MINING THE BLACK DIAMOND:
AN ENVIRO-LEGAL ANALYSIS OF EIA LAWS IN INDIA

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Submitted by

Aanisha Faiza Hakim

SF0220001

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Supervised by

Dr. Chiradeep Basak

Assistant Professor of Law

National Law University and Judicial Academy, Assam

July, 2021

SUPERVISOR CERTIFICATE

This is to certify that Aanisha Faiza Hakim has completed his/her dissertation titled "MINING THE BLACK DIAMOND: AN ENVIRO-LEGAL ANALYSIS OF EIA LAWS IN INDIA" under my supervision for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M DEGREE PROGRAMME of National Law University and Judicial Academy, Assam.

Date: 15-07-2021

Dr. CHIRADEEP BASAK
Assistant Professor of Law

National Law University
and Judicial Academy,
Assam

DECLARATION

I, Aanisha Faiza Hakim, do hereby declare that the dissertation titled "MINING THE BLACK DIAMOND: AN ENVIRO-LEGAL ANALYSIS OF EIA LAWS IN INDIA" submitted by me for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M. DEGREE PROGRAMME of National Law University and Judicial Academy, Assam is a bona-fide work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise.

Aanisha Faiza Hakim

Date: 15-07-2021

Aanisha Faiza Hakim

SF0220001

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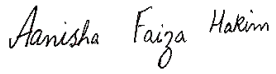

Date: 15-07-2021

Aanisha Faiza Hakim

SF0220001

PREFACE

Coal mining is a development activity, which is bound to damage the natural ecosystem by all its activities direct and ancillary, starting from land acquisition to coal beneficiation and use of the products. This is so because environmental degradation has affected especially the common property resources such as land and water on which depend the subsistence and well-being of the local community. Promoting sustainable mineral development is not only the answer to achieve a common ground on bridging economic interests and environmental imperfections but also has the potential to represent India as a global champion that advocates incorporation of sustainable development principles within its mining sector. Deployment of advanced and sustainable technological solution in the entire mining process, fixing the gaps in its regulatory mechanisms and learning from the successes of specific domestic and international mining operations are certain solutions that have the capacity to make this sector more productive.

Against this backdrop, the objective of this paper is to provide an overview of sustainable mining of coal in India by looking at its legal and regulatory framework, a glance on technologies being used, and learnings from sustainable mining practices being practiced by India's leading mining enterprises. In doing so, it looks into technological aspects to mining that has the potential to make this sector resource-efficient and sustainable. And the main point of focus here is the EIA and SIA mechanism, which if effectively applied can help in restoration of the ecology in spite of the developmental activities.

The researcher through this dissertation attempts to study how the Court has responded to specific petitions or applications as it appeared before the bench, in the process the judiciary has tried to address the fundamental philosophies of resource management and exploitation, and has dealt with the complexities of balancing the interests of environment, the local community, as well as the economy.

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TABLE OF ABBREVIATIONS

Serial No	List of Abbreviations	Expansion
1	AIR	All India Reporter
2	AMD	Acid Mine Drainage
3	CBI	Central Bureau of Investigation
4	CIC	Central Information Commission
5	CIL	Coal India Limited
6	CPCB	Central Pollution Control Board
7	DMF	District Mineral Foundation
8	EAC	Expert Appraisal Committee
9	EC	Environment Clearance
10	EIA	Environment Impact Assessment
11	EMP	Environment Management Plan
12	EPA	Environment Protection Act
13	GoI	Government of India
14	GSI	Geological Survey of India
15	IBM	Indian Bureau of Mines
16	MECL	Mineral Exploration Corporation Limited
17	MMDR	Mines and Minerals Development Regulation
18	MoC	Ministry of Coal
19	MoEFCC	Ministry of Environment, Forest and Climate Change
20	NEPA	National Environment Policy Act
21	NGO	Non-Governmental Organization
22	NGT	National Green Tribunal
23	OB	Over Burden
24	OC	Open Cast

25	OoB	Out of Box
26	PSU	Public Sector Units
27	R&R	Resettlement and Rehabilitation
28	SC	Supreme Court
29	SEAC	State Level Expert Appraisal Committee
30	SEIAA	State Level Environment Impact Assessment Authority
31	SIA	Social Impact Assessment
32	SIMP	Social Impact Management Plan
33	SPCB	State Pollution Control Board
34	ToR	Term of Reference
35	UG	Under Ground
36	UNEP	United Nation Environment Programme
37	US	United States
38	WCA	World Coal Association

CONTENT

CHAPTER 1

INTRODUCTION

1.1 Introduction

"The nation behaves well if it treats the natural resources as assets which it must turn over to the next generation increased; and not impaired in value." -Theodore Roosevelt

The mining sector in India is vital not just for creating jobs and improving lives, but also for providing enough space for environment degradation. Despite the government's repeated promises of sustainable mining extraction and development of rural and tribal populations living near mining sites, these promises are yet to be translated into actionable plans. Natural resources from rural and tribal regions are being plundered to fulfil the wealthier groups' ever-increasing needs and aspirations. Mining has a long-term and catastrophic influence on local air and water quality, depletion of natural resources, decreased rainfall, loss of cultivable land, and other factors. As per the official confirmation of Ministry of Mines, the country is bestowed with 87 minerals. Of them, the prime contributors are mica, coal, lignite, iron ore, bauxite, manganese, aluminium, and crude steel. Among these mineral reserves, coal has occupied a vital place by fulfilling around 55% of India's energy requirements.[1] To fulfil the country's energy needs, coal mining is becoming more commercialised, and as a result different coal-extracting companies have sprung up. The country earns good income from its traditional habit of mining coal, but it has also resulted in significant health and environmental concerns within its gamut.

India, the world's third largest coal producer, has the most abundant fossil fuel supply. The coal industry is one of India's major sector, and it contributes to the country's economic development.

India's coal mining industry is an increasingly important part of the economy, employing hundreds of thousands of people and contributing to broader economic growth.[2] But just like two sides of a coin, mining is harmful and can turn out to be devastating if not regulated properly. The prime reasons why mining has turned out negatively is due to improper regulation, policies which are inadequate and the government which is corrupted to its bones. And all these factors lead to chaos. The effort of Indian Government to protect the human rights

[1] Ministry of Mines: Government of India. National Mineral Scenario. http://mines.nic.in/writereaddata/UploadFile/National_Mineral_Scenario.pdf. Published 2013.

[2] Chris Albin-Lackey and Arvind Ganesan, 'Out of Control: Mining, Regulatory Failure and Human Rights in India' (Human Rights Watch 2012).

of its peoples from violations in consequence of activities of mining operations can be clearly seen in legislations but some are below par aimed that they seem set up to fail. Others have been largely neutralized by shoddy implementation and enforcement or by corruption involving elected officials or civil servants.[3] The result is that key government watchdogs stand by as spectators while out-of-control mining operations threaten the health, livelihoods and environments of entire communities and in some cases public institutions have also been cheated out of vast revenues that could have been put towards bolstering governments' inadequate provision of health, education, and other basic services. The coal mining sector is perceived as a major contributor to environmental degradation throughout the world. It is often tagged as a 'polluting industry' with substantial amount of environmental footprint which is also under claws of illegal mining activities that exacerbates ecological degradation. Even though coal is core constituent for many manufacturing and industrial sectors, their extraction and processing creates considerable negative environmental and social effects. In sum, mining leads to destruction of flora and fauna, clearance of large tracts of land, air- water-soil pollution and can even disrupt local ecological balance or wipe out local biodiversity. This heavily impacts both the environment and the people. Social impacts of developing a coal mining facility majorly involves relocation of tribal people or communities dwelling in coal rich areas which are often met by social resistance and disagreements around issues such as resettlement, compensation and land rights of the indigenous people.[4]

With due course of time, many environmentalists agreed that burning coal is the most polluting method for producing electricity and is causing huge environmental damage. The worst thing that occurs during this process is of course the production of greenhouse gases (mostly carbon dioxide emissions) by burning coal, but carbon emissions are not the only negative thing in this process, as it also involves varied harmful com- pounds that released during burning of coal. Besides burning process, environmental problems are also associated with transportation, storage and disposal, loading and unloading, blasting, etc. Because coal is predominantly mined from the surface of earth, this often causes damage to nearby ecosystems as many of the ecosystems above are degraded or sometimes even completely removed. Coal is usually transported by diesel trains over great distance, which means that it releases extra carbon dioxide and other harmful particles. And there is also coal dust that once produced contributes

[3] Ibid

[4] Akshat Mishra and Mohini Ganguly, 'Sustainable Mining in India', *India MineTech 2018- A Seminar on Mining Technology*.

to particulate matter in the air which ultimately causes air pollution. The trace factors contained in coal (and others formed during combustion) are a large group of various pollutants with a number of health and environmental effects. As a result, it disturbs ecosystem and endangers human health as well. Some cause cancer, others impair reproduction and the normal development of children, and still others damage the nervous and immune systems. Many are also respiratory irritants that can worsen respiratory conditions such as asthma. There is an environmental concern because they are often damaging ecosystems.

The coal mining operation has a negative impact not only on the surrounding environment, but dust particles may move quite a distance from the mine location via river channels and air traffic. Unfortunately, the mining industry's public perception is frequently connected with accidents, tragedies, and environmental damage associated with mining, particularly coal mining. Certainly, there are reasons for such thoughts to be expressed that are founded on occurrences. Mine catastrophes receive extensive media attention; whether it's an explosion, a mine fire, or inundations, the personal and social consequences of these occurrences affect people's lives.

In the majority of situations, investigations conducted after disasters do not dispute that a catastrophic scenario existed and might have been discovered with careful searching. Human mistake has been identified as the direct cause in many situations, although it might have been prevented if management and planning had been more efficient.

The MoC estimated that given the rising demand the need for forestland for mining will increase from about 22 000 ha in 2005 to 75 000 ha by 2025. Coal mining, especially opencast mining and the evacuation of coal, requires large tracts of land for extraction processes, industrial purposes such as thermal power plants and captive plants, as well as ancillary processes such as OB dumps, pipelines, railway lines, and public works. It destroys not only the standing forests but also animal corridors, which diverted the streams.

The mining laws of 'India, did not start with a clean slate, rather their infrastructure was based on the existing framework to the 'British Raj' legislations. The vision of the Indian legislature, from the commencement of the Constitution of India until three and a half decades thereafter, was confined to the labour welfare measures only. The history of Indian mine laws from the first Mines Act 1952 down to 1986 and the Mines Regulations framed thereunder from time to time support the above conclusion. In these legislative exercises the expression environment did not find any specific place.

The provisions show one thing that the mining laws only cared for the men inside the mine and neglected the other components of environment and their inter-relationship with mining activities.

In this backdrop the MoEFCC has laid down the legal framework for Environment Impact Assessment. The EIA notification comes under the purview of the Environment (Protection) Act, 1986. This doctrinal research focuses on the idea of Environmental Impact Assessment (hence referred to as EIA) in relation to environmental clearances and its procedural elements as part of the enviro-legal regime of coal mining in India. Several instances of gross procedural breaches of EIA guidelines and procedural requirements were observed during the review of literature. In India, there have also been a significant number of incidents of EIA regulation violations. This research is an attempt to identify the gaps and loopholes in the prevailing law.

1.2 Statement of the problem

Coal contributes to more than fifty per cent of power generation of India. Its contribution to the country's economy is worth mentioning. It is true that cutting off it's use is not possible in the next few years. But the impact it has on the environment and human health is undeniable. Therefore there is a need to balance between development and ecology. Here comes the role of law to protect the environment. One of the mechanism as such is the Environment Impact Assessment. In simple words, EIA studies all the impacts of a project beforehand and thereafter the authority concerned provides clearance to initiate the project. Therefore keeping in mind the sustainable principles, especially the inter-generational equity principle and the precautionary principle there is a need to analyse the regulatory framework of coal and its EIA mechanism.

1.3 Aim

The aim of this paper is to study the impact of coal mining on human life as well as environment. The paper seeks to establish the rights of the future generation to a healthy environment and also to its natural resources. The paper comprehensively tries to study all the laws relating to coal mining in context of environment in India and at the same time tries to test its efficacy. The paper also tries to study the active role of judiciary in regulating this topic.

1.4 Objectives

The objectives of this paper are as follows:

1. To examine the effects of coal mining on the environment

2. To evaluate the existing mining policy of coal in India.

3. To analyse the legal framework of Environment Impact Assessment in India.

4. To study whether the legal mechanism to ensure effective EIA is effectively operating in India

5. To study the social impact assessment under the EIA regime.

6. To study the role of judiciary in regulating the coal mining sector of India.

7. To make suggestions to streamline the existing regulatory framework

1.5 Scope and limitation

The scope of the study is to understand the impact of coal mining on the environment and how laws try to evolve the concept of sustainable mining. The research is limited to EIA mechanism of coal mining of India. Therefore it studies the topic in national context and in particular studies the cases which comes under the purview of the Union government. The paper studies all prevalent laws for coal mining and tries to find the gap in it. The study doesn't go into the international perspective of EIA nor does it go for any comparative analysis thereof. In the light of the findings of the doctrinal study, it discusses the key areas where the problem still persists and suggests measures to streamline the existing legislative framework.

In spite of putting all the efforts to gather all available and updated data, the researcher still is not content. Due to the pandemic there were a number of problems faced by the researcher. Firstly, due the ongoing Covid-19 pandemic the researcher could not access the library and hence it was difficult to access authentic books on this topic. Secondly, despite the fact that there is a considerable and even surprising amount of international and national law on EIA and coal mining, there has been relatively little study done on the issue that studies it in a systematic manner. Thirdly, while research is primarily an individual endeavour, the value of consulting a group of scholars cannot be overstated. The researcher was unable to pursue an open and consultative method over the course of her research because to the emergence of the Covid-19 epidemic.

1.6 Literature review

1.6.1 Shyam A Divan, 'Making Indian Bureaucracies Think: Suggestions for Environment Impact Analyses in India based on the American Experience' (1988) *Journal of the Indian Law Institute, 30*(3), 263-292.

This article is one of oldest literature on the concept of Environment Impact Assessment. The author timelines the evolution of EIA at the global platform. It begins with the concept of sustainable development as first defined under the Bruntland Report (1987). The author discussed that the Bruntland Report correctly recognises that development and environment are not incoherent. And in order to bring a balance there is a need to integrate the process of environmental management and development. The article first defines EIA and states how it was introduced in U.S with the enactment of the National Environment Policy Act in 1969. The author here discusses in depth the American experience through surveys in this domain and therefore suggests a framework on EIA in India. The article lays down in detail the NEPA process stage by stage. The NEPA Act was not adopted by all the states in uniformity. The author further reviews evaluation and empirical studies of the effects of NEPA on the federal agency decision-making. A review of the studies done by the author on this domain suggests that NEPA has increased environmental sensitivity within federal agencies and has been moderately successful in improving agency decision making. The article have rightly stated the two factors to focus if a similar framework is to be introduced in India- the financial resources and the active participation of the public in the EIA process. The article was written and published before India adopted EIA. It lays down a detailed path to follow and the shortcomings which we might lead to. But since it studied the American experience which is a developed country unlike India it is difficult to say how much helpful it could be for India keeping in view the economy of the country back then.

1.6.2 P. Leelakrishnan, 'Environmental Impact Assessment: Legal Dimensions.' (1992) *Journal of the Indian Law Institute, 34*(4), 541-562

The author here identifies EIA as a tool not only for identifying potential effects on environment but also as an instrument to prevent any adverse effect. The article gives a comparative analysis of Environment Impact Assessment in different countries. The term used is different everywhere. The comparison lies primarily between America and Britain as they have adopted their legal framework for the same. The article also throws light on the new legislative initiatives in Canada, Switzerland etc. The article acknowledges NEPA to be quite successful as an instrument effectively constraining administrative behaviour in the interests of environmental values. The author further studies EIA through two models. One is 'the mandatory model' where it is compulsory to make environment

assessment before any development project is approved as laid down under respective law and the other is 'the administrative discretionary model' which gives wide discretionary power to the executive as to whether an assessment is needed. The author lays down the merits and demerits of both the model. Back then India followed the administrative discretionary model. And the Bhopal gas tragedy is a proper example of the failure to assess under the discretionary model. The author here rightly states the malaise of the Indian legal system which did not incorporate the mandatory model. The author throws light into the EIA draft notification of 1992 which was not finalised. Keeping in view the quasi-federal polity of India the author here suggests to follow NEPA for the procedure to be followed for examination of projects. The fact that India is a developing country and the amount of fund needed for applying a law similar to NEPA has not been given the due significance in this article.

