

The Statesman

A regressive approach

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The draft Environmental Impact Assessment norms of the Government dilute environmental concerns and legitimise violations, says DEBAPRIYA MUKHERJEE.



A signatory to the Stockholm Declaration (1972) on Environment, India enacted laws to control water (1974) and air (1981) pollution soon after. But it was only after the Bhopal gas leak disaster in 1984 that the country legislated an umbrella Act for environmental protection in 1986.

Under this Act, India notified its first Environmental Impact Assessment (EIA) norms in 1994, setting in place a legal framework for regulating activities that access, utilize, and affect (pollute) natural resources.

Every development project has been required to go through the EIA process for obtaining prior environmental clearance ever since.

The 1994 EIA notification was replaced with a modified draft in 2006.

Further the government redrafted it again to incorporate amendments and relevant court orders issued since 2006, and to make the EIA “process more transparent and expedient” so that the latest version of EIA procedures and processes could address legal, technical, environmental and social issues, including social welfare, compensation, safeguards and corrective measures to ensure social, economic and environmental benefits to all, particularly local communities and fauna and flora.

Moreover, the environment is one of the major components of sustainable development. The draft EIA 2020 to update the EIA notification 2006, was put in the public domain on March 12 and the

Ministry of Environment, Forest and Climate Change (MoEFCC) sought views and comments from all stakeholders on it within the next 60 days.

But critical evaluation of this draft clearly reveal that the changes made in the draft EIA 2020 are completely contrary to the principles of environment protection and sustainable development with reference to EIA notification 2006.

Though the EIA process has been established to safeguard the environment, the incidents that have happened one after another, starting from the Bhopal gas tragedy to the recent boiler explosion in Cuddalore in Tamilnadu, clearly expose that EIAs were not practically devised to maintain environmental sustainability and to protect human health through scientific assessment and proper public participation. On the contrary, if critically examined, all these EIAs were outweighed by economic and political concerns leading to legal disputes and public contestations surrounding projects.

Thereby sustainable development as promised by Government of India has been endangered. The most unfortunate part is that the procedure and processes being adopted to prepare EIA for environmental clearance has already eroded the trust of common people in regulatory agencies leading to loss of democratic accountability.

Enforcement is poor, corruption is rampant, and the justice system is slow. But corruption or manipulation in EIA is difficult to prove because it is a practice inherently subtle, though its existence seems certain.

The manipulation depends on the interests at stake, and political or lobby pressures. Numerous procedural and bureaucratic challenges, as well as powerful political leaders exert pressure to reform EIAs through streamlining and simplifying environmental licensing processes. It is perhaps for this reason the draft EIA 2020 has been placed in the public domain by MOEF&CC to replace the EIA notification of 2006 and proposes a new set of environment clearance rules which seem to be heavily loaded in favour of industry.

Critical appraisal of draft EIA 2020 reveals that MOEF&CC legitimises violations by those who start projects without environment clearance, weakens the public consultation process and gives a lot of discretionary powers to authorities. Though public consultation process was in practice, but these efforts frequently became mechanisms of co-option, through which projects of more powerful political and financial actors were projected and the logic of project success was promoted.

Now, this draft proposes to bolster the government's discretionary power so that there will be a political and bureaucratic stranglehold on the EIA process, and thereby on industries while limiting public engagement in safeguarding the environment. As a result, there will be little scope to address corruption, larger territorial transformations, and human rights violations.

The National Green Tribunal (NGT) has consistently ruled against post-facto approvals.

But the new draft simply ignores this cardinal principle of prior environment clearance and permits post-facto regularisation of environment violations by paying fines so long as the project is permissible in the area.

But a fine or punishment would not reverse the detrimental consequences on the environment. Post facto approval is the derogation of the fundamental principles of environmental jurisprudence and violative of the "precautionary principle," which is a principle of environmental sustainability. Any shift from the 'polluter-pays-principle' to the 'pollute-and-pay' principle would cause severe environmental problems. The Supreme Court has clearly opined that environment law would not countenance the notion of ex post-facto clearance.

Thereby to avoid legal problems, this draft has proposed to legitimise illegalities done by industries. It is practically a mockery of the law. The new draft exempts a long list of projects from public consultation.

