

Environment Impact Assessment Draft Notification 2020: An Eco-Legal Assessment

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ABSTRACT

The *Environmental Impact Assessment (EIA) Draft Notification 2020* passed during the COVID-19 pandemic for diagnostic and therapeutic projects' expeditious disposal. Ministry of Environment, Forest, and Climate Change placed the bulk drugs and intermediates under the B2 category of the project to deal with the epidemic-pandemic situations. The sense of urgency was well covered under the global outbreak of COVID-19 but criticized the ground of environmental impact assessment (EIA), social impact assessment (SIA), and strategic environmental assessment (SEA). *The EIA Notification, 2020*, exempted Category B2 Projects from Baseline data, EIA Studies, and public consultation. The characteristic features of the amendment related to the shortening of the public hearings and environmental clearance. These industries' locations allowed in ecologically sensitive areas ignoring the adverse ecological, social, and health impacts. The paper examines the *EIA Notification, 2020*, in light of the legal precept and judicial doctrines of sustainable development.

KEYWORDS

Environmental Impact Assessment, Social Impact Assessment, Strategic Environmental Assessment, Environmental Clearance Process, Environmental Law Reform.

Introduction

Ministry of Environment, Forest, and Climate Change (MoEFCC) notified the *Environmental Impact Assessment (EIA) Draft Notification 2020* during the COVID-19 pandemic. It symbolizes a sense of urgency and emergency to set new terms for the EIA, Social Impact Assessment (SIA), Strategic Environmental Assessment (SEA) in India. As most of India's laws generally passed in the backdrop of the catastrophic industrial accidents, the present proposal has its genesis in the LG Polymers plant in Visakhapatnam and the fire at Oil India Limited's Baghjan oil well in Assam. The legal expediency arose for reform in the environmental clearance process marred by the delay latches and technical inadequacies. The proposed Environmental Impact Assessment Notification, 2020 set to replace the *Environmental Impact Assessment Notification, 2006*, in light of the gainful experiences and expedite the environmental clearance process. The slew of reform borders around the four critical areas, including SIA. expeditious approval of mining projects in the economically sensitive areas, debilitate the EIA law. Under the *Environment (Protection) Act, 1986* from 1994 to 2006, the EIA's mandatory character softened the environmental clearance process towards economic gains than industrial priorities. The paper examines the *Environmental Impact Assessment Notification, 2020*, in the light of its historical and modern evolution in a sustainable development perspective.

Material & Methods

The study's material and methods are pragmatic by legal, technical, and methodological dimensions in EIA clearances and approval methodological refinement (Nomani et al., 2019). The EIA is considered a concurrent and evolutionary development of an institutional capacity to coordinate and monitor the environmental policies and procedures to formulate and implement the necessary legislation and regulations (Banham et al., 1996). The EIA Law during 1996-2020 is legal experimentation (Nomani, 2020) and the constant struggle to balance economic development with ecological integrity in the legal and judicial process (Chowdhury, 2014). During five decades, the global assessment of EIA law often moots the question of feasibility, effectiveness, and challenges in theory and practice (Morgan, 2012). The EIA provides the strategic rebuilding of environmental justice (Nomani, 2019a) under India's Constitution, 1950 (Nomani, 2000); *Environment (Protection) Act, 1986* and *EIA Notification, 2006*. The EIA and SIA process applied across all kinds of projects and often encountered inaccessibility of information, lack of

normative familiarity, institutional capacity, and public participation (Glasson et al., 2013).

Results

The evolution and development of the EIA law 1994-2020 endeavours to incorporate strategic environmental assessment (SEA) and social impact assessment (SIA) through planning, scoping, and monitoring (Petts, 2009). The *Constitution of India*, 1950's mandate protection and improvement of the environment as the constitutional goal and bolstered it by enacting *Environment (Protection) Act*, 1986 (Nomani, 2000a). It has undergone massive amendment *EIA Notification*, 1994, *EIA Notification*, 1997 and *EIA Notification*, 2020 each deserves to studies to draw a holistic perspective about the and *EIA Notification*, 2020.

