

The progress and prospect of environmental impact assessment system in India: from 1994 to 2020 notification

Ziaul Islam^{1*}, Shuwei Wang²

¹ Research Institute of Environmental Law (RIEL),
School of Law, Wuhan University, Wuhan, China.

² Shangjian Law Office, Songjiang District, Shanghai, China.

*Corresponding author E-mail: liyifan@whu.edu.cn

Article info

Received 28/8/2022; received in revised form 11/9/2022; accepted 20/9/2022

DOI: [10.6092/issn.2281-4485/15427](https://doi.org/10.6092/issn.2281-4485/15427)

© 2022 The Authors.

Abstract

In this short communication, we review the Environmental Impact Assessment (EIA) law of India from the 1994 to 2020 amendments. Our study shows that the EIA system of India is undergoing a transitional period. In the 1994 EIA Notification, public hearings are included that ensure the voice of the general people in decision-making for sustainable development. A reverse scenario has been seen in the EIA Notification of 2006 and 2020, respectively, where public participation is almost overlooked, and the high interests of the proponents are taken into consideration. Issues like post-facto clearance and limiting public consultations regarding the proposed projects are the biggest obstacles in EIA Notification 2020. Our study also reveals that although the recent amendment quickens obtaining the Environmental Clearance (EC), it brings forth other problems like corruption, lack of transparency, false and fabricated data, poor monitoring etc that hinder the way of effective EIA system in India.

Keywords

Environmental Impact Assessment, Environmental Clearance, environmental legislation, EIA Notification, public hearings.

Introduction

Regarded as a basis of environmental jurisprudence, Environmental Impact Assessment is a rampart against environmental damage. EIA is a widely used term that assesses the socio-economic and environmental impacts of any project or policy before or after its implementation. Mareddy (2017) argues that for any kind of proposed project, program or legal policy, a rational and efficient approach is required to identify, predict, evaluate and mitigate environmental impacts. The scientific scrutinization of EIA both for positive and negative consequences of a project safeguards the project authority to consider the probable effects and sort out mitigating plans while designing any project, program, or policy. A well-

organized and effective environmental assessment (EA) ensures the success of any proposed project. EIA has been used as an effective tool for sustainable development models in more than 100 countries to lessen environmental damages in the future. Although the implication of EIA was first introduced in the US in the 1970s, developing countries of Asia and Latin America started to adopt this process in the 1980s (Clarke & Cong, 2021). China first promulgated the EIA law in 2003, while India embraced it in 1978 to assess the environmental impacts of its river valley projects. EIA spreads worldwide after the 1992 Rio Declaration, which calls for the holistic participation of citizens to express their opinions on environmental issues. In Principle 17, it is stated that – “EIA as a national instrument shall be undertaken for the

proposed activities that are likely to have significant adverse impact on the environment and are subject to a decision of a competent national authority” (United Nations, 1992). During this period, many international treaties, conventions, and agreements, including the Protocol on Environmental Protection to the Antarctic Treaty (1991), the United Nations Framework Convention on Climate Change (1992), Biodiversity Treaty (1992) etc. have emerged as an assisting mechanism for EIA, and since then EIA system has been utilized globally for conserving and managing the environment. The EIA implication started to integrate into emerging economic countries like Brazil, China, and India in the late 1990s with some specific sustainable development challenges (Yang, 2018), where government systems have already been established in these countries (Yang, 2018; Barandiaran and Rubiano-Galvis, 2019; Johnson, 2020).

The Environment Protection Act of 1986, which is a mother law of EIA Notification 1994, emerged after the massive industrial tragedy relating to Union Carbide in Bhopal, India (Amitrajeet, 1993). In India, the authority that has vested power to provide a clearance certificate for any project or expansion of the project under the EIA Notification 2020 is the Ministry of Environment, Forest and Climate Change (MoEFCC). This Draft EIA Notification 2020 replaced the EIA Notification 2006. The Notification addresses the environmental and socio-economic issues along with public hearings of any proposed project concerning all stakeholders. The MoEFCC assigns panels in some divisions base such as at central, state or territory levels, so that the screening, scoping and assessing the process of any project can be done successfully. From the foundation of EIA in 1994 to the present (2022), it has crossed a transitional period. After nearly three decades of EIA practice, several weaknesses are still prevalent in the EIA system in India (Rathi, 2017). The objective of this paper is to descriptively analyze the EIA law of India from 1994 to 2020 Notification, where the progress, prospect and challenge to the way of EIA law will be evaluated.

