world, may it be economic, environmental or social contexts, they are trying to get an effective and accurate assessment of the same. It is being noticed that the emerging role of these impact assessments has in turn produced a greater interest in practical evaluation of the prevailing situations.<sup>23</sup>

When looking at the answer to the question as to why this is in particular important presently, it is understood that we are, as a society, is moving towards a very dangerous situation of limited resources yet ever-increasing population. Hence it is crucial to address this growing situation with much diligence and without much delay. It is clear that the process of impact assessment of the environment involves a mixture of activities. The investigation into these matters of environment and their interrelationship with the proposed action's impacts are crucial as far as EIA is concerned.

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<sup>23</sup> Cashmore, M, T Richardson, T Hilding-Ryedvik and L Emmelin , *Evaluating the effectiveness of impact assessment instruments: Theorising the nature and implications of their political constitution*, Environmental Impact Assessment Review, 371,379.(2010)

To maintain the soundness of the environment is the need of the hour. But thinking on this line, one should also understand the importance of development for a nation. To balance the rate of development and at the same time give attention to the possibility of degradation such activity might cause to the environment is no easy task. It is here, where, the limelight falls on the concept of Environmental Impact Assessment. EIA requirements acknowledge and take into consideration a couple of things vital for balancing the present situation like critical inspection into the environmental implication of these projects, alternative methods that can be adopted and widening the scope of public involvement.

The analysis of the possible outcomes is nowadays not seen as an extra or an add-on procedure; the vitality of this lies in the fact that it has the power to obstruct the proposal from passing through the phase of authorization. The aim of this concept of EIA is to promote the public and private counterparts to be informed about the decision making process through an open yet systematic process. Sometimes, this process may finally lead to scrapping of the project proposals but this cannot be viewed or interpreted entirely as a negative growth factor since the concept as such stands for the soul purpose of prevention of environmental harm. EIA can be viewed as a very purposeful event of the current times as it strives to achieve a balance in the developmental and environmental aspects by trying to arrive at a decision or planning which is unbiased in nature. The idea of assessments of impacts on environment is being positioned more alongside with a much a broader context of sustainability and one needs to keep in mind that its original, substantive aim is to contribute more to sustainable forms of development and this is being progressively rediscovered.<sup>24</sup>

The Recommendation on the Assessment of Projects, Plans and Programmes with Significant Impact on the Environment of the OECD Council<sup>25</sup> recommends assessment of environment as part of development, planning and decision-making process for the various projects, programmes & plans. It also stresses on the significance of bringing in reasonable alternatives, participation from the common public, and involvement of the stakeholder. It also recommends to properly

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<sup>24</sup> Stephen J, Paul Slinn, *Environmental Impact Assessment; Retrospect and Prospect*, 3 Environmental Impact Assessment Review, 287, 289(2007)

<sup>25</sup>Supra note 10

having a follow up on the measures that was arrived at from the already conducted assessments.<sup>26</sup>

EIA is not a mechanism just confined to securing environmental policies and norms intact but has its relevance in the field of building a foundation of connection with other nations and thereby ensuring economic bonds. Both the European Commission and United Nations Economic Commission for Europe have acknowledged EIA. Attention may be given to the fact that World Bank has also adopted this concept and is coming forward in bringing guidelines highlighting the importance of EIA to their approval processes. Foreign investments, have in general acknowledged the relevance of EIA. This is because environmental aspects of the potential projects can be looked into at an earlier stage thereby decreasing the liability risks surrounding these investments by the money lending agencies and thus it can be understood there exists the necessity of having essential & efficient laws on the same.

EIA becomes relevant by the various processes adopted during the assessment, that is, say a specific set of environmental values, these in fact aids in analyzing the proposed projects & actions proposed to be undertaken for its development, thereby trying to suggest and put forth the viable alternatives that can be adopted in case these actions seem to be dangerous to the environment in which it is proposed to be developed. Here, these actions, almost all aspects of it, are looked into through determination based on values. The emphasis on values raises the issue of whose values should guide the process whether, the values should be more inclined towards the role assumed by the parties having potential interest in the same or towards those who are going to be affected by a proposed action.

It is high time that humans understand the importance of each and every decision they take because these are going to ultimately affect the generations to come to whom they are completely accountable. If implemented properly, the concept can act as efficient tool for analyzing and reducing the harmful effects of man's activity on the environment. Many studies and ongoing researches are made basing the instant topic due to its vitality in the present day. This is because the relevance of the topic is much more in the present day when compared to the 50's or the 60's considering the rate of development which is on a sharp rise. This basic analysis

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<sup>26</sup> Supra note 10

of the instant topic is possible only when it is looked into from its very origin to its position till date.

From the basic readings of the introduction to this concept, it can be understood that impact assessment on environment stands in between the environmental protection factors and the developmental factors. The origin and emergence of such a planning tool can be seen as a response to the rising concerns over the issues of balancing these aforementioned factors. EIA though defined and interpreted differently, is of much help in arriving at sound decision.

The impact assessment of environment has essential components of both the gathering of information and making of decision based on the assessments. Collection of information of the likelihood of major setbacks and communicating them to those who have greater likelihood to suffer due to the same highlights the relevance of the instant topic. This helps the decision maker in deciding whether to grant or deny the carrying forward of a developmental project.

## CHAPTER 3

### INTERNATIONAL PERSPECTIVE OF EIA

Throughout the history of India as a cultural entity the country has been deeply intertwined with nature and utilized this relation to learn and respect the environment. India's international commitment to protection and preservation of all beings can be traced back to the notion of 'vasudaiva kutumbakam' meaning 'the entire world is one family'.

The modern environmental jurisprudence in India has evolved as a result of post-independence modernization drive focusing on 'temples of modern India'. Modern factory-based industries, supporting infrastructure, dams and exploration of land resources occurred at a rapid pace transforming landscape of the country. The rapid development resulted in unintended environmental fallouts which were detrimental in stirring popular demand to have environmental impact assessment to balance development with environment. Acknowledging the building consensus on need to have robust framework to carry out environmental protection measures inclusive of impact assessment, India participated in the Stockholm Conference (First Earth Summit) in 1972. Subsequently 42<sup>nd</sup> amendment to the India Constitution in 1976 introduced Article 48A, which directs the "states to protect and improve the environment and to safeguard the forest and wildlife of the country".

In present days India has a developing regulatory framework regarding environmental impact assessment partly due to international obligation and also because of India's commitment to the same. The development of environmental impact assessment is thus built up on international best practices and informed decisions arrived through international frameworks. India has ratified international climate treaties such as the UN Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol. Both of these instruments emphasize the need and necessity of a robust environmental impact assessment regime for mitigating climate change's negative consequences. The Convention on Biological Diversity (CBD) also emphasizes the importance of a thorough EIA process in order to protect biological resources.

Environmental impact assessment is defined by the Espoo Convention as "a technique for evaluating the likely influence of a proposed activity on the environment." The goal of an EIA like this is to give national decision-makers information about potential environmental effects so they can decide whether or not to allow the activity to go forward and what regulations to put in place<sup>27</sup>. Any regulatory framework that aims to identify environmental risk, incorporate environmental concerns into development initiatives, and encourage sustainable development must include an EIA. It's a tool that helps people make better decisions, it doesn't decide by itself whether or not a project should go ahead or how it should be controlled but provides policy makers with ample data in order to evaluate feasibility of the project. From this perspective, it is evident that a "sufficient" EIA does not have to demonstrate that there is no danger of environmental impact. It will suffice if it contains all of the relevant information regarding the project's potential consequences and follows the right procedure. In its most basic form, EIA is a requirement to pause and consider environmental repercussions before acting, a procedure that necessitates the examination and evaluation of a proposed projects or actions environmental impact before moving forward. Thus, it is "The process of detecting, forecasting, analyzing, and mitigating the biophysical, social, and other important effects of development proposals prior to key decisions and commitments," according to the International Association for Impact Assessment<sup>28</sup>. The EIA standard is thus an umbrella principle that encompasses a variety of more particular responsibilities, despite its conceptual simplicity. The necessity to generate specific forms of impact information, real consideration of such information by decision-makers, governmental transparency and accountability, and public involvement are among the subsidiary standards. Jurisdictions differ in how they express these ancillary norms via legislation or regulation. In order to understand the concept in detail the researcher intend to look in to facets of Environmental Impact Assessment under international regime and different laws governing the same under the jurisdiction of United States of America and United Kingdom.

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<sup>27</sup> 1991 Convention on Environmental Impact Assessment in a Transboundary Context, Article 1(vi). See generally Glasson, Therivel, Chadwick, Wathern, *EIA: Theory and Practice* (London, 1988); Wood, *Introduction to EIA* (2nd ed, London, 2005); *EIA: A Comparative Review* (2nd ed, Harlow, 2003) Ch 1; Holder, *Environmental Assessment* (Oxford, 2004); Holder and McGillivray, *Taking Stock of Environmental Assessment* (London, 2007).

<sup>28</sup> . INT'L ASS'N FOR IMPACT ASSESSMENT, *WHAT IS IMPACT ASSESSMENT?* 1 (2009), Available at [http://www.iaia.org/uploads/pdf/What\\_is\\_IA\\_web.pdf](http://www.iaia.org/uploads/pdf/What_is_IA_web.pdf) Last accessed on 2.05.2021; see also, John Glasson et al., *Introduction to environmental impact assessment* 3–4 (4th ed. 2012); Christopher Wood, *Environmental impact assessment: A comparative review* 1 (2d ed. 2003).

### 3.1 Evolution of Environmental Impact Assessment under International Law

The dawn of international law on environment in modern times is tentatively dated to 1972, the year on which UN Conference on the Human Environment was convened in Swedish city of Stockholm. It was a watershed moment with respect to environmental law, this concurred with developments of the time dating back to UN resolutions in 1968<sup>29</sup>. Due to the fast paced initiation of projects having maximum impacts on the environment there was a series of natural disasters and environmental catastrophes shaking the viability of relationship between nature and human civilization. These ecological disasters include, 1967 oil spill in North Sea (Torrey Canyon Accident), Minamata mercury pollution and outbreak of Minamata mercury poisoning in 1970's. Public awareness of the time was influenced by these incidents and growing awareness in academic circles influenced legislative policies in western democratic governments. The media attention also pointed to these trends and groundbreaking publications such as Max Nicholson's Environmental Revolution (1969) and Limits to Growth by Club of Rome. The renewed ecological consciousness was seen in domestic jurisdictions through enactments of legislations such as Kogai Act, 1967(Japan), Miljoskyddslag, 1969(Sweden), National Environmental Policy Act, 1969(USA).

This trends in environmental protection led to lawmaking process to assess the damage inflicted up on the environment before sanctioning large scale projects having widespread impact, thus the concept of Environmental Impact Assessment as a tool to achieve this aim came in to being.

The concept of Environmental Impact Assessment in domestic legal framework took its roots in the jurisdiction of United States of America. United States became the first country to implement EIA. The National Environmental Policy Act of 1969 was enacted to protect the environment (NEPA) and to give effect to EIA This particular legislation reverberated parallel with growing climate conscience evolving around the country beginning with "Silent Spring" by "Rachel Carson", it brought massive environmental destruction caused by pesticide industry to frontline of public policy debate signaling to lawmakers the need to put legislative framework in place to balance between development and environmental protection. Impact assessment is a multi-step process and evaluation tool aimed at promoting long-term growth. It is used to ensure that human

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<sup>29</sup> Resolution 1346 (XLV) of the UN Economic and Social Council of 30 July 1968, endorsed by UN General Assembly Resolution 2398 (XXIII) of 6 December 1968.

impacts on the 'environment' coming from projects, programs, and policies are properly examined by making sure that all economic, social, and environmental costs are disclosed before decisions are made. Environmental Impact Assessments (EIAs) and Strategic Environmental Assessments (SEAs) have a plethora of definitions. Impact assessment is a multi-step process and evaluation tool aimed at promoting long-term growth. It is used to ensure that human impacts on the 'environment' coming from projects, programs, and policies are properly examined by making sure that all economic, social, and environmental costs are disclosed before decisions are made. Environmental Impact Assessments (EIAs) and Strategic Environmental Assessments (SEAs) have a plethora of definitions. EIAs are defined as "an inspection, analysis, and assessment of proposed operations with the goal of ensuring environmentally sound and sustainable development" by the United Nations Environment Programme (UNEP)<sup>30</sup>. Parties to the Convention on Biological Diversity (CBD)<sup>31</sup> define EIAs as "a process of analyzing the possible environmental implications of a proposed project or development, taking into account interconnected socio-economic, cultural, and human health impacts, both positive and negative."

Even in its infancy, NEPA has received both praise and criticism. Some viewed it as radically transforming environmental planning and regulation, while others charged it with accomplishing little to slow the torrent of modern-day environmental catastrophe. Despite its shortcomings, environmentalists, planners, and regulators have all come to realize it as an essential component of current environmental regulation regimes<sup>32</sup>. EIA has also played a significant role in defining the importance of the public's role and valid concerns in environmental protection.

### 3.1.1 Provision of Environmental Impact Assessment under International Instruments

The Environmental Impact Assessment requirement has extended over the world in the four and a half decades since the National Environmental Policy Act of 1969 was enacted, being

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<sup>30</sup> UNEP Goals and Principles of Environmental Impact Assessment. See UNGA Resolution 42/184 (1987). See also, Birnie, P & Boyle, A., Basic Documents on International Law and the Environment. (27, Oxford University Press, Oxford).

For the purposes of the Espoo Convention, EIAs are defined as 'national procedure[s] for evaluating the likely impact of a proposed activity on the environment'. (Espoo. Article 1 (vi)).

<sup>31</sup> Decision VI/7. Identification, Monitoring, Indicators and Assessment. UNEP/CBD/COP/6/20.00.92.

<sup>32</sup> , INT'L UNION FOR CONSERVATION OF NATURE, WORLD COMM'N ON ENVTL. LAW, DRAFT PROJECT: GLOBAL PACT FOR THE ENVIRONMENT, art. 5, at 3 (2017) Available at <https://www.iucn.org/sites/dev/files/content/documents/draft-project-of-the-global-pact-for-theenvironment.pdf> Last accessed on 18.07.2021.



ingrained in both public international law and national legislation of practically every country around the world. In this scenario it is imperative to look in to adoption of the concept under various international instruments and national laws in pursuance of gaining wider perspective on its evolution in international landscape.

Convention on Wetlands of International Importance (Ramsar), 1971- When change is "probable," wetlands must be conserved, according to Article 3 of the Ramsar Convention. A degree of prediction is required to establish whether change is likely. The Ramsar Parties have addressed this requirement for prediction by developing recommendations for the use of EIAs. The Ramsar Parties suggested in 1980 that when they (or development agencies) were involved in large-scale wetland transformations, "the choice is not made until an assessment of all the values involved has been made."<sup>33</sup>

World Heritage Convention (WHC), 1972- Despite the fact that the WHC does not specify the use of EIAs, the WHC Committee has made it clear that governments must complete EIAs before undertaking projects that may have an impact on WHC sites. This was reflected among the member countries. Eg- US<sup>34</sup>, Canada<sup>35</sup>, Russia<sup>36</sup> etc.

