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“Dharma is to protect the Needy”

Article on
ENVIRONMENT IMPACT ASSESSMENT 2020- A CRITICAL
ANALYSIS

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ABSTRACT

Environment plays a vital role in the healthy living of all organisms and it is important for every individual on the earth to protect our environment for the wellbeing and existence of life. At the same time, there is tremendous economic and technological development in the 21st century due to which a lot of developments and projects have been made. But due to the increase of developments and projects, there is a massive dangerous effect on the environment and people. In order to protect the environment, the draft was proposed by the Union Government which plays a significant role in assessing the projects and developments is known as Environment Impact Assessment.

The new draft Environment Impact Assessment 2020, was proposed by the Ministry of environment, forest and climatic change that seeks to replace the 2006 draft. This new draft seems to be favouring Industrialization and Urbanization but on the other side it is completely weakening the environmental laws and regulations and also it is not focusing on the environment protection rather it is creating a drift between the sustainable development and environment protection. On the contrary, the Indian ministry states that this new draft is expediting the process by making it online and encouraging transparency.

Many Environmental Activists, Ecologist and Biologists state that the new draft can quicken the process but it is completely neglecting the protection of the environment and it can be a disaster to the environment. An Environment Impact Assessment is generally an estimate of a project such as mine, Industrial projects, Thermal and waste treatment plants etc. Therefore, this Article attempts to analyse about the new draft Environment Impact Assessment 2020 and its loopholes in detail, and so it critically aims to explain the measures that can be taken in order to reevaluate or change the draft.

ENVIRONMENT IMPACT ASSESSMENT AND ITS IMPORTANCE

Environment Impact Assessment is an important process or methodology covered under the Environment Protection Act 1986 in order to protect and improve a healthy environment, by which it evaluates the environmental impacts of the projects and developments and it should get environmental clearance. Each and Every project or development such as Real estate projects, Industrial projects, Mining of coal and Thermal plant projects should go through the Assessment. Based on the Assessment given by the Experts, the clearance can be granted or

denied to the projects and developments. Environment Impact Assessment will surely create a balance between the Environment and sustainable development which means there will be a safer eco-friendly environment with development of infrastructures and projects in the country.

Mainly the Environment Impact Assessment is needed because it will critically analyse the development activities and its positive and negative environmental impacts, when the negative impacts are too less then only the development plan can be implemented. In the Samarth Trust Case, the Delhi High Court states that Environment Impact Assessment is a part of participatory Justice in which the voice is given to the voiceless¹. Therefore, it is generally significant for protecting against the environmental issues in which there will be effective participation by the people who locally reside near to the upcoming project and by giving their opinion to the development or project. Therefore, the decision-making power to the public granted by the State also plays an important tool in granting approval for the project or development in which it will promote democracy.

RIGHT TO LIVE IN A CLEAN ENVIRONMENT – A BASIC HUMAN RIGHT

The degradation of the environment can endanger the present and future generations. Therefore, Article 21 of the Indian Constitution states that Right to life which is diversified in nature and it includes right to quality of life and right to live in a clean and healthy environment etc. Hence, a healthy environment is essential not only for human beings but for all living organisms in the earth and so degrading or deteriorating the environment is a violation of the basic human right to live in a clean environment. The Apex Court in Subash Kumar v. State of Bihar, it was held that right to life includes right to enjoyment of pollution free water and air comes under the ambit of Article 21². In M.C Mehta v. Union of India the Supreme Court directed certain tanneries to stop function as they discharge harmful foul effluents without proper primary treatment plant and so it also concluded that closing of industries may impact the revenue, employment but health, life and ecology plays a vital role to the people³.

Thus, Environment Impact Assessment is a legal draft which is precautionary in nature, proposed by the Union Government for assessing the impacts of the project and development plays a significant role in protecting the environment and the basic human right that is right to live in a clean and healthy environment.

¹ Samarth trust and another v. Union of India Writ petition (CIVIL) No. 9317 of 2009

² Subash Kumar v. State of Bihar 1991 AIR 420, 1991 SCR (1) 5

³ M.C Mehta v. Union of India Writ Petition (CIVIL) 4677 of 1985

LOOPHOLES OF NEW ENVIRONMENT IMPACT ASSESSMENT

The Ministry of Environment Forest and Climatic Change had proposed a new draft Environment Impact Assessment 2020, in replacement of the draft 2006 under the Environment Protection Act 1986. This new notification proposed by the Government is to make the assessment of the projects or developments easier and expedient by incorporating an online system and making the process more transparent. This draft may have some positive things but it has a lot of loopholes, due to the fact that many challenges will be faced by the public and environment. Therefore, the loopholes of this new draft have been discussed below in detail.

Primarily, India is a democratic country in which people have the authority to choose the legislators who are making the law. In that case people have more powers in a wider sense. Yet, here this new draft has rapidly increased the powers of the Government. On the other hand, restraining the participation of the public in protecting and safeguarding against the environmental issues is completely discretionary. This new draft states that, the response should be given by the public in public hearing is reduced from thirty days to twenty days for any environmental clearance of the projects or developments. Accordingly, when there is no proper time given to the local communities to collect information on the upcoming project or development to know whether it is good or bad, then it can affect local communities in large due to the unawareness of information in a short span of time for giving their opinions/suggestions. So, the public hearing itself is not meaningful in the unfulfilled decision-making process and it is completely abating democracy.