1.6.3 Manju Menon and Kanchi Kohli, 'From Impact Assessment to Clearance Manufacture.'(2009) 44 Economic and Political Weekly 20.

The author here critically analyses the draft EIA notification, 2009. The article criticises the Government for supporting the industries by speeding up the environment clearance for development projects. The draft notification clearly tries to weaken the already inadequate procedure for environment clearance. The author here lays down how this qualitative process is turning into quantitative nature. The no of projects which are grated clearance has been increasing with time and the number of the rejected project are falling lower than a per cent. The author here states the government's inclination towards development over environment is very clear from the draft notification.

1.6.4 Anne Marie Lofaso, 'What We Owe Our Coal Miners' (2011) 5 Harvard Law & Policy Review 87

The theme of the article is what the society owe workers such as coal miners, who voluntarily enter hazardous work place for the greater good. The author does an empirical study of safety of coal miners in work place in U.S through records of the number of deaths occurred in every decade. The author further relates the deaths with the presence of regulatory framework in favour of safety provisions and on the other hand compares them with the places where there are no laws as such. The article emphasises on the power disparity between the coal mine operators and coal miners. Miners are compensated less than the operators although they are the one taking the maximum risk. The article discusses the restraints on the free movement of labour which further leads to market failure. The mine operators try to find out ways to evade the law to recapture their lost profits, which

were caused due to the safety regulations. Therefore the policy makers should nevertheless question whether these regulations do all that can be done to produce a safer work place.

1.6.5 Shibani Ghosh, 'Demystifying the Environmental Clearance Process in India' (2013) 6 NUJS L Rev 433

The article here narrates the process to be followed before projects are granted environment clearance under the Environment Impact Assessment Notification, 2006.

This article decodes the complex EIA process by critically examining the Notification, related documents and judicial pronouncements. The crux of the notification is that it requires a pre-determined set of projects to obtain prior environmental clearance before undertaking construction- in the case of new projects- or initiating expansion or modernization activities- in the case of existing projects. After discussing the basic contours of the EIA notification the article discusses some of the problematic aspects in the design, particularly, the power dynamics between the Centre and the States, the poor quality of the assessment reports, means by which public consultations are held and weak appraisal and monitoring mechanisms.

1.6.6 Naveen Thayyil, 'Public Participation in Environmental Clearances in India: Prospects for Democratic Decision-Making' (2014) 56 Journal of the Indian Law Institute 463

The author examines the scope of public participation in the environment decision making process i.e environment impact assessment. The paper analyses the limitation for the public participation process in EIA regime, despite its importance being stated everywhere from law to literature on it. The author here states that the ailing part of environmental legal framework in India is the shoddy implementation of the generally sound legislation. The author here correctly points out that for an effective public consultation the first condtion to be fullfilled is ensuring access to relevant information. The author argues public hearing as a check on the arbitrary exercise of powers. The article here tries to examine the formal requirements for public participation leading to a public decision to grant clearance for economic and industrial activities under Indian environmental law.

1.6.7 M P Ram Mohan and Shashikant Yadav, 'Constitution, Supreme Court and Regulation of Coal Sector in India' (2018) 11 NUJS L Rev 49

The author tries to study the legislative conflict between centre and state related to coal sector. The article lays down four decades of coal sector litigation before the Supreme Court of India. The SC has played a pragmatic role in shaping business rules and regulations for Indian coal sector. The paper maps all the important cases analysing constitutional issues related to the coal sector. These cases span a wide range of topics, including but not limited to constitutional

validity of state legislations, Centre-state conflicts over land acquisition, nationalisation of the coal industry, law-making powers of the Centre and states, and states' power to levy cess over minerals, weaving a judicial narrative of all the contentious issues and concluding with the legal position as it stands to that day. Coal is India's most efficient and widely used natural resource, and from this article it appears that court judgments are gradually favouring a federalist form of coal governance over a unitary model, with the SC vesting greater authority in the states while maintaining the public interest.

1.6.8 Sandhu Brea and Varanpreet Kaur, 'Expedition of Environment Impact Assessment in India: Where do we stand in 2020? (2020) 3 International Journal of Law & Humanities 1180

The author here chronologically analyses all the EIA Notifications under the Environment (Protection) Act, 1986. The article lays down the first EIA assessment of India and the growth of the same with time. The first complete legal obligatory provisions for EIA were enacted in The Environmental Impact Assessment Notification, 1994, which marked the start of India's environmental impact assessment journey. In September 2006, the MoEF (Ministry of Environment and Forestry) issued new EIA law, which superseded the earlier notice and filled in the gaps of the previous legislation. Unlike the EIA Notification of 1994, the new legislation places the burden of project clearance on the state government, depending on the project's size and capacity. The draft notification for 2020 is the result of the Central Government's power to make the Environmental Clearance procedure more transparent while also diluting the process to adapt to the changing environment. The article minutely compares the EIA Notification, 2006 and the draft environmental impact assessment 2020. The author rightly states that the draft environmental impact assessment 2020 is an audacious attempt to undermine crucial checks and balances.

1.7 Research questions

1. Whether the legal mechanism to ensure effective EIA of coal is effectively operating in India?

2. Are there any procedural lapses with respect to the compliance of EIA in India?

3. How far the judicial interpretations have helped in shaping the EIA jurisprudence in India?

4. Are the existing legislation of coal mining sufficient in context of environment protection?

1.8 Research methodology

The research methodology of the current study is carried by doctrinal method to find out the fact-situations and grounds related to the topic of the research. The methodology adopted in the preparation of the research report is mainly based on secondary sources. The study will be made by use of various secondary sources such as books, journals, newspaper articles, online sources, research articles, and statutes etc. which are available relating to the concerned study. The proposed research follows an Analytical Methodology. The Researcher will refer to various statutory laws, notifications, schemes and case laws relevant to the topic.

1.9 Research design

The dissertation has been divided into the following chapters:

Chapter 1 - An introduction to the research topic, statement of problem, aim, objective, scope and limitation, literature review, research question and research methodology.

Chapter 2 – The scenario of coal mining in India, constitutional aspects of coal mining laws and concept of sustainable mining.

Chapter 3- The regulatory framework of coal mining in India.

Chapter 4- Environment Impact Assessment of coal mining in India.

Chapter 5- Human rights Impact Assessment of coal mining

Chapter 6- Judicial approach on mining of coal.

Chapter 7- Conclusion and suggestions.

The OSCOLA 4th edition has been adopted for citing various references used in the study.

CHAPTER 2

COAL MINING IN INDIA

"Then there was the whole concept of coal mining, which is a culture onto itself, the most dangerous occupation in the world, and which draws and develops a certain kind of man."

-Martin Cruz Smith

2.1 Scenario of coal mining in India.

"Mines are the source of treasury, from treasury comes the power of Government ". The words are from Kautliya's Arthashastra, a 4th century treatise written by Chanakya, conveys the critical role that mining industry has played in the growth of civilization.

Mining has become an integral component throughout the history of human civilisation and become one of the most valued activities, probably, after agriculture. For many developing countries mining is an indispensable economic activity. Minerals extracted from mines provide the foundation stone of civilisation. Development of civilisation has different stages of transition starting from the age of stone implements to those of uses of iron, copper and also from woods as fuel to coal, oil. Now we are in the age of using nuclear fuel. All of these need mining operations. Therefore, mining operation continues to play a critical role in sustaining the global economy and the civilisation.

A high quality environment should be an important policy objective for every society. Mining activities by its nature has certain associated environmental problems and most of the dent to environment is being caused by past mining operations and leaves the responsibility for rectification of the problem and the provision of required funds to the government and the next generation.

Coal which is commonly called as the black gold of India contributes a major part to its commercial energy production and is widely used in the power industry to generate electricity. However, as compared to other fossil fuels, coal is more pollution intensive and the energy efficiency is very low.[5] Coal is the most abundant fossil fuel resource in India, which is the world's third largest coal producer. Coal Industry is one of the core industries in India and plays positive role in the economic development of the country.[6]

[5] Singh, G. and Singh, A. 'Environmentally Benign Coal Mining: Target One Billion Tonne Coal Production by CIL by 2019-20.' Current World Environment, (2016),11(2)

[6] Chaulya, S.K., Chakravarty, M.K., 1995. In Khuntia, G.S. (Ed.), 'Perspective of new national mineral policy and environmental control for mining sector', Proceedings of National Seminar on Status of Mineral Exploitation in India, Institution of Engineering, New Delhi, India, pp 114-123

The nationalization of coal mines in the seventies ushered in the era of hope, for organized and sustainable growth of the coal mining industry. In these formative years, almost the entire coal sector came under the authority of Coal India limited.

The onus to discover mineral deposits in the country is borne by the Geological Survey of India (GSI) and Directorate of mine and geology of state governments. Indian Bureau of Mines (IBM) and Mineral Exploration Corporation Limited (MECL) have also contributed on this subject.[7]

Types of Coal mining

Coal mining operations are performed by two methods, namely,

(i) Underground Coal mining and (ii) Open Cast Coal Mining.

The choice of underground or deep mining is largely dependent on the geology of the coal-bearing strata. When coal is found just beneath the top surface, open-cast (OC) mining is preferred. When coal is found in much below the surface of the soil, underground mining is preferred.

Underground Coal Mining

Underground (UG) Coal Mining is also called "deep mining". It involves drilling deeper into the earth-surface. According to World Coal Association (WCA)[8], for UG mining two methods are available – "Room-and-pillar mining" and "long-wall mining method".

In room-and-pillar method coal deposits are mined by creating a network of rooms into the coal seams. In this process some pillars of coals are left behind to support the roof of the mine. This left out coal is recovered in a later stage.[9]

In the long-wall method, full extraction of coal from a section of the seam is performed using mechanical shearers. During extraction of coal the roof is temporarily hold up through self-advancing hydraulically powered supports. After the extraction process is over, the roof is allowed to collapse. Through this method coal from the panels of coal can be extracted 3 km through the coal seam.

Open Cast (OC) Mining

This type of mining is also called "surface mining". OC mining is carried out when the coal seams are found near the surface of the earth. It is the most economic and low-risk mining process and extraction of coal can be done up to 90% (WCA). The type of mining extends over a large area (many square km for a big-mine) and requires large number of equipment like

[7] Ibid

[8] www.worldcoal.org, 30th June 2016

[9] Supra 6

draglines, large trucks, shovels, bucket wheel excavators, conveyors, etc. The method involves use of explosives to break up soils and rocks, removal of vegetation cover, top-soil and coal overburdens, and extraction of coal and transport of coal from one place to another.

Open cast coal mining creates enormous dust particles and in areas of low rainfall and high wind it creates major environmental and health problems.[10] Open cast mining has impact on water regime also. Because of rainfall and surface run-off, mine-pits collect water and become heavily sedimented. This mine water also gets heavily acidified due to presence of sulphur and pyritic oxidation. The acidic water is pumped out and released through the drains to the surrounding area, causing potential dangers to water-bodies. Overburden dumps outside the mine-pit contribute immensely to change of topography and environmental degradation.[11]

Stages of a mine project

When an area is found suitable for mining through areal, satellite, and geological surveys, then exploration begins with sampling, mapping and surveying. After the collection of basic data, the planning of the project can start.[12]

The planning stage includes choice of mining method and processing of the ore, design and engineering of the chosen site. When the approval is sought and is sanctioned and required permits are obtained, then construction and thereafter operational stages take over. Construction may include constructing shafts, tunnels or removal of the overlaying rocks.

In the operational stage the mineral is extracted and processed .In the last stage, the closure of the mine involves filling up of voids, and reclamation of the used area and prepare it for future use.[13]

2.2 Constitutional aspect of coal mining laws in India.

As far as constitutional safeguard in Indian context is concerned, the Indian constitution is clear and categorical, in making the state responsible to protect and improve the environment and to safeguard the forests and the wildlife of the country (Article 48-A). More emphatically, Article 51-A makes it the fundamental duty of every citizen of India: To protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. (Article 51A (g))

[10] Sekhar, P.S., and Mohan, S.K., 2014. 'Assessment of impact of opencast coal mining on surrounding forest: A case study from Keonjhar District of Odisha, India.' J. Env. Res. Dev. Vol.9 No.01, Jul-Sept., pp 249-254

[11] Rai, A.K., Paul, B., Singh, G., 2010. 'A study on the bulk density and its effect on the growth of selected grasses in coal mine overburden dumps, Jharkhand, India.' Int. J., Environmental Sc., 1(4), pp 677-684

[12] Ibid

[13] Ibid

Under the Indian Constitution, legislative powers over various subject matters are distributed through three lists - Union list (List I: subject matter on which Parliament can make law), State List (List II: subject matter on which state legislature makes law), and Concurrent List (List III: subject matter on which both Parliament and state legislature can make law).[14]In case of conflict between these subject matters, any Central law shall be supreme and states are denuded from legislating on such matters already dealt with by the Parliament of India.[15] The basic framework of Centre-State relationship related to coal sector has been enunciated by the Indian Constitution through Article 246 read with Seventh Schedule[16]. The overlapping nature of many of the legislative subjects as well as the power to make laws led to constant judicial intervention in the nature of judicial review[17]. Moreover, uniquely, the Supreme Court in the last seventy years of Indian democracy not only interpreted and guarded the Constitution but also committed itself to broaden the reach of the Constitutional rights by liberally undertaking judicial legislations and policies.[18] These Constitutional provisions together with the decisions of an active judiciary form the contours of the Constitutional mandate governing coal sector.

Although in broad terms, the governance and management of mineral resources are divided between the states and the Central Government. The Mines and Minerals (Development and Regulation), 1957 which is one of the overarching pieces of legislation in India affecting coal governance, reserves exclusive power to regulate coal mining operations including the power to make laws related to "Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war",[19] for the Central Government. The Constitution further empowers the Central Government to legislate on "Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest".[20] Accordingly, the legislative power of states in this respect is limited to "Industries subject to Entries 7 and 52 of List I"[21] Importantly, Central Government has the prerogative to promulgate "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient

[14] The Constitution of India, Schedule VII.
[15] The Constitution of India, Art.246 (3).
[16] The Constitution of India, Schedule VII, List I, *Union List,* Items 53, 54; List II, *State List,* Items 23, 50.
[17] Upendra Baxi, 'The Judiciary as a Resource for Indian Democracy', 2010, available at http://www.india-seminar.com/2010/615/615 upendra baxi.htm (Last visited on May 7, 2021).
[18] S.P. Sathe, 'Judicial Activism: The Indian Experience', 6(1) Washington University Journal of Law and Policy 29(2001).
[19] The Constitution of India, Schedule VII, List I, *Union List,* Item **7.**
[20] The Constitution of India, Schedule VII, List I, *Union List,* Item 52
[21] The Constitution of India, Schedule VII, List II, *State List,* Item 24; *See* Bihar Distillery *v*. Union of India, (1997) 2 SCC 727**:** AIR 1997 SC 1208.

in the public interest"[22] and "Regulation of labour and safety in mines and oilfields"[23] for the purpose of legislative and regulatory power. Accordingly, states have the power to pass "Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union."[24]

Similarly, List II, Entry 24, elucidates on the law-making power of the states. However, it is pertinent to mention that the constitutional interpretation of List I, Entry 54 and List II, Entry 23 gives legislative powers to both the Centre and states to regulate mines and mineral development. However, since the legislative power of the state governments is subject to the powers of the Central Government, the SC has comprehensively analysed the Centre- State interactions concerning the coal sector.

Additionally, the SC, on several occasions, has scrutinized coal legislations using the test of 'public interest'.[25] These dynamics of the Centre-state relationship with regard to their respective law-making powers and the meaning of the term "public interest" in the context of the Union List have time and again created ambiguity resulting in the need for constant judicial intervention. Jarvis fittingly describes that when there is constant contestation between institutions of governance on nature of neo-liberal economy, role of the State transforms. In the case of coal sector in India, an institution of the State – the SC has taken over the mantle of governance of coal sector.