Rio Declaration on Environment and Development, 1992, Principle 17 – *“Environmental Impact Assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on environment and are subject to a decision of a competent national authority.”*

United Nations Convention on Law of Seas(UNCLOS), 1982, Art.206- Assessment of potential effects of activities- *“ When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of results of such assessment in the manner provided in article 205.”*

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<sup>33</sup> The Parties to the Ramsar have recommended that development agencies, both utilise EIAs for wetland projects before funding projects in their own work Recommendation. See Regina, Responsibility of Development Agencies Towards Wetlands. (1987)

<sup>34</sup> Mammoth Cave National Park. UNESCO. (2002). 26th Session of the WHC. Aug 1, 2002.

<sup>35</sup> Buffalo Park. UNESCO. (1990). 14th Session of the WHC. CLT-90/CONF.004/13. Dec 12, 1990. 10.

<sup>36</sup> Lake Baikal. UNESCO. (2003). 27th Session of the WHC. WHC-03/27.COM/24. Dec 10, 2003. 42. UNESCO. (2004). 28th Session of the WHC. WHC04/28.COM/26. Oct 29. Decision 28 COM 15B.22. pp. 87.

UNCLOS 1982, Art.205- Publication of reports- *“States shall publish reports of the results obtained pursuant to article 204 or provide such reports at appropriate intervals to the competent international organizations, which should make them available to all States”*.

Convention on Biological Diversity (Rio Earth Summit), 1992, Article 14- Impact Assessment and Minimizing Adverse Impacts- *"1. Each Contracting Party, as far as possible and as appropriate, shall: (a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures;*

*(b) Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account;*

*(c) Promote, on the basis of reciprocity, notification, exchange of information and consultation on activities under their jurisdiction or control which are likely to significantly affect adversely the biological diversity of other States or areas beyond the limits of national jurisdiction, by encouraging the conclusion of bilateral, regional or multilateral arrangements, as appropriate;*

*(d) In the case of imminent or grave danger or damage, originating under its jurisdiction or control, to biological diversity within the area under jurisdiction of other States or in areas beyond the limits of national jurisdiction, notify immediately the potentially affected States of such danger or damage, as well as initiate action to prevent or minimize such danger or damage; and*

*(e) Promote national arrangements for emergency responses to activities or events, whether caused naturally or otherwise, which present a grave and imminent danger to biological diversity and encourage international cooperation to supplement such national efforts and, where appropriate and agreed by the States or regional economic integration organizations concerned, to establish joint contingency plans. 2. The Conference of the Parties shall examine, on the basis of studies to be carried out, the issue of liability and redress, including restoration and compensation, for damage to biological diversity, except where such liability is a purely internal matter.”*

World Summit on Sustainable Development (WSSD), 2002 – Those competent authorities ‘use environmental impact assessment processes’ in the pursuit of sustainable development. As a means of implementing the Plan, it was specifically recommended that the countries at the WSSD that could (and those that couldn't) Develop and promote the wider application of environmental impact assessments, inter alia, as a national instrument, as appropriate, to provide essential decision-support information on projects that could cause significant adverse effects<sup>37</sup>.

These provisions detailed above are some of the major international consensuses on the topic of environmental impact assessment contributing to its development and growth worldwide. It has also laid the groundwork for substantial development legislative frameworks in domestic jurisdictions around the globe drawing from the need to have a systemic impact assessment to counter growing environmental degradation and public sentiments to rectify the deteriorating situation.

### 3.2 EIA in the United States of America

EIA systems were first implemented in the United States, but they have since spread to a number of other nations. Simultaneously, worldwide efforts in sustainable development have pushed for aid to developing countries. In recent years, the notion of strategic environmental assessment (SEA) – taking EIA into account earlier in the policy-making process – has gained traction, and some practical examples have been recorded. The United States was the first country to implement an environmental impact assessment system (EIA). When Rachel Carson's book "Silent Spring" was published in 1962, environmental consciousness in the United States had reached epidemic proportions, resulting in ferocious activities in the latter part of the 1960s. With these social contexts in mind, the United States of America's National Environmental Policy Act (NEPA) was enacted in 1969, and for the first time, EIA demanding environmental assessment in large-scale projects was enacted as law. NEPA only covered only the basic stipulations with respect to environmental impact assessment, and it was supplemented by the National Environmental Policy Act Regulations, which were enacted in 1978. In order to have a comprehensive understanding of the system in place to carry out environmental impact assessment. It is also important to look in to various dimensions in the application of this act

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<sup>37</sup> WSSD Plan of Implementation Section 19(e), 62(h), 136.

such as; commencement of environmental impact assessment, process of screening, scoping, public participation and granting of approval.

### 3.2.1 Various aspects of environmental impact assessment in United States of America

The domestic legislative framework in US known as National Environmental Policy Act procedures include unique requirements not found in other nations' EIA systems, such as the need that EIA be applied not just to project approval but also to legislative and other similar initiatives, and those EIA statements is prepared by federal agencies.<sup>38</sup> The EIA document, known as an Environmental Impact Statement (EIS), must be completed and included in "any recommendation or report on proposals for legislation and other substantial Federal acts significantly impacting the quality of the human environment," according to NEPA<sup>39</sup>. Although only public projects are required to prepare an EIS, many "private" projects are considered public for NEPA purposes since public projects include any activity supported, assisted, or regulated by a federal agency.

According to NEPA laws, "important Federal actions" are divided into four categories:

1. adoption of official policy,
2. adoption of formal plans,
3. adoption of programs, and
4. approval of individual projects.

Only new projects are given an EIS. A modification to an existing facility, on the other hand, would be deemed a new project and would require EIA, but a facility that continues to function as it has in the past would not. The commencement of environmental impact assessment is crucial as it is a prerequisite to prudent development. The process of EIA should be started as soon as possible. EIA should be incorporated into all levels of the planning process because it is such a crucial planning tool. Environmental risks should be carefully evaluated early on to avoid costly mistakes later on. The many projects that have had to be postponed, redesigned, or abandoned late in the planning phase due to the revelation of unanticipated adverse environmental impacts speak to the reality of this statement.

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<sup>38</sup> NEPA 42 U.S.C. 4332(C).

<sup>39</sup> NEPA 40 C.F.R. 1508.18.

In the case of project assessment under NEPA, once it's been determined that the proposed activity is of the type that would necessitate an EIA, a preliminary evaluation is conducted to see if one is actually required. Screening is a term used to describe this procedure. Some laws categories acts and require an EIA if the action is one of the types stated in the law. Other regulations allow decision-makers the authority to decide whether a certain action required an EIA or, in some situations, a less extensive environmental assessment. Some laws combine the two approaches, requiring an EIA for some actions while leaving others to the discretion of the decision-making authority<sup>40</sup>. The authority concerning preparation of environmental impact assessment is crucial as the assessment process derives its legitimacy from the agency that conducts it. Some EIA legislation makes it the project proponent's responsibility to prepare the EIA, while others make it the responsibility of the government body having control over the EIA process. There is no difference, of course, when the agency is the proponent. When a private entity proposes a project, though, the distinction is critical.

There are benefits to having the EIA prepared by the proponent. It's possible that the proponent has already gathered pertinent data. The EIA should aid the proponent in better understanding the nature of the environmental issues that must be addressed, which is critical because any required mitigation measures will almost certainly be implemented by the proponent. The proponent, on the other hand, may not be as objective in evaluating the proposal as the body in charge of the process. It might also be argued that knowing the nature of the potential environmental issues is more significant, because in many circumstances, the agency is the one who decides whether or not to proceed with the project and what mitigation measures should be necessary. Some laws allow or even require the EIA to be completed by a private consultant or "expert." This method may provide a layer of experience and objectivity, but it misses some of the benefits listed above. In the case of US, The EIA must be prepared by a federal government agency, according to NEPA. The regulations allow agencies to hire outside consultants to draught or assist in the preparation of the EIA, but the scope and content of the EIA remain the responsibility of the agency. Developers and anyone with a financial stake in the project are barred from taking part in the planning or even the selection of outside contractors. Although the

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<sup>40</sup> Leelakrishnan, P. "ENVIRONMENTAL IMPACT ASSESSMENT: LEGAL DIMENSIONS." *Journal of the Indian Law Institute*, vol. 34, no. pp. 541–562, 1992.

laws allow project developers to prepare preliminary assessments, the agency retains responsibility for scope and content, just as it does with EIA<sup>41</sup>.

Another crucial aspect with respect to EIA is public participation<sup>42</sup>. The importance of public participation in the EIA process cannot be overstated. A procedure that is accessible to the public and attentive to public concerns is more likely to reflect varied viewpoints, address essential facts and issues, and produce a satisfactory solution for both the proponent and the community. Under NEPA Citizens are not required to be informed about a project until it has been screened. They must post a notice of intent as soon as practical and, in any event, before initiating scoping if they intend to produce an EIA. If the agency decides not to prepare an EIA after screening, it must notify the impacted public, the agency must solicit public feedback after completing the draught EIA and before completing the final EIA. While agencies are not required to seek public feedback on final EIAs, they must wait at least thirty days before making a final decision. The public can submit written comments on the EIA during this time. If a problem cannot be resolved through discussion and response, it can be taken to the courts or, in some cases, the Council on Environmental Quality. Citizens and public interest organizations are increasingly using legal challenges to enforce NEPA. However, the United States Supreme Court has primarily limited the grounds for contesting EIAs to procedural issues. Courts in the United States are unlikely to uphold an EIA challenge if agencies follow the procedures outlined in the NEPA regulations.

And finally, the most important aspect in the domestic environmental impact assessment regulation in US is granting of approval. After reviewing the EIA document, a decision is made on whether or not to proceed with the planned action. Who makes the decisions is a crucial question. The agency that prepares the EIA makes the decision in the United States. The decision may impose requirements on the project proponent, such as requiring the proponent to take certain mitigation measures. Following the comment and referral period, the agency that compiled the EIA determines whether or not to proceed with the action. The report must say what decision was made, list all options under consideration, and specify which alternative was deemed environmentally superior. It must also state whether all reasonable efforts to avoid or minimize environmental harm were used, and if not, why. If mitigation measures are included in

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<sup>41</sup> NEPA 42 U.S.C. 4332(2)(C).

<sup>42</sup> Eli, Report of the International roundtable on Environmental impact assessment and public participation in environmental decision-making (1992).

the record of decision, the project proponent must implement them, and funding for the action must be contingent on mitigation<sup>43</sup>.

### 3.3 EIA in the UK

In the United Kingdom, environmental impact assessments are mandated by the European Union's EIA Directive. The Town and Country Planning (Environmental Impact Assessment) Regulations 2017<sup>44</sup> in England implement the Directive. Wales, Scotland, and Northern Ireland have similar laws. EIA is required by the Directive for some types of development that are likely to have severe environmental repercussions. The Town and Country Planning Regulations, which include EIA processes, cover local government's management of regional land use programmes and development control. Highways, power plants, and other significant infrastructure projects, on the other hand, are approved by the national government in compliance with appropriate laws, such as the Highways Act or the Electricity Act. Highways, power plants, water resources, land drainage, forests, pipelines, port works, and a variety of other developments are covered by separate legislation (and certain non-legislative processes) that are not covered by town and country planning legislation. Some of them will be classified as nationally significant infrastructure projects (NSIPs), which will be handled by the Planning Inspectorate on behalf of the Secretary of State under the 2008 Planning Act. Individual laws specify the EIA procedures for various projects.<sup>45</sup> Local government agencies play a vital role as regional planning agencies in development regulation administration and flexible interaction between agencies and project executors from the early phases of project development in EIA procedures<sup>46</sup>.

The UK regulations have been criticized for not adequately interpreting the EIA Directive's spirit. Individual incidents involving big development proposals have sparked heated arguments concerning the quality of the EIAs completed. Third parties have also protested to the European Commission about the UK government's reluctance to properly execute the EU Directive on Environmental Impact Assessment. The United Kingdom will leave the European Union on

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<sup>43</sup> Supra note 16, at pg 48-49.

<sup>44</sup> The Town and Country Planning (Environmental Impact Assessment) Regulations 2017. Available at <http://www.legislation.gov.uk/uksi/2017/571/contents/made> Last accessed on 16.07.2021.

<sup>45</sup> Permitted Development and EIA. Available at <https://www.gov.uk/guidance/environmental-impact-assessment#decision-making-subject-to-eia> Last accessed on 20.07.2021.

<sup>46</sup> The Planning and Compulsory Purchase Act 2004 Available at <http://www.legislation.gov.uk/ukpga/2004/5/contents> Last accessed on 20.07.2021.

January 31, 2020. A transition phase will last until December 31, 2020, during which time the UK will be treated largely as if it were still a member of the EU and will be subject to EU legislation. The EIA Directive has been transposed into UK legislation through the EIA Regulations, which will, in any case, continue to operate after the transition period has ended until they are changed, if necessary. The administration has stated that it intends to consult on environmental impact assessment amendments later in 2021.

### 3.3.1 Dimensions of environmental impact assessment in UK

As the researcher pointed out in this research, numerous times earlier, EIA is a fact - finding exercise carried out by the developer according to a prescribed, well-established process, which allows relevant authorities to assess the ecological consequences of a development prior to actually deciding if it should proceed. The most significant aspect of EIA is the emphasis on developers compiling information in a methodical, holistic, and rigorous manner using the finest accessible sources of objective information. In theory, a well-researched and objective EIA should enable the entire community to comprehend the genuine impact of the proposed development. EIA should be a methodical process in the United Kingdom that culminates in a final written result, the Environmental Statement (ES), thus, an EIA should result in better environmental outcomes while balancing development aspirations. For furthering understanding of the process in UK it is vital to look in to dimensions of implementation process of EIA in UK. In UK for the purpose of carrying out assessment study the projects are classified in to Schedule 1 projects and Schedule 2 projects considering nature of projects and level of scrutiny required.<sup>47</sup> For Schedule 1 projects environmental impact assessment should be followed through except in case of military/national security or in case of national emergency. With regards to Schedule 2 projects environmental impact assessment is carried out only in case of “likelihood of significant impact up on the environment” due to the nature, location or size of the project. There have been uncertainties on implementation of EIA due to the vague nature of domestic legislative framework in UK. Examples for Schedule 1 project consists of railway lines, energy generating plants, waste treatment plants and incinerators, significant motorways etc and examples for Schedule 2 includes cook oven, chemical production, breweries, dairy products manufacturing, butcher shops etc. In the case of Schedule 2 projects the authorities assess the requirement for

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<sup>47</sup> Supra note 20.



EIA by looking in to three different aspects such as whether it is a major project and whether it is a project of smaller scale in sensitive or vulnerable location. The courts in UK have tried to struck a balance between legislative vagueness with respect to EIA and the need to conduct EIA for benefit of all parties involved. In the case of *Berkeley v Secretary of State for the environment and others*<sup>48</sup>, House of Lords ruled that “EIA was a distinct set of methods which must be applied coherently and, in their entirety,” this ruling has put authorities in a tight spot as they are now under pressure to assess the requirement of EIA for a project much more strictly thus closing loopholes in legislative framework.

