



# **A Critical Examination of the Environmental Impact Assessment Framework and Its Effectiveness in Safeguarding the Environment: The Indian Context**

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## **ABSTRACT:**

Environmental Impact Assessment (EIA) is a vital tool used globally to anticipate and mitigate the negative effects of developmental projects on the environment. In India, EIA has evolved over the decades as a statutory requirement aimed at balancing developmental needs with ecological protection. However, questions about its efficacy, transparency, and enforcement mechanisms persist. This article critically examines the EIA framework in India, evaluates its effectiveness in achieving environmental protection, and suggests reforms to strengthen the regulatory regime.

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## **Introduction:**

The term "environment" refers to water, air, and land, as well as the interrelationship that occurs between water, air, and land and humans, other living creatures, plants, microorganisms, and property.<sup>1</sup> The degradation of the environment as a result of a variety of factors has become a significant global epidemic. In the name of developmental activities nowadays, degradation of environment is increased every day. To create balance between developmental activities and environment, sustainable development concept has been evolved. Sustainable development aims to address the needs and expectations of today's people without jeopardising the ability to meet those of future.<sup>2</sup>

The Environmental Impact Assessment (hereinafter referred to as "EIA") process is critical for ensuring Sustainable development. The Environmental Impact Assessment methodology derives from the 'Precautionary Principle,' which requires the competent authority to refuse consent or approval of a development activity if it poses a significant or permanent threat to the environment. The 'precautionary principle' requires that EIA be made mandatory for development activities that are expected to have a substantial negative impact on the environment. If the EIA reveals that the development activity presents a significant or permanent danger to the environment, the competent authority shall withhold authorization for approval or permission for such activity.

1. Section 2(a) of the Environment Protection Act 1986.
2. World Commission on Environment and Development. Our Common Future, 40, Delhi (1987)

EIA models are classified into two categories. The first is the statutory model, which makes impact measurement mandatory under enacted or delegated legislation. The other is the discretionary administrative model, in which the administration uses its discretion to determine if an impact analysis is required and, if so, how it should be conducted.<sup>3</sup> EIA started in India in 1978-79, well before the Ministry of Environment and Forests was established, with the assessment of river valley projects. Since then, the scale of the initiative has extended to include irrigation and hydropower facilities, mines, industries, atomic energy, ports and harbours, rail and road roads, bridges, airports, and communications, as well as other infrastructure projects. Before introduction of EIA Notification under Environment Protection Act, India followed the discretionary administrative model of EIA.

The Ministry of Environment, Forest and Climate Change released a draft EIA notification 2020 on March, 23, 2020 for public consultation.<sup>6</sup> Public and stakeholders criticized the draft notification because they felt it fails to ensure sustainable development and neglecting the public participation. The Draft EIA Notification 2020 is a very detailed notification in comparison with earlier notification of 1994 and 2006. It consists of twenty seven clauses along with schedules and appendices. This research has emphasized various measures adopted by the Government to implement the EIA in India. Researcher compares USA and UK legislative measures for EIA process with Indian EIA system. This research has critically analysed the Draft EIA notification 2020 in comparison with previous EIA notifications.

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## Evolution of EIA in India:

The roots of India's EIA framework trace back to the early 1980s although it was only in 1994 that EIA became a formal legal requirement under the Environmental (Protection) Act, 1986. The 2006 EIA Notification brought significant procedural changes, including categorization of projects, scoping, public consultation, and environmental clearance by Expert Appraisal Committees (EACs). However, a closer look reveals that implementation gaps and systemic weaknesses hinder its intended goals.

The relevance of EIA has grown over time as a result of the political emphasis on environmental protection versus economic growth, which was emphasised for the first time at the Stockholm Conference in 1972,

3. George Cyriac and Shamik Sanjanwala, *Environmental Impact Assessment in India: An Appraisal*, Journal of the Campus Law Centre, Vol.10, (1998).

4. P. Leelakrishnan, *Environmental Law*, LexisNexis, Fourth Edition, 2016, p. 255&256.

which focused on the advancement of the human environment. The UN Conference on Environment and Development, held in Rio de Janeiro in 1992, generalised this notion of environmental protection to the principle of carrying power of a spatial unit/setting, which became popular for its Local Agenda 21, which announced action planning for environmental conservation at the local level. This focus on grassroots planning for the environment is now being internalized all over the world as a required planning skill for environmental management. Following the conference, the Brundtland Report in 1987 proposed the idea of sustainable development as a corollary to the World Commission on Environment, with the goal of limiting resource consumption in order to preserve sufficient reserves for future generations.