Evolution & Development of EIA Law

The evolution and development of EIA Law derive sustenance from environmental policies and statutes' mixed bad. The EIA law manifested in the *National Policy on Pollution Abatement*, 1992 (NPPA) and the *National Conservation Strategy*, 1992 (NCS), *Policy Statement on and Development Environment*, 1992. the umbrella legislation of the *Environmental (Protection) Act*, 1986, *Air (Prevention and Control of Pollution) Amendments Act*, 1987 and the *Water (Prevention and Control of Pollution) Amendments Act*, 1988 and *Forest (Conservation) Act*, 1988 fortified the EIA laws. The *EIA Notification*, 1994, for the first time, translated Section 3 of the *Environment Protection Act*, 1986 and its operational ambit (Nomani, 2003). The notification made an environmental assessment report (EAR) and environmental management plan (EMP) mandatory for environmental clearance. Since public participation is inbuilt in the EIA law, the *EIA Notification*, 1997 added public hearings procedure for the giving effect to the social impact assessment (SIA) (Thomas, 2017). The Gujrat High Court in *Centre for Social Justice v. Union of India* (AIR 2001 Gujarat 71) issued specific public hearing procedures. It emphasized that the venue's selection, virtual access to the executive summary, and environmental clearance certificate (ECC) are of seminal importance in giving effect to the public participation under EIA laws in letters and spirits (Nomani, 2002). The *EIA Notification*, 1997 assumes that public hearing and participation are an integral part of the country's EIA law. The compliance of public hearing provision should not be a mere formality. The *EIA Notification*, 2020, hit hard to the core values of public participation in environmental decision making. Therefore, it is imperative to look at the *EIA Notification*, 1997 in detail.

EIA Public Hearing Notification, 1997

The *EIA Public Hearing Notification*, 1997 empowered public standing, and participation among the stakeholders in the EIA cycle and created space (Morgan, 2012). The developer and project proponent was placed under a mandatory duty to submit twenty sets of the Executive Summary and other necessary information to solicit suggestions, views, comments, objections from all bonafide residents, environmental groups, displaced and affected people (Nomani, 2010). The public hearing composition included State Pollution Control Board (SPCB) District Collector, State Government, Local Bodies, and Senior Citizen. The executive summary shall be made available to them for meaningful participation and cooperative federalism. In *M.C. Mehta v. Union of India* (AIR 1988 SC 1037), the Supreme Court observed that 'because of devastation and damage to ecology executives' apathy and slackness of enforcement agencies *no law or authority can succeed in removing the pollution unless the people cooperate.* In *Ganga Pollution (Municipalities) Case* (AIR 1988 SC 1116), the Supreme Court held that 'it would not be unreasonable to expect any particular person to take proceeding to stop is as distinct from the community at large.' In *Lakhmipathy's Case* (AIR 1992 Kant. 57), the Karnataka High Court, while hearing a case of control of industrial pollution, held that 'the residents have a right to expect a strict performance of statutory duty and public bodies can not frustrate public interest.' The Court categorically asserted that 'when the administrators do not mend their ways the courts become bottle ground of social upheaval. If administrators show indifference to the principle of accountability, the law becomes a dead letter on the statute book, and public interest will be the casualty.'

EIA Notification, 2020

The *EIA Notification*, 2020 hit complex public participation in environmental clearances. Therefore, it is necessary to examine the amending features of the *EIA Notification*, 2020, in lines to follow. The MoEFCC suggested that the drugs and medicinal projects for diagnostic and therapeutic purposes be treated under B2 category. The changes brought from Category 'A' ostensibly sound the emergency and immediate delivery of the medicines and drugs

