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Analysis of EIA 2020

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ABSTRACT

The author through this article seeks to highlight and enumerate the multi-tiered issues with respect to the Draft EIA Notification passed by the Central government on April 11, 2020. The article additionally brings forth an overview of the draft that enumerates the multiple imperative clauses and provisions. The issues so understood shall be broken down and scrutinized through a legal and moral aptitude. The article shall also focus on upholding the principles environmental jurisprudence.

Keywords- EIA 2020, Environmental Jurisprudence.

I. INTRODUCTION

An environmental impact assessment study or report is intended to identify, assess and evaluate the economic, environmental and social impact of a proposed project or developmental activity (such as a mine, dam, industrial unit etc.). The EIA is used to predict the environmental impacts of a project in the pre-planning stage itself so that decisions can be taken to minimize any adverse impacts on the environment and is considered a critical aspect of sustainable development.

The Draft EIA Notification is intended to promote transparency and streamline compliance, as it integrates numerous notification, amendments, office orders, circulars, court and tribunal directions since the last EIA notification in 2006, which is currently in force.

II. DRAFT EIA 2020: AN OVERVIEW

The initial three clauses of the draft simply presents its name, area of applicability (which is entire India, including the territorial waters) and the meanings of the phrasing utilized in the draft. The third clause, i.e., the condition which contains the meanings of the terms utilized in the draft, is an extremely definite proviso. The clause includes sixty definitions and alongside it, it additionally expresses the abbreviations of the long terms. This provision is indeed the key, to comprehend the draft.

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This is the kind of categorisation, utilized in this draft. The classification into “*Category ‘A’, Category ‘B1’, and Category ‘B2’ is done on the basis of potential social and environmental impacts and spatial extent of these impacts*”²The principal piece of the draft begins with provision four, which expresses that every developmental (Categories A, B1, and B2) require prior-Environmental clearance or prior-Environmental permission.

These activities and their categories are referenced in the schedule of this draft. . For instance: the developmental activity, is mining. Presently, three categories are made based on resources utilized. As it is an undertaking of mines, the resources which will be utilized is land. On the off chance that in excess of hundred hectares of land is utilized, it will go under class 'A', assuming area utilized is somewhere in the range of five and hundred hectares, it will go under classification 'B1', and in the event that land utilized is not exactly or equivalent to five hectares, it will go under class 'B2'. Here we can straightforwardly see that the effect on the climate will be enormous if developmental activity based category A is done. The effect will diminish with classification B1, and will be least, with classification B2.

The draft now moves towards the formation and composition of the Expert Appraisal Committee (EAC). Expert Appraisal Committee, “*is a committee of experts constituted at central level by the Ministry for appraisal of projects referred to it and for making appropriate recommendations*”³[7].

Clause six further proceeds to depict the qualification standards to be a member in this panel. The draft, in provision six, eight, and nine, states and depicts different sorts of committees, other than portraying its formation and purpose. For example, it portrays, the State or Union Territory or District Level Expert Appraisal Committee and the Technical master Committee, in clause eight and clause nine, separately. The EAC works at focal level, and the councils referenced in provision eight works at state, UT, and region level. The Technical master panel's capacity is to sort and re-categorise, the developmental projects and activities.

Clause ten of the draft is by a wide margin the main draft, as it expresses the way toward getting prior Environment Clearance (EC) or prior Environment Permission (EP). This clause simply expresses the stages for getting prior – EC or EP, and afterward these stages are portrayed in detail, in the forthcoming seven to eight clauses. In this way, there are fundamentally six phases, during the process of getting prior - EC or EP. The six phases are:

1. Scoping;

² Sub-clause 1 of clause 5 of Draft Environment Impact Assessment – 2020.

³ Sub-clause 27 of clause 3 of Draft Environment Impact Assessment – 2020.

2. Preparation of Draft EIA Report;
3. Public Consultation;
4. Preparation of Final EIA Report;
5. Appraisal; and
6. Grant or Rejection of Prior Environment Clearance”⁴

The entirety of the previously mentioned stages are portrayed, correspondingly in the forthcoming clauses. Clause twelve of the draft, describes scoping. Scoping means the process of determining the Terms of Reference by the Regulatory Authority for the preparation of EIA Report, for the project, seeking prior-EC⁵.

Of the relative multitude of phases of getting prior EC, public consultation, is considered of more prominent significance, contrasted with others. Such interactions guarantee a window of expectation for limiting the harm, to the local community.