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## Structural and Procedural Weaknesses

### 1. Dilution through Amendments

One of the major criticisms of the Indian EIA regime is the trend toward dilution of its provisions. The 2020 Draft EIA Notification for instance proposed post-facto environmental clearance for projects that have already begun operations without prior approval effectively legalizing violations.

### 2. Limited Public Participation

While public consultation is mandated, the process is often marred by poor dissemination of information language barriers and limited access to EIA reports. Affected communities are frequently excluded from meaningful engagement.

### 3. Questionable Quality of EIA Reports

EIA reports in India are often prepared by consultants hired by project proponents, leading to conflicts of interest and biased reporting. Many reports lack comprehensive baseline data, cumulative impact analysis, or alternatives assessment.

### 4. Weak Monitoring and Enforcement

Post-clearance monitoring is a significant gap in the Indian EIA system. Regulatory authorities lack adequate manpower technical expertise and resources to ensure compliance with environmental clearance conditions.

5. Gurdip Singh, "Environmental Law in India", New Delhi: Mc Millan India Ltd, 2005.

The Draft EIA Notification 2020 attracted widespread criticism for proposing several regressive changes, such as:

- Post-facto clearance (legalizing violations),
- Reduced public participation periods,
- Exemptions for certain large-scale projects (e.g., highways, inland waterways),
- Weakening of monitoring requirements.

These proposed changes indicate a shift toward facilitating ease of doing business at the cost of environmental and public health safeguards.

### 2. Compromised Public Hearings

Although public hearings are mandated, they are often ineffective due to:

- Inadequate notice and outreach,
- Technical complexity and language barriers in EIA reports,
- Suppression of dissent and local opposition.

As a result, affected communities are frequently sidelined in decision-making.

### 3. Questionable Quality of EIA Reports

Many EIA reports are criticized for being:

- Superficial and template-based,
- Prepared by consultants hired by the project proponent, raising conflict of interest concerns,
- Lacking in cumulative impact assessments or biodiversity analysis.

#### 4. Lax Monitoring and Compliance

Post-clearance compliance mechanisms are weak. Authorities lack the capacity and resources to enforce clearance conditions effectively. Environmental Management Plans (EMPs) are seldom monitored or updated.

6. Prasad Modak and Asit K. Biswas, "Conducting Environmental Impact Assessment in Developing Countries", (New Delhi: Oxford University Press, 1999).

7. Ibid

#### 5. Lack of Transparency and Accountability

There is limited transparency in decision-making. Minutes of EAC meetings are often not detailed, and decisions appear to be taken with minimal environmental scrutiny. The independence of these committees is also questionable.

#### Role of the Judiciary in Environmental Impact Assessment (EIA) in India:

The Indian judiciary has played a pivotal role in strengthening the Environmental Impact Assessment (EIA) framework and upholding environmental rights. In the context of the Indian regulatory landscape where executive and legislative oversight may often lean toward developmental priorities the judiciary has emerged as a crucial check and balance to ensure that environmental concerns are not undermined.

##### 1. Judicial Recognition of Environmental Rights

The Indian Constitution does not explicitly mention a right to a clean environment. However, the Supreme Court and various High Courts have interpreted Article 21 (Right to Life) to include the right to a healthy environment. This interpretation has laid the foundation for judicial intervention in environmental matters, including the EIA process. This was explained in the case *Subhash Kumar v. State of Bihar (1991)* in this case the Court held that the right to life includes the right to enjoy pollution-free air and water, thus strengthening the legal basis for EIA-related litigation.

##### 2. Promoting the Precautionary and Polluter Pays Principles

Indian courts have repeatedly invoked international environmental law principles, such as the precautionary principle and polluter pays principle, in their rulings. This was mentioned in the case *Vellore Citizens' Welfare Forum v. Union of India (1996)* in this case the Supreme Court emphasized that the precautionary principle and polluter pays principle are part of Indian environmental law. This case laid the groundwork for preventive environmental regulation, aligning with the EIA's objectives.

##### 3. Scrutiny of Environmental Clearances

Courts have not hesitated to strike down or suspend environmental clearances granted under a flawed or incomplete EIA process.