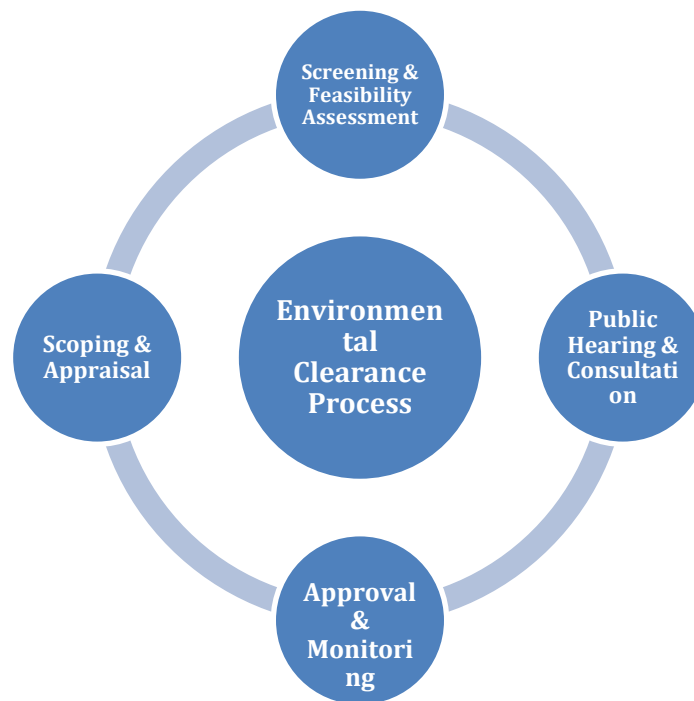
during the COVID-19 pandemic(Nomani et al., 2020a). The Category B2 projects are exempted from collecting Baseline data, EIA Studies, and public consultation to fast track the environmental clearances (Dhar, 2020). That is why it evoked massive proposals by the pharma sector for expeditious ecological approvals. The EIA Notification's characteristic features tilt towards shortening public consultation hearings to a maximum of 40 days.The public comments and inputs also reduce from 30 to 20 days. The combined effect is the slashing of the public hearing and expeditious environmental clearanceunder natural resources' legal policy(Nomani et al., 2019b).The pharma sector is an inherently hazardous industry, but the amendment allows such operation to be established even in the ecologically sensitive areas without a public hearing and environmental clearances. Besides projects of mining,oil, gas, and shale exploration(Nomani et al.,2020b), hydroelectric projects up to 25 megawatt, irrigation projects between 2,000 and 10,000 hectares of command area, all inland waterway projects(Salahuddin et al., 2021), and the expansion or widening of highways between 25km and 100km with defined parameters also falls outside the public domain.Thus Category B2 projects identified 40 strategic industries beyond the purview of the public consultation and environmental clearance process.

Discussions

Instead of conferring a statutory position as an independent enactment, the government has set the entire EIA law and jurisprudence to regressive mode. In contrast, we find the *EIA Notification, 2020*, having a cascading effect on the Indian environmental law.The comparison and contrast to *EIA Notification, 1994*, *EIA Notification, 1997* and *EIA Notification, 2006* further offer insights and dispel misgivings.

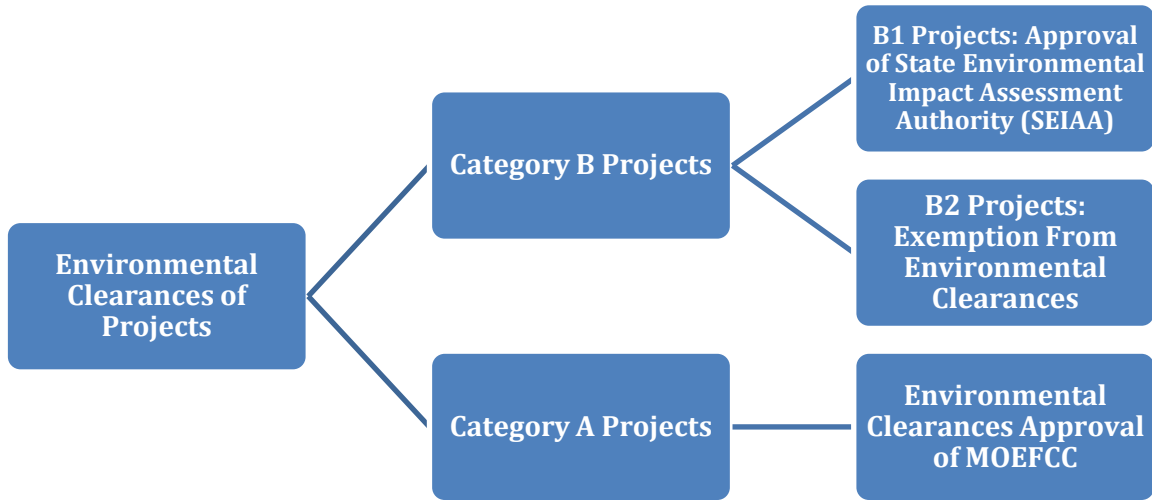
EIA Notification, 2006

The *EIA Notification, 2006* read with the *National Environment Policy, 2006* represents the forceful articulation of the EIA principles and precepts.It has an overriding effect on the *EIA Notification, 1994* and *EIA Notification, 1997*.The environmental clearances under the *EIA Notification, 2006*, evolves a four-pronged strategy. The environmental clearance process begins with the screening and feasibility assessment and proceeds to the scoping by the Expert Appraisal Committee (EAC) of the ministry. The third stage involves a public hearing with multi stakeholding by the State Pollution Control Board (SPCB) and local constitutional bodies for the public disclosure of the project's EIA.



