



ENVIRONMENT IMPACT ASSESSMENT- PREVENTION BETTER THAN CURE

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Abstract: Environment Impact Assessment (EIA) is an effort to anticipate, measure and weight the socio-economic and bio-Physical changes that may result from a proposed project. It assist decision makers in considering the proposed project's environmental costs and benefits. Where the benefits sufficiently exceed the costs, the project can be viewed as environmentally justified. The environmental harm from a large project could be reduced if it's probable environmental impacts were explored before the projects inception. The modern technological state intensifies the conflict between environmental values and developmental needs. Legal strategies are necessary to reconcile this conflict, and to augment sustainable development. EIA is an instrument of reconciliation. The Council on European Economic Committee, in the following words: The effects of a project on the environment must be assessed in order to take account of the concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystem as basic resource of life. Any project utilizing natural resources beyond their self-replenishing capacities or discharging emissions/wastes beyond assimilation capacities of receiving bodies, will have a profound impact on the environment. The extent of the impact will vary from project to project and from location to location. EIA is an effort to anticipate the measures and weigh the socio-economic and bio-physical changes that may result from a proposed project. Thus, EIA is potentially one of the most valuable, interdisciplinary, and objective decision making tools with respect to alternate routes for development, process technologies, and project sites.

Key Words: Environment, Effect, Justified, Protection, Project, Decision, Making

INTRODUCTION

EIA is a policy management tool both planning and decision making. EIA assists to identify, predict, and evaluate the foreseeable environmental consequences of proposed development projects, plans and policies. In many countries EIA is a no longer seen as an add-on process. The greatest contribution of EIA to environmental management is in reducing adverse impacts by devising measures, beyond those warranted regulations, through the application of tools such as impact identification and the use of mathematical models for prediction before the project proposal submitted for environmental appraisal. It is now, generally accepted throughout the world that the benefits of project level EIA studies range from simple impact statements to changes in project sites, manufacturing process, raw materials, engineering designs, introduction of additional pollution control measures, landscaping, manpower training programmes, compensation for restoration of damaged resources, and off-site programmes to enhance the quality of life of the community likely to be affected due to the proposed developmental activity. The outcome of an Environmental Impact study assist decision-makers and the general public to determine whether a project should be implemented at all or if it is to be implemented then in what form should it be implemented. Environment per se Impact Assessment does not make decisions, but it is an essential tool for those who do.

It may be worthwhile to encapsulate the above discussion through a hypothetical example. Consider a project where the 'Project proponent' (either private or state owned operator/ entrepreneur) wants to have a chemical plant in a particular place. Naturally this venture requires some amount of resources such as land fuel, water, electricity, raw materials, etc. If the project proponent is given a free hand then he will think only from the point of view of the 'cost' of amassing all the required factors of production like land, labour, capital, and organizational cost. Then depending upon his sensitivity which is often a contentious issue he will take into account how his project would affect the environment, both during the life time of the project and in the long run. Often there may be some conflict of interest, in the sense the immediate neighbourhood community might not welcome such an intervention from the project proponent. They may express their resentment in many ways. The most popular way in which this starts is that the community does not want to give land to the project. Further, they also suspect that this is going to affect their environment and ecology. If the State sponsors his cause and gets the land for him, then this resentment would continue even after the industry is established. There will be constant conflicts between the industry and the neighbourhood community, almost throughout the life time of the project. This will affect the efficiency of industry and may in the long run affect its existence itself. This is a well accepted sociological aspect of the matter.



Now, if we let the matter be considered only from the point of the view of environment and ecology there will be divided points of view between competing groups. On the one hand, there may be some groups which may welcome the establishment of the industry. On the other hand some other groups may oppose the same by stating reasons of environment degradation. This deadlock can be resolved by proper impact assessment, wherein the impacts (both long and short term) upon the environment will be predicted using well established scientific methodologies. Once these scientific findings are placed before the community, they will naturally accept the findings. This will enhance the sustainability of the project itself. This will also make the state agencies work without much trouble, as they would be able to assess the environmental impacts of the developmental activities with some amount of precision.

On a simple level, the legal mechanism of environmental impact assessment (EIA) and strategic environmental assessment (SEA) (which we refer to together as 'environmental assessment') are merely information-gathering exercises enabling decision-makers to understand the environmental effects of certain project (in the case of EIA) and plans or programmes (SEA) before deciding whether or not to grant consent or approval for the proposal. On this level, however, there is little to distinguish this concept from, say, the deciding whether or not to grant planning permission. Indeed, prior to specific legislation on environmental assessment there were examples where detailed assessments of the environmental effects of developments had been carried out, for instance in relation to appraisal since the early 1990's.