Glimpe EIA practice in India from 1994 to 2020 Notifications

The EIA has become a law under the Environmental Protection Act 1986. In fact, the journey of EIA began in India in the 1970s to evaluate the river valley

projects, later all development projects were required to obtain permission from the government for operating industrial activity. Considering the growing environmental problems, a national committee on environmental planning and coordination was established between 1969-1978. With the economic progress in the 1990s, environmental destruction is also seen across the country. Realizing the severe consequences of environmental degradation by the unplanned and unsustainable economic activity, the government made it obligatory to obtain an ‘environmental clearance’ under the Environmental Protection Act of 1986 to run any industrial activity, project, or program. This is considered a vital step for the Indian government to prevent environmental pollution and protect the interests of the local communities who depend on natural resources for livelihood. To protect the environment, natural resources, and biodiversity, the MoEFCC has been playing a significant regulatory role in the conservation of forests, restraint of harmful substances, impact assessments of any project, and conservation and protection of the wildlife and their habitats since its establishment in 1985 (Menon & Kohli, 2015). Before the enactment of EIA Notification 1994, there was an absence of EA at the project level, which was considered a weakness of the EIA system (Valappil et al., 1994). Later, this weakness was reviewed respectively in the 2006 and 2020 EIA Notification. In addition, external inspection and follow-up of EIA process EIA follow-up and external inspection are often absent from the EIA process, and this has been an issue within the EIA system in India.

Besides EIA, Strategic Environmental Assessment (SEA) was initiated to improve coordination among government institutions at policy and planning levels. However, the recent Draft EIA Notification of 2020 has not been discussed openly about SEA (JhaThakur and Rajvanshi, 2020).

EIA Notification 1994. At the early stage of India’s environmental legislation, no regulatory body was created to make an EIA report; rather, various types of political interventions influenced preparing the report, which often raised a question about the quality of the EIA documents. Yet, the emergence of EIA as an impact assessment tool for protecting the environment from any proposed project through EIA Notification 1994 under Section 3 of the Environment Protection Act, 1986 brought a revolu-

instead of becoming a statutory change in India's environmental legislation (Jolly and Singh, 2021; Paliwal, 2006). For the first time, this Notification approved a public hearing in the EIA system in India after the amendment in 1997. Although public hearings matters on socio-economic and development issues rather than environmental concerns (Sainath and Rajan, 2015). It is undeniable that public hearings have been almost overlooked or sidelined by strategically designing the public participation mechanism since the 2006 EIA Notification to 2020 Notification. The EIA Notification 1994 enlisted 29 categories of projects that must undergo the EIA process before an operation, including the project related to the nuclear power plant, projects of oil and gas exploration, project of mining extraction, projects based on infrastructure and construction, and projects related to hydro and thermal. The Notification clearly indicates the guidelines of the EIA monitoring procedure. Despite such guidelines, insufficiency in environmental management plan implementation, alleviating measures, and compliance monitoring are largely seen. The complex procedural formalities to obtain a clearance certificate, ambiguous enforcement mechanism to penalize the law breachers with regard to EIA, and uncertainty about the authority of the Expert Appraisal Committee (EAC) were the main obstacles to the EIA Notification 1994. Addressing the above issues, a new draft of the EIA Notification of 2006 was published online in 2005 and called for public opinion. Since the Notification was published in the English language only; therefore, no single comments were received. However, this first EIA Notification has passed many overhauls and was repealed by EIA Notification, 2006 (Turaga, 2016).