Another important aspect with respect to environmental impact assessment is the authority excising the powers under regulations existing in legislative framework of UK<sup>49</sup>. Local Planning Authority have a central role in decision making process in UK, they can enquire about the project and ask the applicant to submit details of the same to determine whether the component of environmental impact assessment is required for the particular project or not. As per the regulations in place the Local Planning Authority have to provide a formal opinion on request whether environmental impact assessment should be carried out or not for a particular project. This power possessed by Local Planning Authority is known as ‘screening opinion’; in order to provide this opinion, the authority must be satisfied that sufficient information was provided to arrive at that opinion. Local Planning Authority also has additional power to refuse the project in case of non-compliance with regulations. Other important pillar in this process is Secretary of State having appropriate authority to intervene in case of any disputes with decision of Local Planning Authority. Thus, in UK a structured system is followed with respect to environmental impact assessment deriving guidelines from EU directives and other local regulations in force<sup>50</sup>.

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<sup>48</sup> HL 11 MAY 2000.

<sup>49</sup> Permitted Development and EIA Available at <https://www.gov.uk/guidance/environmental-impact-assessment#decision-making-subject-to-EIA> Last accessed on 22.07.2021.

<sup>50</sup> Planning Practice Guidance screening checklist Available at <https://www.gov.uk/government/publications/environmental-impact-assessmentscreening-checklist> Last accessed on 22.07.2021.

## **CHAPTER-4**

### **POSITION OF EIA IN INDIAN SCENARIO**

*The environmental problems of developing countries are not the side effects of excessive industrialisation, but the reflection of the inadequacy of development.” – Indira Gandhi*

#### **4.1. Introduction**

The legislative history of India in regard with Environmental protection commenced even before the Stockholm conference, even though the Stockholm Conference is more often than not considered as the genesis of global focus on environmental affairs in a legal and social perspective. Yet, India has been adept in its ways through ancient knowledge of Vedas and Upanishads which uncover a full awareness of the unfortunate impacts of ecological debasement cause by natural activities as well as human exploitation.

The worry for clean climate expanded during 1970s during the Earth Summit, as it did for the rest of the world. In India, this momentum translated into the enactment of the Environment Protection Act, 1986, which brought about an aggregation of all the different environmental protection laws in existence at the time, and conferring powers on the Central Government to investigate pollution sources and violations. The said enactment allows for delegation of the rule making powers to establish and enforce regulatory standards for control of environmental pollution, and also to regulate handling of hazardous substances to the executive. The Environmental Impact Assessment regulations are a part of the Environment Protection Act through the notification promulgated by the executive on 27 January 1994 by the then Union Ministry of Environment and Forests.

#### **4.2. History of EIA process in India**

The Environmental Impact Assessment in India existed in India per se since the 1970's when the Planning Commission requested the Department of Science and Technology to examine the

river-valley projects and further, at the time from an environmental protection angle.<sup>51</sup> Further, other government funded mega projects such as mining, atomic power plants, and other possible highly polluting industries also warranted for a proper Environmental impact assessment at the time prompted as per the guidelines of the National Planning Commission and was then implemented by the Central Government's Department of science and technology.<sup>52</sup>

The responsibility of impact assessment fell on the state pre-1994 as the state was considered to be the true utilitarian representative of the people. But the true flaws manifested when it was clear that there was not much forethought in terms of environment and the developmental projects and its impact then. The state started rolling back and giving space to the private enterprises, mostly due to India's economic policies during the 1970's-80s which was guided by industrial revolution.<sup>53</sup> Hence it was decided that a comprehensive mechanism for environmental protection was to be in place and the Environmental impact assessment regulations ought to be a requirement for complacence prior to grant of licences or permissions from the concerned regulatory agency for the respective projects. In view of this thought, the 1994 regulation was brought about. The same has been amended several times, the most phenomenal amendment in 2006 and the most recent proposed amendment being in 2020 in the form of Draft Environmental impact Assessment Bill,2020 which has been the topic of various debates in recent times. The existing legislative position and the proposed amendments and its anticipated impacts will be further discussed in this chapter at a later stage.

It is pertinent to state that the Supreme Court of India has played a substantial role in emphasizing the need to protect the environment. These principles have formed the bedrock of environmental law jurisprudence in India. The principles that are most relevant includes the;

a. 'polluter pays principle'<sup>54</sup> for which the basic premise is that the polluter has to bear the cost of all remedial or clean-up cost and also the amounts to be payable as compensation to the

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<sup>51</sup> Environmental Impact Assessment, Drishti IAS, ,06 Jan 2020, Accessed on 16.07.2021. Available at <https://www.drishtiiias.com/to-the-points/paper3/environmental-impact-assessment-1>.

<sup>52</sup> Understanding EIA, <https://www.cseindia.org/understanding-eia-383> (last visited 15.07.2021).

<sup>53</sup> Ibid.

<sup>54</sup> The 'polluter pays' principle is the commonly accepted practice that those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment. For instance, a factory that produces a potentially poisonous substance as a by-product of its activities is usually held responsible for its safe disposal. The polluter pays principle is part of a set of broader principles to guide sustainable development worldwide (formally known as the 1992 Rio Declaration).

victims of pollution, and the relevance of the same in terms of Environmental Impact Assessment

b. 'precautionary principle'<sup>55</sup> developed by the judiciary, requires government authorities to anticipate, prevent and address the causes of environmental pollution. This principle also imposes the onus of proof on the developer or industrialist to show that, their actions are environmentally benign. Therefore, it is not only prudent but also mandatory to have some studies conducted in order to understand and predict what is going to be the environmental impact of the proposed economic activity. If the environmental damage is considerable then the project proponent may think in terms of alternatives, or change the technology/process etc. Further, The Supreme Court and National Green Tribunal has outlined the particular grounds on which administrative action requiring environmental approval could be challenged and also laid out landmark observations in strengthening various process under EIA. The constant evolution of judicial interventions brought out various aspects of EIA for the empowerment of common man. There are good numbers of cases where the courts have moved further proactively to appoint their own expert committees to find out scientific varities of the proposed project under contention. But pure examination of findings in the Environmental Impact Assessment reports or commenting upon the findings of the EIA study conducted by the courts is yet to occur in Indian scenario. The role of the judiciary in Environmental Impact Assessment and its growth shall also be discussed in detail in the chapter.

#### 4.3. Legislative framework of Environmental Impact Assessment in India

In order to comprehend the legislative advancements of Environmental Impact assessment in India, one needs to understand the legal framework of the same as it exists now and the proposed changes in the system. As stated above, the scope of Environmental Impact Assessment in India does not exist as a specialized and dedicated legislation, but in several notifications brought under the Environment Protection Act, 1986 in the form of subordinate legislations. The parent

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<sup>55</sup> The precautionary principle states that if there is risk of severe damage to humans and/or the environment, absence of incontrovertible, conclusive, or definite scientific proof is not a reason for inaction. It is a better-safe-than-sorry approach, in contrast with the traditional reactive wait-and-see approach to environmental protection.

legislation<sup>56</sup> amply empowers the Central Government to “take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution”<sup>57</sup> S.3(2) of the Act empowers the Central Government to have some protection measures like ‘restriction of the areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards.’<sup>58</sup> These are the provisions that are often quoted that empowers the Central Government in their delegated responsibility to promulgate the Environmental Impact Assessment notification. Further, Sec. 5(3)(a) of the Environment (Protection) Rules, 1986 states that Central Government may ‘wherever it appears....expedient be able to “impose prohibition or restrictions on the locations of an industry or the carrying on of processes and operations in any area by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time...”<sup>59</sup> Therefore, it is safe to state that the Environmental (Protection) Act and the Environment (Protection) Rules form the bedrock and provide legitimacy to the notifications, regarding adherence to the EIA prior to granting approval for any potentially environmentally degrading project, promulgated by the Central Government. Although there have been academic discussions questioning the vague and broad nature of these provisions, it has not arisen as a serious constitutional issue in the court of law and therefore the discussion has stayed to be purely academic.

#### 4.3.1. The primary notification, 1994

The erstwhile Union Ministry of Environment and Forests, empowered under the Environmental (Protection) Act 1986 promulgated an EIA notification on 27 January 1994<sup>60</sup>, making Environmental Clearance (EC) mandatory for expansion or modernisation of any activity or for setting up new projects listed in Schedule 1 of the notification.<sup>61</sup> This notification, being the first of its kind in India introduced extensive amendments, inclusive of, but not limited to:

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<sup>56</sup> The Environmental (Protection) Act, 1986.

<sup>57</sup> Sec. 3(1), The Environmental (Protection) Act, 1986.

<sup>58</sup> Sec. 3(2), The Environmental (Protection) Act, 1986.

<sup>59</sup> Sec. 5(3)(a), Environment (Protection) Rules, 1986.

<sup>60</sup> Notification No. S.O. 60(E), dated 27th January 1994.

<sup>61</sup> Ibid, schedule I.

- a) Mandatory Environmental clearance from the Central Government to start any new industry listed in the Schedule I<sup>62</sup> of the notification.
- b) The project proponent is required to formally apply<sup>63</sup> to the Secretary, Ministry of Environment and Forest, New Delhi. The application shall be accompanied with the following documents for the consideration of the Ministry - (i) the Environment Impact Assessment (EIA) Report; (ii) the Environmental Management Plan (EMP); and (iii) Details of public hearing<sup>64</sup>
- c) Exceptions<sup>65</sup> had been created in 2 main types of projects; (i) in case of small-scale industries located in certain areas<sup>66</sup>(with regard to the requirement of ‘public hearing’) and (ii) in case of ‘pipe-line projects’ (with regard to requirement of submission of Environmental Impact Assessment report)<sup>67</sup>
- d) A new category of ‘site specific projects’ were created, which was considered to be ‘extremely sensitive’ in terms of its effect to the environment. In terms of gaining approval for such projects, the project proponent is required to gain permission from the Central Government in advance and is not to take any further action till such permission is obtained within thirty days.
- e) An Impact Assessment Agency is created by the Central Government in the Ministry of Environment and Forest by the virtue of this notification in order to evaluate the application submitted by the project proponents. The agency may seek the assistance of ‘experts’ in the field during evaluation of the application.
- f) A mechanism of ‘post-project monitoring’ is set up; a compliance report is to be submitted before the Impact Assessment Agency which take stock of the situation and

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<sup>62</sup> There is a Schedule appended to the Notification which had number of industries named in to it, which required ‘environmental clearance’ before they are established in any part of India.

<sup>63</sup> In a proforma specified in Schedule II of the EIA Notification.

<sup>64</sup> As specified in Schedule IV of the EIA Notification.

<sup>65</sup> Supra; n. 11 at Sec. 1 (a).

<sup>66</sup> The Notification, Supra; n. 16, created exceptions in case of small scale industries with regard to the requirement of ‘public hearing’ provided the same is located in any of the - (i) notified industrial areas; (ii) areas earmarked for industries under the jurisdiction of industrial development authorities. In cases of widening and strengthening of highways, mining projects with lease areas up to 25 hectares, industrial units located in special economic zones (SEZs) and modernization of existing irrigation projects, also the requirement of public hearing was dropped.

<sup>67</sup> The Notification states that in case of pipeline project, there is no need to submit Environmental Impact Assessment report while seeking environmental clearance. But the public hearing is made mandatory before taking up such projects.

whenever necessary will put this information to the public domain to inform people of the same, to monitor the satisfactory compliance of conditions imposed.

- g) There are four Schedules attached to the Notification depicting procedural subtleties for the venture advocate to consider furthermore, notice. There are 31 projects recorded in the Schedule I of the Notification, which expect (subject to the subtleties referenced previously) natural freedom before beginning of work. If there should be an occurrence of 150 Nuclear energy Stations expert for freedom is appointed to the concerned State Government. In the event of nuclear energy station and pit head nuclear energy stations, the undertaking defender is needed to approach the concerned State Government for example the office which is enriched with work identifying with climate and environment with every one of the essential subtleties indicated therein. The Schedule III of the Notification subtleties out organization of the Expert Committee for Environmental Impact Assessment. The Board of trustees comprises of specialists drawn from different abilities like - (I) eco-framework the board; (ii) air/water contamination control; (iii) water asset the board; (iv) vegetation/fauna preservation and the board; (v) land use arranging; (vi) social sciences/recovery; (vii) project examination; (viii) environment; (ix) ecological wellbeing; (x) branch of knowledge trained professionals; and (xi) delegates of NGOs/people worried about natural issues. This Expert Committee helps the Impact Assessment Organization of Ministry to survey/assess applications for Environmental Leeway. An individual from the Impact Assessment Agency goes about as Part Secretary of the master committee. The remarkable and experienced scientist or naturalist or specialized proficient with wide administrative involvement with the significant formative area would go about as the Chairman of the Expert Committee.

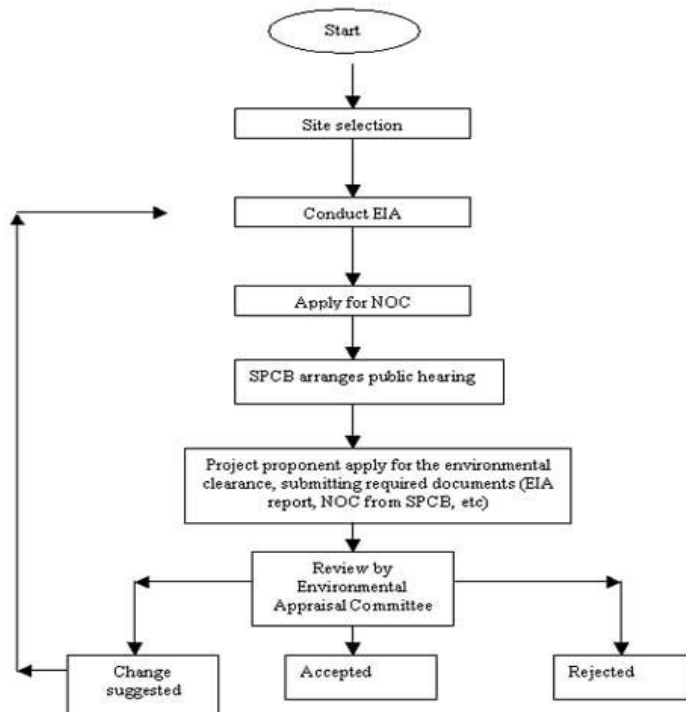


Fig 1: The generalized process of EIA

#### 4.3.2. The 2006 notification

The subsequent amendment that created a major change in the EIA process was notified by the Ministry of environment and forests on 14th September, 2006.<sup>68</sup> The main aim of this amendment seemed to be to decentralize the power to the State Governments. Various projects, such as mining, thermal power plants, river valleys, infrastructure (roads, highways, ports, harbours, and airports), and industries, even very tiny electroplating or foundry units, will be required to get environmental clearance under the notification. Unlike the EIA Notification of 1994, however, the new legislation has placed the burden of project clearance on the state government, depending on the project's size and capability. Certain operations that are permitted under the Coastal

<sup>68</sup> Notification No. S.O. 1533(E), dated 14th September, 2006.