India is a member party to most of the International Conventions of environment such as Convention on Biological Diversity and United Nations Framework on Climatic Change where it states that the prior environmental clearance must be granted to the Projects and Developments and it is compulsory. But this new draft imposes post facto clearance which means the environmental clearance can be granted even when the construction of a project or development starts or during the construction phase, sometimes it is granted even after the construction ends. Consequently, this post facto clearance given in the draft is completely violating the principles of the environmental laws and regulations especially the precautionary principle, the important principle of sustainable development. In *M.C Mehta v. Union of India*, the court states that the Precautionary principle is mandatory for the State Government to

anticipate, prevent and attack the causes of Environmental Degradation⁴. The ultimate goal of the environmental law and regulations are violated because the damage to the environment by the projects or developments are not prevented before itself but they were legally recognized.

Recently LG polymer gas leak disaster happened in Visakhapatnam, where many people got injured and some of them died and hence the shocking truth behind the incident is the LG polymer Gas plant does not get environmental clearance and the result is the environment and people get extremely affected. Another incident recently happened in Natural Gas of Oil India Limited in Assam, a blowout and fire was reported by State pollution Board Assam in which there was severe damage caused to the livelihoods of people and Biodiversity and the sad truth is the plant was operated without environmental clearance.

Whenever any project or development is violating the environment law and regulations then the cognizance of the violation can be filed by the violator himself, which means the individual who is working on the project, the regulatory authority, appraisal committee which means the Government can only file the complaint against the particular project. This shows that the draft is completely neglecting the public opinion and if any project is completely violating the environmental law the public cannot do anything but ultimately the public only suffer due to the bad consequences of the project.

This new draft proposes a strategic exemption, which means the Central Government can declare any project or development related to the National security and Defence as Strategic, which means strategic projects information cannot be accessed by the Public and violations can be reported by the concerned persons as already stated above. Based on that, this is completely violating the basic human rights and natural justice and sometimes the Central Government can use their discretionary power in stating the project as simply strategic. On the account of that, there are many projects that are additional exempted from public consultation stated in the draft particularly all the linear projects in the border areas which means the larger portion of the construction of project or development in the border areas that is 100 km line from the actual control of bordering areas within the country that is North Eastern part and any linear projects made in the North Eastern part can be made without consulting the public by the Government but the North Eastern part in the Country is highly ecological and plenty of natural resources are present.

⁴ M.C Mehta v. Union of India AIR 1997 SC 734

Further, this new draft also states that the construction projects up to 1,50,000 square meters does not need detailed scrutiny and public consultation but the old draft states that projects of 20,000 Square meters or above need public consultation. This shows that the new Environment Impact Assessment is an anti people Act and it does not concern the people and environment because this draft is completely focusing on the increasing of Industries and Infrastructures but not on the environment protection.

In Addition, this new draft states that the promoter of the project should submit a report only once in the year but the old draft 2006 states that the promoter of the project should submit the report every six months in a year. This shows that new draft is violating the norms of the environmental law in which half yearly compliance report is needed because the activities that are happening in the project should be properly investigated because there are many environmental and social issues associated with it and it can become unnoticed due to the extension of the time for filing the report.

At last, India is mostly a member of all the international frameworks and conventions such as United Nations Framework on Climate Change, Rio Summit 1992, Paris Climate Accord and United Nation Conference on Human and so these conventions and frameworks strengthened the Environmental Governance. But this new draft proposed by Indian Ministry is completely weakening the Environmental Governance and therefore India is nonconforming to the International Conventions and frameworks will weaken the India's stance in the global climatic politics.

REVALUATION OF ENVIRONMENT IMPACT ASSESSMENT 2020

Overall, this draft seems to be favouring the side of Industrialization and not on the environment and sustainable development. This new draft will bring transparency and expedite the process said by the Union Government but the sad truth is it is totally degrading the environmental laws. This new draft should be reevaluated by insisting some changes like public consultation should be stronger, post facto clearance should be eradicated because it is disastrous to the environment and the compliance report should be properly submitted every half year. There is a list of projects that are exempted from public participation that needs to be reevaluated and it should be changed. Overall, there are a large number of communities like Adivasis, peasants and fishermen communities who totally depend on the environment and this new draft can cause a worse impact on the living and working conditions of these people by

increasing the industries. And thus, the new draft should be changed and should focus on saving the environment and people and it should minimize the powers of the Union Government because it is arbitrary in nature. India needs stronger laws to protect the environment and to ensure the natural resources should be available to the people equally, and so the Government should make stronger laws in order to reduce the larger scale of environmental violations.

Accordingly, it is important here to mention that the economic growth and development is significant for the country, but sustainable development is much needed in protecting the environment and saving the natural resources for our future generations. Sustain later is the notion indicated through this new draft that may cause dangerous impacts on the environment and wellbeing of the people. And so, the growth must be balanced with sustainable development otherwise nature will worsen the life of all living organisms.

CONCLUSION

To conclude, this new Environment Impact Assessment is an anti people and anti environment act because the purpose of this process is completely destroyed. Indian Ministry needs to reevaluate the Environment Impact Assessment 2020 because this process is needed to achieve a healthy environment and sustainable development. In this era, Urbanization and Globalization has rapidly increased due to the fact that many projects and Infrastructure developments have been constructed but the environment is getting worse. For that the Environment Impact Assessment is needed to evaluate the both positive and negative impacts of the projects and developments so that it can control the harmful consequences to the people and environment. The new Environment Impact Assessment has one positive thing, it elaborately explains the terms and lucidly explains the clauses in a detailed manner but it has plenty of negative impacts which are stated above and it should be reevaluated. India needs stronger and people friendly laws to protect the Environment and the problem is the Government is not acknowledging the speedy need of the people friendly environment laws. Hopefully, the better law must come into force and should deftly balance between the Environment and Economy.