EIA Notification 2006. Alike the EIA Notification 1994, the 2006 Notification also reveals the lack of social environment and ecology monitoring. In the last 14 years, there have been a lot of changes in the 2006 Notification (Jha-Thakur and Rajvanshi, 2020). The EIA Notification of 2006 envisages establishing a well-organized regulatory mechanism to foster a sustainable development process, incorporates environmental precautions in the proposed project to minimize adverse impacts on the environment, and engages the stakeholders in public hearings of a proposed project. Despite provisions of the Nagarpalika Act, 1992, Panchayat Raj Act, 1992, and the Schedule Tribes and other Traditional Forest Dwellers Act, 2006, the participa-

tion of local bodies in decision-making for socio-economic development is ignored. The provision of public hearings has been almost diluted in this Notification, thus creating a loophole for the project proponents to circumvent the public hearings for an extension of project activity. Though it has been made compulsory to provide an EIA report for any project, many believe that such a report does not create any impact on decision-making unless decisions are taken basis on politics. There is a controversy about the EIA review mechanism since the review reports are often considered less effective and impractically prepared. For instance, the impact of nuclear projects on human health is not considered; fabricating predictions of a project is used for another one. With regard to checking compliance, the limited capacity of the regulating agencies also hinders the EIA review process. As a powerful sector of the economy, the energy sector limits the power of regulating agencies to take strict steps (Jha-Thakur and Fischer, 2008). Furthermore, concerning the violation of any unit, the State Pollution Control Boards and the MoEFCC become helpless to shut this unit (Ramana and Rao, 2010). Thus, appeals from all sides pressure the government to amend the EIA Notification 2006 with a successful implementation.

Draft EIA Notification 2020. With great hope, the EIA law of India was amended in 2020. It was assumed that there would be significant reformation in the new EIA amendment that could remove the shortcomings of the previous Notifications. The notable positive changes in the new EIA Notification 2020 are establishing the post of Technical Expert Committee (TEC) that will categorize proposed projects based on scientific principles, announcing the final result of EC or Environmental Permission (EP) within the shortest possible time, and providing rights to appeal against the results. The draft of the EIA Notification 2020, which was substituted by EIA Notification 2006, was released online during the pandemic in English and Hindi languages at the first stage, and after a long debate, the Notification was published in three other vernacular languages. This, in fact, deprives the general people of taking part in decision-making. There was a spontaneous protest across the country against the Draft EIA Notification 2020 of India, claiming that this EIA law poses a risk to the environment and ecology of the country. The serious allegation against the EIA Notification 2020 is that

environment and people-friendly, this Notification favors industries and goes against people. Moreover, the EIA Notification 2020 dilutes the existing environmental regulations, and the scope of EIA has been shrunk in many aspects. Many believe that this Draft EIA-2020 Notification lacks assessment criteria rather than approval of projects. In this draft Notification, the interests of local communities, who mainly depend on the forest for livelihood, are overlooked, and issues like biodiversity loss, climate change, and environmental degradation are also given less attention. In addition, the draft Notification does not reflect the objectives of the Environment (Protection) Act, 1986, and goes beyond international agreements and conventions. Article 12 of the Paris Agreement, to which India is a signatory, states that “Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement.”

The significant changes that have been done in the Draft EIA Notification 2020 include ‘post facto clearance and limitations of public hearings’. According to the new amendment, a project can continue to run operation without having the required clearance from MoEFCC if the project proponents pay fines for violation. In various courts’ decisions, obtaining such clearance was mentioned as illegal. In the *Alembic Pharmaceuticals Ltd v Rohit Prajapati* case of 2020, the Supreme Court of India remarked that such post facto clearance is against the EIA Notification 1994 and destructive to the environment (Sonia, 2021). The right to public hearings in the EIA process has been diminishing in this Notification by reducing the response time to 20 days of a proposed project. In addition, in the EIA Notification 2006, the environmental clearance monitoring report has to be submitted twice a year but in the new amendment of 2020, industries can submit compliance reports annually, which poses a vulnerability in the EIA system. However, a storm of protests and controversies against the draft Notification 2020 led the Karnataka high court to issue a stay order on it.