Regulation Zone Act of 1991 also need the same level of approval under this notification. Furthermore, donor institutions operating in India, such as the World Bank and the Asian Development Bank, have their own set of environmental clearance criteria for projects they support. The major changes brought about in this notification include:

a) The notification divides all projects into 2 main categories- Category A and Category B—based on potential impacts over an area and on human health and natural and man-made resources. According to the notification, all Category A projects (with potentially significant impacts) are required to carry out an EIA and undertake a public hearing before an EC may be granted by the Union environment ministry. Category B projects (with potentially less significant impacts) are evaluated and given a clearance by state level authorities, the State Environment Impact Assessment Authority (SEIAA) and State Expert Appraisal Committee (SEAC) Moreover, projects under Category B1 also require an EIA and public consultation, but those falling under B2 are exempted from requirements of both EIA and public consultation.<sup>69</sup>

b) new state level authority, the State Environment Impact Assessment Authority (SEIAA) and State Expert Appraisal Committee (SEAC) is established by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 comprising of three Members including a Chairman and a Member-Secretary.

c) The category A projects has to be completed in the time frame of 10.5-12 months, as opposed to the long-time limits given in the 1994 notification.

c) The environmental clearance process for new projects will comprise of a maximum of four stages, all of which may not apply to particular cases as set forth below in this notification. These four stages in sequential order are: -

- Stage (1) Screening (Only for Category ‘B’ projects and activities) : This stage is to differentiate the projects in the A and B categories, and in order to scrutinize the projects that come under the B category by the concerned State level Expert Appraisal Committee (SEAC). For categorization of B1 and B2 projects, the Ministry of Environment and Forests (MoEF) is supposed to issue appropriate guidelines from time to time.

- Stage (2) Scoping - Scoping refers to the process by which the Expert Appraisal Committee (EAC) in the case of Category ‘A’ projects or activities, and State level

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<sup>69</sup> Id.

Expert Appraisal Committee (SEAC) in the case of Category ‘B1’ projects or activities determine detailed and comprehensive Terms of References (ToRs) addressing all the relevant environmental concerns for the preparation of the EIA report.

- Stage (3) Public Consultation – The public consultation refers to the process by which the concerns of the local affected persons who might be affected due to this particular project is ascertained. All category ‘A’ and ‘B1’ projects are to undergo public hearing. Yet, certain projects were omitted for this process, without any due reason stated.
- Stage (4) Appraisal – The State or National Expert Appraisal Committee conducts a detailed scrutiny of all the documents submitted for the grant of environmental clearance. There is no public consultation subsequent to this process, and as a result, the citizens do not get to peruse the final document, etc.

#### 4.4. Draft notification on EIA, 2020

The Draft Environmental Impact Assessment Notification, 2020 was legislated with the intention to replace the 2006 notification. There has been major departures from the previous notification, including, but not limited to;

- a) Removal of several activities from the purview of public consultation. Various projects have been now included within the purview of Category B2, expressly exempts purview of public consultation and exempting from the requirement of an Assessment.<sup>70</sup> Further, projects having implication for ‘national security, ‘all linear projects falling within 100 kilometres distance from the Line of Actual Control”, etc. are amongst the projects exempted from public hearing. This reduced the level of scrutiny of the projects.
- b) The EIA report was not required anymore for the modernization of projects where the intended increase in production capacity is up to 25% and public consultation exempt up to 50% increase in production capacity.<sup>71</sup> Further, construction projects up to 15,000 sq mt. were deemed to be exempt from the whole assessment procedure.

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<sup>70</sup> S.O. 750(E) dated the 17th February, 2020, Clause 13, sub cl. 11.

<sup>71</sup> Ibid.

c) The notice period for public hearing has been reduced from 30 days to 20 days, and the whole public hearing procedure is to be completed within 40 days, as opposed to the previous 45 days.<sup>72</sup>

d) Previously, complaints by the public were deemed to be allowed. In this notification, no reporting of violations or non-compliance by the public is even contemplated. The cognizance is to be self-reported, i.e, from the violators themselves, or the government authorities and the guidelines of the central pollution control is to be followed in such circumstances.<sup>73</sup>

e) In the previous notification, there is no scope of a setting up or expanding projects without prior environmental clearance. The 2020 notification allows the projects to receive post-facto clearance, i.e; the project will be able to supply for regularization if the Resource Augmentation Plan is equivalent to 1.5 to 2 times the damage assessed and the economic benefit derived.<sup>74</sup>

f) The 2020 draft proposes annual reports, as post compliance reports in order to ensure continuous compliance, instead of compliance report every 6 months, as under the 2006 notification.

g) There is a whole lot of autonomy given to the public agency through this notification. If the public agency or authority who is responsible for organising public consultation reports to the Regulatory Authority concerned that owing to the local situation public hearing could not be organised then after due consideration the Regulatory Authority may decide that the public consultation in the case need not include the public hearing.<sup>75</sup>

#### 4.4.1. The criticisms against the 2020 Draft EIA notification

- a) Exemption for certain projects: The main criticism against the proposed changes through the novel notification is that the huge exemption granted from the EIA process and public consultation for projects listed under the B2 category, and further expansion/modernisation of projects will have an adverse effect and set us

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<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid at Section 14(8).

back in terms of environmental protection. It is to be noted that category A projects require appraisal from the Central Committee while B1 requires appraisal from the state committee, while B2 category projects do not require mandatory EC. In regards with exempting certain projects having strategic consideration for national defence and security, the analysts note that the government shall have discretion to designate any project as being of strategic importance.<sup>76</sup>

- b) Post-facto environmental clearance: Further, the provision regarding post-facto environmental clearance of projects being allowed in this notification is a major concern as the damage would already have been done and prevention is always better than cure. The judiciary has held — as in the case of *Alembic Pharmaceutical vs. Rohit Prajapati*<sup>77</sup> in April 2020 that “environment law cannot countenance the notion of an ex post facto clearance.”<sup>78</sup> The provision of ex post facto clearance could clearly and obviously be misused as it is likely to “encourage industries to commence operations without bothering clearance and eventually get regularized by paying the penalty amount” and likely “open a floodgate of violations ...”<sup>79</sup>
- c) Reduced time periods: Additionally, the notice period for public hearings has been reduced from the previous period of 30 days to 20 days in this notification. The reason given for the same by the former Minister of Environment, Forest and Climate Change, Mr. Prakash Javadekar was that the shorter time span was “in tune with the times”, given the growth of internet and mobile technology.<sup>80</sup> This will make it difficult to study the draft EIA report, more so when it is not widely available or provided in the regional language.<sup>81</sup> It is to be noted that several environmentalists and organizations have argued against the 30 day time frame

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<sup>76</sup> “[India’s proposed overhaul of environment clearance rules could dilute existing regulations](https://india.mongabay.com/2020/03/indias-proposed-overhaul-of-environment-clearance-rules-could-dilute-existing-regulations/)”, *Mongabay*, March 2020 <https://india.mongabay.com/2020/03/indias-proposed-overhaul-of-environment-clearance-rules-could-dilute-existing-regulations/>.

<sup>77</sup> Civil Appeal No. 1526 of 2016.

<sup>78</sup> *Ibid.*

<sup>79</sup> “Post Facto clearance Environmental clearance set to be New Normal in India”, *NEWS Click*, May 4, 2020.

<sup>80</sup> “Draft EIA in line with green rules, court rulings: Prakash Javadekar, Environment Minister”, *The Economic Times*, August 17, 2020. <https://economictimes.indiatimes.com/news/politics-and-nation/draft-eia-in-line-with-green-rules-court-rulings-prakash-javadekar-environment-minister/articleshow/77578695.cms>.

<sup>81</sup> [Jacob Koshy](https://www.thehindu.com/sci-tech/energy-and-environment/new-environment-impact-norm-cuts-time-for-public-hearing/article31052406.ece), New environment impact norm cuts time for public hearing <https://www.thehindu.com/sci-tech/energy-and-environment/new-environment-impact-norm-cuts-time-for-public-hearing/article31052406.ece>

provided by the 2006 notification itself, reasoning that this time frame was inadequate as the information failed to reach the stakeholders residing in remote and inaccessible terrains.<sup>82</sup> It is also essential to note that the novel notification has waived the importance of public consultation in the sense, the agency conducting the public hearing can decide whether or not public hearing is to be conducted or not in an arbitrary manner, which is a clear excessive delegation of power in this regard.

- d) Post clearance compliance: The subsequent concern is regarding the post clearance compliance. Post clearance compliance is of the implication that the project proponents are to adhere to certain rules in order to mitigate further damage. The newly proposed time period of 1 year to file annual reports is counter-intuitive as allowing a longer period for filling the compliance report will give an opportunity to project proponents to hide disastrous consequences, which could go unnoticed.<sup>83</sup> Further, this particular compliance report will be prepared solely by the project proponents themselves, which has room for apparent errors or/and subjectivity. One of the effective tools to strengthen the monitoring and compliance system is allowing the affected communities to participate in monitoring activities.<sup>84</sup> In the case of *Sandeep Mittal v. Ministry of Environment, Forests and Climate Change and Ors.*<sup>85</sup> in July 2020, it was observed that the mechanism for monitoring environmental norms was inadequate and hence, required the MoEFCC to monitor EC clearance conditions “on periodical basis, at least once in a quarter.”<sup>86</sup>
- e) Lack of notifications in regional languages: The fact that the notification, which impacts the citizens was published only in Hindi and English, as the critics state,

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<sup>82</sup> “Govt legitimizing and legalizing environmental violations for business by amending EIA rules: Activists”, Himachal Watcher, July 06, 2020. <https://himachalwatcher.com/2020/07/06/himachal-pradesh-proposed-eia-draft-amendments-2020/>.

<sup>83</sup> “How draft environmental impact assessment notification dilutes green clearance norms”, Northeast Now, June 5, 2020. <https://nenow.in/environment/how-draft-environmental-impact-assessment-notification-dilutes-environment-clearance-norms.html>.

<sup>84</sup> Supra Note 36.

<sup>85</sup> Original Application No. 837/2018 before the National Green Tribunal, Principal Bench, New Delhi.

<sup>86</sup> Ibid.

is a lapse on part of the central government and a blatant disregard of constitutional values.

The apparent distrust and agony of the citizens has been recorded in the form of at least 17 lakh comments from the public received by the environment ministry against the proposed changes in the EIA, especially against the post facto compliance.<sup>87</sup> This has been possible, in part, due to the success of environment and civil society groups in raising awareness about the controversial changes in environment law that the draft EIA proposes. In conclusion, it is essential to state that the EIA 2006 notification was not an adequate condition for ensuring adequate environmental protection. A few arrangements in the most recent draft appear to shift the scale for 'facilitating businesses and easing the norm'. In the 2019 'Ease of Doing Business' report by the World Bank, India has consistently ascended from 142nd positioning in 2014 to 63rd positioning in 2019.<sup>88</sup> India, nonetheless, has consistently declined on Environment Performance Index, from 141st position in 2016 to 168th position out of 180 nations in 2020.<sup>89</sup> The public authority has guaranteed that it will endeavour to find some kind of harmony between the natural and formative concerns. As and when the EIA is settled, it is required to consolidate the viewpoints of different partners and stakeholders in a fair way.

#### 4.5. Environmental Impact Assessment: A judicial viewpoint

The decisions of the Honourable courts with explicit concentration upon the Environmental Impact Assessment is very restricted in India. In greater part of cases, where the developmental projects are tested as presenting risk to the climate, the courts have observed the Environmental Impact Assessment Statements, yet have not gone into the subjective parts of it. There are acceptable quantities of cases where the courts have moved further proactively to choose their own expert committees to discover logical varities of the proposed project under conflict. Yet, unadulterated assessment of discoveries in the Environmental Impact Assessment

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<sup>87</sup> Supra note 31.

<sup>88</sup> "Doing business 2020: Reforms boost India's business climate ranking: among top ten improvers for third straight year" The World Bank, October, 2019. <https://www.worldbank.org/en/news/press-release/2019/10/24/doing-business-india-top-10-improver-business-climate-ranking>

<sup>89</sup> "[Environmental Performance Index 2020](https://epi.yale.edu/downloads/epipolicymakerssummaryr11.pdf)" *Environment Performance Index*, June 2020. <https://epi.yale.edu/downloads/epipolicymakerssummaryr11.pdf>.

reports or remarking upon the discoveries of the EIA study led by the courts is yet to happen in the Indian situation.

The Indian courts have outlined the particular grounds on which administrative action requiring environmental approval could be challenged through some judgments, including, but not limited to;

*Sterlite Industries (India) Ltd. v. Union of India*<sup>90</sup>, which is deemed to be a Landmark case wherein which arbitrariness of bureaucratic procedure, Illegality, irrationality, and procedural impropriety were used as grounds for judicial review. As a result, it was held that granting environmental approval by the competent body outside of the authority's legal authorities would be invalid. If the decision is incorrect under Wednesbury Principle<sup>91</sup>, the Court may intervene on the basis of irrationality. It was additionally held that permission might be contested if it was granted without following the correct procedure.

The Supreme Court in another landmark judgement regarding environmental matters, i.e; *Vellore Citizens Welfare Forum v Union of India* brought about the concept of 'sustainable development' in light in India. It was held that even though development and companies are essential in a country's growth cycle, having regard to pollution, the doctrine of 'sustainable development' must be adopted by the law makers as a balancing concept.<sup>92</sup>

In the matter of *Gram Panchayat Navlakh Umbre*, the Bombay High court has held that the "decision-making process of those authorities must result in a reasoned conclusion which is reflective of a due application of mind to the various concerns arising from a project such as the present, in addition to being transparent. The mere fact that a committee is made up of specialists is not enough of a guarantee that the outcome of its proceedings would be equitable and proper."

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<sup>90</sup> 2013 AIR SCW 3231.

<sup>91</sup> The Wednesbury principle states that only an administrative decision that is blatantly unreasonable can be taken before a court for judicial review. The notion is widely regarded as a rationale for courts to refrain from interfering with decisions made by administrative bodies. The principle's non-applicability would mean that courts would be less unwilling to intervene in such decision.

<sup>92</sup> 1996 5 SCR 241.

<sup>93</sup> Public Interest Litigation No. 115 of 2010. Judgment of Bombay High Court on June 28, 2012 Paragraph 26.

The Delhi High Court concluded in the matter of *Utkarsh Mandal*<sup>94</sup> that EAC was required to reveal the reasons for its decision, based on the Supreme Court's concept that quasi-judicial and administrative bodies must disclose reasons for reaching a certain result. The Court has also underlined the importance of a thorough examination of the facts and rationale.

The National Green Tribunal (NGT) has upheld that "appraisal is not a mere formality and it requires detailed scrutiny of the application as well as the documents filed by EAC and SEAC, the final decision for either rejecting or granting an EC vests with the Regulatory Authority concerned, viz., SEIAA or MOEF, but the task of appraisal is vested with EAC/SEAC and not with the regulatory authority"<sup>95</sup>.

In a case where the witnesses who spoke out against the proposal were not recorded, and no summary of the public hearing was produced in the local language or made public, the Court deemed the approval null and void. The poor conduct of public hearings has been a popular issue for contesting environmental clearances<sup>96</sup>.