Overall, over the past years, the SC has played a pragmatic role in shaping business rules and regulation for Indian coal sector. While the SC has upheld the validity of many laws relating to the coal sector, it has likewise declared several laws to be ultra vires to the Constitution of India.

As discussed, the SC has clarified in many cases that states cannot override the parliamentary power to legislate on the subject matter concerning the development of mines and minerals. However, a certain amount of ambiguity has arisen on the magnitude of state's power related to mines and mineral development especially after Centre comprehensively covered the "Regulation and Development" of mining sector through enactment of the 1957 Act. The issues mainly pertained to the validity and scope of existing state legislations after enactment of the 1957 Act, and concerned executive powers which were drawn from such legislations. The SC adjudicated extensively on these matters.

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[22] The Constitution of India, Schedule VII, List I, *Union List*, Item 54.
[23] The Constitution of India, Schedule VII, List I, *Union List*, Item 55.
[24] The Constitution of India, Schedule VII, List II, *State List*, Item 23.
[25] RamMohan P M and Shashikant Yadav, 'Constitution, Supreme Court and Regulation of Coal Sector in India.' (2018) 11 NUJS Law Review 49.

One such issue concerning nature and scope of state legislation was first addressed by the Court in *Hingir-Rampur Coal Co. Ltd. v. State of Orissa* ('Hingir- Rampur')[26] while analysing the constitutional validity of the Orissa Mining Areas Development Fund Act, 1952. The monthly returns of the companies involved in mining operations in the state of Orissa were requested by the Administrative Officer enforcing this Act for assessment of cess. Subsequently, a warning was issued under Section 9 threatening prosecution for non-submission of returns. The validity of the Act was inter alia challenged by the companies on the ground that the state legislature exceeded its jurisdiction under List II, Entry 23, since it is subject to development and regulation under control of the Parliament provided for in List I, Entry 54. The SC determined that the impugned Act was beyond the constitutional competence of the Orissa legislature and observed that

"[...] if a central act has been passed which contains a declaration by Parliament as required by Entry 54, and if such declaration covers the field occupied by the impugned Act, the impugned Act will be ultra vires not because of any repugnance between the two statutes but because the State Legislature has no jurisdiction to pass a law."[27]

Taking the same position forward, in *Bharat Coking Coal Ltd.* v. *State of Bihar*,[28] the SC held that the state is not allowed to exercise its executive power in regard to subject matters covered by the 1957 Act and its related rules. This view had been reiterated by the SC in *Sandur Manganese and Iron Ores Ltd. v. State of Karnataka*,[29] by mentioning that the state has no power to frame a policy regarding a subject matter that falls under the ambit of the 1957 Act and the Rules.

From the foregoing cases, we can see that wherever there was room for interpretation of regulatory power between the Union and state governments, the SC has in almost all cases curtailed the state's legislative power and reserved most of the administrative power for the Central Government. However, minor minerals are not subject to the general restriction on the undertaking of mining operations stated under Section 4 to 9 of the 1957 Act, and the exploration of these minor minerals is being regulated by the minor mineral concession rules, which have been formulated by the state governments under the 1957 Act.

2.3 The conflicting domain of development and environment

[26] Hingir-Rampur Coal Co. Ltd. *v.* State of Orissa, AIR 1961 SC 459.
[27] Ibid
[28] Bharat Coking Coal Ltd. *v.* State of Bihar, (1990) 4 SCC 557.
[29] Sandur Manganese and Iron Ores Ltd. *v.* State of Karnataka, (2010) 13 SCC 1.

The history of evolution of mankind on earth reveals that in initial stages of human civilization there was more harmony between nature and mankind. However, this equation changed drastically with the gradual development and constant progress in socio-economic life in human society. Slowly, Environment and Development became two different facets and got separated in conditional clause of -either-or. As a result a dimension of conflict emerged between the domain of Environment and Development. With the rapid pace of development, the scope of reconciliation between the two became more and more negligible.

During the era of post colonization and industrial revolution, followed by World Wars, the prevailing philosophy was that each nation had sovereign right to achieve socio-economic development. Accordingly, it was proclaimed that every nation had the right to development by exploiting its own natural resources available within their territorial jurisdiction and supported by their respective legislative framework. Thus, socio-economic development became the topmost priority among these nations. Since then, the concern towards the potential adverse environmental impacts caused by the various socio-economic developmental activities was gradually ignored by the states. The unplanned growth and lack of ecological concern in the designing as well as implementation of these developmental policies are often said to be responsible for the degradation of the natural environment of earth.

This trend of unidirectional socio-economic development, which to some extent was incompatible with the environment, continued until early 1970s. Thereafter, in 1972, the experts made a breakthrough at Founex in Switzerland by proposing the agenda of integration of Environment and Development, just prior to the Stockholm Conference. This clearly marked a distinction in the prevailing outlook and philosophy of states towards the environment. The cause and effect analysis of the environmental degradation was done and the sole responsibility of environmental degradation was put on the states and its various anthropogenic activities. As rightly it was held in the famous document of —"Our Common Future" that;

"Man is the creator and moulders of his environment"[30]

In this context the term "Environment" can be well interpreted as the bio-physical environment, within which all the life forms on earth are sustained. Since the dawn of human civilization, human race has made tremendous progress in all sphere of human life. The human society has evolved tremendously from the prehistoric nomadic society to agrarian society and from

[30] "Our Common Future" a report published by the World Commission on Environment and Development, 1987, available at www.un-documents.net/wced-ocf.htm, [last visited on 06 June, 2021].

agrarian to industrial society and further to contemporary technologically advanced society.[31] As we know, that in each of the said stages of transformation in human society, the socio-economic developmental activities had gradually started affecting the environment of the earth adversely.

Growth and economic development have been dominant paradigms since the first industrial revolution that started in England nearly 200 years ago, remaining so until the first half of the 20th century. At about this point in time questions have started to be raised related to this model of development, which has been associated with drastic changes such as the intensive exploitation of resources and the continuous technical and technological innovation. This period of strong human intervention on the biosphere, named Anthropocene, allowed growing the standard of living of mankind and a greater support for the continuous growth of the world's population. However, it is well-known that this occurred at the expense of large inequality, in both income and resource consumption, between the developed countries and those still under development, as well as of a new scenario of environmental degradation of global proportions.[32]

Development remains the greatest pursuit as well as a challenge, faced by humanity. However, despite the unprecedented economic and social progress that has been made over the last century, poverty, famine and environmental degradation still persist on a global scale. Moreover, environmental deterioration and climate change have started to show irrevocable damages to the developmental progress made so far. Thus, development goals must be pursued without breaching environment regulations.

2.4 Impact of coal mining on environment

Throughout the history of civilization, the surrounding environment had undergone change, but the last century has seen excessive interference by man into the domain of nature. In the coalfields of India, coal mining has been threatening the environment and in many cases, there has been over-exploitation in an unscientific manner, without caring for the environmental consequences. Due to coal mining and associated industries, the components of the environment in the mine area e.g. land water and forest resources are constantly undergoing a process of change.

[31] Mukherjee Parna, EIA Scams: 'Decaying The EIA Legal Regime In India, Journal of Environmental Research And Development', Vol. 6 No. 3, Jan-March 2012

[32] Monica J Schwalbach, RL Knight and SF Bates, *A New Century for Natural Resources Management* (10th edn, 1995).

At the time of nationalization, there were more than 900 coalmines, most of which were small units developed by the private sector in a profligate manner. The shallow coal deposits were exploited irrationally for easy and quick gains, without consideration of long-term requirements and conservation.

Coal mining deals with handling and transport of a section of the earth's crust, which incidentally has useful heat value, and is therefore a source of energy. The handling and transportation requires active mechanical and human power.

Coal mining is by nature destructive to the surrounding environment and for the people who work in the coalmines is also exposed to a set of hazards and risk to their health. Though technological advances and proper health facilities, if used as preventive measures for the mineworkers, can make it possible to reduce the risk of health hazards.

Every coal mining operation causes us to pay heavy environmental price, which are quite visible during operation and have long term impact even after closure of the mining operation. Coal mining generally involves[33] –

(i) Removal of vegetation cover, even cutting of matured tree in many cases. This would contribute towards loss of biodiversity resulting in danger to many endangered plants and animals, if existed.[34]

(ii) Removal of layers after layers of rocks and soil which covers the coal seams. These rocks and soils are called overburden (OB).

(iii) Change of topography and land use/land cover.

(iv) Blasting of coal bed for extraction of coal, causing noise and air pollution – emission dust and gaseous pollutants.

(v) Use of heavy extraction equipment and excavators causes noise and contributes towards air pollution.

(vi) Extraction of coal.

(vii) Dumping of coal waste

(viii) Dust and gaseous pollutant emission due to erosion through wind from the OB and coal-stockpile.

(ix) Transportation of coal, which pollutes the air, destroys road conditions

(x) Dumping of OB and coal-waste destroys soil-fertility, retarding growth of vegetation for long time

[33] Goswami, S., 2015. 'Impact of Coal Mining on Environment: A Study of Raniganj and Jharia Coal Field in India.' IAFOR J. of Arts and Humanities, Vol.3(1) pp: 2-16

[34] Ibid

(xi) During extraction process mining operation, sometimes, goes beyond the depth of ground water level. This would result in ground water coming into the mine pit and causing heavy acidification of the mine-water. These mine-water, when pumped out, would cause water and soil pollution.

(xii) Pollution caused by leaching of OB and coal-dumps and causing acidification through oxidation – release of acid mine drainage to the surrounding water bodies and percolation down to ground-water

(xiii) Continued acidic mine water problem even after closure of mining leaving the mine pits, which are filled with water.

(xiv) Back-filling of mine pit – even than the soil will remain unfertile for long period retarding growth of plant life, etc.

The impact of coal mining on environment are as follows[35]-

Air Pollution

Coal dust, in addition to being dirty and unpleasant smelling, is dangerous if inhaled over an extensive period of time. People with prolonged exposure to coal dust are at high risk of contracting "Black lung disease," which left untreated can lead to lung cancer, pulmonary tuberculosis, and heart failure.[36]

Fires

Since coal is combustible, the threat of fire is another example of the environmental effects of coal mining. If a fire occurs in a coal bed, it can last for years or even decades, potentially spreading and releasing noxious fumes into the surrounding community.[37]

Toxicity

Coal and coal waste contain heavy metals such as lead, mercury and arsenic, which are highly toxic both to plant and animal life.[38]

Acid Rain

Possibly one of the scariest environmental effects of coal mining is the threat of acid rain. The high acidity of AMD remains in the water supply even through evaporation and condensation,

[35] Ibid
[36] Ibid
[37] Ibid
[38] Ibid

which enables it to stay in the atmosphere and eventually return in the form of "acid rain," thus perpetuating the cycle of pollution.[39]

Radiation

Coal contains trace elements of radium and uranium, which, when released into the environment, can lead to radioactive contamination. While it's true that these elements occur in small amounts, enough coal is routinely burned at coal processing plants to produce dangerous levels of radioactive waste.[40]

Climate Change

High levels of methane, a potent greenhouse gas, is released during the mining process, contributing to the destruction of the ozone layer. Carbon dioxide, another greenhouse gas, is released in the combustion (burning) process, when coal is used to fuel electric generators and steam engines. As a result, global warming is probably one of the most significant and widely-felt environmental effects of coal mining.[41]

Noise pollution

One of the most obvious (albeit perhaps least harmful) environmental effects of coal mining is noise pollution. Coal mining is a loud, day- and night-long process that disrupts the lives of those in the surrounding communities, reduces the quality of life and can go on for decades. Noise pollution is quite evident while discussing about coal mining and pollution. As mining activity is taking place throughout the day, the noise coming out at the time of blasting, drilling, and transportation is polluting the entire environment. Mostly because of opencast mines, the noise comes out at the time of blasting and overburden (OB) removal.[42]

Loss of wildlife

Coal mining requires a large expanse of territory. When a mining operation moves in, it invades and destroys sizable ranges of wilderness area, displacing the native fauna and removing habitat and food sources. This eventually results in an imbalanced ecosystem and even the endangerment or extinction of entire species. The development of coal mines has led to the loss of forest cover and simultaneously affected biodiversity and wildlife corridors in these forest

[39] Ibid
[40] Ibid
[41] Ibid
[42] Ibid

areas. According to the Ministry of Coal (MoC), about 60% of coal resources are located in the forest areas (MoC, 2005). Most coal blocks allocated in the last few years have been in or adjoining forest areas. Of all the coal leases acquired by CIL, 28% lay under forest region, ie, out of which 2 00 000 ha are coal leases and 55 000 ha lay under forest cover (Greenpeace Report, 2012).[43]

Sink Holes

Another environmental effect of coal mining is "mine subsidence" -- the earth sinking as a result of a disturbance to its foundation. This occurs when the coal deep below our planet's surface is removed from its bed.[44]

Topographical Alteration

Coal mining irreparably damages plant life and soil, creating barren patches of land that are not only aesthetically unpleasing but contribute to loss of valuable topsoil, erosion and dust storms.[45]

Flooding

Coal mining and preparation generates millions of gallons of highly toxic, semi-solid waste called "slurry." To contain the slurry, dams are often built in between the mountains from where the coal is being mined. There are several documented instances in which slurry dams have failed, resulting in deadly floods and ensuing environmental disaster.[46]

Water Pollution

Highly acidic runoff from coal stocks and handling facilities, known as acid mine drainage (AMD), infiltrates waterways, contaminating local water supply and affecting the PH balance in the surrounding lakes and streams. Pollution of both surface water and groundwater is becoming rampant due to coal mining activity. During the initial period, the release of obnoxious substances such as ash, oil, phosphorus, ammonia, urea, and acids are contaminating the surface water quality of the mining regions. Studies have found that the groundwater quality is also getting contaminated due to the release of manganese (Mn), cadmium (Cd), and lead (Pb). The concentration of these metallic particles was found beyond the maximum permissible limits. Similarly, the presence of these metallic substances in water resulting in various health

[43] Ibid
[44] Ibid
[45] Ibid
[46] Ibid

hazards such as rheumatism, speech and hearing disability, euphoria, impotency, high blood pressure, high cholesterol, diabetes, kidney stones, and cancer. Sometimes, overexploitation of water from the nearby water bodies is becoming the major cause of water scarcity.[47]

With due course of time, many environmentalists agreed that burning coal is the most polluting method for producing electricity and is causing huge environmental damage. The worst thing that occurs during this process is of course the production of greenhouse gases (mostly carbon dioxide emissions) by burning coal, but carbon emissions are not the only negative thing in this process, as it also involves varied harmful compounds that released during burning of coal. Besides burning process, environmental problems are also associated with transportation, storage and disposal, loading and unloading, blasting, etc. Because coal is predominantly mined from the surface of earth, this often causes damage to nearby ecosystems as many of the ecosystems above are degraded or sometimes even completely removed. Coal is usually transported by diesel trains over great distance, which means that it releases extra carbon dioxide and other harmful particles. And there is also coal dust that once produced contributes to particulate matter in the air which ultimately causes air pollution. The trace factors contained in coal (and others formed during combustion) are a large group of various pollutants with a number of health and environmental effects. As a result, it disturbs ecosystem and endangers human health as well. Some cause cancer, others impair reproduction and the normal development of children, and still others damage the nervous and immune systems. Many are also respiratory irritants that can worsen respiratory conditions such as asthma. There is an environmental concern because they are often damaging ecosystems.[48]

2.5 The concept of sustainable mining of coal

There is a view, sometimes championed by social and non-government activists, that the concept of sustainable development is incompatible with the extractive mineral industry and that mining is inherently unsustainable as it involves exploitation of the society's non-renewable resources. But at the same time, it must be remembered that these non-renewable mineral resources have no value if these remain under the ground. Mineral wealth of a society must be developed as minerals in the ground are its dormant asset. The material fabric of a society is largely built with mineral products and metallurgical and technological advances have defined advances in civilization from ancient times. Using mineral production to sustain

[47] Niharranjan Mishra and Nabanita Das, 'Coal Mining and Local Environment: A Study in Talcher Coalfield of India' (2017) 10 Air, Soil and Water Research 1.
[48] Ibid

economic well-being is important for local communities, for the region (especially a backward region) blessed with mineral resources and the entire nation itself. For many less developed areas, mining underpins industrial development which in turn leads to technological up-gradation, skill development and diversification of the economic base.[49]

Therefore, while looking at the sustainability issues in the mineral sector, the option of completely banning mining is not a realistic or viable one, just as switching off the electricity or gas is not a sustainable response to the problem of emission of greenhouse gases causing progressive global warming. In the energy sector, one looks for cleaner or more energy-efficient technological options and is even prepared to accept slightly higher average temperature as a trade-off against higher standards of living. Similarly, the challenge of sustainable development in the mineral industry is to ensure that mineral resources are developed in an efficient manner with least possible generation of wastes and that the damage or disturbance caused to the environment (including social environment) by mineral development is brought into balance with the planet's capacity for accommodating change". This necessitates the use of efficiency-increasing technologies and continuous technological improvements in the mineral sector. Associated with this is the concept of "limits" which translates into the requirement that mineral development in a region must be carried on within the "carrying capacity" of its remaining natural capital while avoiding excessive pollution which could threaten waste assimilation capacities of the life support systems. Given uncertainties, a precautionary principle must inform all mineral development activities.