The innovation behind the formal EIA and SEA processes is the systematic use of the best objective sources of information and the emphasis on the use of the best techniques to gather that information. In recent years the importance of allowing meaningful public participation in the decision-making process has also been stressed. Thus the ideal EIA, for example, would involve a totally bias-free collection of information about impact in an integrated manner. It should then allow the decision-maker and members of the public to scrutinize the proposal, assess the weight of predicted effects and suggest modification or mitigation (or refusal) where appropriate.

Thus, environmental assessment is both a technique and a process. EIAs and SEAs are inanimate rather than tangible. The key point is that strictly the 'assessment' is undertaken by the decision-maker on the basis of information supplied to it. This information consists in part of an environmental statement prepared by the developer (or more likely, by hired consultants) which details at least the main environmental impacts of the project and any mitigating measures which are proposed to reduce the significance of those impacts. (With SEA, the equivalent document is termed the environmental report.) But just as importantly the environmental information also includes other information supplied by various statutory consulters (e.g. the Environmental Agency, English Nature), independent third parties (such as local conservation and amenity groups, members of the public and even the decision-maker itself. So it is worth stressing the developer does not produce an environmental assessment (a mistake even some judges still make); the decision-maker carries out the assessment on the basis of environmental information supplied.

1) PRINCIPLES AND POLICIES SUPPORTING ENVIRONMENTAL IMPACT ASSESSMENT

The most important reference to EIA is Principle 17 of the Rio Declaration which states that:

Environmental Impact Assessment, as national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to the decision of a competent national authority. A report on EIA Project-Capacity Building and Institutional Strengthening in Iran (submitted to the UNDP by the Government of the Islamic Republic of Iran 1999), states the principles of EIA thus:

1. EIA shall integrate and balance long term and short term economic, environmental, social and equity considerations of development with consideration for the environment;
2. EIA shall identify and clarify the more likely adverse effects of an activity;
3. EIA shall consider the global impact of actions and policies of general planning strategies and specific development projects;
4. EIA shall provide an appropriate vehicle for community involvement in planning, evaluation, and decision-making, and shall promote public participation;
5. EIA laws shall provide clear guidelines for specific terms of reference(ToR) for EIA study, the type of projects that shall be subject to EIA, and the prioritization of factors to be considered in an EIA;
6. EIA shall provide guidelines for determining the environmental acceptability of a project as well as the significance of public interest;
7. EIA shall identify the institutional responsibilities for the preparation of EIA documents, the process of its preparation EIA documents and the process of their evaluation;
8. EIA shall develop mechanism for the resolution of conflicts resulting from the planning, decision making, or the implementation of a project;
9. EIA shall provide a procedure for monitoring and reviewing the effects of a development project during its operation and providing feedback to the community;
10. EIA shall ensure that the total effects are considered, and the effectiveness and efficiency of the EIA process is monitored;



11. EIA shall pursue educational opportunities, ensure participation of all interest groups and individuals, and ensure that all participants are fully aware of the project; and
12. EIA shall ensure that the accountability of responsible institutes, the integrity of the decision making process, as well as cost-effectiveness and flexibility, are being maintained.

The Principles of Environmental Impact Assessment – best practices developed by the International Association for Impact Assessment, comment about the principles stating that:

...the process should provide appropriate opportunities to inform and involve the interested and affected public, and their inputs and concerns should be addressed explicitly in the documentation and decision-making.

There are few basic principles which can be summed up in this regard. An ideal EIA mechanism will have the following features:

1. It shall provide an opportunity for public participation in government decision-making;
2. It shall be open and transparent;
3. It shall provide a certainty of application and process to all participants including the community, government and industry.
4. It shall provide for accountable decision-making;
5. It shall be administered with integrity and professionalism;
6. It shall provide cost-effective processes and outcomes;
7. It shall be flexible enough to deal effectively and efficiently with various proposals; and
8. It shall ensure practical outcomes for effective environmental protection.

In conclusion, it can be said that EIA is potentially one of the most valuable, interdisciplinary, and objective decision making tools with respect to alternate routes for development, project technology and project sites, etc. 'Environment' and 'development' are not separate challenges, but are inexorably linked and the challenge lies in achieving a situation that will enable environment and development to complete one another and exist in harmony. Environment Impact Assessment is an ideal anticipatory mechanism which establishes quantitative values for parameters indicating the quality of environment and natural system before, during, and after the proposed developmental activity, thus allowing measures that ensure environmental capability.

Any project utilizing natural resources beyond their self-replenishing capacities or discharging emission/wasters beyond assimilation capacities of receiving bodies, will have a pro-found impact on the environment. The extent of the impact will vary from project to project and from location to location. Environmental Impact Assessment is an effort to anticipate the measures and weigh the socio-economic and bio-physical changes that may result from a proposed project. It assist decision-makers in considering the proposed project's environmental costs and benefits. When the benefits sufficiently exceed the costs, the project can be viewed as environmentally justified.