In demonstrating the nature of discussions while considering a project for giving its recommendation, it is essential that the views, opinions, comments, and suggestions made by each and every member of the committee are required to be recorded in a structured format<sup>97</sup>.

The role of private expert bodies and consultants in the EIA has also been scrutinized by the courts, referring to the Committee on Minor Minerals recommendations, the court in *Deepak Kumar v. State of Haryana and Ors*<sup>98</sup> stated that state governments should be discouraged from granting mining licenses/lease to plots less than five hectares in order to reduce circumvention and ensure sustainable mining.

Additionally, in the case of *V. Srinivasan v. UOI*, the National Green Tribunal has held that previous environmental clearances from the Ministry of Environment and Forest Affairs should

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<sup>94</sup> Writ Petition (Civil) No. 9340 of 2009.

<sup>95</sup> Gau Raxa Hitraxak Manch and Gaucher Paryavaran Bachav Trust, Rajula v. Union of India and Others, Appeal No. 47/2012 Judgment of NGT on August 22, 2013.

<sup>96</sup> Appeal No. 3/2011 (T) (NEAA No. 26 of 2009). Judgment of Principal Bench of the National Green Tribunal on April 20, 2012.

<sup>97</sup> Samata and Forum of Sustainable Development v. Union of India & Ors 5 Appeal No. 9 of 2011. Judgment of NGT (Southern Zone, Chennai) on December 13, 2013.

<sup>98</sup> Special Leave Petition (Civil) No. 19628-19629 of 2009. Judgment of Supreme Court on February 27, 2012.



be requested when land is divided into smaller portions. False information provided by the consultant was deemed to be professional misconduct by the Court, which advocated stern action in such circumstances<sup>99</sup>.

In the *Samarth Trust Case*, the Delhi high court through Justice Madan B. Lokur had considered EIAs “a part of participatory justice in which the voice is given to the voiceless and it is like a jan sunwai, where the community is the jury.”<sup>100</sup> This judgement seems to be of special importance at the moment when the role of participatory justice has been steadily reduced through the 2020 amendment wherein the time for public hearing has been reduced, and public hearing has been avoided altogether for certain projects of essence.

In a Supreme Court judgment delivered on 1st April 2020, The court had observed, “The concept of an ex post facto EC (environmental clearance) is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January 1994. It is, as the judgment in Common Cause holds, detrimental to the environment and could lead to irreparable degradation.”<sup>101</sup>

In pursuance to the evolving interpretations, the Supreme Court has ruled that the religious rights of individuals and communities to be determined by the Gram Sabha must be protected, and that the Gram Sabha's decision must be considered before the MOEF grants environmental approvals for development projects in forests or scheduled areas, highlighting the Gram Sabha's role<sup>102</sup>.

The most recent innovation that has been brought about in the current process of Environmental Impact Assessment that stemmed from the objections made by a number of judges on the current institutional arrangement with regard to the EIA. The Supreme Court recently ordered the formation of a ‘National Environmental Agency’ to oversee this process. It concluded that the “current mechanism under the EIA Notification... is deficient in many ways, and what is required is a national regulator...who can carry out an independent, objective, and transparent appraisal

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<sup>99</sup> V. Srinivasan v. UOI, Appeal No. 18 of 2011 (T), Judgment of Principal Bench of the National Green Tribunal on February 24, 2012.

<sup>100</sup>Writ Petition (Civil) No. 9317 of 2009, Judgement of the Delhi High Court on 28 May, 2010.

<sup>101</sup> Supra note 27.

<sup>102</sup> Writ Petition (Civil) No. 180 of 2011. Judgment of the Supreme Court of India on April 18, 2013.

and approval of projects for environmental clearances, as well as monitor the implementation of the conditions set forth in the Environmental Clearances.”<sup>103</sup>

The process of EIA in India stands up to various huge issues, the most significant of which is the requirement for better straightforwardness, expanded administrative duty, and further developed public cooperation quality. Every one of these issues has been tended to by the Court's mediations in different cases. The Court's new request to make an independent national environmental regulator to screen the EIA process mirrors the Court's anxiety with piecemeal policy reforms and an endeavour to offer an unmistakable institutional system for settling the current hardships.

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<sup>103</sup> N Godavarman v. Union of India. Order of the Supreme Court on January 6, 2014 in I.A. Nos. I.A. NOs.1868, 2091, 2225-2227, 2380, 2568 and 2937 in Writ Petition (Civil) No. 202 of 1995.

## CHAPTER 5

### **PUBLIC INTEREST-BASED APPROACH & EIA**

#### The Everlasting bond between Environment & Public

Environment is being continuously and thoroughly assessed so that the impacts can be understood in a better manner. This has its reflection on the human society. The promotion of both environmental improvement and human development are both intertwined concept. When discussing about this subject, it can be observed that a transition has occurred in the developmental agenda over the years; countries and other actors started to incorporate more policies into their system to advance human rights-based approach in environmental matters.

Man is an important creation and in most situations, mostly getting positioned in between the topics of environment and development. According to UN Conference on Human Environment,

*Man is both creature & moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights.<sup>104</sup>*

The global society started to be aware of the significance of human rights as a concept especially after the 2nd World War but we were less aware of right to healthy environment as part of this wider concept of human rights then. Indeed the times have changed, scenarios have changed; a tremendous growth in the importance of this right namely, the right to healthy environment can be observed over the years. It is necessary to understand the fact that in order to protect humans

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<sup>104</sup> Declaration of the United Nations Conference on the Human Environment, 16 June 1972

[https://www.soas.ac.uk/cedep-demos/000\\_P514\\_IEL\\_K3736-Demo/treaties/media/1972%20Stockholm%201972%20-%20Declaration%20of%20the%20United%20Nations%20Conference%20on%20the%20Human%20Environment%20-%20UNEP.pdf](https://www.soas.ac.uk/cedep-demos/000_P514_IEL_K3736-Demo/treaties/media/1972%20Stockholm%201972%20-%20Declaration%20of%20the%20United%20Nations%20Conference%20on%20the%20Human%20Environment%20-%20UNEP.pdf)

as a race, we must protect the environment in which they thrive. Quoting the words of Greta Thunberg in this context of worsening environmental situation,

*"I want to feel safe. How can I feel safe when I know we are in the greatest crisis in human history?"*<sup>105</sup>

The right to clean environment is the topic of talk across the globe and this cannot be definitely brought under the heading of individual right. This right is obviously the right that is vital for the whole public as such and not just for a particular individual, so it can be clearly viewed in a collective-right perspective. The time calls for immediate actions on the current circumstances of environment from the authorities as well as the common man at the same time. This responsibility falls on the public too because it is in the interest of the common man that the resources in the environment are increasingly being utilised so equal responsibility falls on the common man to thrive forward keeping in mind the best interest of the environment

#### Why public engagement?

Since the so called effects are reflected on the environment, the same is borne by the humans, so, when we look into the topic of impact assessment, we understand that focus should be given to the concept of 'public'.

The Latin word 'publicus' is from where the word 'public' originated and the word tries to connect the concept of people with common interest.. The definition of public is very differently interpreted by different scholars; many are of the view that the term public should be able to cover a certain set of population and some are of the view that an explanation should not be brought about at all as they believed that the definitions are most likely to exclude a relevant party. It was seen by some that the whole purpose of defining public in the context of environmental impact assessment, is mainly to distinguish and exclude those parties who are less likely to contribute anything much into the public process constructively.<sup>106</sup> It is important to include those who are most likely to have the ability or chances to contribute and thus they must

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<sup>105</sup> Amelia Tait, *Greta Thunberg: How one teenager became the voice of the planet*, Wired( March 30, 10.14 PM) <https://www.wired.co.uk/article/greta-thunberg-climate-crisis>

<sup>106</sup> Meinhard Doelle , A. John Sinclair, *Time for a new approach to environmental assessments: Promoting cooperation and consensus for sustainability*, Environmental Impact Assessment Review 185, 187 (2005)

be allowed to participate; whether these people actually participate in a constructive manner or not totally depends and can be understood only by the results that are arrived at the end of the process.<sup>107</sup> Public, in the opinion of John Dewey was defined as a group of people who, in facing a similar problem, recognize it and organize themselves to address it.<sup>108</sup>

To "learn from experience" is to make a backward and forward connection between what we do to things and what we enjoy or suffer from things in consequence.<sup>109</sup> Environmental impact assessments, in general, are turning into a tool for not just environmental purposes, but also for social betterment in the current day. Quoting Meredith, "*Despite its complexity, EA 'is no more than a process by which common-sense concerns about community futures are incorporated into decisions that will affect the future'*"<sup>110</sup> The system of organizing public hearing is a very advantageous procedure as it acts as a check on arbitrary power exercised by the authorities and at the same time furthers the principle of natural justice namely, *audi alterm partem*.<sup>111</sup>

In earlier times, the practice of impact assessments was not quit linked or associated with concept of human rights. Since we are very aware of the fact that humans are an integral part of the environment and by going through basic logics, when environment impact is assessed, it is important to include the public in the various steps involved in the same. Special Representative to the Secretary-General on business and human rights, Professor John Ruggie had tried to highlight and advocate about 'rights-holders' and 'duty-bearers'.<sup>112</sup> The public participation in these various processes of EIA in reality enhances the whole procedure. Emphasizing on preserving the human rights is important aspect to impact assessment of environment for the various developmental projects, since these are most likely to have a negative impact on the health, property and safety of the public residing in these areas.

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<sup>107</sup> *ibid*

<sup>108</sup> John Dewey *The Public and Its Problems*(Swallow Press 1991)

<sup>109</sup> John Dewey, *Democracy and Education*, 146( 2011, Penn State Electronic Classics Series Publication)  
<https://nsee.memberclicks.net/assets/docs/KnowledgeCenter/BuildingExpEduc/BooksReports/10.%20democracy%20and%20education%20by%20dewey.pdf>

<sup>110</sup> Alan Paul Diduck, *Learning through Public Involvement in Environmental Assessment: A Transformative Perspective*, (National Library of Canada, 2011)

<sup>111</sup> Justice A. R. Lakshmanan, *Thoughts on Environmental Public Hearings*, 17 Student Bar Review 1, 3(2005)

<sup>112</sup> Deanna Kemp & Frank Vanclay, *Human rights and impact assessment: clarifying the connections in practice*, 31 Impact Assessment and Project Appraisal, 86-96( 2013)

As we are aware of, the various constituents of the process of EIA includes scoping, preparation of draft EIS documents, with proper public comment periods; finalization of EIS documents, monitoring, etc.<sup>113</sup> It is clear from this that, public hearing is an important component of the process when taken in totality. Generally, the framework set by human-rights model seeks to strengthen the public and highlights the vitality of their participation in the various procedures of decision making; afterall, it is the public that in reality faces the impacts on the environment. The public has the potential to put forward the practical difficulties faced by them and thereby seek the implementation of policies and measures. Public participation is focused in EIA more now, as this enhances the situation of the public and helps them to access more information without much hindrances, helps in reaching better decisions which looks into, not only the developmental side but also at the sustainability of the project ideas that are put forward. This inturn, helps in resolving the possible conflicts that may arise in these instances by avoiding situations of court involvement in these subjects. When the knowledge of the common people in the society is included in the developmental projects, it tends to provide a decision with better quality.

#### What is the concept?

Rio Declaration and the Principles formulated within it discuss the topic of including the participation of the general public:

Principle 10 basically brings forth the idea that the various issues related to environment are handled in the best possible manner by the active involvement of all concerned citizens. It states that “*..at the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.*”<sup>114</sup>

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<sup>113</sup> William A. Tilleman, *Public Participation in the Environmental Impact Assessment Process: A Comparative Study of Impact Assessment in Canada, the United States and the European Community*, 33 COLUM. J. Transnat'l L. 337 (1995)

<sup>114</sup> Rio de Janeiro Earth Summit ( UNCED) – principle 10-June 1992.

According to Principle 22, *“The indigenous groups of people and their related communities, and also, the other local communities, have an important role in environmental management and development because of their knowledge and traditional practices...states should recognise and at same time duly support their identity, culture and interests... enable their effective participation in the achievement development which is sustainable in nature”*.<sup>115</sup>

According to the World Bank, *“participation from the public leads to better baseline and impact information and thus better design of projects and programs...people's participation in EA of development investments is recognized as key to the identification of environmental impacts as well as to the design of adequate mitigation measures proposed to address them.”*<sup>116</sup>

The Aarhus Convention too voices similar ideas in the context of public participation in environmental matters; the Convention stipulates parties to necessarily include provisions for participation from the public in environmental policies, programs, plans and even regarding legally binding instruments.<sup>117</sup>

Almost from 1989, the World Bank has considered this aspect of participation of the public to be an elementary necessity of its Environmental Assessment Policies.

R Stewart has conveyed the importance of participation of public in the impact assessment of environment, saying:

*“by assuring the various considerations of interests of all affected persons.. will lead to yielding outcomes that better serve society as a whole ..., such participation ... is in reality valuable in itself since it creates in the minds of the citizens a sense of involvement in the process of government and also add on to the confidence of the citizens in the fairness of government decisions. . . this infact...considers that scheme of interest representation is responding to powerful needs that have been neglected by other branches of government”*.<sup>118</sup>

#### How is the concept brought into practicality?

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<sup>115</sup> Rio de Janeiro Earth Summit ( UNCED) – principle 22-June 1992

<sup>116</sup> William L. Partridge, *People's Participation in Environmental Assessment in Latin America: Best Practices-* The World Bank Latin America Technical Department Environment Unit(1994)

<sup>117</sup> "The United Nations Economic Commission for Europe Convention Public Participation in Decision-making and Access to Justice in International Illegal Mateñals 3, 517 (1999). See arts. 6,7 and 8 of Aarhus Convention

<sup>118</sup> R. Stewart, *The Reformation of American Administrative Law*, 88 HARV. L. REV. 1760-62(1975)

Inability to consider the concerns of the general public is most likely to lead to unfavourable results. One such example is the one given by the authors of the impact assessment of environment for Point Aconi Coal plant where they did not give much importance or heed to the common people's concerns about basic issues like climatic change and it is seen that therefore, Nova Scotia Power couldn't manage its emission rate of carbon dioxide target.<sup>119</sup>

Certain biases amongst public was noticed by a few scholars who noticed that certain sect of the public were affected by bias; for example only particular sections of the public in Columbia are infact provided with the opportunity or chance to participate in the various procedure related to EIA.<sup>120</sup> The quality of the outcomes of these public participations varies from place to place and public to public. When public participation is incorporated into processes of EIA, it is important to ensure that it is not merely included for name sake but that it is having a meaningful purpose considering the fact that it has a major role since it is now increasingly been considered as the cornerstone of EIA. The whole legitimacy of this topic cannot be checked and questioned if there is no public participation with meaning. The particular term 'meaningful' is used to try to highlight the fact that public participation should not be viewed as a mere technical process in EIA but should be given the importance that it deserves; this means that public participation should necessarily include the essential steps including providing of notice and information sharing to educate, including the active and critical exchange of ideas among proponents, regulators and participants.<sup>121</sup> Information is a very important thing and must be available to the participants so that they have the adequate idea of the scenario they are in. According to Stewart and Sinclair also, participation becomes meaningful when factors are taken into consideration such as the ability to influence the final decisions or outputs, adequate timing in the decision cycle, fair and open dialogue & discussion, and participant support.<sup>122</sup>

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<sup>119</sup> Toner T.P, *Environmental and public interface for Point Aconi Generating Station, Point Aconi, Nova Scotia Canada*(1994)

<sup>120</sup> Javier Toro., *Environmental Impact Assessment In Colombia: Critical Analysis and Proposals for Improvement*, 30 *Envtl. Impact Assessment Rev.* 247,257 (2010).