In consonance with the Brundtland definition of sustainable development, the mineral sector has to demonstrate that it contributes to the well-being of the present generation without compromising that of future generations for a better quality of life. This implies that mining enterprises as production agents must have the ability and willingness to turn non- renewable (mineral) resources into a flow of wealth, beyond profit, that can be used to generate sustainable development (now and in the future) in the communities where they operate. What it means is that through compensating investments in manufactured and constructed assets, damaged natural capital can be replaced by man-made, human and social capital. This requires a systems approach which involves identification of the key sustainability issues and of direct stakeholders in mining operations, initiatives and action programmes to address different areas

[49] Nilmadhab Mohanty, 'Institute for Studies in Industrial Development Planning Commission SUSTAINABLE DEVELOPMENT Emerging Issues in India's Mineral Sector' (2012) <http://isid.org.in> accessed 14 January 2021.

of concern, sharing of information and communication with stakeholders and progress evaluation of various activities with appropriate sustainability indicators.[50]

Traditionally, in mining, government and mining enterprises were considered only two core stakeholders who negotiated the terms of mining operations. Increasingly a third direct stakeholder has emerged on the negotiating table — the local communities whose interests, both short and long term, are materially affected by mining projects. Locals or people residing in the vicinity of a mine must be distinguished from other advocacy groups including non-government organizations (NGOs) which are basically non-core actors in mining with objectives and interests of broader political and ideological nature. Mining enterprises must take note of this distinction and identify legitimate and core stakeholders for their respective projects for the purpose of engagement. These stakeholders (local communities) are directly affected by a mining project and have the right to receive regular information on various aspects of a mining project's operations. They must also participate in decision-making on issues affecting their lives.

'Sustainable development' is an all-inclusive, somewhat ambiguous concept which also includes the concepts of "needs" (of the poor) and "limits" on the environment to meet the present and future needs. It basically means economic and social development that endures over the long-term and its core ethic is intergenerational equity. For the mineral sector what it translates into is that mining should contribute to the well-being of the present generation without compromising that of the future generation for a better quality of life. This is possible if mining enterprises are able to substitute, in their project areas, damaged natural capital (mineral resources) with compensating investments in other forms of (man-made or constructed) assets such as physical infrastructure, human and social capital that will guarantee income for the affected people in a mining project area even beyond the life of the mine. This requires a systems approach which involves identification of key stakeholders and sustainability issues in mining operations such as stakeholder engagement and attending to their concerns, local area development, and sharing of information and communication with stakeholders as well as good governance and management of the mineral sector.[51]

Coal India Chief Pramod Agrawal has said that the coal behemoth is alive and sensitive to the need of environmental protection and the PSU pursues sustainable mining practises persistently. The statement assumes significance especially when there has been concerns

[50] Nilmadhab Mohanty, 'Institute for Studies in Industrial Development Planning Commission Sustainable Development Emerging Issues in India's Mineral Sector' (2012) <http://isid.org.in> accessed 14 January 2021.
[51] Ibid.

about the global climate change on account of burning of fossil fuels, including coal, which releases green gases into the atmosphere.[52]

"Restoration of ecosystem, effective bio-reclamation, effective utilisation of water are followed with equal fervour and importance as production," Agrawal said in a communication. Coal India, he said, has planted close to 2 million saplings during FY'21 over an area of 862 hectares exceeding the target by 16 per cent. "CIL is alive and sensitive to the need of environmental protection and pursues sustainable mining practices persistently," the chairman said in his message posted on the company's website. Satellite surveillance indicates that in 51 major Open cast mines, producing more than 5 M.Cu.M of coal and overburden (OB) combined per annum, 67 per cent of excavated area has been restored. He further said that 24 eco-parks and mine tourism projects have been developed so far. In FY'21 CIL's effective utilisation of mine water irrigated 703 villages benefitting 1.1 million populace. The key to co-existence with nature is to restore the ecosystems, the CIL chairman noted-"The greatest threat to our planet is the belief that someone else will save it. We make the world that we live in. So, with this belief let us make our world a better place to live," he said.[53]

Nature in her abundance and benevolence provides sufficient resources to mankind for its prosperity and development and in response, replenishing back the nature becomes not only a responsibility but a moral obligation, Agrawal said "We have only one earth and we personify it as mother," he said, adding that here is a saying "we have not inherited the earth from our forefathers but borrow it from future generations. This perhaps lends real meaning to sustainable development." Ecosystems are elixir of life that sustain the living on earth. "Our very existence depends on the health of our ecosystem. The way the ecosystem is being depleted, unless we restore and shore it up the consequences would be terrible," he explained. With care and commitment, all kinds of ecosystems can be restored -- forests, oceans, natural habitats, farmlands including cities, he added.[54]

Government has put major thrust on sustainable development in coal mining and is taking multi-pronged action on both environmental & social fronts. Ministry of Coal has moved forward with a comprehensive Sustainable Development Plan and has initiated its speedy implementation. Primary focus is on making immediate social impact through Out of Box

[52] 'Coal India alive, sensitive to need of environmental protection: Chairman' Business Standard (June 6, 2021)
[53] Ibid
[54] Ibid

(OoB) measures besides regular environmental monitoring and mitigation during mining operation. These OoB measures include use of surplus Mine Water for irrigation & drinking purpose in and around mining areas, extraction & use of Sand from Overburden (OB), promoting Eco-Mine Tourism, encouraging Bamboo Plantation, etc.[55]

Utilization of Mine Water

Top most priority is being given to gainful utilization of Mine Water for irrigation &providing treated water for drinking to rural population in & around command area of mining subsidiaries of CIL, SCCL & NLCIL. Huge volume of mine water released during mining operation is partially utilized for internal consumption by coalmines for providing drinking water in their colonies, dust suppression, industrial use, plantation etc. The internal consumption constitutes about 45 % of total mine water leaving a substantial volume for community use. Some of the subsidiaries of CIL are already providing mine water for irrigation purpose & drinking water to nearby villages. A detailed mine wise plan has been prepared for all the coal/lignite companies for maximizing supply of mine water to nearby villages in their command areas.[56]

Eco Parks

10 new Eco-Parks in different mining areas are under different stages of development in various subsidiaries of CIL, SCCL & NLCIL and will be completed in next 2 years. Coal companies have already developed 15 eco-parks in various coalfields. The Saoner Eco Park of WCL near Nagpur is running Eco-Mine Tourism Circuit, a first of its kind in India, in collaboration with MTDC where people can visit and see mining operation of both Opencast &Underground Mines. There is a likely plan to start Eco-Mine Tourism Circuit in different coal companies to showcase efforts made by coal companies in environmental protection. Bamboo Plantation along coal transport roads and on the edges of mines will help in minimizing dust pollution.[57]

Extraction and use of Sand from Over Burden (OB)

[55] Press Information Bureau,Government of India,Ministry of Coal "Sustainable Development for Coal Sector" 26 Feb 2021<https://pib.gov.in/Pressreleaseshare.aspx?PRID=1701117>
[56] Ibid
[57] Ibid

Extraction of sand from Over Burden (OB) for use as construction & stowing materials another unique initiative promoting sustainable development through gainful utilization of wastes generated during mining. This will not only help in availability of cheaper sand for house & other construction but will also minimize the land required for OB dump in future projects. This initiative also lowers the adverse footprint of riverbed mining of sand. Such effort has already started in WCL, where sand produced through large Sand Processing Plant is being used for low cost housing scheme under Pradhan Mantri Aavas Yojana (PMAY) & also for construction by other Govt. & Private Agencies.[58]

First Mile Connectivity

First Mile Connectivity (FMC) is another major sustainable initiative by coal companies, where coal is being transported through conveyor belt from Coal Handling Plants to Silo for loading. This process eliminates movement of coal through road and thus not only minimizes the environmental pollution, but also reduces the carbon footprint. Taking a big step, 35 such projects have been planned to be commissioned by 2023-24 handling more than 400 million tonnes of coal with an investment of Rs. 12500 Crore.[59]

Renewable Energy

Towards use of renewable energy, CIL has set a target to establish 3 GW of Solar PV projects by FY24 to become self-reliant in electricity. In addition, 1 mega SPV Project with 1000 MW capacity will be set up in joint collaboration of CIL & NLCIL with an investment of Rs. 4000 Cr.[60]

Bio Reclamation and Tree Plantation

Bio-Reclamation and massive tree plantation has been one of the key thrust areas of coal companies in promoting environmental sustainability. New techniques like seed ball plantation have been adopted in many mines for providing green cover on OB Dumps. Till 2020, coal companies have brought about 56000 Ha of land under green cover by planting 135 million trees in and around mining areas. Target of 2021-22 is to have more than 2000 hectares of affected land converted into green cover. Monitoring of such efforts is being done

[58] Ibid
[59] Ibid
[60] Ibid

through remote sensing. Similarly, systematic mine closure plan with land reclamation & restoration is also vigorously monitored to reuse the reclaimed land for agriculture purpose in future.[61]

A massive capital expenditure investment plan on activities related to Sustainable Development in next five years has been made. The investment includes expenditure on Mining Equipment, Setting up of Solar Plants, Surface Coal Gasification, First Mile Connectivity Projects & on all other out of box activities for environmental protection. All these activities will pave way in next 5 years for benchmarking a much better Sustainable Development effort by Coal Industry on Economic, Environmental & Social front.[62]

For achieving sustainability in coal, what is required is that a mining project should be economically viable, financially profitable and technically efficient. This will enable the project to have the capability to maintain continuous environmental and socio-economic improvements, from mineral exploration, through operation, to closure. In operational terms, sustainable development in the mineral sector implies a mix of scientific mining, improved environmental management including pollution control and enhanced socio-economic development, especially for local communities in mining areas.[63]

Thus, to sum up our discussions of sustainability in coal, it may be stated that although "sustainable development" is a broad and somewhat ambiguous concept, it can be translated into a few operational principles for the purpose of achieving its objectives in mineral development. Sustainability in coal mining operations can be conceived in terms of a framework comprising the following elements: (i) scientific mining, (ii) environmental protection, especially minimizing the impacts of mining practices on biodiversity, (iii) local stakeholder engagement, (iv) enabling local socio-economic development (in the areas of mining operations) and (v) accountability and transparency.

However, two main pre-conditions for achieving sustainability through these mechanisms are the existence of good governance and self-regulating mining enterprises which are economically viable, financially profitable and technically efficient.

[61] Ibid
[62] Ibid
[63] Ibid

Chapter 3

Acts, Rules, Notifications and Schemes for Coal Mining in India

"*We just can't see a way to write a mining law that would appropriately regulate all of these different things and work any better*."- Carol Raulston

There is a comprehensive architecture of policies, laws and regulations in order to ensure environmental sustainability of coal mining operations in India. There are environmental policies and legislation generic to all industries including mining; there are also laws and regulations specific to the coal mining industry. The administrative arrangements for their enforcement tend to be complex because of the division of responsibilities between the central and state governments and also between the functional agencies such as the mining, forest, environment and health bureaucracies (at both the state and federal levels) and the pollution control boards.

The first concrete proposal for inspection and regulation of mining operations in India came in 1890, from Lord Cross, the then Secretary of State of India. Accordingly, in 1894, James Grundy was appointed as the first ever Inspector of Mines in India within the organization of the Geological Survey of India. After preliminary study by inspector of mines in the year 1894, a committee was appointed by Govt. of India to frame suitable legislation to afford full protection to persons working in the mines in such matters, in which they had a reasonable claim on the state for protection.

In the year 1901, first Mines Act was enacted in India, since then Mines Act has been re-enacted in 1901, 1923, 1928 and 1935.In the year 1952, Mines Act was now applicable throughout India. Since then the Mines Act has been guiding and regulating the mining activity in India, through the act is open to necessary amendment and it has been amended from time to time. Along with Mines Act, 1952 there are many other acts which regulate and provide a framework to mining, which includes "Mines and Minerals (Development and Regulations) Act, 1957.

The operation of the mining sector in India is governed by the Mines and Minerals (Development and Regulation) Act, 1957, the Mines Act, 1952 and the rules and regulations framed under them. The Government has also formulated the National Mineral Policy for the management and development of the mineral resources in the country.

3.1 The Mines Act, 1952

The Mines Act, 1952 came into force on 1st July, 1952. The provisions of the said Act came into force on different dates but not later than 31st December, 1953 as has been mentioned in the Act. The applicability of the Act is extended to the whole of India. Mines Act, 1952 was legislated with the purpose of regulating the health and safety of labourers working in the mines. Mines Act, 1952 consists of 88 sections divided into 10 chapters. The said act came into existence solely for the safety and health and welfare of workers working in the mines. The act however, defines as to what is a mine. As per clause (j) of section 2 of the Act, mine means the place where any excavation work is carried on for the searching and obtaining of minerals.[64] Minerals as per clause (jj) of section 2 means those substances which can be obtained from the earth by means of digging, dredging, drilling, mining or through other operations.[65] Minerals as per this clause also include mineral oils which mean natural gas and petroleum.

Chapter 2 of the Mines Act deals with Inspectors and Certifying surgeons. Section 5 provides that there should be an appointment of one chief inspector that would be regulating all the territories in which mining is done and an inspector for every mine who would be subordinate to the chief inspector.[66] Moreover, the District Magistrate is also empowered to perform the duties of an inspector subject to the orders of the Central Government. However, the Act restricts the District Magistrate from exercising such powers under sections 22, 22A and 61 of the Act.

The chief inspector or any of the inspectors would make such inquiry, at any time whether day or night, in order to check whether the law is being abided in the mines or not. However, they would not exercise their rights in such a way which would obstruct the work in mines. The inspector would inquire about the safety, welfare and health of the persons working in the mine along with the conditions of the mine. While making inquiry and examining the conditions of the mine, the chief inspector or any inspector has reason to believe that any offence is being committed, in that case, the inspector would be empowered to initiate search and seizure as mentioned in the Code of Criminal Procedure, 1973.

Section 11 of the Act appoints certifying surgeon. Any medical practitioner can be appointed as certifying surgeon for a group of mines as notified by the Central Government. The certifying surgeon has the power to appoint qualified medical practitioner to exercise such powers which the certifying surgeon would specify. The certifying surgeon and the qualified

[64] Section 2(j) of The Mines Act, 1952
[65] Section 2(jj) of The Mines Act, 1952
[66] Section 5 of The Mines Act, 1952

medical practitioner would examine the persons working in the mine and the exercise of such medical supervision would be prescribed by the Central Government.[67]

The Act deals with health and safety of the workers under Chapter 5. Section 19 provides that there should be the facility of safe drinking water in every mine and that each such point should be legibly marked as "Drinking Water" in such languages as is understood by the people working there.[68] There would be accessibility of first aid boxes or the cupboards filled with such contents and a person trained in such first aid treatment should be available during the working hours of the mines. A conveyance should be readily available in cases where there is a need to take any person to the nearest dispensary or hospital. The number of first aid boxes should be such as prescribed by the central government however, in places where there are more than hundred and fifty workers, in such cases, the size of the room should be such which can occupy all the workers along with first aid boxes and required number of nurses.