Strengths and weaknesses of the EIA system in India

It is to be acknowledged that despite some drawbacks in the recent amendment of EIA Notification, it

has progressed in many aspects compared to the previous amendments. There are seen improvements in completeness and objectivity and speeding up the EC release. The screening process, the expertise of the personnel, and transparency in the total EIA system have also improved significantly. Many argue that in the name of the speedy process and transparency of EIA, the screening and scoping process have been diluted (Bindra and Rawat, 2020; Pradhan, 2020), and the recent Notification paves the way for the proponents to relax their strengthening capacity to submit compliance reports. A successful EIA system must strictly adhere to the monitoring program in order to ensure the plan and promises of a project are met before designing a project (Rajaram & Das, 2011), but in the recent EIA Notification, such monitoring was relaxed. With the rapid growth of the population and increasing economic activities in various sectors have contributed to degrading the environmental situation in India today. Moreover, there is a failure to protect the environment in the developmental planning process that needs to be effective implementation of EIA in India (Turaga et al., 2019). Considering such backlogs, government improves the EIA framework from time to time by reforming it (Thakur and Khosravi, 2021). It is to be noted that the future perspectives of the EIA law mostly depend on the political will and economic situation rather than social responsibility. There are several problems associated with the EIA system in India that raise a question about the credibility of the EIA regulatory mechanism. For example, low-quality or fabricated data are often used to grant an EC, which may bring severe environmental disasters. Besides, poor and weak screening and scoping processes, poor monitoring, corruption, inefficient follow-up, and legislative weakness are the most prominent loopholes in not successfully executing the EIA law. It is, therefore, required to shift the EIA system into an independent regulatory body that works freely and is free from any influences to eradicate such inadequacies.

Conclusion

A successful EIA system is essential to ensure sustainable development and conserve the environment in a country like India. Maintaining a balance between development activities and conserving the environment at all levels is urgent to promote sustainable development goals. Regarding environmental issues, the role of EIA is not satisfac-

DOI: [10.6092/issn.2281-4485/15427](https://doi.org/10.6092/issn.2281-4485/15427)

tory but rather questionable. A biased outlook has been seen in India's EIA system that prioritizes the proponents' interests instead of the affected people. Therefore, the proponents have been given multiple opportunities to exploit the law and subdue the voice of the affected people. However, it should not be forgotten that the local people's interest needs to be prioritized first rather than the commercials. The Draft EIA Notification 2020 cocoons the voice of affected communities by limiting their participation in various projects like irrigation, road and highways construction, building construction. Furthermore, this Notification is more pro-industry that needs to be checked now to protect the environment from further deterioration.