<sup>121</sup> A. John Sinclair , Gary Schneider & Lisa Mitchell, *Environmental Impact Assessment Process Substitution: Experiences Of Public Participants*, 30 *Impact Assessment and Project Appraisal J* 85 (2012)

<sup>122</sup> Jennifer M. P. Stewart and A. John Sinclair *Meaningful Public Participation In Environmental Assessment: Perspectives From Canadian Participants, Proponents, And Government*, 9 *Journal of Environmental Assessment Policy and Management* (2007)



When we speak of information, it must be kept in mind that it be comprehensive in nature and should be necessarily be able to cover the interests of the parties concerned. Though it sounds easy when we simply hear, when we come to the practical situation, it is different. It is because gaining access to these information can be a herculean task; say, like collecting information on reviews of proposals that happened way in the past. This practical situation that may arise can be handled, by getting access to proper and adequate materials like the assessment of impacts & their prediction documents, the decision taken and the reasons behind the same. All these could be efficiently accessed by the general public when the materials are made available through the internet, say in the form of electronic- libraries; in this way there will be a greater public with greater knowledge who could then give greater contribution in the form of opinions to improve the proposed projects. One advantage of e-libraries is that through this platform, the public will also be able to collect information about the laws and cases in the public registries.

Moving on to the next aspect, that is, to process the collected information in an effective manner is also not an easy task. This is the stage that broadens the scope beyond just providing access to information. This stage calls for the collaboration of the public to discuss; this also includes discussions on situations that require novel solutions and which can't be helped with by the government. For this, many communication methods is made utilized of, which even nowadays include social platforms and other electronic as well as non-electronic modes. Hence, we see that to bring in useful involvement of the public and the authorities simultaneously, the information collected should be processed in a less complicated yet meaningful manner which sets the discussions into motion. This is possible through adoption of the necessary steps which includes adequate public notice, assisting and helping the participants with the information collected, conducting of public hearings etc. There are different techniques to involve the public. The active public information techniques can be utilized by engaging expert panels, conducting field trips and even by including stimulation games. The passive form of techniques for informing the public may include mostly print materials, like advertisements and newspaper inserts, it may even go on to include websites and television.

When the issue is to be settled amongst a small group, techniques like negotiation & mediation, juries, community represented panels, citizen juries etc can be utilized and when the issue is to

be handled in a much larger group, techniques like interactive polling and large scale workshops can be conducted.

One important practical factor that affects the participation and the quality of the same is the unequal resources that are available to the public. This can be viewed in terms of amount of information that is made available to the public and the time provided. One negative force seen in this context is that in most cases, the project proponents try to influence the decision making authorities as their selfish motives are inclined towards avoiding the public participation since they do not want to spend efforts in finding alternative measures for accommodating the general population's concerns. According to Palerm, technical expertise is one factor that affects the quality of public participation; the unequal or uneven level of technical expertise.<sup>123</sup> Many argue against the concept of public participation, who puts forth the argument that social impacts differ in various projects and thus can't be measured or evaluated properly and thus has to be considered least important and ignored.

Public participation in different contexts

#### European Context

Since the major event of US incorporating the NEPA into their legislative system, the Commission of the European Communities also did develop an interest towards the impact assessment strategy of the environment. The various member states of EC have tried to incorporate the process of public consultation for the public to come forward and comment on the environmental information at the time or soon after the same is submitted to the competent authority; basically before the decision is reached.<sup>124</sup> Many EIA studies have been completed by the European Commission before bringing forth possible action. Industrial developments and related activities have undergone different kinds of authorization procedures in all the Member States. Even though the provisions differ to some extent, they basically bring forth the following underlying steps:

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<sup>123</sup>Juan R.Palerm, *Public participation in environmental decision making: Examining the Aarhus convention*, *Journal of Environmental Assessment Policy and Management* 229, 244(1999)

<sup>124</sup> Commission of the European Communities (1993) COM (93) 28, 2.4.1993: Report from the Commission of the Implementation of Directive 85/337/EEC.

- a. Submission and presenting of the documentary evidence regarding the developmental project that is having higher chances of creating an impact on the environmental set up of the proposed venue before the authorities.
- b. Most importantly, in this context we are discussing, the process of consultation of these assessments of impacts with the other concerned authorities and the common public.
- c. After getting the required inputs from the process of consultation, the findings from these are associated and used for further stages of authorization.

At the time of the compiling of planning application to be submitted to the respectful authority, the public is generally given attention to and is considered & consulted in UK. Even though the necessity for prior consultation and participation is not quite formal, this mostly happened on a voluntary basis. When application is submitted along with the environmental statement, the authority is supposed to arrive at a decision generally in a period of sixteen weeks. Objections are most likely to occur and these are mostly looked into by public inquiry which may be conducted on the basis of magnitude of the various objections.

During the time of 1970s, Dutch Central Advisory Council on the Environment highlighted this idea of bringing the EIA process and inculcating the same as part of their environmental policy to the Ministers of Health and Environmental Hygiene and of Economic Affairs. The Council also highlighted & was highly of the opinion of preparing EI statements for the various Government measures and also, the Ministers have commissioned case studies that involve environmental impact assessment of both projects and development plans, all, prior to taking action. The process of public consultation has in fact two different stages in the Netherlands. One is that, basic setting up of the guidelines of EIA and another is the one where the environmental impact statement is being evaluated. Also, at the stage two, a public hearing is conducted with lesser or even no much constraints or restrictions on the concerned public. It can be understood that majority member states do not show a pattern of conducting participation by the public at earliest stages.

Before undertaking any public works connected with private projects, the French Protection of Nature Act 1976 has prescribed public authorization accompanied by an impact assessment.

Around the time of 1977, many Application Decrees were issued to give an idea about public consultations and the provisions involved the rough coverage & content. <sup>125</sup>

It could be seen that there prevailed a lot of deficiencies when it comes to the EIA requirements in the European perspective. It was seen that the various EIA procedures were of much less formality or strictness in most of the public authority projects when compared to the private ones. It was observed that even if there were provisions and goals to further EIA requirements as aforementioned by the member states, there existed many setbacks to the same. In the participatory public context, the setback was that during the consultation procedure, in most situations, the information required for the impact assessment were received at a point which is too late for any sensible decision or arrangement could be made over the same.

Even we look at the impact assessment of environment concerning the land use and landuse planning; there are considerable differences amongst the Member States of European communities regarding the basic guidelines on the patterns of landuse. Initially when this topic was considered, the planning process basically was initiated at the grass root levels by the local authorities but as years passed, the same was started to be considered by the higher levels also.

Even if there existed differences amongst the member states, there were infact certain points which almost all the members agreed upon and were seen as common procedure for the planning procedures involved in landuse. They were:

- (i) When planning-document is being made for the benefit of the assessment process, the information which is necessary for the same is collected through survey which also aids in understanding the future issues that may arise and with this, identifying the strategies or methods that can be adopted to mitigate the same.
- (ii) Again, important to our context, all these member states, agree upon the need for including public participation and consultation based on the document containing the aforementioned information and if necessary, after this step, to revise the plan in further stages.

### Canadian Context

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<sup>125</sup> Lee, Norman, and Christopher Wood. *EIA—A European Perspective*, 4Built Environment, 101, 110(1978)

The very vital concept of the assessment of the impacts those are likely to be the outcome of the development processes was first considered and established in 1973 through the EARP, also called the Environmental Assessment Review Process. It can be noted that EARP during the time, was infact a formal opportunity for the public to discuss and debate about the aforementioned impacts that are likely to be the outcome of the development processes. The EARP basically put forth the idea of involving and consulting the public but also portrayed the idea that early involvement was not something pushed for as mandatory. So, in practicality, it could be seen that the participation under this was much lesser than what was intended out of it and mostly included quite short presentations in front of the review panel and lacked transparency in decision making. It could be noted that neither special attention was dedicated for aboriginal engagement nor were provisions present that voiced the possible impacts on the lands and culture of these aboriginals. One of the major negative that prevailed in this scenario was that the seeking of input from these communities was not a sure event and even it was sought for, it was in most cases, considered after assessment was being submitted and reviewed; what is to be seen here is that, at this stage the discretion of EARP was broad.<sup>126</sup>

In Canada, S.35(1) of the Constitution Act 1982 discusses about the duties of government to specifically seek the consultation of the aboriginal people on topics and concerns related to resources and their developments on their indigenous lands which might have higher chances of affecting their rights negatively. To achieve a fairly good magnitude of public participation, various factors are be ensured.

One of the major points that top this list is the availability of information. This particularly refers to information which is complete in nature and not broken or inaccurate; incomplete disclosure of relevant information can end up being disadvantageous consequence.<sup>127</sup> For understanding this, one needs to know whether the pubic registry showing such information is accessible to the public or not. A registry system is important as far as common public in this scenario is concerned, because it acts as a primary link to the public for accessing the aforesaid information about the developmental projects. With the advancement that world is subjected to in the present

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<sup>126</sup> Marie Ann Bowden, Fred Curtis, *Federal EIA in Canada: EARP as an evolving process*, 8 ENVIRON IMPACT ASSESS REV 97 (1988)

<sup>127</sup> Diduck and Sinclair, 62 *Reconceptualizing public participation in environmental assessment as EA civics*, ENVIRON IMPACT ASSESS REV 174 178( 2017)

day. The internet is increasingly becoming a platform of membership for the common public. It is gradually becoming a method of public access to various government and other official information and documents. It was opined and stated by one federal official, that *"The web site is viewed as an increasingly important tool for the provision of information about what we do and what EA is"*.<sup>128</sup> Also, on this line, one of the British-Columbia officials had commented that, *"We heard criticism that there is too much information on the web site and registry. So, we are looking at preparing listings and summaries, which will simplify access to electronic information"* (Pat. June 30. 1999).<sup>129</sup>

Another essential for a good public hearing on environmental aspects is an adequate notice that is, when a proposal for a certain project is being submitted before the authority, for an effective initiation of environmental assessment process coupled with fair public engagement, there exists the necessity of a proper public notice. The process of informing the public through notices could be through different ways. Say, according to S.3 of Alberta Environmental Assessment Regulation, when the Director decides that a further assessment needs to be conducted regarding a proposed developmental activity or project, the proponent's notice regarding the same shall be *"published in at least one issue of newspaper that is approved by the Director and has general circulation in the area where the proposed activity is to be located"*<sup>130</sup>. This provision continues to state that the notice must contain relevant information like the location of the proposed developmental project, the details of this activity in brief and most importantly, the places/ locations where these *"information about the proposed activity should be made available for the public to inspect"*.<sup>131</sup>

The scenario in British Columbia in this context is similar. Here, both the Director and proponent are required to notify a couple of things to the general public including acceptance of an application, and preparation of draft project reports. The regulation here tries to acknowledge

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<sup>128</sup> Supranote 7 at p. 59

<sup>129</sup> Supra note 7 at p.59

<sup>130</sup> Environmental Assessment Regulation, Alberta Regulation 112/1993- S. 3(1)(a)  
<http://extwprlegs1.fao.org/docs/pdf/al24544.pdf>

<sup>131</sup> *ibid*, at S.3(1)(b)

situations surrounding the providing of public notice, access to information, about setting of a basic public comment periods and regarding holding open house forums.<sup>132</sup>

### Indian Context

India has always been showing its precautionary attitude when it comes to environment and EIA is considered as the central procedure to decide whether or not to grant environmental clearances. The country focuses and tries to flourish various scientific and technological methods to deal with the consequential developmental crisis on the environment but now there is an increasing acknowledgment of the fact that science alone can't aid in reaching a viable solution to the current problem of tackling & regulating the environment. This is because there are many questions to which science cannot give practical solutions, thus it can be seen that now, India is trying to include general public participation in such crucial decision-making points. The rising trend shown here is to look into the granting of environmental clearance for different economic activities by including opportunity for the public to discuss on the same.

As we are aware of, in India, right to information is a very important right. This grew as an important right mainly because the general public here is quite active and sought information regarding various activities of the government. There were many public actions that were brought in by different civil society actors, sometimes even in the form of PILs that reach the judiciary. On top of all this, we should also note the fact that public was very much inclined to getting access to relevant information here that the Right to Information Act was brought about in 2005.<sup>133</sup>

EIA is increasingly being viewed as the procedure playing the central role in most of the decisions surrounding the question of whether to or not grant environmental clearances. The steps behind the conducting of the procedure is discussed in notifications in Environment Protection Act, 1986. The trend of involving common public through the public interest litigation has been existent for quite some time now. This is even evident in the *Kanpur Tanneries case*<sup>134</sup>

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<sup>132</sup> Environmental Assessment Office User Guide, Published in 2009 and updated in March 2011.

<https://www.energy.gov/sites/prod/files/2015/06/f22/EAOUG.pdf>

<sup>133</sup> Right To Information Act, 2005 No. 22 of 2005 <https://rti.gov.in/rti-act.pdf>

<sup>134</sup> *MC Mehta v. Union of India*, AIR 1988 SC 1037

and *Vellore Citizen's Forum case*<sup>135</sup> where common public was tried to be engaged in connection with decisions surrounding the granting of environment clearances.

By the 1994 notification, certain steps were brought about where the proponent of the developmental project, while seeking an application for environmental clearance, was supposed to file before the Ministry of environment and forest documents like, an assessment impact assessment report, environment management plan and project report. This clearance here, was supposed to be granted only after looking into the aforementioned documents and most importantly, after conducting mandatory public hearing.<sup>136</sup> Also, it can be observed that many of the steps involved were modified over the time. An amendment to the notification was brought which required the project proponents to give public access to the copies of EIA report.<sup>137</sup> Later on, further amendments were also brought; the one brought about through the notification in 1997 tried to bring forth different, newer procedures inclusive of the public hearings.<sup>138</sup> Participatory approach is basically encouraged and is seen as a process that promotes accountability and transparency.

When we move on further, we reach the 2006 notification where it is been stated that a developmental project shall be started only after getting clearance for the same from concerned impact assessment agency and while going ahead for the application for green clearance, the application for conducting the EIA should be made before the the state level environmental impact assessment authority that is, the SEIAA or before MoEF; projects classified under the heading of category A was required to be brought before the MoEF and those in category B before the SEIAA. According to this notification, out of the main steps enumerated as the stages of prior-environmental clearance process, stage 3 is mentioned to be public consultation. The notification describes the process of public consultation as process which focuses on the situations and concerns of the affected locals and the others & stakeholders in the various

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<sup>135</sup> *Vellore Citizen's Welfare Forum v. Union of India*, AIR 1996 SC 2715

<sup>136</sup> Notification No. SO 60 (E), Jan. 27, 1994.