Thus, Environmental Impact Assessment is potentially one of the most valuable, inter-disciplinary, and objective decision making tools with respect to alternate routes for development, process technologies, and project sites. It is an ideal anticipatory mechanism allowing measures that ensure environmental compatibility in our quest for socio-economic development. Finally it can be said that, EIA works on the simple techniques of predicting what the state of environment will be (using scientific methods) when the developmental activity is taken up. If the impact is predicted to be huge (meaning outweighing the proposed benefits of the project) the project will not be allowed to be taken up in the state as it is proposed. When it is learnt that the proposed project's impact upon the environment is not so significant, as without affecting the environment, nothing can be done, the project is given a green signal.

02) Environmental Clearance Processes for New Projects:-

After identifying the prospective site but before commencing any construction activities or preparing land the site, the project exponent makes the application for prior environmental clearance. A copy of the prefeasibility project report should accompany the application. In the case of construction projects or area developments or township, the conceptual plan is to be given instead of a pre-feasibility report.

(1) Screening

The State Environmental Appraisal Committee (SEAC) screens and examines the nature and location specificity of the category 'B' projects, and activities to determine whether they do require further studies for preparation of an EIA prior to the grant of clearance. The project which require EIA will be termed as 'B1' projects, and those that do not require EIA are called 'B2' projects. Thus, screening is only for projects coming under the category needing state clearance.

(2) Scoping

Scoping is needed for both category 'A' and 'B1' projects. The EAC or SEAC will determine detailed and comprehensive terms of references (TOR) addressing all relevant environmental concerns for the preparation of EIA report. This is done



on the basis of information in the application form, TOR proposed by the applicant, and on other available information including those gathered by the sub-group of EAS or SEAC on a site visit, if made. Scoping is not necessary in the case of building/construction/area developing projects and township described as '8' Schedule project as for these projects, a conceptual plan accompanying those projects are available. TOR shall be conveyed to the applicant by EAC and SEAC within 60 days of the receipt of application. In the case of 50 MW hydroelectric power generation projects, TOR shall be conveyed along with the clearance for pre-construction activities. There is a deeming provision so far TOR is concerned. TOR suggested by the applicant shall be deemed to be final if EAC or SEAC does not convey its TOR within 60 days of the receipt of the application for clearance. Even at the stage of scoping the regulatory authority concerned can reject prior environmental clearance on the recommendation on EAC or SEAC.

(3) Public Consultation

The concept of 'Public Consultation' under the notification of 2006 is a 'process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns activities require public consultation while some others are exempted. A public hearing and obtaining the responses in writing from other concerned persons having a plausible stake are the two components of public consultation. IN certain contingencies the regulatory authority may, after due consideration of the report and other reliable information, decide that the public consultation in the case need not include public hearing.

For eliciting responses in writing from other concerned persons having a plausible stake, the regulatory authority or the board shall place in summary of EIA Report in its website or other appropriate media. Confidential information such as that involving intellectual property rights shall not be through the quickest available means so that the applicant can make appropriate changes in the draft EIA and EMP (Environment Management Plan) and can send the final EIA Report to the concerned regulatory authority for appraisal. Alternatively, the applicant can submit a supplementary report to draft EIA and EMP addressing all the concerns expressed during the public consultation.

Appraisal

EAC and SEAC make the appraisal of all materials and evidences available after screening, scoping and public consultation. This is a proceeding in which the applicant shall be invited for furnishing necessary clarifications in person or through an authorised representative. After appraisal, categorical recommendations are made to the regulatory authority. The EAC and SEAC make appraisal of projects or activities, which are not required to undergo Completing appraisal, ie, within 60 days of the final EIA Report and other documents. Then the appraisal report is placed before the competent authority for final decision within the next fifteen days.

(B) Expansion or Modernisation

In the case of expansion or modernisation or change of product mix in existing projects the EAC or SEAC will make the appraisal within 60 days, decide 'on the due diligence necessary including preparation of EIA and public consultations' and appraise the application accordingly for grant of environmental clearance.

(C) Grant or Rejection

The regulatory authority shall normally accept the recommendations of the appraisal authorities and convey its decision to the applicant within 45 days. This means that the decision is taken within 105 days of the receipt of the final Environment Impact Assessment Report or of the completed application where EIA is not required. In cases of its disagreement the regulatory authority can ask for reconsideration of the recommendations and make the final decision after getting the reconsidered views of the expert appraisal authorities. Prior environmental clearance shall be on stipulated terms and conditions. When the application is rejected, reasons for rejection shall be given.