This Act was amended in 1983 which provided a new law for the mine workers. It provides that the person working in the mine should not be less than eighteen years of age. If in case a child is seen to be working in the mine, in such a case, the owner, manager or agent of such a mine should be held responsible and a penalty of rupees five hundred would be imposed upon him. Since there is a lesser penalty imposed upon the owner, manager or agent, so the parliament has drafted a new amendment bill in 2011 which is still pending. Therefore, the new amendment bill would bring beneficial changes in favour of the workers working in the mines.

Whereas Section 58 of the Act[69] deals with power of the Central Government to make rules for the term of office, the manner of filling vacancies among members of the committee, the appointment of court of inquiry under section 24, the regulating the procedure and the power of such courts, inspection of mines to be carried out on behalf of the person employed therein by a technical expert, the suitable rooms to be reserved for the use of children under the age of six years belonging to women employed in mine. The standard of sanitation to be maintained, scale of latrine and urinal provides in the mines, supply and maintenance of medical appliances, number of cupboards, prohibiting the possession or consumption of intoxicating drinks or drugs in the mines, providing for the management of rescue stations etc. Due to the section 58 of the

[67] Section 11 of The Mines Act, 1952
[68] Section 19 of The Mines Act, 1952
[69] Section 58 of The Mines Act, 1952

Mines Act, 1952 our legislatures has enacted various rules such as The Mines Rules, 1955, The Mines Rescue Rules, 1985 etc.

3.2 The Mines Rules, 1955

The Mines Rules deal with matters related to the employment of persons, their health and the welfare amenities to be provided to them. The Mines Rules were amended in November, 1978, and in the amended rules, Chapter IVA medical examination of persons employed in Mines was added after the Chapter IV providing for the initial and periodical medical examinations of all persons employed in a mine, after such date or dates as the Central Government may notify in the Official Gazette, The Mines (Amendment) Rules, 1986, came into force with effect from 26th April, 1986. The main provisions have been the constitution and functioning of the workmen's inspectors and the Pit Safety Committees and provisions of form J and K for the registers of reportable and minors accidents respectively. The quantum of disability allowance has also been fixed at 50% of the employee's monthly wages.

3.3 The Mines and Minerals (Development and Regulation) Act, 1957

The MMDR 1957 is basically the main legislation which lays down the (legal) framework for the regulation of mines and development of minerals other than petroleum and gas. Since its enactment, the Act has undergone a series of amendments from time to time. Prior to 1990, the amendments made in the Act (in 1972 and 1986) basically enhanced government control on mining. On the other hand, the amendments carried out in 1994 and 1999 and the associated revision of the relevant rules have somewhat liberalized the procedures for granting mineral concessions and facilitating private sector including foreign investment into the sector. Also, provisions relating to environment have been introduced through those amendments.

The Mines and Minerals (Development and Regulation) Act, 1957, provides the legal framework for regulation of mines and the grant of different permits and licenses for exploration and exploitation of minerals (excepting petroleum and natural gas). The Parliament is empowered to regulate mining activities and the development of minerals to the extent that is expedient in public interest; state legislatures may regulate the same subject to Parliamentary censure.

Some important provisions of the MMDR Act, 1957 are enumerated as under:

- The responsibility to grant and approve licenses lies with the state governments, as per the state list appended to the Constitution of India. Activities such as carrying out

mining processes and conducting surveys are regulated by the GSI, Controller of Mining Leases and the Indian Bureau of Mines.

- The Act clearly lays down the terms, conditions and rights granted under the Act, and it further imposes certain restrictions on the grant of licenses and leases.
- The Act stipulated a maximum area of 10 sq. km to any person who has acquired a mining license; however, this area can be extended or increased as per the discretion of the Central Government upon application for the same.
- Depending on the minerals being explored, a mining lease may be issued for a minimum period of 20 years that may extend up to a maximum period of 30 years. This lease is subject to renewal for a period of 20 years, subject to approval by the Central Government.
- Any entity that acts in contravention to the provisions provided for prospecting lease and mining license shall be punishable with imprisonment for a term of 5 years or with a fine which may extend to Rs. 5, 00,000, or both.
- Any contravention of the Rules or Act shall be punishable with imprisonment for a term that may extend to 2 years or with a fine that may extend up to Rs. 5, 00,000, or both.
- In case of continued contravention, an additional fine may be imposed on the entity, which may extend up to Rs. 50,000 for every day the contravention continues.
- In the case of illegal mining, fines may extend up to 10 times the value of minerals mined or three years imprisonment or both; the contravener may be debarred from obtaining any future concessions, and it may also attract cancellation of the mineral concessions held by the convicted person.

The need for a revision in the law came because of loopholes that have seemingly mushroomed over the years being used by corrupt stakeholders to subvert legal procedure to their ends. India's system for regulation of the mining sector is notoriously weak, for example, the applicant company for lease is itself entrusted with choosing and paying the consultant who makes the Environmental Impact Assessment (which provides data on the possible negative social and environmental impact of a proposed operation). This same assessment then guides the government's decisions to allow an operation, favouring a glaring conflict of interest.

Crime and illegal activities are part and parcel of growth and development. So is the case in the mining sector as well. Over the course of the last decade, the mining sector has seen an increase in illegal mining. There has been a rampant increase in unscientific and environmentally harmful mining over the years; even today, in states like Goa and Orissa,

environmental activists are still fighting for the removal of such illegal miners. In *Manohar Lal Sharma v. The Principal Secretary& Ors*,[70] the Supreme Court held that there should be a cancellation of coal blocks allocated by the government in 1993 on the grounds that the procedure followed by the Central Government was in contravention of the MMDR Act, in terms of arbitrariness and non-transparency of procedures.

Further, in another case *Re: Natural Resource Allocation*,[71] the Supreme Court held that auctioning of natural resources was not a constitutional mandate and is merely a means to benefit businesses by serving as an alternative form of revenue. There arose a need to liberalize the coal and mining industry regulations in order for it to reach its full potential and attract foreign direct investment. For this purpose, it became absolutely imperative for the government to ease the restrictions imposed by the MMDR 2015 and MMDR 1957. The introduction of the bill will allow 100 percent foreign direct investment in coal mining operations; further, it aims at reducing importation of coal and increasing domestic and national production thereof.

The Mineral Laws Amendment Act 2020

Features of the Amendment Act are as follows:

- As per the old Act, companies purchasing coal under Schedule II and III through auctions could only utilize coal extracted for end-use purposes like power generation and steel production. The Amendment provides relief to these companies permitting them to carry out operations for sale, use, in their subsidiaries, or any other such purpose, as permitted by the central government.
- The old Act recognized two types of licenses, namely, the Prospecting license and mining license. The Amendment recognizes a third type that integrates the two allowing the licensee to prospect and license coal, called the license-cum-mining lease. Further, holders of a non-exclusive reconnaissance license can acquire a prospecting and mining license, as opposed to the previous Act that did not permit them to do so.
- The old Act required new licensees to obtain new statutory clearances before the commencement of their mining operations. However, now the various permits, licenses and clearances granted to the old licensee shall be transferred in the name of the effective bidder for the initial two years

[70] Manohar Lal Sharma *v*. The Principal Secretary& Ors., Writ Petition (Cri.) No. 120 of 2012
[71] Re: Natural Resource Allocation, SR number 1 of 2012

- The Central government can now decide the allocation and reallocation of terminated mining allotment orders as per their discretion and designate a custodian for the same until the mines are reallocated.
- As per the old Act, the state government was required to obtain approval from the central government in order to issue licenses, permits and leases. This requirement has now been relaxed, and the state government is not required to obtain approval in certain cases, such as in the event the central government has already made allocation or when the federal government has reserved a mining block for resource protection.
- Prior experience in the coal and mining industry in India is not a contributor to the eligibility of the company to participate in an auction.

New regulations allowing private participation in the mining sector is a double-edged sword; that is, it has its fair share of advantages and disadvantages. The coal mining industry has been dominated by the public sector for decades on end; the new regulations open up this sector to private participants with the aim to draw in more investors. This new regulation has relegated the minority status of the private sector by opening up biddings through coal mine auctions. On the one hand, this seems like a great step towards attracting investment but, on the other hand, it is highly unlikely that there would be a large flow of investors, as expected in the wake of the pandemic.

Energy security has always been an economic driver for the country, contributing to the GDP; however, over the years, there have been several shortfalls in meeting the requisite targets of imports.

Further, the goal of driving up demand is highly unlikely to be met considering the costs that would be incurred in an attempt to procure cheaper coal; costs such as miner's prices, government taxes, transportation costs, etc., need to be taken into consideration before investing in the industry. The new regulations only affect the miner's costs only by a small amount; therefore, no drastic change in the pricing is bring brought about through these regulations.

The new regulations are said to open up new mines in order to explore the full potential of national reserves. However, new mines may take years to develop, there- fore, putting any developer or potential investor in a frenzy as to whether investing in such mines is a risk they are willing to take.

The new Amendment raises a vast array of environmental concerns, considering that the whole world is moving towards more sustainable alternatives to fossil fuels and India, on the other hand, is trying to capitalize on the same by increasing demand and supply. In keeping with the aim of attracting foreign investment in the coal and mining sector, India is jeopardizing its commitments made under the Paris Agreement, consequently jeopardizing the health and safety of employees that is a natural result of inhaling toxic fumes. The new Amendment also opens its doors for potential overexploitation of resources through increased competition and rivalry in the sector.

The MMDR Amendment Act 2021

The Mines and Minerals (Development and Regulation) Amendment Act 20213 brings about several reforms in the mining sector. It aims at optimally using the mineral industry's potential and capabilities in order to increase employment and investment in the mining industry, particularly coal. The Act has introduced several changes. Whether these amendments prove to be an instrument of over-exploitation of the natural resources and the environment or an apparatus to realise our dreams of self-reliance, only time will tell. The judiciary which has often been tagged as environment-biased, is yet to test the validity of this Amendment Act. This article tries to study the changes introduced by the MMDR Amendment Act, 2021 and its implication there off.

The mining industry in India has immense underutilised scope and potential. India features amongst the top five coal producing countries in the world, only second to China[72]. Yet, to meet our exponential demands, India imports coal and minerals worth billions of dollars every year despite being the third largest storehouse of coal in the world. It has been a common concern that India lags in actualizing its abilities qua its mining industry. Corruption and myriad of scams have dampened India's prospects in the field even further. To put the lack of actualization of India's mining capabilities into perspective, India has explored only 10% of its Obvious Geological Potential (OGP) so far and utilises only 5% of it for mining. Despite having similar potentials, the mining sector contributes around 7 to 7.5% of the GDP of countries like South Africa and Australia while it is only 1.75% of India GDP[73]. In order to overcome such factors, overhauls in the sector were introduced in 2015 itself and the 2021

[72] Monica Philalay et al, Coal in India 2019 37 (2019).

[73] Shekhar Gupta, 'Why MMDR Amendment bill will help unlock mining industry that has been under-performing', The Print (MAR 24, 2021, 3:40 pm), https://theprint.in/opinion/why-mmdr-amendment-bill-will-help-unlock-mining-industry-that-has-been-under-performing/627587/.

amendments seek to take it forward. The Mines and Minerals (Development and Regulation) Act, 1957[74] was adopted to regulate the mining sector in India and specifies the requirement for obtaining and granting mining leases for mining operations.

While the Principal Act gave the central government power to reserve any mine (except coal, lignite and atomic mineral) for a specified end use[75]. These were called captive mines. The 2021 Act amends Section 8A of the Principal Act and removes any and all restriction on end use of minerals irrespective of the mines being captive or non-captive. The Act now permits sale of minerals by captive mines with a ceiling of 50% of annual mineral production, provided it has met the requirement of the end use plant linked with the mine and made additional payment as given in Schedule VI, in the manner prescribed by the Central Government. The capping of 50% can be further changed by the Central Government through notifications[76]. Schedule five and Schedule six have been added to aid these clauses. The fifth schedule lists four minerals with specified additional amount to grant extension of mining lease when period of mining leases, other than the ones granted through auction, shall be extended[77]. The sixth schedule contains three lists for non-auctioned captive mines (other than coal and lignite), for auctioned captive mines (other than coal and lignite) and for coal and lignite. These three lists under schedule six specify the additional amounts to be paid minerals of captive mines to non-captive industries.

A new provision has been inserted by the way of these amendments for mines whose lease has expired. These mines may be allotted by the State Government with prior approval of the Central Government, to a Government Company or Corporation. Such lease shall be granted for a period not exceeding ten years or till selection of new lessee through auction, whichever is earlier[78]. The Amendment Act brings a change in the transfer of statutory clearances. The earlier Act stated that mines are leased to new persons after a mining lease has expired. And within two years of such transfer of lease, the new lessee must file for fresh clearances.[79]Whereas, the Amendment Act provides that all permissions and licences issued

[74] The Mines and Minerals (Development and Regulation) Act, 1957, No. 67, Acts of Parliament, 1957 (India).
[75] Ibid, MMDR Act, Sec. 8A
[76] Supra 2, MMDRA Act, Sec 8A (7A).
[77] Ibid, MMDRA Act, Sec. 8A (8).
[78] Ibid, MMDRA Act, Sec. 8B (1).
[79] Ibid, MMDRA Act, Sec. 8B.

under this Act will remain in effect until the reserves have been mined, after which they will be transferred to the next successful bidder.[80]

Under the Principal Act, provision existed for a non- exclusive reconnaissance permit, which was allowed for a preliminary prospecting of mineral in an area.[81] The introduced amendments remove such licence permit and states that any existing permit under the previous Act will lapse on the date of the commencement of the 2021 Amendment Act. Any expenses incurred in reconnaissance or prospecting operations are dictated to be reimbursed to individuals whose rights has lapsed.

Further, the 2021 amendment Act grants more powers to Central Government. Whereas the Principal Act empowered State Governments to manage the auction process of the mineral concessions except coal, lignite and atomic minerals. The amendment introduces an active role to be played by the Central Government, by bestowing upon it the authority to set a deadline for the completion of auction process after consulting with the respective State Government. In circumstances when the State Government have difficulty or fail to notify the areas or hold auctions within the stipulated period, the Central Government can take over the process from states.[82] The Amendment Act also provides that when a mining lease lapses either due to non-operation of mining within two years of the grant of lease or due to discontinued mining operation for a period of two years; such lease will not lapse if a concession is provided by the State Government. An application is to be made by the holder of the lease before it lapses. A one-time extension of one year may be granted by the State Government.[83]

With the amendment of section 4(1) of the Principal Act, private entities may also be notified by the central government with enhanced technology to undertake mineral exploration activities[84]. In the Amendment Act, a new sub-section (5) to Section 9C has been introduced[85], which enables the notified private entities to seek funding from the National Mineral Exploration Trust (NMET)[86]. The NMET was established by the central government for regional and detailed mine exploration, pursuant to the 2015 amendments to the MMDR Act, 1957.

[80] Ibid, MMDRA Act, Sec. 8B (1).
[81] Supra 5, MMDR Act, Sec. 10C.
[82] Supra 2, MMDRA Act, Sec. 11.
[83] Ibid, MMDRA Act, Sec. 4A.
[84] Ibid, MMDRA Act, Sec. 4(1).
[85] Ibid, MMDRA Act, Sec. 9C95).
[86] Supra 55, MMDR Act, Sec. 9C.

The 2021 amendments to the MMDR act have few key takeaways, firstly, by allowing captive miners of both coal and other minerals (excluding atomic minerals) to sell up to 50 per cent of their production, after meeting the requirements of the end-use plant and on paying additional royalty to the state government, the 2021 amendment clearly absolves the distinction between captive and non-captive mines, resultantly implying that the ores extracted from captive mines would no longer be only used by captive industries. Upon paying the additional charges, the lessee would be able to sell the minerals in the open market. In a manner, this move would open India's mines and minerals market for the private players which was earlier dominated by captive industries only, thus facilitating increase in production and supply of minerals, ensuring economies of scale in mineral production, stabilizing prices of ore in the market and bringing additional revenue. Further, the 2021 amendments seek to counter '*red-tapism*' and '*license raaj*' head-on by introducing the provision for transfer of statutory clearances. The new provisions allowing for these clearances to be valid throughout the lease period of the new lessee as opposed to the two years term, previously mandated in the Act, definitely would contribute in diminishing the tedious procedures alluring more and more players to participate in the mining sector. Also, the provisions for allocation of mines whose leases have expired to government companies in certain cases would be instrumental in achieving increased productivity by eliminating the chances of mines unexploited for some reason or another, after their allocation. The provision regarding extension of lease to government companies on payment of additional amount would also aid in ensuring continuity in exploitation of the unused resources.[87]

Nonetheless, there are contentious side to these amendments as well, it empowers the central government to conduct auctions or re-auction processes related to mineral concessions, if a state government fails to complete the auction process in a specified period. The said specified period has to be specified by the central government, although, after consultation with the state governments. This provision in itself gives leeway to the union government to surpass its federal responsibilities by not giving due weightage to its consultations with the state governments and nonetheless specify the time period for auctions to complete. Another amendment that seems the federal structure is the Central Government may give directions regarding composition and utilization of fund by the District Mineral Foundation (DMF)[88]. The

[87] Tejaswini Misra And Aanisha Faiza, Hakim, 'Decoding The Mines And Minerals (Development And Regulation) Amendment Act, 2021' (2021) 4 International Journal of Law Management & Humanities 2609.
[88] Supra 52, MMDRA Act, Sec. 9B (3) Proviso.

