

EFFICACY OF ENVIRONMENT IMPACT PROCEDURE IN INDIA

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Environment Impact Assessment, commonly known as EIA, is defined in the §102(2) of the National Environmental Policy Act, 1969, as the effort which is taken by the government in order to assess and evaluate the changes that are biophysical in nature, due to a particular proposed project. It also makes sure that it is an important managing tool in terms of managing natural resources, as well as sustainable development.

In India, this procedure is usually carried out, through the Environment (Protection) Act, in 1986, enshrined under the §3 of the act. This provision authorizes the central government, to take the measures necessary for the protecting, as well as to preserve the quality of the environment, and also to prevent as well as to regulate environmental pollution.

The main object behind this very procedure, is to predict if the project is harmful for the environment, or is affecting any other socio-economic factors. After the target problem is identified, the necessary steps is then taken in order to minimize the hazardous impact. The main object of the procedure, hence, is as follows:

- ✓ Bring to light, and identify the socio economic impact by a certain project,
- ✓ And to take necessary steps, to mitigate the hazardous impact on the environment, and to maximize the benefits that can be yielded from the project.

I. THE TWO MODELS FOLLOWED BY THE COUNTRY FOR THE IMPLEMENTATION OF THE EIA PROCEDURE

There can be mainly two categories, in which the models that the countries usually follow with respect to their EIA provisions, are statutory mandatory model, which is a highly controlled by the legislations so provided, can be both specific as well as delegated- so as to make the decision makers to review the assessment, or to evaluate the impact. Administrative discretion the model which is controlled by the administrative agency and purely depends upon executive policy, administrative agency, as well as

the political expediency. In a nutshell, there might not be a specified statute or a law so support the procedure. It is therefore on the country, to practice this very concept through any of the models so mentioned.¹ As per research, it has been observed, that the mandatory model suits most appropriately, as it ensures open assessment, authorized by the central government.

The United States, follows the NEPA, or the National Environment Protection Act, following the mandatory model of carrying out the EIA procedure.

In the United Kingdom, there was nothing until the 1980's, only public inquiry, which was then followed by the European Economic Community Directive of 1985 encapsulating the procedure of EIA, adopting the procedure of delegated legislation, again under the mandatory model. India, on the other hand, still follows the administrative model which makes the implementation of the procedure more difficult.

In India, the most dangerous act of the industries, with respect to them violating the environment, is the Bhopal Gas Tragedy (*MC Mehta v. Union of India*²), is most commonly remembered as the trauma in the history, which resulted in a massacre and the loss of numerous lives, can be very lucidly seen as disaster, which is due to the result of the vacuum in legal system, when it failed to provide for a mandatory model as well as an open assessment but instead relied upon an administrative model. When the Union Carbide Corporation, applied for a license, there were about fifty bungalows, and a railway station at about a three kilometers radius. The license had to be granted from many authorities, such as Ministry of Chemicals and Fertilizers, etc. Not only they were shown a green flag the, they were also allowed to proceed in spite of being design defection also the absence of a computerized safety system, which was very unlike the plant in West Virginia. There had also been clearance granted from the Ministry of Science and Technology, for the testing of harmful chemicals in the plant. This was highly disapproved and was red flagged by the committee of experts. At no point whatsoever, there is proof of the impact assessment on the location, not there is any trace of inspection or the safety

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¹ P. Leelakrishnan, *Environmental Impact Assessment: Legal Dimensions*, Vol 34. No.4,pg; 543,Journal of Indian Law Institute, pg; 548 (1992)

² M.C Mehta v. Union of India 1987 SCC 395

workers. The malaise of the legal system, here is their implementation of the administrative discretion model, and not the mandatory model and free impact assessment.³

However, it can be noted that in those counties, where the EIA provisions are not explicit and the mandatory model is yet to be implemented, the gaps and the lacunas can be filled by the judicial review.

