International Journal of Environmental Engineering and Management.
ISSN 2231-1319, Volume 4, Number 3 (2013), pp. 227-232

http://www.ripublication.com/ ijeem.htm

Environment Impact Assessment: Do we really need a Shift from EIA

Bhanu Pratap Singh

LL.M, RMLNLU, Lucknow.

Abstract

EIA examines the consequences and predict future changes in the Environment. It guides the administrative agencies in balancing conflicting social values, and environmental quality.EIA foresees and avoids potential dangers. An EIA concentrate on problems, conflicts and natural resource constraints which might affect the viability of a project. It also predicts how the project could harm to people, their homeland, their livelihoods, and the other nearby developmental activities. After predicting potential impacts, the EIA identifies measures to minimize the impacts and suggests ways to improve the project viability.

The role for EIA was formally recognized at the earth summit held at Rio conference in 1992. Principle 17 of the Rio declaration states that –

"EIA as a national instrument shall be undertaken for the proposed activities that are likely to have significant adverse impact on the environment and are subject to a decision of a competent national authority".

The phrase 'Environmental Impact Assessment' comes from section 102 (2) of the National Environmental Policy Act (NEPA), 1969, USA. EIA is an effort to anticipate measure and weigh the biophysical changes that may result from a proposed project. It assists 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. Environmental impact assessment (EIA) is an important management tool for ensuring optimal use of natural resources for sustainable development. It is a formal study process used to predict the environmental consequences of any development project. EIA thus ensures that the potential

problems are foreseen and addressed at an early stage in project planning and design.

India may be a developing country, but clamoring for industrialization may prove to be to her detriment in the long run. In order to provide for a more holistic growth of the country, claims of sustainable development simply cannot be sidelined. For the nation to forge ahead in this direction, the voices of the marginalized and the destruction of the environment must be taken seriously. And the only way to do this is to give Environmental Impact Assessment the due regard it deserves.

1. Introduction

The Environment Impact Assessment (EIA) is a process widely employed to assess the impact of various activities on the environment with a view to minimize such impact to a maximum possible extent. In this process the developer and other bodies carry out an information gathering exercise, which enables the concerned planning authority to understand the environmental effects of a development before deciding whether to grant planning permission to that proposal or not. To get the best result, this process, therefore, makes the systematic use of the best objective sources of information on environmental effects of developmental plans and lays emphasis on the use of best available technique to gather that information. An ideal EIA involves an absolutely impartial collation of information produced in a coherent, sound and complete form and allows the planning authorities and members of the public to scrutinize the proposal, assess the weight of predicted effect and suggest modifications or mitigations where appropriate[1].

The requirement of a State to conduct Environmental Impact Assessments in respect of activities that are likely to significantly affect the environment has been reflected in Principle 17 of the Rio Declaration on Environment and Development, Article 5 of the Legal Principle for Environmental Protection and Sustainable Development, adopted by the Experts Group on Environmental Law of the World Commission on Environment and Development, and in the 1987 Goals and Principle of Environmental Impact Assessment developed under the auspices of UNEP by the Working Group of Experts on Environmental Law and which were adopted by the UNEP Governing Council at its 14th session, and commended to States to be considered for use as a basis for preparing appropriate national measures including legislation. Such a requirement in the context of trans boundary impacts has also been incorporated in several regional agreements, e.g. UN/ECE Convention on Environmental Impact Assessment in a Tran boundary Context (1991) and several Regional Agreements concluded under UNEP's Regional Seas Programmes and resolutions of international bodies, e.g. 1984 ECA Council Resolution on

[1]Simon Ball & Stuart Bell, Environmental Law IInd ed. Indian Reprint, (1996) at 235

Environmental and Development in Africa, 1984 EEC Council Directive on Assessment of the Effects of Major Public and Private Projects on the Environment.

2. Process of Environment Impact Assessments

The main steps are as follows:

- Preliminary activities include the selection of a coordinator for the EIA and the collection of background information. This should be undertaken as soon as a project has been identified.
- Impact identification involves a broad analysis of the impacts of project activities with a view to identifying those which are worthy of a detailed study.
- Baseline study entails the collection of detailed information and data on the condition of the project area prior to the project's implementation.
- Impact evaluation should be done whenever possible in quantitative terms and should include the working-out of potential mitigation measures. Impact evaluation cannot proceed until project alternative has been defined, but should be completed early enough to permit decisions to be made in a timely fashion.
- Assessment involves combining environmental losses and gains with economic costs and benefits to procedure a complete account to each project alternative. Cost-benefit analysis should include environmental impacts where these can be evaluated in monetary terms.
- Documentation is prepared to described to the work done in the EIA. A working document is prepared to provide clearly stated and argued recommendations for immediate action. The working document should contain a list of project alternative with comments on the environmental and economic impacts of each.
- Decision-making begins when the working document reaches the decision maker, who will either accept one of the project alternatives, request further study or reject the proposed action altogether.
- Post audits are made to determine how close to reality the EIA predictions were.