Principal Act requires that the District Mineral Foundation is to be established as a non-profit body by the State Governments, to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government[89]. The composition and functions of the District Mineral Foundation are also prescribed by the State Government. The amendments putting DMFs under control of the central government seems to be bypassing the constitutional mandate of a federalism. Moreover, the funds under DMF are meant to be utilized for the betterment of the districts affected by mining activities and it is in best interest of the people that such trusts should remain decentralized for the concerns in every affected district would be unique and so has to be the usage of funds for their benefits. A centralized one-size-fits-all kind of approach would do no good in such a situation.

The idea behind changes made to the MMDR Act seems to be promoting ease of doing business for the industry and streamline processes to harness the full potential of mining sector and generate higher revenues, but these mining reforms may end up against the interests of the mining-affected communities and environment at large. The Government, through its Union minister for Coal Mr. Prahlad Joshi, has shown its trust in these reforms. He writes "The MMDR reforms will give new 'LIFE' to the mining sector, where 'L' stands for Long-term impact, 'I' for Immediate boost to mineral production, 'F' for Focus on public welfare, and 'E' for Ease of Doing Business.[90]" While it is true that the mining sector in India desperately needs restructurings in practice and investments in capital by inviting private and foreign players into its realm, the reforms and investments are needed more so in cleaner technologies and fairer labour and employment practices. The goal is understood, it is to actualize India's potential in mining sector and reducing our imports. But, realizing this goal while neglecting environment and ecology would not only be short-sighted by disastrous in the longer run. The 2021 amendment prioritizes development over ecology, disregarding the concerns over mine-pollutants and effects of mining over environment and people displaced due to mining operations. In its quest to fulfil the notion that is '*Atmanirbhar Bharat*', the Indian Government is keen on these amendments stipulating that all existing permissions, clearances and licenses are either continued, extended or transferred to the consecutive bidder by maintaining continuity without wasting any time on these purely administrative hassles unless minable resources are exhausted and India's needs are fully met.

[89] Supra 5, MMDR Act, Sec. 9B.
[90] Prahlad Joshi, 'MMDR reforms to give new life to mining sector', Financial Express, April 06, 2021.

3.4 Coal Bearing Areas (Acquisition and Development) Act, 1957

An Act to establish public control over the coal mining industry and its development by providing for acquisition by the State of unworked land containing or likely to contain coal deposits. The Coal Bearing Areas (Acquisition & Development) Act 1957 is an offshoot of old Land Acquisition Act of 1894 in India. The Coal Bearing Areas (A&D) Act in short CBA Act was established in the economic interest of India for a greater public control over the coal mining industries and its development by providing for the acquisition by the state of un-worked land containing or likely to contain coal deposits or all rights in over such land, extinguishment or modification of such rights, acquiring by virtue of any agreement, lease, licence or otherwise. This Act was enacted by Parliament in the 8th year of Republic of India. It was operational parallel to the LA Act 1894 and was applicable to the allotted coal blocks in India that to only Government companies (PSUs) such as CIL & its subsidiaries and NTPC etc. During that time it was stated clear that same companies or PSUs shall apply the normal LA Act 1894 to the other acquisitions such as Land required for the company for infrastructure, Township and other requirements excluding the coal block. In both the cases such as CB Act and LA Act 1894 the compensation calculation was almost parallel to each other hence applying both the act simultaneously has no impact on land cost except on time of acquisition. When RFCTLARR Act 2013 came into force in 1st January 2014 after abandoning the LA Act 1894, the equation of CB Act to the new LA Act 2013 requires introspection. This article is intended to highlight the impact for understanding of all those who are engaged in applying Land Acquisition through both CB act and LA Act and for academic and administrative purpose so that the coal extraction does not suffer. Section 105 of RFCTLARR Act, sub-sec (1) says that new Act shall not apply to the enactment relating to land acquisition specified in the 4th schedule of the RFCTLARR Act. The 4th Schedule contains the CB Act along with 13 other Acts, which will continue to remain in force, even if the LA Act 1894 is discontinued.

In this context, the compensation calculation and the process of consent which is essence of new LA Act will not be applicable in the CB Act. The companies permitted to acquire land under CB Act are also to acquire land for other than the coal bearing area such as township, water corridor, rail corridor, rehab colony and allied activities where the CB Act cannot be made applicable for acquisition. Since this patch of land is not far away from the coal bearing area, the contradictory provisions of both the Acts will create the conflict of interests as a result the implementing agencies will face the difficulties on ground.

3.5 The Coal Bearing Areas (Acquisition and Development) Rules, 1957

In exercise of the powers conferred by section 27 of the Coal Bearing Areas (Acquisition & Development) Act, 1957 (20 of 1957), the Central Government hereby made the Coal Bearing Areas (Acquisition and Development) Rules, 1957. The Rules provides guidelines to serve any notice or order as required by the Coal Bearing Areas (Acquisition & Development) Act, 1957. It states in details the various modes of serving the notice.

3.6 The Wild Life (Protection) Act, 1972

The Wildlife Protection Act, 1972, provides for protection to listed species of flora and fauna and establishes a network of ecologically-important protected areas. The Act consists of 60 Sections and VI Schedules- divided into Eight Chapters. The Wildlife Protection Act, 1972 empowers the central and state governments to declare any area a wildlife sanctuary, national park or closed area. There is a blanket ban on carrying out any industrial activity inside these protected areas. It provides for authorities to administer and implement the Act; regulate the hunting of wild animals; protect specified plants, sanctuaries, national parks and closed areas; restrict trade or commerce in wild animals or animal articles; and miscellaneous matters. The Act prohibits hunting of animals except with permission of authorized officer when an animal has become dangerous to human life or property or as disabled or diseased as to be beyond recovery.

3.7 The Coal Mines Nationalisation Act 1973

Increasing coal production has been one of the key policy objectives ever since India got freedom. Coal sector was in private hands in British Era but after independence the sector went into government control. First government organizations were National Coal Development Corporation (NCDC) and Singareni Collieries Company Ltd. (SCCL). The major nationalization of coal mines occurred in 1970s when the Coking Coal Mines (Nationalisation) Act, 1972 brought all coking coal mines and the coke oven plants (other than TISCO and ISCO) under the Bharat Coking Coal Limited (BCCL), a new Central Government Undertaking. All these mines were nationalized under the Coal Mines (Nationalisation) Act, 1973. To manage the non-coking coal mines, the Coal Mines Authority Limited (CMAL) was set up and National Coal Development Corporation were brought under the Central Division of the CMA.

In 1975, Coal India Limited was formed as a holding company with five subsidiaries namely Bharat Coking Coal Limited (BCCL), Central Coalfields Limited (CCL), Eastern Coalfields Limited (ECL), Western Coalfields Limited (WCL) and Central Mine Planning and Design

Institute Limited (CMPDIL).The Indian coal sector was thus dominated by Government and remains so even today. Coal India Ltd. has 81% share in production while Singareni Collieries Company Ltd has 9.5% share. Remaining coal comes from privately owned collieries and captive coal mines.

As a result of the nationalisation, Coal India Limited and its subsidiaries (Coal India) gained a monopoly over coal mining activities until 1993 when the Nationalisation Act was amended to allow restricted private sector participation in coal mining activities, i.e. for captive purposes in certain industries like steel, power, cement, etc. Under the Nationalisation Act, the allotment of coal mines for captive use was based on the recommendation of a high-powered committee chaired by the Secretary, Ministry of Coal. As a result, 216 coal blocks were allotted by the GoI from 1993 to 2010 through this committee.

Whilst limited private sector participation was allowed in coal mining for captive consumption, Coal India continued to have a monopoly on commercial coal mining. In 2010, the process of allotment of coal mines to private parties was changed and MMDRA was amended to end the ad-hoc allotment regime. It required GoI to allot coal mines through auction by competitive bidding to companies recognised for private participation in coal mining, i.e., for captive use in iron and steel, power, washing of coal, etc.

3.8 The Water (Prevention and Control of Pollution) Act, 1974

The Water Pollution Act, 1974 provides for the prevention and control of water pollution and the maintenance or restoration of wholesome quality of water. For this purpose it vests power in the State Pollution Control Boards (SPCB) to lay down and enforce effluent standards for "trade effluents" i.e. any liquid, gaseous or solid substance discharged by industrial establishments including mines and processing plants. The legislation requires a person to take prior consent (permit) from the State Pollution Control Board for the establishment of any mining (or any other) operation in which discharge of effluents into a stream, well or sewer or on to land (section 25) prohibits such discharge beyond the prescribed standards and lays down penalties (fines /imprisonment) for non-compliance. Prior to 1988, enforcement was done only through criminal prosecution in the appropriate court. After an amendment of the law in 1988, the SPCB may close down a defaulting unit or withdraw its supply of power and water by an administrative order. The penalties are also more stringent; and a provision for citizens' initiative to make complaints to the court strengthens the enforcement machinery**.**

3.9 The Coal Mines (Conservation and Development) Act, 1974

The Coal Mines (Conservation and Development) Act was enacted to provide for the conservation of coal and development of coal mines and for matters connected therewith or incidental thereto.

Coal mines (Conservation and Development) Act, 1974 deals with the process of conserving the coal and development of coal mines. As we all know that coal is non-renewable resource, it is better to conserve it for future and it became necessary to implement laws regarding coal's development. There were several developmental plans were introduced for coal conservation either before independence or after independence and this act is one of them.

The main objectives of this act are as follows: -

- Infrastructural development of coal mines.
- To ensure achievement of Annual Action Plan for coal production.
- To improve efficiency of coal in India.
- Proper use of technology to reduce environmental externalities.
- To attracts private investments for coal production and conservation.
- Allocation of new coal blocks.
- To conservation and developmental process of coal

Central government has power in respect of conservation of coal and development of coal mines. Section 4[91] deals with the same. Section 5[92] states that owner of coal mines shall take steps when it is necessary for conservation and development of the same. He can execute operations if it is necessary for fulfilling the objectives of the act and for utilization of coal.

It is the duty of owner to open coal mines conservation and developmental account. He shall open a separate account in a scheduled bank, which will be known as the "Coal Mine Conservation and Development Account''. The money credited to this account will be used for fulfilling the object of this act.

The chief inspector or any inspector shall have power to investigate coal mines, as he think fits. If any pillar of coal mine is likely to collapse or mine become not a good place for working of human being then inspector shall inform the owner of the coal mine in writing.

[91] Section 4, Coal Mines (conservation and development) Act, 1974
[92] Section 5, Coal Mines (conservation and development) Act, 1974

Coal Board established under Coal Mines (Conservation and Development) Act, 1952, is dissolved under this Act and all the powers vested under coal board is now performed by central government. All borrowings, liabilities and obligations of the Coal Board are now the borrowings, liabilities and obligations of central government.

If any suit, appeal or other proceeding in relation to the Coal Board is pending by or against of such Board, then the same shall not abate or discontinued, the suit appeal or other proceeding may be continued, prosecuted and enforced by or against the Central Government. This act protects actions taken in good faith for the betterment of coal mines.

The Central Government may, for the purpose of conservation of coal and for the development of coal mines, exercise such powers and take, or cause to be taken, such measures as it may deem necessary or proper or as may be prescribed under the Act.

Any rule made under the provisions of this Act may provide that the contravention thereof shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both.

3.10 The Forest (Conservation) Act, 1980

The Act requires the approval of the Central Government before a State 'dereserves' a reserved forest, uses forest land for new forest (including mining) purposes, assigns forest land to a private person or corporation or clears forest land for the purpose of reforestation. An advisory committee known as the Forest Advisory Committee constituted under the Act – advises the central government on these approvals. Contravention of the Act attracts up to 15 days in jail. The Forest (Conservation) Rules 2003 framed under the Act prescribe, among the things, the composition of the advisory committee and the factors it should take into consideration while formulating its recommendation to the Central Government on various proposals received for 'forest clearance'.

In cases relating to proposals for de-reservation or diversion of forest land for non-forest purposes, the most important condition stipulated by the Central Government is that of compensatory afforestation. The proponent of a project is required to submit a scheme for compensatory afforestation over an equivalent area of non-forest land, as far as possible, in the proximity of reserved or protected forest. However, no compensatory afforestation is required in respect of the proposals involving underground mining in forest land below 3 metres and in cases of renewal of mining leases unless new forest land is to be "freshly broken up".

Over the years, the Courts interpreted various provision of the Forest (Conservation) Act 1980 in order to amplify its scope, with a view to preventing destruction of forest cover and protecting the environment. In the Godavarman Case[93] (*T.N. Godavarman Thirumulpad vs. Union of India*), the Supreme Court laid down that since the Forest (Conservation) Act 1980 was enacted with a view to checking further deforestation which ultimately results in ecological imbalance, its provisions for forest conservation and allied matters "must apply to all forests irrespective of the nature of ownership and classification".

The words "forest land" accruing in Section 2 of the Act will not only include a "forest"' as per the latter term's dictionary meaning but also any area recorded as forest in government records irrespective of their ownership and classification. In this context, it was also laid down that prior approval of the Central Government is required for any non-forest activity (including mining) within the area of any forest. Such 'prior approval ' of the Central Government is also mandatory in respect of renewal of pre-existing leases, as was laid down by the Supreme Court in the case *Ambica Quarry Works vs. State of Gujarat*.[94]

There have also been initiatives by the Court to lay down, for the executive agencies, the criteria that should be followed in the exercise of their discretionary powers under the Forest (Conservation) Act 1980. In the Kudremukh mining case, for example, the Supreme Court opined that the principles of sustainable development and the precautionary principles (which govern the law of environment) should be followed in making decisions in these cases. Similar guidelines to the State and Central Government agencies were also provided by the Court in *Samatha case*[95] when it said that it was their "duty to prevent mining operations affecting the forest" and "to ensure that the industry or enterprise does not denude the forest to become a menace to human (existence) nor a source to destroy flora and fauna and bio- diversity."

The legal position, however, is that the Forest (Conservation) Act 1980 only prohibits mining or any other non-forest activity on forest lands that do not have the (prior) approval of the Central Government. The Supreme Court has clarified that it was not against mining per se but mining which is in violation of the provisions of the Forest (Conservation) Act 1980 and also mining in the National Parks and Sanctuaries.

[93] T.N. Godavarman Thirumulpad v. Union of India, AIR 1997 SC 1228
[94] Ambica Quarry Works v. State of Gujarat (AIR 1987, SC1037
[95] Samatha v. State of A.P. & Ors, JT 1997 (6) S.C. 44

However, this arrangement which leaves it to the sole discretion of the Central Government to provide 'forest clearance' in respect of non-forest activities has its demerits since it tends to concentrate this power in a Central ministry. Although there is an expert advisory committee to examine these cases, their recommendations are advisory in nature and the Minister is not always bound by their advice. The final decision is with the Minister for Forests and Environment who sometimes may be swayed by political consideration in the context of India's multi-party polity where different political parties are in power in the States and at the Centre. Besides, in the Indian society, given its continuing feudal character and ego-centric government ministers and officials, there is as yet no tradition of robust professionalism or independent decision-making. In these circumstances only a vigilant public opinion and aggressive press can provide the needed antidote against political and personal bias in environmental decision-making.