<sup>137</sup> Notification No. SO 632 (E), June 13, 1994.

<sup>138</sup> Notification No. SO 318 (E), April 10, 1997



consequential impacts of the developmental projects on an environment and thereby taking into view the major issues pertaining to the same developmental project or activity.<sup>139</sup>

According to subsection (ii) of the same, the procedure behind consultation of the public mainly involves public hearing at the project site or somewhere near its proximity for the benefit of accommodating & acknowledgement of the concerns of the affected locales. This process of public consultation also involves responses from not just the affected locales, but also from those persons with plausible stake in the developmental project and the environmental aspects.; responses from these persons are also obtained in writing.<sup>140</sup>

Even we look at the latest EIA draft of 2020, it is quite evident that the Indian public exhibits a responsible attitude towards environmental matters. This draft released by the Ministry of Environment & Forest Change faced millions of criticisms and almost 1.7 millions of comments from the common public.<sup>141</sup> Major criticism was surrounding the notice period of public hearings. This was initially 30 days and the draft proposed to reduce it to 20 days. In this context environment minister Prakash Javedkar tried to justify this by highlighting the advanced technology and internet in the current day.<sup>142</sup> This lead to many activists raising voice against the same; they highlighted that in not all situations did relevant information reach the general public and other stakeholders who lived in remote areas and other places which are generally inaccessible to any communications.<sup>143</sup>

### Necessity behind the concept of public participation in environment

Engaging the public and making way for their participation in the decision making processes helps in enhancing the democratic attitude in the environmental governance context. This

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<sup>139</sup>Notification No. S.O. 1533, Sep 14, 2006 Point 7-III (i)

<https://parivesh.nic.in/writereaddata/ENV/EnvironmentalClearance-General/18.pdf>

<sup>140</sup> Notification No. S.O. 1533, Sep 14, 2006 Point 7-III (ii)

<https://parivesh.nic.in/writereaddata/ENV/EnvironmentalClearance-General/18.pdf>

<sup>141</sup> *Nothing disturbing in the clauses of draft EIA 2020: RP Gupta* Hindustan times, (March 2,11.36 PM)

<https://www.hindustantimes.com/india-news/nothing-disturbing-in-the-clauses-of-draft-eia-2020-rp-gupta/story-Xx76kMgX5ExoowBcrhFYCL.html>

<sup>142</sup> Anubhuti Vishnoi, *Draft EIA in line with green rules, court rulings: Prakash Javedkar, Environment Minister*, The Economic Time,(March 22, 9.34 AM), <https://economictimes.indiatimes.com/news/politics-and-nation/draft-eia-in-line-with-green-rules-court-rulings-prakash-javedkar-environment-minister/articleshow/77578695.cms>

<sup>143</sup> *Govt legitimizing and legalizing environmental violations for business by amending EIA rules: Activists*, Himachal Watcher,( Apr 02, 10.26 PM), <https://himachalwatcher.com/2020/07/06/himachal-pradesh-proposed-eia-draft-amendments-2020/>

participatory mechanism in environmental governance furthers the idea of equity by the participation of the public which brings about a kind of representative democracy rather than the issues being dealt with by just experts who are not elected by the public.<sup>144</sup> What we understand from the discussion is that involving the public at particular stages of the impact assessment process is crucial as the common man is at a better pedestal to voice the issues concerning the environment they live in. Not only does the consultation of the public aim at the proper hazard identification but also aims at addressing & pinpointing the concerns and worries of the greater public. Concern is diverted to the health and social factors faced by common man rather than just sticking on to the economic factors alone. Since it is public good we are discussing it is important to pitch in ideas to further the growth of development in a sustainable manner which means that only if attention is given to the current circumstances, can the issues be mitigated for the upcoming generation. The reality is that since we are standing at those times where the developmental stages have exceeded the limits bearable by the environment, it is going to be a tedious and continuous process to maintain the environment in a judicious manner.

The involving of common man in the matters connected to environmental impact assessment is another form of respecting the rights of the indigenous masses and protecting their interests in environmental matters. The necessity to further this intention exists strongly, especially at this point of time where environment is being increasingly utilized, or rather misused for the benefits of a few in the society, completely ignoring the impacts on the greater population. Encouraging the participation of the public in these vital matters boosts the public-trust factor regarding the regulatory system and at the same time it aids in improving the economy with least damage to the environment which ultimately belongs to the public.

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<sup>144</sup> Lee and C. Abbot, *The usual suspects? Public participation under the Aarhus Convention* 66 *Modern Law Review* 80, 83 (2003).

## **CHAPTER-6**

### **CONCLUSION**

Environment is a complex area of discussion. Since it is one of the important concerns, over the previous decades there has been tremendous growth of interest regarding issues related to environment. Discussions have grown surrounding topics of sustainability and better management of the concept of development in harmony with the burning theme of environment. Current day global studies estimates that at each passing year, about 6 million hectares of useable land is degraded & changed into non-beneficial plots of land and is expected to turn into deserted lands having an area roughly of Saudi Arabia. It is also understood by analyzing the various studies that approximately 11 hectares of forestlands are depleted at the end of each year and when taken together this would be about the area of India by the end of the 21<sup>st</sup> C.

A number of conferences based on these topics are held at different points of a year in order to deal with the raising environmental situation much efficiently and often these pave ways for international environmental treaties. The increasing global concerns over the environmental issues demanded viable solutions to bring the situation under control. In this context was introduced the concept of Environmental Impact Assessment in the legal arena in order to give legal backup and strength for the protection of environment. The basic understanding of EIA is that firstly, it oversees the proposed project and the predicted environmental consequences of the same, in not only the immediate terms but also, in the long-term future. The next main purpose of the EIA procedure is to set out the alternatives for the developmental project and calculates both the costs as well as the benefits of such alternatives. Thirdly and probably, the most crucial stage is to involve the public and relevant interest groups by informing them about the basic contents of the EIA; they are supposed to negotiate regarding various aspects of the developmental plan. The finality regarding the whole procedure is reached at towards the end and the decision is mostly made by the government agency of respective countries. EIA is relevant to a broad spectrum of development activities that goes on to include various plans, projects, policies etc. A developmental activity is in a large sense, a very sensitive topic since development has the potential to generate both adverse and beneficial effects in totality.

During the international growth of the concept over the decades, the various EIA procedures when compared to the initial days have been updated and the overall capacity has been strengthened in countries- the developing, the developed and the transitional economies. From the research it can be safely concluded that EIA has been able to bring positive changes in mature EIA systems in terms of institutions, public & stakeholder involvements. The status regarding the quality of decisions regarding impact assessments on EIA has been also improving over the years related to the various stringent & strict set conditions and permissions and sometimes regarding the implementation disputes of developmental proposals over the potential consequences to the common man and the stakeholder.

The United States and a number of other European countries, as seen earlier in the previous chapters, had a more close contact with the theme of environmental protection for quite a longer period of time, actually extending way back to the nineteenth century. As we have looked into previously, UNEP from its very initial days has backed up the strong ideas relating to EIA. UNEP has since then supported the spreading of the impact assessment concept by trying to bring forth information regarding various methodology, encouraging different regional and international conferences and providing information related to various methodologies that can be utilized for the afore discussed assessments. It also aids in providing necessary technical support to the agencies focusing on environmental issues in the developing countries.<sup>145</sup> Other than this, through the instant research, it is also seen and understood that organisations like OECD and European Community have widely shifted its focus on the environmental conditions in the past few decades. Influences on a large scale has been put forth by the various international organisations in view of striving to encourage the nations to adopt legislations highlighting EIA both directly encouraging the member states and indirectly by spreading light on the environmental responsibility expectations borne by these nation states. Shortly, it can be concluded according to outlook on the previous chapters that the international system has taken an evident lead in both bringing up the environmental issues to light as well as paving ways slowly to solutions instead of wasting time to wait for the domestic approaches to emerge in form of grass-root sustainable developmental strategies.

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<sup>145</sup> Prasad Modak and Asit K. Biswas Conducting environmental impact assessment in developing countries UN University Press, [1999]

### Public & EIA

The public perspective can be seen as a very crucial and inevitable part of the impact assessment on the environment. The decision making process surrounding environmental matters were exclusively the arena under direct vision and control of the experts. It can be understood that the views of the experts who possess technical knowledge on the subject and the that of the common man who has to live through the practical situations of the environmental impacts are quite different, hence giving a greater importance to the common man's perspective on this topic of impact assessment. If these issues of the public are rather swept under the carpet and not taken heed of, then this has a huge potential of piling up of excess burden on the judiciary and this ultimately affects the rule of law. The period of industrialization has seen a lot of changes over the years and the environmental clearance is a very crucial point in this. From instant research perspective, it is concluded that the public consultation part of the ongoing EIA system is quite inadequate; both at the basic design and implementation levels. All these call for the public scrutiny of the stages of the whole process. Mostly this element of public participation is damaged through legislations that put forth ideas of blanket exemptions from public participations, poor strategies adopted for communications during the hearings and omitting of notices.

### Importance of Assessing Impacts on Environment

The so called impacts on the environment are infact the changes or variations in the environmental parameters (in space & time) when measured against with what would have happened had the project not been undertaken. The parameters that is taken is usually environmental factors like quality of water, quality of air, noise etc.

This needs to be viewed with much more seriousness than we imagine because, some environmental resources once diminished, can't be replaced easily. This highlights the importance of the reversible and irreversible impacts because it is not always possible to replace or compensate a destroyed resource and substituting this isn't possible always. . It is also to be noted, that when it comes to impact assessment, the assessment of some impacts becomes difficult as they cannot be quantified. From the previous chapters, it can be concluded that studying of the distributional impact is a herculean task when it comes to EIA. The impacts of a

proposed project don't usually fall evenly on affected areas & the parties concerned. A proposed developmental plan of a project may bring about benefits regarding the activity that it is trying to put forth but in most cases, the consequences sow seeds of destruction on particular geographical areas and a few groups of public community living. Hence it can be concluded on a semantic point that the very concept of 'impact' has a deep impact in the whole process of assessment.

#### Basic Outline of Shortcomings of EIA

From the process of researching into the this topic in depth, the shortcomings of the concept can be narrowed down to mainly two types at the end;

The first type emerges from systemic problem. On one hand, when the proposed developmental design actually is cyclical in nature, on the other hand the EIA process tends to be in most cases, a one-time exercise. And on top of this, this exercise is mostly taken into its implementation much negligently at very late stages, that is, there arises problematic situation in the systematic conducting of EIA when the process turns up very late in the scene of the project initiation stages thereby leading to the projects conforming to their particular concept of design. At this situation, EIA can do nothing much to implement its potential role.

The shortcoming of the second type is less fundamental when compared to the first type and thus can be corrected if acted rightly without any further delay. This is regarding the analysis and other related activities that could be conducted to improve a preliminarily weak initial implementation. This can be achieved by encouraging activities like risk-assessments, the range of participation by the common public, studying the scope of social impacts, other follow up monitoring over the project-in-building state.

#### Current position of Environmental Impact Assessment in the Legal Scenario

EIAs are a way of "bringing international environmental law home," to quote Harold Koh<sup>146</sup>. EIAs implement international environmental legal instruments at the domestic level by bringing international environmental ideals to bear on domestic decision-making processes. However, the EIA process is designed in such a way that neither the participants nor the standards invoked are left untouched. The self-regulatory aspect of EIA, unlike legally binding legislative processes,

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<sup>146</sup> Harold Koh, "Bringing International Law Home" 35 Houston L. Rev. 623 (1998).

allows participants to create and comment on the meaning of environmental norms in light of a set of known conditions. Thus, the concept of environmental impact assessment is still evolving to the needs of time and there is a substantial lacuna in international regime in case of environmental impact assessment as there is no comprehensive binding convention regarding the same in existence. Even with these shortcomings the international framework has tried to step up in delivering 'global good' via framing guidelines for implementation of EIA among domestic jurisdictions thereby increasing the impact and scope of the concept.

India is one of the largest democracies in the world and a nation that is similarly rich in its biodiversity and possesses a comprehensive model of policies & laws concerning EIA.

The existing model of EIA law in India is striving to address the existing cry for environmental protection in the backdrop of rapid development in the nation but it is noted that there are voids to be filled that appears in the policies and the enforcement of these laws.

The Indian environmental legislation covers different areas including laws on control of pollution and conservation of the major environmental resources. As seen earlier, the Indian legislation gives importance to assessing the environment to study about the impacts caused due to the activities of rapid development in the nation and thus EIA principles are viewed with special importance amongst the other environmental legislations.

Water (Prevention and Control of Pollution) Act, 1974, one of the very early legislations, highlights the concept of EIA by discussing on relevant mechanisms of monitoring, licensing, the need for proper vigilance and has provisions highlighting the process of post-EIA monitoring that is conducted after licensing. In 1981, Forest (Conservation) Act was enacted in a similar background, where the impact of various forest resources on the environment started becoming negative. According to this legislation, the government at central level has the power to adopt procedures based on concept of EIA in order to monitor & analyse the usage pattern of the forest land. Environment Act 1986 can be found to be a departure from the previous laws and tried to standardize the basic environmental norms and thereby produce few refined methodologies on EIA. This idea that was put forth by the act was furthered ahead through different procedures by the Acts that came after that namely the Public Liability Insurance and National Environment Tribunal Acts of 1991 and 1995 respectively; these actually can be viewed as legislations with healing effect in post-EIA phase.

It is an unmistakable assumption that the amended 2020 notification is far from what India needs right now in terms of environmental affairs. Yes, the whole strategy has shifted to easing businesses and development in India, but, as several matters in the Supreme Court has held and as what it deemed best for all, the notion of sustainable development, through public participation and discussion is being subdued here.

It can be concluded that first generation of laws on environment did try to take up the concept of EIA but was only appreciative in nature and when viewed critically it can be understood that it doesn't go beyond that. The recent trends of environmental laws try to address EIA with much seriousness and have also come forward to take a procedural approach.

Thus viewing the picture of implementation both internationally and nationally, it can be understood that this part of getting the written technical aspects of the assessment process into actuality is not a very strong point of EIA. Even though the positives possessed by the process are tremendous, the truth is that the intended results are not arrived at the current frame of time-period.

*How successful is this mechanism in terms of curbing environmental depletion ?*

According to the researcher, EIA is a process that can be relied on because the process is, to a huge extent, based on science. For starters, science is an impartial subject and thus is a strong legitimate institution at all levels of governance, may it be the state or the world at a large. So, the dependence science gives impact assessment more legitimacy.