3. Legal Framework of EIA in India

The Planning Commission of India in its Seventh Five Year Plan stressed the need for EIA in India as follows:

"By the year 2000, industrialization of the country will have reached a stage when in the absence of effective remedial measures, severe problems of air, water and land pollution will assume serious proportions....In project planning, besides the availability of raw material, man power and funds, decisions regarding the use of the environment will have to be taken, investments built-in for minimizing environmental damage or degradation. This will apply equally to the public and private sectors. A new type of

expertise in environmental impact analysis will have to be developed and applied for deciding the optimum location of any project".[2]

After the United Nation's Conference on Human Environment held at Stockholm in 1972, nations of the world in general and signatories to this Conference in particular became serious about taking necessary measures including legislative ones for the protection of the earth's natural resources; prevention, control and abatement of environmental pollution, and evolving principles of liability and compensation to redress the grievances of the victims of environmental pollution. India, being signatory to this Conference, did not lag behind and came up with certain Acts, Rules and Notifications to achieve these objectives. Not only this but two very important Articles, *viz.*, 48A and 51A(g) were added to the Constitution of India through the Constitution Forty Second Amendment Act, 1976, which make it obligatory for the State and citizens as well to protect the environment. From amongst these legislatives measures the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986 along with the Rules made there under and the Environment Impact Assessment Notification of 1994 are most relevant to the aspect of the protection of environment and prevention, control and abatement of environmental pollution.

4. Judicial Response for EIA

The Supreme Court of India in *M. C. Mehta* v. *Union of India*[3] has also emphasized the need to evolve a national policy for this purpose in the following words:

"We would, therefore, suggest that a High Powered authority should be set-up by the Government of India in consultation with the central board for overseeing functioning of hazardous industries with a view to ensuring that there are no defects or deficiencies in the design structure or quality of their plant and machinery, there is no negligence in maintenance and operation of the plant and equipment and necessary safety devices and instrument are installed and are in operation and proper and adequate safety standards and procedures are strictly followed".[4]

It is also necessary to point out that when science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is a certain element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazard or risk altogether. We cannot possibly adopt a policy of not having any chemical or other hazardous industries merely because they pose hazard or risk to the community. If such a policy were adopted it would mean the end of all progress and development. Such industries even if hazardous, have to be set-up since they are essential for economic development and advancement of well - being of the people, we can only hope to reduce the element of hazard or risk to the community by taking necessary steps for locating such

[2].Seventh Five Year Plan: 1985-90, Planning Commission, Government of India (1985)
[3].AIR 1987 SC 965
[4].Ibid. at 980-981.

industries in a manner which would pose least risk or danger to the community and maximizing safety requirements in such industries. We would, therefore like to impress upon the Government of India to evolve a national policy for location of chemical and other hazardous industries in areas where population is scarce and there is a little hazard or risk to the community and when hazardous industries are located in such area, every care must be taken to see that large human habitation does not grow around them. There should preferably be a green belt of 1 to 5 km width around such hazardous industries.[5]

The Indian judiciary has also started applying this principle with great care and enthusiasm as soon as it was born, holding that such principles are part of the environmental law of the land. The Apex Court of India has very brilliantly explained the concept of this Principle in *Vellore Citizens case*,[6] successfully applied the same in *Taj Trapezium case*[7] and quite categorically stated in *M.V. Nayudu case*[8] that '*it is better to err on the side of precaution and prevent environmental harm than to run the risk of irreversible harm'*.[9]

Thus, techno-scientific inadequacies and uncertainties are the mother of precautionary principle wherein anticipation of environmental harm, adoption of preventive measures, option of minimum environmentally harmful ventures and burden of proof on the developer that the venture is environmentally benign there by making him more cautions even while planning and designing the project are seriously involved. However, there is a caution against this principle that precautionary obligations must not only be triggered by suspicion of concrete danger but also by justified concern or risk potential.[10]

5. Reasons for Failure

- Lack of financial resources;
- Insufficient political awareness;
- Insufficient public participation;
- Inadequate legislative framework;
- Poor institutional base;
- Insufficient skilled manpower;
- Poor scientific databases and information technology ; and
- LACK of review, monitoring, and enforcement capabilities.

---

[5]. Ibid.
[6].Vellore Citizens Welfare Forum v. Union of India (1996) 5 SCC 647
[7].M.C. Mehta v. Union of India (1997) 2 sec 353 (Taj Trapezium Case).
[8] .A.P. Pollution Control Board v. M.V. Nayudu AIR 1999 812 SC and (2001) 8 SCC 765.
[9].Ibid. as per Justice M. Jagannadha Rao at 820.
[10] P. Leelakrishan, Environmental Law Case Book, (2004) p. 297.