The judiciary, at that point in time, acting as a filler for the gaps in the legal system. A precaution principle was hence introduced, as one of the initial steps to fix the failing system. As affirmed in the case of *Andhra Pradesh Pollution Control Board v M.V. Nayadu*⁴, the precaution principle hence involves the anticipation of any kind of environmental harm, and to take effective measures in order to avoid the harmful and hazardous activities, and is solely based on scientific uncertainty. The exercise of the protection environment should not only include the protection of health, property, but should also include the protection as well as the preservation of the environment, for its own benefit. In a nutshell, this principle suggests that in cases of high risk, there should be someplace to transfer burden of proof, and that should be on the person who is responsible for the corrupting the environment.⁵

II. THE PROCESS OF EIA IN INDIA

The EIA process is a meticulous as well as a comprehensive process, involving screening, preliminary assessment, scoping, etc. At first, a detailed report has to be submitted by the developer. Then comes the procedure of screening, which decided whether the specific project requires EIA or not, and is classified as the category A or B. B1, requires public hearing, whereas B2 does not.⁶

Next step consists of the preliminary assessment, which involves research, and reviewing of data, and after this the process of scoping takes place, which involves the conversation with developers, addressing all the issues of various groups. Then. The final procedure of public hearing takes place, if

³ Vernika Tomar, *Corporate Responsibility and Environment Impact Assessment*, Vol. no 50. No. 2, pg:230, Journal of the Indian Law Institute, pg. 235

⁴ *Andhra Pradesh Pollution Control Board v. M.V. Nayadu* 1994 (3) SCC 1

⁵ Supra note 3

⁶ G.K Today current affairs, Environment Impact Assessment in India, GK Today, February 11th, 2016, (<https://www.gktoday.in/gk/environment-impact-assessment/>)

it falls within the category. Therefore, on the basis of the result given by the IAA team, the Ministry of Environments and Forests, grants the clearance and is valid of five years.

In India, therefore the procedure of the EIA, was introduced in the precisely in the year of 1978 during the period of several river valley projects. In the year of 1994, therefore twenty nine projects were signed, under the Environment (Protection) Rules, under the rule, and was required to prepare a project report for an impact assessment, for clearance, with a mandatory public hearing, making it one of the first steps towards an efficient EIA scheme. Although the procedure of the compliance, and the strategy is extremely efficient, it is unsuccessful due to the nature of the rules, and therefore are just left as the laws that are 'soft' in nature. The main notification, has been amended, over seven times. There are also, many reasons which obstruct the pathway of implementation. It can be understood, as the lack of funds by the government, in order to hire analysts and to deal with the issue completely, and also the private corporations not falling under the ambit of this procedure.⁷

III. CONCLUSION

India currently emphasizes upon the economic development, although it gravitates soon towards the efforts for the protection of the environment. It is therefore to also be highlighted, that the amalgamation of strong commands, staunch judiciary, as well as dedicated NGO's, proves that India is no more a breeding ground for the industries that have no concern for the environment.

The main problem with India, is not its lack of legislations with respect to the environment, nor is the lack of precedent in order to provide protection for the environment, but it can be concluded as the failure of the Indian government with respect to the implementation of the existing environmental laws. Therefore, a more efficient as well as an efficient mechanism in order to adequately regulate the society, and to protect the environmental laws.⁸ Due to the 'soft' legislations and the nature of the rules so enacted, the implementation till date remains the main obstructions in the path of following the due process, which highlights the dire need for the judiciary to introduce the mandatory model of governance. Also, this will bring all the private corporations in the ambit of this very assessment.

⁷ Shyam A. Divan, Making Indian Beauraucracies think: Suggestions for Environment for Environment Impact Analysis in India Based on the American Experience, Vol 30 Vo. 3, pg 263, Journal of Indian Law Institute, pg: 286, (1988)

⁸ Supra note 6, pg 282

Notwithstanding the rapid growth in the industries, putting a stop is not the answer, but proper implementation of the procedures so enacted can definitely save the health of our environment.