3.11 The Air (Prevention and Control of Pollution) Act, 1981

The Air Pollution Act of 1981 seeks to prevent, control and abate air pollution. Its framework is similar to that created by the Water Pollution Act, 1974 and it utilizes the institutional mechanisms of the Central and State Pollution Control Boards for administration of its provision. Under this Act, all industries (including mines) operating with in designated air pollution control areas must obtain permits (consent) from SPCBs. The state boards lay down the standards of emission of air pollutants in to the atmosphere from industries (including mines) and vehicles after consulting the central board and noting its ambient air quality standards. The Act empowers the authorities (SPCBs) to enforce the provisions of the Act including measures to close down a defaulting unit and /or stop its supply of electricity and water. A board may apply to a court to restrain emissions that exceed the prescribed standards. There are also provisions for a citizens' initiative and for prosecution and penalties for non-compliance.[96]

All polluting facilities are legally required to obtain from their respective SPCB consent (permit) to establish (CTE) and then consent to operate (CTO). Also quarterly reports on water and air pollution are obtained from specified industries (including mining) and registers are maintained in SPCBs showing pollution with reference to standards. In spite of these legal provisions, there is a laxity in compliance mainly due to the lack of resources and capacity in

[96] Mohanty (n 49).

the regulatory agencies to monitor compliance. It is also necessary for citizens to be proactive in accessing the available information in order to ensure effective compliance.[97]

3.12 The Mines Rescue Rules, 1985

The Mines Rescue Rules, 1985, have been framed for rescue of work persons in the event of explosion, fire etc. These rules apply to coal and metalliferous underground mines. The Rescue Rules provide for the establishment of rescue stations and conduct of rescue work in Mines affected by an explosion or fire, an inrush of water or influx of gases. To operate under these conditions, services of specially trained men with special rescue apparatuses are required.

The Mines Rescue Rules, 1985 came into force with effect from 2nd April, 1985, replacing the previous Coal Mines Rescue Rules, 1959. The most important change made is that these rules are applicable to both coal and metalliferous mines having workings below ground. The new rule have far reaching implications, and, as it was considered not possible and expedient to enforce all the provisions immediately, a period of 3 years was provided for the changeover. In the meanwhile the mine owners were to arrange for the new Rescue Stations and Rescue Rooms, and equip them with the stipulated apparatus and the rescue trained persons.

3.13 The Environment (Protection) Act, 1986

The Environment Protection Act of 1986 (EPA) and the Environment (Protection) Rules 1986 framed under the Act provide an overarching framework for environmental protection in the country. EPA has a very broad scope for providing for the protection and improvement of environment and prevention of hazards to human beings, other living creatures, plants and property. Section 3 of the Act vests with the Central Government power "to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment and preventing, controlling and abating environmental pollution". Specifically the Act empowers the Central Government to lay down standards of quality of the environment and standards of emission or discharge of environmental pollutants. Section 7 of the Act prohibits the discharge or emission of environmental pollutants in excess of the prescribed standards. In order to implement this mandate, the standards have been laid down in the Environment (Protection) Rules 1986, as Schedules form I to VII. While Schedule I lays down the industry-specific standards for an effluent discharge and emissions in respect of specified industries. Schedule VI specifies the general standards for discharge of environmental

[97] Ibid

pollutants for all other industries. While Schedule IV indicates the standards of emission pollution norms for motor vehicles, schedule III and VII prescribe national ambient air quality standards in respect of air pollutants and noise. The pollution control boards have been empowered to lay down strict standards than these, where necessary.

Under Section 3 (2) (V) of EPA, the government is empowered to restrict industrial locations and impose conditions. Rule 5 of EPR lays down the factors such as standards of quality of environment in the area. Its biological diversity, topographic and climatic conditions and environmentally compatible lands use, to be taken into consideration while prohibiting or restricting location of an industrial activity (including mines) in any area.

Section 5 empowers the Central Government to issue "directions in writing to any person, officer or any authority" and this power includes directions to close, prohibit or regulate "any industry, operation or process" and also to stop or regulate the supply of "electricity, water or any other service". Since Section 23 of the Act empowers the Centre to delegate its powers and functions (with a few exceptions) to any officer, State Government or any other authority, these powers to give directions can also be exercise by its delegates for achieving the objects of the Act.

EPA under Section 3(3) makes provision for the Central Government to constitute one or more authorities to implement the Act. This would enable the Central Government to set up an autonomous and professional agency along the lines of the US Environment Protection Agency to oversee the implementation of EPA and its rules. This has not happened so far and the Ministry of Environment and Forests (MoEF) continues to exercise all these powers.

The Act provides for prosecution in the event of contravention of its provisions and requirements and for strict penalties of a prison term up to 5 years or fine up to Rs.1 lakh or both. There is also a provision of a citizens' initiative in filing complaints against violation but the conditions put on the exercise of this initiative makes if somewhat ineffective.

Finally, there is a broad rule making power conferred in the Central Government under Section 6 and 25. The Central Government has used this power to issue a large member of rules and regulations covering areas like pollution control, handling of hazardous substances, protection of the coast and ecologically fragile areas and environment impact assessment. In response to specific environmental threats, industrial and mining activity has been stopped through government notifications in some ecologically sensitive areas such as the Doon Valley in Uttarakhand (Feb 1989) where the area was harmed by extensive limestone quarrying and in

the Aravalli range in Rajasthan and Haryana (May 1992) where limestone quarrying threatened the flora and fauna.

The Coastal Zone Regulations issued in Feb 1991 strictly control development activity (including industrial activity) within a strip of 520 metres from the sea shore in the coastal areas.

However, from the point of view of mining (and many other industries), the most important environmental requirement is a comprehensive statutory impact assessment programme (EIA) which was started in 1994. Under the powers conferred by Section 3 (1) (V) and (2) of EPA read with Rule 5 (3) of EPR, the Central Government issued a notification on 27th January, 1994 providing for mandatory EIA. This was subsequently replaced by a fresh notification on the 14th of September, 2006 (further amended in 2009) which now governs the EIA procedures for mining and other specified industries.

3.14 The Environment Impact Assessment Notification, 2006.

EIA has been broadly defined as "the process of identifying, predicting, evaluating and mitigating the biophysical, social and other relevant effects of development proposals prior to major decisions being taken and commitments made" (IAIA, 1999). Although EIA can be applied to legislative proposals, policies and programmes, in India it is exclusively applied to individual development projects in various sectors including mining. To that extent it boils down to a technique or process by which information about environment effects of a project is collected mostly by the project proponent and also to some extent from other agencies and sources and taken into consideration by the relevant authorities in making decisions on whether the project should be allowed to proceed or not.

The 2006 Notification divides the projects into categories always having significant effects on the environment and for which EIA will be required in all cases (category A projects) and those which either will not require an EIA (category B2 projects) or will require in some circumstances (B1 projects). Also, a category 'B' project located within 10 km from the boundary of a protected area notified order the Wild Life (Protection) Act 1972, notified critically polluted and eco-sensitive areas and inter-state or international boundaries are treated as Category 'A' projects. In "mining for minerals", for example, more than 50 hectares of mining lease area in respect of non-coal mine lease and 150 hectares of lease area in respect of coal mine lease are included in Category 'A', along with offshore and onshore, oil and gas exploration and development. Category 'B' projects cover mining lease area between 5-150

hectares in respect of coal and 5-50 hectares in respect of other minerals. Mineral prospecting, however, is excluded from prior environment clearance.

While Category 'A' projects are assessed by a Central Environment Assessment Committee (EAC) whose recommendations are submitted to the Central Government (Minister for Environment and Forests) for final decision, in the case of Category 'B' projects (both B1 and B2) the required assessments are made by a State-level Expert Appraisal Committee (SEAC) and decisions taken by a State-level Environment Impact Assessment Authority (SEIAA). Both SEAC and SEIAA are constituted by the Central Government on the recommendations of the respective State Governments. It is interesting to note that neither the State nor the local government agencies have any role in final decision-making (both with respect to the constitution of the appraisal committees or giving environmental clearance) although the environmental effects of the project are in fact felt in the areas under their immediate jurisdiction. The environment assessment committees are, however, multi- disciplinary bodies staffed by technical and professional persons with considerable expertise and experience in environmental assessment methods and in the relevant projects under consideration. A National Environment Appellate Authority (constituted under an Act of Parliament), headed by a retired justice of the Supreme Court or Chief Justice of a High Court and comprising subject matters experts hears appeals filed by persons aggrieved by an order granting environmental clearance where industrial activity is restricted under Sections 3(1) and 3(2) (v) of the Environment (Protection) Act. However, the Authority has no jurisdiction to directly hear appeals by project authorities who are denied environmental clearance. Thus, the entire environmental clearance procedure is somewhat reminiscent of the industrial licensing approval system of the earlier license-permit raj!

However, following international practice the 2006 Notification lays down a number of substantive steps for the EIA process with the avowed purpose of anticipating, measuring and assessing the bio-physical and socio-economic changes, both positive and negative, that may result from a proposed project. The emphasis, compared to many other mechanisms of environmental protection, is (or should be) on prevention and the primary purpose is supposed to be to anticipate and avoid or mitigate significant adverse environmental (including socio-economic) consequences of development projects and promote development that is sustainable and optional in the use of resources.

The EIA process is not merely about issuing or denying an environmental clearance permit for the start of a project. If undertaken with due intellectual honesty, objectivity and thoroughness, EIA can be an effective decision-making tool for the regulatory agency, a project management tool for the developer and a basis for negotiation between the project proponent, government agencies and the affected communities in order to bring about a project outcome that balances development needs with environmental integrity.

3.15 The Coal Mines (Special Provision) Act, 2015

In an order dated 27 February 2018, the central government approved the methodology under the CMSPA for allocation of coal mines by auction and allotment of coal for sale. The CMSPA envisages an ascending forward auction where the bid parameters are the price offer in INR per tonne to be paid to the State government on coal production. This is one of the most significant reforms in the coal sector since the nationalisation of the sector in 1973 and has the effect of opening up commercial coal mining to the private sector.

The Mineral Laws (Amendment) Act 2020 amends the Mines and Minerals (Development and Regulation) Act 1957 (MMDR Act) and the Coal Mines (Special Provisions) Act 2015 (CMSPA).

The amendments to the CMSPA are aimed at boosting coal production and reducing dependencies on imports. Companies with no coal mining or other mining experience can participate in auctions of coal blocks. Further, the amendment removes end-use restrictions on companies producing coal under the CMSPA. The amended provisions, therefore, allow for wider participation in the auction of coal mines for a variety of purposes (such as own consumption or for any other purpose specified by the central government.[98]

In 2012, the Comptroller and Auditor General published its report on allotments of coal mines in India and remarked that the high-powered committee had not followed a transparent method of allocation of coal and the process lacked transparency and objectivity. The legality of the allotments was also challenged before the Supreme Court in a common cause public interest litigation, which started hearing the matter in September 2012. The Central Bureau of Investigation (CBI), the federal investigative unit of the GoI was also directed to investigate

[98] Saket Shukla and Maryam Naaz Quadri, 'India: Coal Mining Sector: Road to De-Nationalisation' (13 May 2020) < https://www.mondaq.com/india/mining/933746/coal-mining-sector-road-to-de-nationalisation> accessed 08 July 2021.

the criminality of the allocation of coal blocks, commonly referred to as the infamous 'coal scam'.

Pursuant to these, in August and subsequently in September 2014, the Supreme Court held that all allotments of coal blocks made during 1993 to 2010 (except (i) allotment for ultra-mega power plants which was by way of a public auction; and (ii) two allocations made to the GoI public sector undertaking not having any joint venture) were illegal and cancelled them (collectively, the Supreme Court Judgement).

In the meantime, the Supreme Court continues to monitor the investigations being conducted by the CBI and other investigative authorities for irregularities in the allotment of coal mines between 1993 and 2010. Per the reports, three preliminary enquiries and 53 cases have been registered by the CBI.

In the aftermath of the Supreme Court Judgement, the Coal Mines (Special Provisions) Act, 2015 (CMSPA) was enacted to deal with the cancelled blocks. The CMSPA amended the Nationalisation Act and the MMDRA and introduced three categories of coal mines specified in Schedule I, II and III. The CMSPA is a forward looking enactment and paved the way to allow greater private participation and end the monopoly of Coal India. It provided for allocation of coal mines to successful bidders and allottees through a transparent bidding process. The CMSPA also sought to promote optimum utilisation of coal resources consistent with the requirements of the country.

Schedule I, II & III Blocks: Schedule I coal mines were all the blocks that were cancelled by the Supreme Court Judgement. Schedule II coal mines include the 42 producing and ready to produce coal mines forming part of the Schedule I coal mines. Schedule III include 32 coal mines of the Schedule I coal mines which were substantially developed coal blocks. Schedule II and III mines were reserved for allocation only for specified end use (i.e., power, steel, cement, etc.). In the years since the enactment of CMSPA till the end of 2017, 84 coal mines (53 through allotment and 31 through auction) have been successfully allocated by the GoI.

The CMSPA paved the way for change in the coal sector. While earlier only those companies which could use the coal for captive purposes were eligible to participate in the auction, the CMSPA partially removed this restriction and allowed companies having prior experience and already engaged in coal mining in India to participate in the auction for Schedule I coal mines

either for its own consumption or for sale. However, Schedule II and III coal mines were reserved for companies engaged in specified end-use and therefore a large number of mines could not be used for commercial sales.

Captive Coal Mining Issues: The policy on captive use of coal blocks has had some major drawbacks. For one, it did not result in optimal utilisation of an important natural resource of the country given that the use was dependent on the industry for which a coal block was allotted. If such industry did not do well because of market forces or other factors, the coal production suffered. For example, steel can be cyclical and if there was a downturn in the steel industry, there was a resultant impact on captive coal blocks which could not be used for an industry that was operating at better capacity, leading to an increase in the import of coal by industries. The lack of competition in commercial coal mining meant that the sector and associated industry/infrastructure (washery, separation, etc.) did not benefit from best practices, technologies, equipment, etc. and efficiencies decreased unlike sectors like telecommunications, construction and power which have all benefited from increased competition and foreign investment. Cleaner coal is also the need of the hour and is an area where India continues to lag.

The GoI having taken note of these issues approved the methodology for auction of coal mines under the CMSPA in 2018 (2018 Order). Prior to this, the GoI had also issued the methodology to fix the floor or reserve price for auction of coal mines in 2014. The 2018 Order provided for commercial coal mining for private sector with no restriction on the sale and/or utilization of coal from the coal mine. The auction of the coal mines was sought to be based on prescribed bidding parameters. In line with the 2018 Order, the foreign direct investment (FDI) policy was also amended to reflect the policy change in the coal sector.

Reforms under the amendment:

a) Composite prospecting licence-cum-mining lease: The MMDRA and the CMSPA contemplated a two stage concession, prospecting/reconnaissance and thereafter mining. The Amendment allows for grant of a composite prospecting licence-cum-mining lease in respect of coal blocks. This is expected to allow mining of unexplored or partially explored blocks and increase the inventory of coal blocks in India.

b) Eligibility of bidders: The Amendment removes the restriction of prior engagement in coal mining operations in India as an eligibility criterion for grant of mining lease and other related licenses (Mining Concessions). The Amendment allows all companies, irrespective of their prior experience in coal mining operations in India to be selected for grant of the Mining Concessions through auction by competitive bidding. Any company which proposes to carry on coal reconnaissance, prospecting or mining operations, for own consumption, sale or for any other purpose is now permitted to get the Mining Concessions.

This move is likely to see foreign companies which do not have prior experience in coal mining in India participate in the competitive bidding. This is further complemented by 100% FDI which has been allowed for coal mining activities in this sector.

c) Schedule II and Schedule III opened up: As mentioned, the CMSPA only allowed allocation of operating or substantially developed coal mines (Schedule II and Schedule III) for specified end-use. Consistent with the 2018 Order, the Amendment removes this restriction to permit companies which are not 'engaged in specified end-use' to participate in auctions for these coal mines, effectively allowing these mines to be used for commercial mining.

d) Reallocation of coal mines: The CMSPA defines a 'prior allottee' and gives power to the nominated authority to cancel the vesting or allotment order granted under the CMSPA. Prior allottees are the coal allottees of Schedule I mines whose allotments were cancelled pursuant to the Supreme Court Judgement.