Clauses eleven to eighteen, depicts the six stages in detail. The clauses nineteen to 24, examines various concepts, identified with the prior and post EC measures. A portion of these concepts deal with the validity period of the prior-EC, the the process of managing the infringement cases and the instances of non-compliance of standards. Clause 25 talks about the appeals against prior – EC granted by the appropriate authority. The draft expresses that such appeals will go under the purview of the National Green Tribunal. The penultimate clause of the draft expresses, the rundown of formative exercises, which doesn't need prior-EC or prior-EP.

The list includes forty activities and projects, which causes insignificant ecological harm. The last clause of draft EIA 2020, states that the entirety of the prior drafts will be supplanted, from the last date of distribution of this notice. It additionally expresses that all the prior-EC issued after the distribution of this notice, will be viewed as given under this notification.⁶

III. SHORTCOMINGS OF DRAFT EIA 2020

The proposed draft notification seeks to replace the present rules. It is important to note that the EIA is the process responsible for giving environmental approval and clearance to developmental and industrial projects.

⁴ Sub-clause 1 of clause 10 of Draft Environment Impact Assessment – 2020.

⁵ Sub-clause 49 of clause 3 of Draft Environment Impact Assessment – 2020

⁶ Atharva nikam (2020). *DRAFT EIA 2020: A CRITICAL ANALYSIS*. [online] Lexsyndicate. Available at: <https://www.lexsyndicate.com/post/draft-eia-2020-a-critical-analysis> [Accessed 2 May 2021].

This has drawn heavy criticism for the unnecessary dilution of the existing process and for catering to smoother and swifter ways for industries to secure environment clearances and flout rules.

(A) Post-Facto Approval

The new draft takes into account post-facto endorsement for projects. It implies that the clearances for activities can be granted regardless of whether they have begun development or have been running stage without getting environmental clearances.

This is disastrous because we already have several projects that are running without EIA clearances. An example is the LG Polymer Plant in Vishakhapatnam, where the styrene gas leak happened on May 7. It was revealed that the plant had been running for over two decades without clearances.⁷

This likewise implies that any ecological harm brought about by the activity is probably going to be postponed off as the infringements get legitimized.

As the solitary measure is force a fine or punishment; yet that would not reverse or impede the damage caused to the environment.

Post facto endorsement is the discrediting of the basic principles of environmental jurisprudence and infringement of the "precautionary principle," which is a principle of environmental sustainability.

Even the Working Group of experts constituted by the UNEP in 1987 has enunciated as one of their 13 principles that any framework for EIA must operate "prior" to the beginning of the project.⁸

In the matter of *Common Cause v. Union of India*⁹ the court emphasized "The concept of an ex-post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January, 1994. It is detrimental to the environment and could lead to irreparable degradation. The reason why an ex post facto EC is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment."

⁷ Was negligence behind India's deadly gas leak? (2020). *BBC News*. [online] 24 May. Available at: <https://www.bbc.com/news/world-asia-india-52723762> [Accessed 2 May 2021].

⁸ UNEP Res. GC14/25, 14 Sess. (1987), endorsed by GA res. 42/184, UN GAOR, 42nd Sess., UN Doc. A/Res/42/184 (1987).

⁹ *Common Cause v. Union of India*, (2017) 9 SCC 499

(B) Public Consultation Process

The draft notification accommodates a decrease of the time span from 30 days to 20 days for general the public to submit their responses during a public hearing for any application seeking for environmental clearance.

The peril is that if enough time isn't given for the arrangement of perspectives, remarks and ideas to the individuals who might be influenced by the project, at that point such formal conferences would not be significant.

Further, the decrease of time would especially represent an issue in those places where data isn't effectively available or regions where individuals are not that very much aware of the process.

Moreover Principle 10 of the Rio Declaration¹⁰ clearly states that, “*States shall facilitate and encourage public awareness and participation by making information widely available*”. Unfortunately, that has not been done in the instant case. The draft notification has only be published by the Central Government’s Ministry of Environment, Forest and Climate Change, absent any efforts by the State governments to circulate it on their official websites, thus making it all the more difficult for a significant number of stakeholders from having the opportunity of reviewing and submitting their comments on the draft notification.¹¹

(C) Compliance Report Issue

The 2006 notification required that the project proponent submit a report every six months, showing that they are carrying out their activities as per the terms on which permission has been given.

Be that as it may, the new draft requires the advertiser to present a report just once a year. During this period, certain irreversible ecological, social or health consequences of the project could go unseen due to the extended reporting time.

For instance, if a mining project is being done at someplace which can be conceivably risky to the population in the proximity and can taint the air and water close by, a half-yearly compliance report would better assist in tending to these worries.