Finally,the EAC recommends approval and periodic EIA monitoring. The classification of the projects in A and B

categories follows the spatial distribution and the scale of their potential impact on health (Nomani et al.,2020c) and natural and human-made resources(Valappil et al., 1994).



The first and second stages complete in 60 days, whereas the third and fourth stages require 105 days. The *EIA Notification,2020* reduced the mandatory window for public consultation from a minimum of 30 days to a minimum of 20 days.

Highlights of EIA Amendments

The *EIA Notification,2020* enhanced the validity of the environment clearances from 10years to 15 years because of long-term environmental and health impacts(Pradyumna,2015) in mining(Nomani et al.,2021) and river valley projects(Nomani et al.,2020d). The B2 projects are exempted from the EIA and public hearing process and EIA disclosure in the public domain. It encompasses 40 natural resource generating and infrastructure industries, which seriously compromises environmental and social impact assessment. The introduction of *ex-post-facto* ecological clearances to the project granted on the remediation and resource augmentation plan. Its subjected to the cost-benefit ratio 1.5-2 times of 'the ecological damage assessment and economic benefit derived due to violation.' The public standing for reporting the violation of environmental damage is grossly obfuscated, and the government and developer alone can determine the extent and magnitude of the ecological damage assessment. The amending provision is antithetical to the Multilateral Environmental Agreements ratified and the comparative EIA laws. The *National Environmental Policy Act(NEPA)*,1969 of the united states, contains similar exemptions(CATEXs) available for the projects having no significant effect on the environment(Divan,1998)).The relaxation of the EIA's public standing negates the International Convention on Environmental Impact Assessment's essence and spirit in *a Transboundary Context (Espoo Convention)*,1991(). It violates the *Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters(Aarhus Convention)*,1998(Hildén et al.,2001). The *Aarhus Convention*,1998, focuses on interactions between the public and public authorities the local, national and transboundary environment impact assessment(Mason, 2010).

Citizen Standing and Judicial Process: The International Court of Justice (ICJ) upheld public participation *Aarhus Convention*,1998 in *Costa Rica v. Nicaragua*(Muschlner, 2001).The ICJ has compensated for Nicaraguan sovereignty violations and significant environmental damages to the Colorado River by an exemplary compensation based on EIA and SIA process (Cittadino, 2019). The *EIA Notification, 2020* violates sustainable development's basic tenets, most notably the 'precautionary principle' and the 'public trust doctrine. The courts in India have settled these principles as the law of the land in *M.C. Mehta v.Kamal Nath* and *Veolor Citizen Forum v.Union of India*.The citizen standing and judicial process has seminal bearing to test the EIA Notification's integrity,2020.In a dissenting opinion, Justice S.P.Bharucha in Narmada Bachao Andolan Case, the Supreme Court negated the *ex post facto* environmental clearance. It mandated the full-scale EIA under *EIA Notification, 1994 de novo* in 2000.The Wednesbury review of EIA law found categorical mentions in the Supreme Court decision in *Prof.M.V.Nayudu Case* (2000(3) SCALE 354). Thus, the refinement in EIA techniques and transparency is *sine quo non* in EIA process.We can conclude that the

maxim fraus et jus nuneum cohabitant meaning thereby fraud and justice never dwell together. The Andhra Pradesh High Court in Reliance Granite Pvt. Ltd. Case (AIR 2006 AP 292) upheld the maxim by assuming that 'non-disclosure and suppression of material fact in getting environmental clearance amount to nothing short of fraud.'

Conclusion

in India, the EIA law is in constant influx of experimentation, as evident from the 55 amendments and 230 office memorandums (OMs) issued under the EIA notification, 2006 till date. These amendments have compounded the confusion and heading to obscure the salubrious provision. The government, in a surge to ease of business, made the environmental legislation for gradual softening. The global rankings on the ease of doing business have a myopic perception of environmental protection. According to Yale University's Environmental Performance Index, India ranked 168 out of 180 countries in 2020. The global index's foundational values remain contested, although it comprises 32 indicators and decade performance trends. The *EIA Notification, 2020* manifested in exemption of the public consultation, *ex-post-facto* clearance, monetization of environmental damages, and expeditious disposal of the ecological permissions. The *EIA Notification, 2020* also not legally tenable to the international treaty obligation, municipal environmental legislation, and judicial precedents. The country's economic growth should be in tandem with natural resource management. The EIA law becomes promissory to robust development pollution control norms and a sustainable future. However, the sanctioning approach to developmental projects impairs fair play in public participation and environmental governance.

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