Firstly, science as we understand of it radiates an aura of impartiality. EIA as a process involves collection of data and reducing it to possible hypothesis and deriving predictions thereby. This is basically a scientific themed, legitimate activity, used for the data gathering. This eliminates much of bias that may arise on the developer as well as the one who sanctions the same. Secondly, science involved in EIA, is much wider in terms of its focus area. Much earlier, the focus was given to only preserve the existing resources in the nature. When it comes to EIA, science has played a crucial role not just to focus on the remote, immediate consequences but to develop an understanding wide enough to cover the entire possible sets of consequences on the ecology of the proposed developmental plan. Thirdly, science is a subject which find application universally and the pieces of scientific information based on universal truth can be applied



anywhere regardless of any remote factors. Even though ecological information regarding a place is mostly specific and local to its geographical location, by keeping the base of EIA on a fundamental strong point of science, allows the information gathered to be perceived as widely applicable to different kinds of ecological issues at hand, that is, all these are bundled and interpreted in a standard form of environmental issues. It can be thus concluded that scientific persona of EIA along with the awareness of environmental situations mostly gives rise to efficient EIA legislations.

According to the recent study by Ministry of Environment & Forest it was found that the loss of GDP in the nation due to environmental degradation is about 2.5% and the predicted annual cost of land degradation is approximately estimated to exceed the reclamation costs in the year 2030. Only when environmental issues are considered with the necessary seriousness can the issues in the present and future can be sorted properly. Not only this, environmental matters should be balanced against considering the welfare of the common man. This is where EIA comes into play.

EIA has being trying to conserve the environment and to prevent harmful impacts by developmental activities thereby protecting the community at a large. Even the judiciary became more sensitive towards these matters showing the confidence that has been developed by EIA over the years. In *BEAG v. State of Maharashtra*<sup>147</sup> the Court had arrived at the view that the authorities had looked into the necessary situations of the project and had imposed strict safeguards. In this case, site clearance was granted by Environmental Dpt. of the Govt. of Maharashtra after making it subject to almost 15 stringent conditions. Amongst these were the conditions to get the necessary clearances from the concerned authorities. The court commented: *“We find on the part of the authorities and experts all the seriousness while considering and deciding upon the varied factors and circumstances including environment in relation to this project... decision of said authorities can't be said to be arbitrary/ capricious or one not in good faith or actuated by improper motive or extraneous considerations”*<sup>148</sup>

Other than the stringent conditions that EIA successfully implements to slow down the current rates of environmental damage, it also promotes public participation as have seen in chapter 5

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<sup>147</sup> *Bombay Environment Action Group v State Of Maharashtra And Others* AIR 1991 Bom 301

<sup>148</sup> Id. at para 16

earlier. As seen, in most cases, the persons who are mostly affected due to the consequential environmental depletion due to developmental activities are the people from poor backgrounds. So it is important to ensure the removal of obstructions that prevents public participation by these people at all situations. One important case that is discussed in this context is *Centre for Social Justice v. UoI*.<sup>149</sup> The court held that to make the public hearing meaningful and effective, it was essential to ensure supply of the meetings' minutes.

A healthy pattern is seen lately where EIA laws are adopting strategies legal and quasi legal methods for the preventing the environmental depletion by bringing forth regional EIA laws. Environmental depletion is controlled at a much better rate with the slowly developing regional EIA enactments. The Ministry of Environment are striving to bring forth new notifications on certain areas and also get rid of certain strategies in order to improve the existing conditions.

These regional EIA laws have succeeded in reducing environmental depletion at sensitive areas ranging from valleys to various other heritage conservation zones. This recent trend of fastening EIA laws securely on the biodiversity enriched regions can be concluded to be very useful in the current times as these laws address conservation objective with much needed clarity.

According to the research, it is understood EIA has been successful in its own pace to control environmental depletion though there exist obstacles which contribute to the slowing down of the whole process at different points of time.

#### *How effectively is EIA balancing the developmental and anti-development aspects*

The concept of EIA has been in discussion for many decades in many countries across the globe and as any emerging concept faces problems of its own, it is seen that the concept of EIA is no different. In this background it is relevant to bring the dilemma of the decision makers into limelight regarding weighing the non-beneficial physical impacts & beneficial socioeconomic impacts of a developmental activity.

From the research, it is understood that there still persists debates as to whether EIA will produce an outcome that is developmental or non-developmental in nature. The researcher would like to put forward opinion that development is a very wide topic; that cannot be narrowed down in just monetary terms. Development is the advancement of a being or his community in different

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<sup>149</sup> *Centre for Social Justice v Union of India*. AIR 2001 GUJ 71

aspects. This may include development of a nation, development of the company in terms of its capital and development of a common man in terms of his living condition.

The presence of EIA in the current is, according to the researcher, more of a boon than bane. This is because the very concept of EIA has itself faced many struggles since its origin and from that point it has been striving to act as an umbrella for the environment in the background of various developments happening. Even though, there have been instances where strict rules had to be made to act as guidelines for the rising industrial activities and thereby acting in the negative role of being non developmental, the bigger picture of the situation is to be viewed. Due

An important point to remember that is necessarily connected with development and environment is the industrialized countries and their responsibility towards the instant situation. A key component relevant to both development and the environment. It was recently heard about an opinion from an important Asian head that these countries that are industrialised carry huge responsibility towards protection of environment as these countries' way of lifestyles and other economic policies is the biggest threatening factor to the eco system. Thinking about it logically, one may not quite agree with the same but on close pondering one might strike the thought that it is in fact the industrialised countries that mostly have contributed to greater damage and hence they should be held liable for their actions considering the fact that these countries also possess more economical power and research capacities. This does not mean that developing countries should neglect their responsibilities to protect the environment. What EIA highlights is, according to the researcher, a concept of common but differentiated responsibility; intervention by EIA has proved to be more beneficial or, in other words, developmental.

Like earlier mentioned, development is concerned with preserving the quality of environment and protecting the health of humans. This is precisely what is discussed in the EU EIA Directive 85/337/EEC on the assessment of the consequences of private & public projects. This is important for the development of the standards of life of the beings in a given eco system.

Even though human health *isn't* mentioned as such, Article 3 of the Directive comes forth with the idea that that EIA should be doing a job of identification, as well as to describe & assess the consequences( both direct and indirect) on human beings in the initial stage and later try to

identify the same on the flora and fauna. Other than this provision, Article 5 mentions about the info which has to be given as provided for in Annex IV-

*“description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors..”<sup>150</sup>*

The focus of the impact assessment is mainly to balance the developmental aspect of a proposed project or industrial plan with the impacts that is likely to be produced on its environmental surrounding; by this, the impact assessment further extends its scope further to the public. This is because public is equally affected when the environmental surrounding is affected. This is the part where public consultation gains much importance as a part of EIA. One can think of impact of developmental activity on the environment as a ripple effect; just similar to a huge rock thrown into water, a major developmental project has the capability to produce significant ripples, which means to create impacts spreading far and wide. These projects have to be thus viewed strictly and be subjected to special procedures. These procedures in UK include public inquiries, hybrid bills that have to be passed through parliament and other EIA procedures.

After the research it is understood that, there arise different kinds of problems at various stages of the assessment procedure. The aftereffects of the foreseeing of the likely impacts of the developmental projects may give way for different conceptual and technical problems. To trace the basic outline of the impacts of initial stages of projects is not easy, especially for the latent technology projects. The ready availability of data is one of the technical problems faced on the way of the procedure. It can be seen that newer varieties of innovative techniques are tried to developed inorder to predict as well as evaluate the likely impacts such as complex mathematical models and other multi-criteria approaches. The issue that arises here is that, as the complexity as these methods increases, the difficulty for the common public to take part in the stages of EIA process also increases.

### Initial Hypothesis Analysis

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<sup>150</sup> Using impact assessment in environment and health: a framework WHO  
[https://www.euro.who.int/\\_data/assets/pdf\\_file/0007/190537/e96852-final.pdf](https://www.euro.who.int/_data/assets/pdf_file/0007/190537/e96852-final.pdf)

The first hypothesis of the instant research was that *Environmental impact assessments have, to an extent been able to curb the negative impacts of developments in the environment.*

From the research it can be concluded that environmental impact assessments have changed the face of developmental activities. The most significant of them being the considering of impacts on environment and keeping this as the base, accordingly considering the developmental type, its size and the ecological location at issue. It can be therefore be understood that the mechanism has been a successful one in terms of the initiative adopted as well as the encouragements taken internationally and consequentially by the individual nations. It has been able to curb a lot of potential destructions on the ecology by making the world of industrialization adaptable to the concept of sustainability. As a community, man has grown over the decades and as we stand in the 21<sup>st</sup> C, to look back at the way we have carried on the journey of development is quite a remarkable one but at the same time, unless & until, the environment surrounding is preserved against the overwhelming rates of developments, it would be useless to carry forward this journey of development.

This is where EIA as a process has proved its capability to keep the development in control and at the same time ensure that these don't infact stand in the way of progress. One of the difficult questions that had to be faced and conflicted is the question filled with dilemma as to whether EIA as a process had turned out to be developmental or non- developmental in character. As the researcher nears the end of the study, it can be safely concluded that as far as the progress in EIA has happened over the years, when weighed on the scales of practicality, it can be understood that the impact assessment has not caused lag to the process of development when compared to the dangerous consequences that would have been result had it not been for the responsible interference by the EIA process at the various stages of scoping, screening and monitoring of the assessment. Thus it can be seen that the process has been very helpful in curbing negative impacts on the environment man lives in without affecting his journey of development.

Since the process of assessment is focused on acting as a precautionary measure to the likely damages that may arise due to the rapid development that our present calls for, EIA has been able to identify the potential impacts that could negatively impact the environment. Therefore the initial hypothesis of the research is hereby confirmed in terms of the ability of the assessment in

curbing a vital amount of damage to the environment through its various steps at various points of the procedures involved.

The second hypothesis of the research was that *though EIA plays a very helpful role to the society and despite being discussed in the international paradigm, the implementation is weak.*

Environmental impact assessment (EIA) is based on the principle that choices impacting the environment should be made after a thorough examination of potential consequences. Despite their evaluative purpose, EIA processes do not impose precise environmental standards, instead relying on the construction of open, participatory, and information-rich decision-making environments to achieve ecologically responsible results. Environmental law at the international level is not self-activating. As a result, if the gap between commitment and compliance in international environmental law is to be narrowed, mechanisms that project environmental norms into deliberations must be an integral part of the institutional arrangements designed to address environmental decision-making at the transnational and global levels. In a number of ways, international EIA obligations address the desire for "initiating" instruments in international environmental law. To begin with, EIAs work across national and international borders, as well as between public and private sectors. EIAs thus represent not only the transnational nature of environmental deterioration, but also the wide range and variety of people and organisations, including states, which are impacted by environmental decisions. Even at national levels, the debates surrounding the instant topic can be seen implying the uncertainty surrounding the way of addressing of the environmental impact assessment and implementing the same so as to collect the success that is desired out of it.

Hence the hypothesis that the implementation part of the process is weaker than its objective is hereby proved right.

### Suggestions

EIA is as we have understood, is a very complex process. There is nothing that can exactly stop its complexity rather the points of detailing can be increased; there can be never- ending different types of alternatives that can be suggested regarding a proposed project.. When the concept is huge, there always logically arises room of confusions and questions related the same. Similar is the case with EIA also. Since it possess the herculean task of balancing developments and anti-

developmental aspects based on environment, the concept is very likely to have its own problems. As a researcher on the topic, it is the duty of the researcher to put forth views in the form of suggestions to improve the instant topic:

Practicality is a very important term as far as EIA is considered. The technicality of the process is widespread over the reports, texts, and other relevant materials. The problem here is that as the technicality increases, the concept goes more out of focus which ultimately means that EIA slips of its adjusted seat of practicality. It is quite evident from readings of various scholars that experts still find it difficult to identify and pinpoint the exact problem in order to arrive at an amenable solution. The major suggestion here, thus, is that there could be more sharpening and focus may be imparted to the various EIA related institutions, documents & materials and the processes. In short, EIA in theory & in practice need an absolute reality-check.

Though many approaches have been taken towards improving the existent EIA system, the researcher suggests that pushing the 'capacity building' aspects might lead to better practices in this area. This can be done by supporting more researches into the diverse aspects of this topic. Capacity building in EIA goes hand in hand with countries of wider institutional capacity. It was seen previously that in some developing countries, EIA is actually a pre-requisite for assistance of developmental programs where there is no proper framework for protecting the environment & common man. The various practitioners involved in the field can be provided with better training and proper guidance regarding the distinction between good & bad EIA practices. Suggestion on this point is highlighted by opening doorway to the thoughts on publishing guidance on the specific aspects of EIA procedure. On the long run, strengthening capacity building, the researcher feels, will be beneficial towards developing and sustaining certain standards of the concept of EIA.

Setting up and organizing provisions for adequate training of these project managers and other technical specialists is suggested as this may eventually help in improving the practice standards of EIA mechanism.

Another major suggestion to ensure the proper implementation of the set rules is to organise better measures to look in order to look into the follow up part of the approved actions.

EIA process when narrowed down and decided to be implemented, the most important thing to be considered is its feasibility. The problems with ignoring feasibility are that this will ultimately lead to the EIA process neglecting the decision-makers, leading to weak implementation. It is thus suggested that the feasibility of the EIA process be considered at an initial stage itself preferably.

Rather than just focusing on the firm foundation aspects of EIA, the researcher also brings forth suggestion to focus a big part of attention also to the detailed conduct of the impact assessment process.

It is observed that scoping is one of the important stages of EIA as far as US is concerned. Surprisingly, other jurisdictions give much lesser relevance to scoping. This is the point, where researcher puts forward the suggestion to conduct an EIA process that has within itself an efficient scoping technique. Widening the practices and requirements regarding scoping would in fact help in arriving at desirable outcomes of the process of impact assessment.

The public say in the event should be increased gradually which was initially dominated by the industrial class. Impact assessment should be preferably be held at quite an early stage by adequate notice to the affected public so the potential issues can be appraised, identified and investigated well beforehand. According to researcher, this step of the EIA process should not in any way be skipped/ compromised in any way; even if the same leads to slowing down of the developmental proposed project. More focus should preferably be given to adequate public involvement to scrutinize the decisions regarding granting of environmental clearances. Participatory nature should be encouraged at preferably at almost all stages of the process if possible, may it be scoping, monitoring or screening. This would help in ensuring the legitimacy of the environmental clearances that are granted at the end of the process.

The next one is regarding the project managers who have an overwhelming responsibility to guide a team that manages aspects of the EIA process. Much less or in other words, literally no attention has been given to the project managers of the various proposed project. In actuality, they play a very vital role. Thus it would be more beneficial if it is ensured that the manager be open to the situations in hand and use his/her powers in the right manner. It is highly suggested



that there be sufficient delegation of the management strategies along with proper control from the part of project manager.

It is hereby concluded and found that there exists a number of loopholes and drawbacks regarding the existing system of EIA including the poor reliability on the impact assessment consultants for the lack of their accountability and integrity, poorly designed consultation procedures mostly at a very uselessly later point of the assessment and not to forget the absence of mechanism to check the correct compliance of the conditions of post clearance stages of the projects.. An environmental impact assessment, to conclude, has been a protective umbrella against the likely damages of developmental plans. Until now, it has been able to serve its purpose though at the same time comes in contact with many practical difficulties on its way to purpose accomplishment. The coming years will hope fully reveal whether or not EIA can stand the test of time.

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