In the event that the decision of the regulatory authority is not communicated to the applicant within the stipulated time, the applicant may proceed as if the environment clearance sought for has been granted or denied in terms of the final recommendations of the expert appraisal authority concerned. This deemed prior environmental clearance is tantamount to a bouquet stealthily given to the project applicant by the authority concerned. Regulatory authorities in their sheer negligence or deliberate disregard of the materials before them. On expiry of the period specified the decision of the regulatory authority and the final recommendations of the appraisal authorities shall be public documents.

Clearance from other bodies is not required, unless it is sequentially essential due to a requirement of law or for technical reasons. Similar to the position in the notification of 1994, deliberate concealment and misleading information shall vitiate the application leading to rejection or cancellation of environmental clearance. The prior environmental clearance is for a specified period varying from projects to projects.

(D) Post-clearance Monitoring and Transferability

A post-environmental clearance monitoring on the basis of half-yearly mandatory compliance reports by the project management is a novel feature of the ELA Notification 2006." Compliance reports shall be public documents available on the website of the concerned regulatory authority. The notification specifies that prior environmental clearance granted



to an applicant may be transferred during its validity to another legal person on the same terms and conditions." No reference to the appraisal authorities is necessary in such cases.

(E) Projects and Activities Requiring Environmental Clearance

In the schedule to the notification a list of projects or activities requiring environmental clearance is appended. There are 39 categories placed under 8 heads with separate threshold limits and conditions with which clearance is to be given. They are as follows:

CONCLUSION:

The Environmental Impact Assessment (EIA) procedure is among the tools which in recent years have been employed widely to judge the impact of various activities on the environment so as to mitigate such impact. To be able to respond to the challenges which such activity creates in the management of environment, it is desirable that an effective mechanism should ensure that any development which is intended is environmentally sound. Unfortunately, we in India have no provision in any of our statutes making the EIA study compulsory. For example, the Water Act has a provision for granting of not granting a consent to discharge effluents. But Water Board is not legally bound to investigate into this matter or its consequential impact. Though NCEP and DOE do some work in this regard but the basis to prepare or submit their reports is administrative in character and not statutory. Therefore, it is suggested that the EIA study should have a statutory basis and the DOE should have complete responsibility of assessing the impact and prepare monitoring environmental impact study. No new projects should be launched without obtaining a clearance from DOE.

In India Environment Impact Assessment (EIA) is Still in its nascent stages. Constraints like inaccessibility to information, lack of information, inadequate communication systems, lack of financial resources, diversity of ecosystem, failure to appreciate EIA, etc. Have made its utility rather limited. EIA is not required by law. Clearance of a project upon the proponent's project report and the information gathered from questionnaires which are required to be completed by the development authority or the proponent. Public participation in the EIA process is lacking. The stop gap arrangement devised by the recent Notification of the Ministry of Environment specifying for compulsory environmental appraisal of 29 polluting activities is not enough. In this context it may be enacted on the lines of the U. S. National Environmental Policy Act of 1969 (NEPA). Which could provide Environmental Impact Assessment a statutory requirement for all polluting activities or proposed developmental plans. The scope of EIA also needs to be broadened to include inter-sectoral impacts. The analytical methodology needs to be made more effective and viable through development of techniques for screening and scooping, objective ranking matrices for normalisation or tangible and intangible impacts, computer aided predication and evaluation of impacts. The entire process should not be done in a state of secrecy but be amenable to public scrutiny and review by judicial bodies preferably the environmental courts. Lastly, EIA needs to be institutionalized and standardized and public participation by involving NGOs be made mandatory so as to ensure administrative and public acceptability of anticipatory activities in the project.

REFERENCES

- 1) Armin Rosencranz, Shyam, Divan, Environmental Law And Policy In India, Second Edition, Cases, Materials and Statutes, Oxford, Second Edition, P. 417, 418
- 2) P., Leelakrishnan, Environmental Law in India, Lexis Nexis Butterworths Wadhwa, Nagpur, P. 326, 327, 328.
- 3) Dr. Tiwari, H., N. Environmental Law, Allahabad Law Agency, P. 124
- 4) Thakur, Kailash. Environmental Protection Law and Policy in India, Reprinted 2013 P. 396, 397
- 5) Dr. T. Padma, The Principles of Environmental Law, Alt Publications, P. 22, 23
- 6) O. V. Nandimath – Hand Book of Environmental Decision Making in India- An EIA Model – 2009 – Oxford University Press, New Delhi P. 16, 17
- 7) Environmental Impact Assessment Notification, 1994.
- 8) Stuart Bell & Donald McGillivray – Environmental Law - Sixth edition Oxford University Press, New Delhi P. 508