In particular, linear projects such as roads and pipelines in border areas will not require any public hearing. A 'border area' is defined as "area falling within 100 km aerial distance from the Line of Actual Control with bordering countries of India."

That would cover much of the Northeast, the repository of the country's richest biodiversity. Further all inland waterways projects and expansion/widening of national highways will be exempt from prior clearance.

These include roads that cut through forests and dredging of major rivers that are part of the diverse ecosystem. In this context it is pertinent to mention that Prime Minister Modi had urged people to preserve and conserve the biodiversity of India describing it as a "unique treasure" for the entire humankind.

This exemption is a clear indication of the government's negligence in maintaining the natural ecosystem that is practically "ecocidal" and places a million species at risk of being wiped out.

The battle with the current pandemic has shown us how vulnerable and unstable our systems of production, distribution and supply are in the face of Nature.

This draft will accelerate the exploitation of natural resources in the name of "development" that cannot maintain equilibrium among economies, society and environment.

Ultimately this will force humanity to face severe consequences like diseases and bad weather. While projects concerning national defence and security are naturally considered strategic, the government can designate any other project as of strategic importance in name of energy security or any other, and place it out of purview of public scrutiny. This could be an irrigation or mining project.

Further, the building and construction lobby which has been facing several court cases regarding clearance rules will be assured that the industry will no longer require an appraisal from the expert panels of the environment ministry.

The new law also proposes to declare some areas as 'economically sensitive areas', on the recommendation of MOEF&CC, which would then be taken outside the ambit of mandatory environmental and other clearances.

This could pose a serious threat to delicate and highly unstable ecosystems like sacred groves, remnant forest patches and those that sustain critically endangered fauna like the great Indian bustard, Asiatic lion and one horned rhinoceros. Development of projects without proper development planning and environment management may improve our ranking in the 'ease of doing business' index but might irrevocably damage our environment in the long run.

Further this draft increases the validity of environment clearances to 50 years for mining projects as against 30 years in the current law and 15 years for river valley projects as against 10 years. Based on my experience on monitoring mining areas, it may be mentioned that such long-term clearances would increase the risk of irreversible environmental, social and health consequences.

This draft has reduced the time period for the public to submit their responses during a public hearing for any application seeking environmental clearance from 30 to 25 days.

The time required for the preparation of views, comments and suggestions of people affected by the project particularly in those areas where information is not easily accessible will be not adequate. Such public hearings would not be meaningful. Unless a public hearing is meaningful, the whole EIA process would lack transparency and credibility. In 2006 notification, there is a provision to submit a report every six months.

But the new draft requires the promoter to submit a report only once every year. During this period, irreversible environmental, social or health consequences of the project could go unnoticed because of the extended reporting time.

Many examples can be cited to establish the necessity of short compliance periods to avoid hazards to the nearby population and to prevent contamination of air, water and soil near the project site.

The backbone of environment clearance rules involves monitoring the conditions on which projects are cleared and ensuring compliance. In this draft, the ministry will rely on self certification by the industry.

In reality, the 2020 draft is a regressive departure from the earlier version.

Environmentalists as well as well-meaning economists have argued that if the government throws caution completely to the winds to make good the GDP loss to the economy due to the prolonged lockdown, it will make a mockery of its commitment to the global community made in the United Nations Climate Change Conference 2019 (COP 25).

Thereby this new draft would come as a major embarrassment to the country in the international stage. It is pertinent to note that India ranked a very low 177 out of 180 countries in the Environment Performance Index (EPI) 2018. This draft initiates the process for industries to get a green signal for beginning, extending and even continuing projects in a far easier fashion.

If this draft is legalized, people frustrated with the impassivity of authorities may turn agitational because operation of projects without strong enforcement of EIA guidelines entail many risks. Ignoring these factors at the start, and intentionally turning a blind eye to them despite the opportunity to incorporate them in the EIA study and address them at the initial stage is risky.

There is an urgent need to offer a new way to think about project licensing processes and to avoid such flaws in future. EIA processes could meaningfully inform more accurate economic indicators, as well as social and environmental points of concern, and could lead to decisions that avoid environmental harm, human rights violations, and costly work stoppages. It is most essential to make the EIA notification 2020 more participatory and democratic in nature.

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