8. Subhash Kumar v. State of Bihar (1991)

9. Vellore Citizens' Welfare Forum v. Union of India (1996)

This judicial oversight acts as a corrective mechanism for executive lapses. This was mentioned in the case *Lafarge Umiam Mining Pvt. Ltd. v. Union of India (2011)* in this case the Supreme Court scrutinized the EIA process and upheld the importance of tribal rights and environmental safeguards, ordering a fresh appraisal. In another case *Sterlite Industries (India) Ltd. v. Union of India (2013)* the National Green Tribunal (NGT) and Supreme Court both criticized the inadequacy of the EIA and ultimately closed the plant due to non-compliance with environmental norms.

##### 4. Role of the National Green Tribunal (NGT)

Established in 2010 under the National Green Tribunal Act, the NGT has emerged as a specialized judicial body to handle environmental disputes. It plays a significant role in:

- Reviewing faulty EIA reports,
- Monitoring compliance with clearance conditions,
- Hearing appeals against environmental clearances,
- Imposing penalties for violations.

This was mentioned in the case *Save Mon Region Federation v. Union of India (2019)* the National Green Tribunal quashed environmental clearances for a hydropower project in Arunachal Pradesh, citing inadequate public consultation and faulty impact assessment.

### 5. Encouraging Transparency and Public Participation

Judiciary has also upheld the importance of public hearings and access to information, which are core to an effective EIA process. In the case *Goa Foundation v. Union of India (2014)* in this case the Supreme Court emphasized transparency in environmental decision-making and halted illegal mining operations that bypassed due process.

### 6. Filling Legislative and Executive Gaps

In cases where laws are ambiguous or executive agencies fail to act, courts have issued guidelines to improve environmental governance. In the case *T.N. Godavarman Thirumulpad v. Union of India (1996 – ongoing)* This is one of the longest-running environmental cases in India, wherein the Court has issued a series of orders regulating forest use and requiring environmental clearances.

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## Limitations of Land use planning system

The Environmental Impact Assessment Directive has become something of a litmus test on issues of enforceability and access to justice in the domestic courts of European Community Member States. There are two major issues addressed. First, there is the impact of doctrinal issues on potential rights arising from the Directive, including direct effect and horizontal applicability. Although the managerial frameworks of most environmental Directives generally exclude direct effect, the procedural conditions that are fundamental to EIA tend to be not only subject to judicial scrutiny, but also to meet the logic of individual rights enshrined in Community jurisprudence.

Second, important contested interests are at stake on a wider policy canvas, in the sense of which an analysis of the effectiveness of key procedural elements that underpin evaluation is provided. A key policy goal was to enhance systematic environmental accounting during the development control period, resulting in a more knowledgeable balance of interests. Although discussions over the consistency and coherence of the Community's commitment to greater involvement continue, a transparent information and participation process can be seen to be at the core of the EIA system.

Since 1947, the UK's statutory land-use planning scheme has allowed Local Planning Authorities (hereinafter referred to as LPAS) to anticipate likely development demands, assess their importance, and assign land to meet them when needed. Environmental factors are an important aspect in this evaluation. Most projects need planning permission, but denying it will prevent environmentally harmful developments. This system culminated in a significant accumulation of planning experience on the possible implications of development proposals.

However, since the mid-1960s, the planning system appeared to be less successful at mitigating the effects of major projects. In the late 1960s, public concern about environmental conservation increased significantly, as shown by the planned third London Airport. The Roskill Commission was formed with the mandate to prepare a cost-benefit analysis of potential sites in order to choose the most appropriate location for an airport in southeast England. The methods were needed to achieve a balance between socio-economic and physical environmental objectives.

10. Lafarge Umiam Mining Pvt. Ltd. v. Union of India (2011)

11. Save Mon Region Federation v. Union of India (2019)

12. Goa Foundation v. Union of India (2014)

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## An Overview of the Environmental Clearance System:

The directive was implemented in the United Kingdom by the use of various statutory instruments in 1988 and by subsequent measures. EIA and the EIS were termed environmental assessment (EA) and the environmental statement (ES) respectively. Regulations integrating the EA of projects requiring planning permission into the British town and country planning system came into effect in July 1988, accompanied by a Circular and followed by more detailed guidance in 1989 and 1994.