References

- AMITRAJEET A.B. (1993) Should Large Developing Countries Pursue Environmental Policy Unilaterally? *Indian Economic Review*, New Series 28(2): 191.
- BARANDIARAN J., RUBIANO-GALVIS S. (2019) An empirical study of EIA litigation involving energy facilities in Chile and Colombia. *Environmental Impact Assessment Review* 79: 106311. <https://doi.org/10.1016/j.eiar.2019.106311>.
- BINDRA, P.S., RAWAT, V. (2020) EIA 2020 legitimises environmental damage, undermines democracy say environmentalists to MoEF&CC. Available from: <https://sanctuarynaturefoundation.org/article/eia-2020-legitimises-environmental-damage>
- CHEN Q., ZHANG Y., EKROOA. (2007) Comparison of China's environmental impact assessment (EIA) law with the European Union (EU) EIA directive. *Environmental Monitoring and Assessment*, 132:53–65. Doi: <https://doi.org/10.1007/s10661-007-9359-9>.
- CLARKE B.D., CONG C., VU. (2021) EIA effectiveness in Vietnam: key stakeholder Perceptions. *Heliyon* 7(2): e06157. <https://doi.org/10.1016/j.heliyon.2021.e06157>.
- JHA-THAKUR U., RAJVANSHI A. (2020) Strategic environmental assessment in India: trends and prospects. In: Fischer, T., Gonzalez, A. (Eds.), Chapter 25 in *International Handbook of Strategic Environmental Assessment*. Edward Elgar.
- JHA-THAKUR U., FISCHER T.B. (2008) Are open cast coal mines in India casting a shadow on the Indian environment? *International Planning Development Review*, 30(4):441–458.
- JOHNSON T. (2020) Public participation in China's EIA process and the regulation of environmental disputes. *Environmental Impact Assessment Review*, 81:106359. <https://doi.org/10.1016/j.eiar.2020.106359>
- JOLLY S., SINGH S. (2021) Environmental Impact Assessment Draft Notification 2020, India: A Critique. *Chinese Journal of Environmental Law* 5(1): 11-36. <https://doi.org/10.1163/24686042-12340062>
- LEELAKRISHNAN P. (1992) Environmental impact assessment: legal dimensions. *Journal of the Indian Law Institute* 34(4):541–562. <http://www.jstor.org/stable/43953194>
- MAREDDY A. R. (2017) EIA practice in India. *Environmental Impact Assessment Review* 49:491–556. Doi: <https://doi.org/10.1016/b978-0-12-811139-0.00013-x>
- MENON M., KOHLI K. (2015) Environmental Regulation in India: Moving “Forward” in the Old Direction. *Economic and Political Weekly* 50(50): 20–23. <http://www.jstor.org/stable/44002954>
- PALIWAL R. (2006) EIA practice in India and its evaluation using SWOT analysis. *Environmental Impact Assessment Review*, 26(5):492–510.
- PRADHAN P. (2020) Draft EIA Notification 2020: Dilutes EIA process & encourages violations. Available from: <https://sandrp.in/2020/06/23/draft-eia-notification-2020-dilutes-eia-process-encourages-violations/> (Accessed 7 Aug 2020).
- RAMANAM.V., RAOD.B. (2010) The environmental impact assessment process for nuclear facilities: an examination of the Indian experience. *Environmental Impact Assessment Review*, 30:268–271.
- RATHI A.K.A. (2017). Evaluation of project-level environmental impact assessment and SWOT analysis of EIA process in India. *Environmental Impact Assessment Review* 67: 31-39. <https://doi.org/10.1016/j.eiar.2017.08.004>.

DOI: [10.6092/issn.2281-4485/15427](https://doi.org/10.6092/issn.2281-4485/15427)

SAINATH N.V., RAJAN K.S. (2015) Meta-analysis of EIA public hearings in the state of Gujarat, India: its role versus the goal of environmental management. *Impact Assessment and Project Appraisal*, 33(2):148-153. <https://doi.org/10.1080/14615517.2014.964085>

SONIA S. (2021) Environmental impact assessment in India. Available from: <https://blog.ipleaders.in/environmental-impact-assessment-in-india/>

THAKUR U.J., KHOSRAVI F. (2021) Beyond 25 years of EIA in India: retrospection and way forward. *Environmental Impact Assessment Review* 87:106533. <https://doi.org/10.1016/j.eiar.2020.106533>.

RAJARAM T., ASHUTOSH D. (2011) Screening for EIA in India: Enhancing effectiveness through ecological carrying capacity approach. *Journal of Environmental Management*, 92(1):140-148. <https://doi.org/10.1016/j.jenvman.2010.08.024>.

TURAGA R.M.R., JHA-THAKUR U., CHAKRABARTI S., HOSSAIN D. (2019) Exploring the role of urban green spaces in 'smartening' cities in India. *Impact Assessment and Project Appraisal* 38(6): 479-790. <https://doi.org/10.1080/14615517.2019.1690864>.

TURAGAR.M.R.(2016)The politics of formulation of environmental impact assessment regulation in India: A Case Study. *Journal of Environmental Assessment Policy and Management*, 18(2):1–30. <https://www.jstor.org/stable/10.1142/enviassepolimana.18.2.03>

UNITED NATIONS (1992) The Rio declaration on environment and development, Principle 17.

VALAPPIL M., DEVYUST D., HENS L. (1994) Evaluation of environmental impact assessment procedure in India. *Impact Assessment*, 12:1. Doi: <https://doi.org/10.1080/07349165.1994.9725851>

YANG T. (2018). The emergence of the environmental impact assessment duty as a global legal norm and general principle of law. *Hastings Law Journal*, 70:525–572.