(D) Bypassing EIA Process

¹⁰ Principle 10, Rio Declaration on Environment and Development, 2020

¹¹ Verma, A. (2020). *Critical Analysis of the Draft EIA notification, 2020*. [online] Ipleaders. Available at: https://blog.ipleaders.in/critical-analysis-draft-eia-notification-2020/#_ednref1 [Accessed 2 May 2021].

Through the draft notification, the central government gets the power to categorise projects as “strategic.”

Rule 5 (7) of the draft EIA Notification, 2020 provides that when the Central Government declares any project as strategic, “*no information relating to such projects shall be placed in public domain.*”.

Violations can only be reported suo moto by the project proponent, or by a government authority, appraisal committee, or regulatory authority. This is against the principles of natural justice.¹²

Further, the draft notification states that the new construction projects up to 1,50,000 square metres (instead of the existing 20,000 square metres) do not need “detailed scrutiny” by the Expert Committee, nor do they need EIA studies and public consultation.

This is likewise in opposition to the concept of sustainable development as it looks to exclude a bigger number of new activities from the domain of the notification. Nonetheless, with the increment in the quantity of new activities, the point should be to bring increasingly more of them inside the domain of the notification so an extensive evaluation of the negative effects they would have on the environment could be done.

IV. IMPORTANT PETITIONS

(A) Petition filed in Delhi High Court

Delhi-based activist Vikrant Tongad filed a petition in the Delhi High Court on June 30 seeking an extension of time for public consultation due to the pandemic, and publication of the draft EIA notification in the 22 languages mentioned under Schedule VIII of the Constitution of India. The Delhi High Court ordered extending the period of public hearing to August 11. The court also ordered the Ministry of Environment to publish translated versions of the draft on all the government websites within 10 days. The Ministry failed to do so.¹³

(B) Petitions filed in Karnataka High Court

United Conservation Movement filed a petition in the Karnataka High Court looking for extension of time to document complaints on the Draft EIA 2020 notice till December 31, 2020. On August 5, the Karnataka High Court coordinated the Union government not to distribute the last notice of the draft EIA till September 7, seeing that the draft was not broadcasted in

¹² Clause 22 of Draft EIA 2020

¹³ Jackson, J. and Gunasekar, K. (2020). *Decoding the Current Status of Draft EIA 2020*. [online] The News Minute. Available at: <https://www.thenewsminute.com/article/decoding-current-status-draft-eia-2020-133728> [Accessed 2 May 2021].

vernacular dialects. The HC then extended the interim order and the stay on the publication of the final notification based on the Draft EIA 2020 until further notice as the Centre did not file any response.

Then, Bangalore Environment Trust documented a writ request in the Karnataka HC on September 2 trying to restrict the distribution of the final notification based on the Draft EIA 2020. A heap of associated prohibitory writs have been called alongside the essential appeal recorded by United Conservation Movement. The court heard these petitions on September 7 and gave notice to the Ministry of Environment to answer to the appeal in the following hearing.¹⁴

(C) Petition filed in Madras High Court

A petition was filed in the Madras High court by Meenava Thanthai, an association working for the for the cause of the fishermen community, to guide the government to decipher the Draft EIA 2020 into territorial dialects, and provide adequate opportunity to submit objections.¹⁵

On August 24, the Madras HC issued notice in another plea encouraging for interpretation of the draft into vernacular dialects and augmentation of the time allowed to document objections to the Draft¹⁶. The bench coordinated that this be connected with the above mentioned plea.

V. CONCLUSION

The draft EIA 2020 is a special draft, in correlation with the prior ones. It is extraordinary in the details of its portrayal, language, and ideas utilized. The portrayal is reader friendly, as it depicts every single idea, in an ideal way. The draft sequentially depicts each and everything related to the process of acquiring prior EC or prior EP.

Apart from the entirety of this, the draft is a decently condemned notification. The draft has confronted analysis from a distinguished group of people, including acclaimed environmentalists. The environmental harms are irreversible and it is something which cannot be quantified monetarily.

Such legitimate and accommodating reactions of the draft helps the public authority and explicitly the service in progress of the draft. The draft in its absolute first passage expresses that the draft will be thought about, after expiry of sixty days, starting since the date, the draft is disclosed. Thus, I believe that even though the draft is self-explanatory, descriptive and of a wide scope it is against the environmental jurisprudence and the very fundamentals of the

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ B Ramkumar Adityan v. Union of India, 2020.

Principles of natural justice.

Though the above is true, there are some provisions worthy of being retained. These include the detailed definition of every term, introduction of the Technical Expert Committees, Accredited EIA Consultant Organisation (ACO), online mode of submissions, reducing the time-period for grant or rejection of EC, introduction for provision for appeal etc.