### Evaluating whether to undertake environmental assessment:

The first step in the EA process is to determine whether a project is worthy of an evaluation of its future environmental impacts. A developer may either perform an EA on their own or seek guidance from the local planning authority on whether a scheme comes under Schedule 1 or 2 and as a result whether an EA is required. A developer may also be notified by a local planning authority that an EA is needed for a project for which a planning application has been made without an ES. If the authority determines that an EA is required but the developer disagrees, or if the authority fails to provide the developer with the opinion sought within the statutory time period of three weeks, the developer may demand a 'direction' from the relevant Secretary of State. Independent of the above procedure, the EA Regulations enable the Secretary of State to decide on the need for EA after hearing from third parties.

### Preparing the environmental statement:

After a project's need for EA has been identified, the next step in the EA process is to evaluate the different environmental effects, resulting in the creation of an ES. The local planning authority must notify its regulatory consultees of the planned development and their duty to include any input needed by the applicant in designing the ES.

### Appraising the environmental statement:

When a developer completes an ES, he or she submits it for a planning application and it should become an integral part of the application. The process is close to those used to work with planning proposals that aren't accompanied by ESs.

13. John Glasson & Riki Therivel, "Introduction to Environmental Assessment – Principles and Procedures, Process, Practice and Prospects", 2nd ed, (London: UCL Press Limited, 1999).

14. A.J.Lembert & C.M.Wood, "UK Implementation of the European Directive on EIA: Spirit or Letter?", The Town Planning Review, Liverpool University Press, Vol.61 No.3 (Jul.1990).

Prior to submission to the local planning authority, the proposal must be announced for example, by publishing notices on the project's proposed site and placing ads in the local newspaper. Also, copies of the ES must be available for sending to the statutory consultees.

If an ES is voluntarily submitted with a planning proposal—that is, the developer has not issued an opinion or a direction that an EA is required it is considered to come under the remit of the Regulations if application and the developer can have discussions with regulatory consultees and receive representations from third parties in the meantime. It is of note at this stage that the inadequacy of an ES is not sufficient grounds for refusing planning permission, but the authority is free, as with all planning applications, to seek additional information from the developer.

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## Conclusion:

Environmental Impact Assessment (EIA) became common in Europe in the early and mid-1970s, and after much debate, the European Commission decided in 1985 to require Member States to introduce their own legislative requirements for EIA by July 1988. This directive established the basic principles of EIA "in order to supplement and organize construction approval processes regulating public and private projects expected to have a significant environmental impact."

The EIA Notification has evolved into a complicated procedure. It has been changed several times over the years, with some changes aimed at diluting and weakening the mechanism for example, eliminating public consultation requirements for some types of projects; others aimed at improving the consistency of decision-making for example, proposals to strengthen transparency for EIA reports. The researcher has discussed about existing EIA system in India. This chapter has analysed the EIA Notification 2006. The researcher is of the view that the current system of EIA is effective to ensure the sustainable development concept.

The Indian judiciary, particularly the Supreme Court and the NGT, has been instrumental in holding the EIA framework accountable and ensuring it functions in the public and ecological interest. By reinforcing constitutional rights, upholding environmental principles, and scrutinizing executive actions, the judiciary acts as a guardian of environmental justice. However, for a truly effective EIA system judicial intervention should complement not replace a robust transparent and independently administered environmental governance mechanism. Strengthening institutions empowering local communities and implementing judicial directives remain essential steps toward a sustainable and just EIA framework in India.

A Draft EIA Notification 2020 has both advantages and disadvantages. It has taken EIA to step forward through the introduction of online mode of application and by providing the comprehensive list of definitions. A few of the provisions seem to be a step backward, such as shortening the time allowed for the public to respond, increasing the area threshold for building proposals, causing further projects to fall outside the scope of the notification, and reducing the number of approval reports.

It reduced the importance of public consultation in the EIA process. It exempted many projects from the public consultation stage in EIA process. It defeats the precautionary principle in environment management. This chapter has critically analysed the Draft EIA notification 2020 in comparison with previous EIA notifications. Researcher opines that draft notification has more disadvantages than advantages. It should be amended before publication of final notification.

The EIA framework in India, while theoretically sound, suffers from several deep-rooted issues that compromise its effectiveness. From compromised public participation to weak enforcement, the process often favours industrial growth at the cost of ecological and social well-being. With growing environmental crises, climate change, and public health concerns, it is imperative to revamp the EIA mechanism to ensure that it truly safeguards the environment and the rights of communities. A transparent, participatory, and scientifically robust EIA system is not just a regulatory necessity it is a moral imperative.

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