The Amendment puts an allottee whose allocation has been terminated under CMSPA at the same footing as that of a 'prior allottee' and permits such allottee to participate in the immediate next auction provided that it meets all the prescribed criteria applicable to a 'prior allottee' under the CMSPA.

e) State government's power to allot: A state government cannot grant Mining Concessions for coal mines except with the previous approval of the GoI. The Amendment allows for an exception to this and permits the state government to grant the Mining Concessions for coal without the previous approval of the GoI if (i) the GoI has issued an allocation order; (ii) the area has been reserved by an order of the GoI or the state government; or (iii) a vesting order or an allotment order has been issued by the GoI under the CMSPA.

This could substantially cut down on the time required for new lessees to obtain the necessary approvals, licences and clearances in order to start their mining operations and in turn, facilitate sustained production of coal.

f) GoI to appoint custodian: The Amendment also empowers the GoI to make rules for the Amendment and appoint a designated custodian in respect of Schedule II mines whose auction or allotments are not complete or where a vesting/allotment order has been cancelled for a coal mine under production.

g) Captive use expanded: The Amendment permits a successful allottee to utilize the coal mined by it in the plants of its holding or subsidiary company so long as the holding/subsidiary company is engaged in the same specified end use.

The Amendment is significant as it seems to be the culmination of years of efforts of the GoI to de-nationalise the coal mining sector and make the sector more attractive for private capital. The sector has lagged behind considerably and the reforms under the Amendment will hopefully give it the much need shot in the arm attracting not just local private participation but also foreign investment. The Supreme Court Judgment was a turning point in the coal mining sector and the clear directive of the Supreme Court was to ensure sufficient transparency and fairness. The GoI's response to the Supreme Court Judgment has been equally laudable with the GoI enacting CMSPA as an ordinance within a month of the Supreme Court Judgement and the tender process for allotment of Schedule II mines being initiated soon thereafter and quite successfully at that. The removal of restriction of captive mining and 100% FDI are bold steps which demonstrate GoI's resolve to reform the sector. While the long-term effect of the Amendment will have to be seen, it does set a level playing field to attract private capital and fester better competition and collaborations in the sector, improving and boosting the coal mining sector overall.

3.16 The Coal Mines Regulations, 2017

In exercise of the powers conferred by section 57 of the said Mines Act, 1952 and in supersession of the Coal Mines Regulations, 1957, the Central Government enacted the Coal Mines Regulations, 2017.The applicability of the Act is extended to the whole of India. The Regulation was legislated with the purpose of regulating the health and safety of labourers working in the mines. The said act came into existence solely for the safety and health and

welfare of workers working in the mines. The act however, defines as to what is a mine. "Mine", for the purpose of chapter IV under these regulations, means all excavations within the mine boundary and all premises, plants, machinery and works as specified in clause (j) of sub section (1) of Section 2 of the Act and the same shall collectively constitute a mine.[99]

Chapter 4 of the Regulation deals with Inspectors and Mine Officials. The rules provide that there should be an appointment of one chief inspector that would be regulating all the territories in which mining is done and an inspector for every mine who would be subordinate to the chief inspector. Moreover, the District Magistrate is also empowered to perform the duties of an inspector subject to the orders of the Central Government.

The chief inspector or any of the inspectors would make such inquiry, at any time whether day or night, in order to check whether the law is being abided in the mines or not. However, they would not exercise their rights in such a way which would obstruct the work in mines. The inspector would inquire about the safety, welfare and health of the persons working in the mine along with the conditions of the mine. While making inquiry and examining the conditions of the mine, the chief inspector or any inspector has reason to believe that any offence is being committed, in that case, the inspector would be empowered to initiate search and seizure as mentioned in the Code of Criminal Procedure, 1973.

3.17 The Coal Block Allocation Rules, 2020

The Coal Block Allocation Rules, 2017 were enacted to pave the way for competitive bidding of coal blocks. As recently as June 2020, the Central government initiated auction of 41 coal blocks leading to an investment potential of Rs. 33,000 crore of capital investments over the coming years apart from allowing hundred percent foreign direct investment. With the introduction of the Mineral Act (Amendment) Bill, 2020, the private entities who could only use coal for captive consumption till now have been allowed to sell coal as well. Thus, the coal industry has come a full circle from nationalisation to a complete privatization.

Key take-away from the Coal Block Allocation (Amendment) Rules, 2020[100]

[99] Rule 2 (zo) of the Coal Mines Regulations, 2017

[100] Sharmin Kapadia and Adhya Sarna "Burgeoning of the Coal Sector with the Coal Block Allocation (Amendment) Rules, 2020"<https://ijpiel.com/index.php/2020/10/26/Burgeoning-of-the-Coal-Sector-with-the-Coal-Block-Allocation-(Amendment)-Rules- 2020>

The Amendment in Rules was warmly welcomed by the nation as it proved to be a step towards a beginning of change and reforms; and opened doors to generate employment for thousands. Some of the highlights that have proven to be a game-changer, are as follows:

1. An Amendment has been made in the definitions of 'ceiling price', 'floor price', and 'reserve price' which shall now include a percentage in addition to the price;

2. When the coal block is specified for auction for one's own consumption, as per the Amendment, the tender shall specify the capacity of end use of project that the bidder will be bidding;

3. Initially, the CG could specify the maximum number of coal blocks or amount of coal reserves or both that may be allocated to a company or corporation, its subsidiary or parent company, associate companies or group companies or its affiliate. However post the Amendment, both maximum number of coal blocks or amount of coal reserves shall not be allocated but will be based on a parameter that computes coal production or a combination;

4. As per the Rules, if the coal block is specified for the purpose of own consumption and a bidder having a coal linkage becomes the successful bidder, then the entitlement to receive coal pursuant to such coal linkage for the end-use plant on the basis of which it became a successful bidder may be reduced on such basis as may be specified by the CG. With the Amendment, the entitlement to receive coal pursuant to such coal linkage would be reduced in the manner as specified in the tender document by the CG;

5. As per the Amendment, an allotment document, as specified by the CG, to the successful allottee shall state the basis of reduction in the entitlement to receive coal pursuant to such coal linkage for the end-use plant;

6. The Amendment sees an insertion of 'prospect license-cum-mining lease' ('PL cum ML'), which was peculiar to Section 11A of Mineral and Minerals (Development and Regulation) Act, 1957 ('MMDR Act'). It was retrospectively amended with effect from January 10, 2010 by the Mineral Laws (Amendment) Act, 2020 as it empowers the CG to grant PL cum ML for coal and lignite;

7. Successful allocatee has to provide an irrevocable and unconditional performance bank guarantee in its favor to ensure production of coal as per the mining plan, once a grant has been received under Rule of 9 of the Colliery Control Rules, 2004 to the concerned State Government ('SG') for the amount equivalent to the performance bank guarantee submitted by it to the CG for ensuring the production of coal as per the mining plan and;

8. Earlier, coal linkage holders or successful allocatees could enter into agreements or arrangements with other successful allocatee(s) or coal linkage holders, for optimum utilization

of coal block for the same purpose in the public interest and to achieve cost efficiencies. However, now the concept of coal linkage holders has been completely done away with.

Private parties were allowed to participate in the coal sector until the 1970s. Due to lack of interest in incorporating scientifically advanced methods and unhealthy mine practices, it was decided that the coal sector would be nationalized. The decision to open doors to commercial mining has emerged because there is a shortfall in domestic coal production to meet the rising demands.

The move made by the Union FM, MoC, and Hon'ble PM has opened up areas of growth in the coal sector. Initially, it was just the CIL and Singareni Collieries Company, both being Government controlled entities, that had major dominance in the coal sector. The Amendment has ensured an ease in doing business by paving the way to commercial coal mining and auctioning 38 coal mines, it has created a ray of hope in providing employment to thousands in the backward regions of the country and tribal areas. It will also pave the way for sustainable mining. India is home to non-coking coal whose import has shot up over the years. There has been an import of 180-190 million tonnes (MT) of coal as against 183 MT of coal in 2019. The dependency of non-coking coal is high as it is used in cement, fertilizer, glass, and ceramic, paper, chemical and brick manufacturing, and for other heating purposes. The decision of liberalization will help in meeting the rising domestic demand.

Depending on imports PM cum ML will now offer exploration of the unexplored and partially explored coal blocks for mining. Commercial coal mining will also create a sense of independence as it can cut import bills by Rs. 45,000 Crores as there will be a sharp decline in the import of non-coking coal. This move is meant to break free from one party dominating the industry as it will create a sense of competitiveness amongst parties to bid. It will have two benefits-firstly, it will destroy the monopolistic market in the coal sector. Secondly, there will be assurance that the highest bidder will invariably channelize more funds, advanced technology and use sophisticated means to excavate coal. Additionally, the SGs whose states are a storehouse of coal mines will generate more than Rs 20,000 crore per year in royalties. It is essential for the SG and CG work hand-in-hand to achieve the goal.

3.18 The Mineral Concession Amendment Rule 2020

The Central Government made these rules in exercise of power conferred by Section 13 of the Mines and Minerals (Regulation and Development) Act, 1957. This rule is applicable to all minerals including Coal, lignite, atomic minerals etc. and deals with procedure for grant of Prospecting Licence (PL) and Mining Lease (ML) of major minerals only. It does not apply to

oil fields or minor minerals. Minor minerals are notified by Central Government from time to time, for which the State Governments, frame rules for issuing permits, licences etc. The salient features of these rules are –

Chapters II, III and IV contain rules for the grant of reconnaissance permits as well as grant and renewal of Prospecting Licence and Mining Lease only in respect of the land in which the minerals vest with the Government of India.

Rule 4 to Rule 7 of Chapter II lay down the procedure for the grant of reconnaissance permit by the State Governments along with the conditions of reconnaissance permit, which include that the permit holder has to obtain permission to enter 'forest land' for reconnaissance purpose, under the Forest (Conservation) Act, 1980.

Rules 8 to 21 in Chapter III lay down the procedure for the grant/renewal of prospecting license, conditions of prospecting license, security deposit, etc. The conditions relating to environmental mitigation measures are laid down in Sub-rule 1(x) of Rule 14. These are as given below

The licensee shall - (a) take immediate measures for planting in the same area or any other area selected by the Central or State Government not less than twice the number of trees destroyed by reasons of any prospecting; (b) look after them during subsistence of the license after which these shall be handed over to the State Forest Department or any other authority as may be nominated by the Central or State Government; and (c) restore to the extent possible, other flora destroyed by prospecting operations Sub Rule 2(A) (iii) of Rule 14 imposes restrictions on felling of the trees on unoccupied and unreserved Government land.

Sub Rule 2(A) (v) of Rule 14 imposes restrictions on operations in reserved or protected forests.

Rules 22 to Rule 46 relate to the grant/renewal of mining lease and related issues. Sub Rule 5 of Rule 22 outlines that the following details are to be shown on the mine plan so extent of mining operations o Geological details, mineral reserves o Area under manual mining and under mechanized mining separately o Natural water courses, forest areas with diversity of trees, assessment of impact on forest land surface and other environmental parameters including air and water pollution.

Rule 27, Sub Rule (1) (s) lays down the conditions that relate to environmental protection in the mining operations. These are outlined below. The lessee shall Take immediate measures for planting in the same area or any other area selected by the Central or State Government not

less than twice the number of trees destroyed by reasons of any mining operations; * Look after them during the subsistence of the lease after which these trees shall be handed over to the state Forest Department or any other authority nominated by the Central or state Government; and * Restore, to the extent possible other flora destroyed by the mining operations.

Rule 22, Sub Rule (2) states that a mining lease may contain such other conditions as the State Government may deem necessary in regard of the following, namely – * The compensation for damage to the land covered by the lease * The felling of trees * The entering or working in a reserved or protected forest.

Features of the Mineral Concession Amendment Rule 2020[101]:

- Registration of Qualified Persons for Mining Plan preparation is no longer required. Project proponent's declaration in this regard will suffice.
- Empowering block allocatee to make minor changes in mining plan and reducing requirement of repeated approvals thus giving flexibility in operation.
- An option is now available to Coal Block allocatee to engage an Accredited Prospecting Agency for conduct of prospecting operation and preparation of Geological Report (GR) with a view to expedite exploration, bringing technology and faster growth of coal sector.
- Additional option is also made available to Project Proponent through accreditation system for Mining Plan Preparing Agency for preparation. Similarly, a peer review of Mining Plan to improve quality of mine planning and fast tracking approval system has also been introduced.
- Provision for regulating grant of PL-cum-ML in light of the Mineral Laws (Amendment) Act, 2020.

3.19 The Occupational Safety, Health and Working Conditions Code 2020

The central government has recently amalgamated the existing Indian labour laws relating to safety, health and working conditions of workers employed in various establishments, including mines, under the OSH Code. Among other things, the OSH Code sets the requirements for safety and working conditions of labour employed in mines. The OSH Code

[101] Recent initiatives of Coal Ministry to improve efficiency and promote ease of doing business Amendments in Mineral Laws & Guidelines aim to open up coal sector and reduce coal imports <https://pib.gov.in/PressReleseDetailm.aspx?PRID=1629073>

will come into effect on a date to be notified by the central government. Once notified, it will replace the Mines Act 1952 (Mines Act) and the Mines Rules 1955 (Mines Rules).

3.21 Policies and schemes:

i) Vriksharopan Abhiyan

In the current fiscal, Ministry's Going Green initiative has been rolled out by launch of Vriksharopan Abhiyan (VA) on 23.07.2020 by the Hon'ble Home Minister in presence of Hon'ble Minister of Coal.[102] Coal sector has not only played a key role in fulfilling the country's energy demand but has also been equally sensitive towards environmentally sustainability. Going Green has remained one of the key thrust areas of coal sector involving maximization of green cover through ecological reclamation and plantation in coal bearing areas. Concept of 'restore back the nature and environment' is the motto.[103]

On the launching day, around 4.5 lakh seedlings of local species were planted covering an area of about 450acres spread in 38 districts of 10 States (131 places) and 3.5 lakh seedlings were distributed amongst the local people for plantation in the nearby areas. All plantation sites were electronically connected and visible at one platform.[104] The Hon'ble Home Minister had inaugurated 2 eco-parks and laid the foundation stone for 3 Eco-parks & 1 Sal Plantation project. About 70000 people participated in the Abhiyan.[105]

ii) Jal Shakti Abhiyan

In the process of coal mining, huge volume of mine water gets collected in mine sumps and subsequently pumped out to surface. By application of appropriate treatment methods, the available mine water may be used for drinking/irrigation purposes. Coal companies are doing their job in gainful utilization of mine water – both from active and abandoned mines. This endeavour is in line with the Jal Shakti Abhiyan for water conservation campaign initiated by Government of India.[106]

iii) Promoting Renewable - Moving towards net zero carbon

In order minimize the carbon footprints of mining and to progress towards the goal of net zero carbon emission, coal/lignite companies are keen on promoting renewables. Coal companies are going for both roof top solar and ground mounted solar projects. It has also been envisaged

[102] http://www.coal.nic.in/sustainable-development-cell/vriksharopan-abhiyan
[103] Ibid
[104] Ibid
[105] Ibid
[106] http://www.coal.nic.in/sustainable-development-cell/mine-water-utilization

to develop solar parks in some of the reclaimed mining areas.[107]As on 31.01.2020, Coal/lignite PSUs have installed solar capacity of about 1445 MW (including roof top solar of ~ 4 MW) and wind mills of 51 MW. During next 5 years it is planned to install additional 4254 MW of renewable capacity.[108]

iv) Promoting Eco-Tourism in mining areas

Mining areas, after exhaustion of coal reserves, offer good potential for promoting tourism by developing eco-parks, sites for water sports, underground visits, golf grounds, avenues for recreation, adventure, bird watching etc. Over the years, coal companies have developed more than 15 eco-parks by undertaking sustainable mine closure practices. These mining sites are now stable, environmentally sustainable and present a very beautiful site aesthetically.[109]

v) Air Quality Management in Mining Areas

One of the major fallouts of mining activities is liberation of pollutants comprising primarily of particulate matters and to a lesser extent gases including methane, oxides of nitrogen etc. Particulate matters being the major air pollutant, air quality management issues in mining areas are mainly centred around minimizing the impacts of dust – most importantly the health impacts associated with PM10 and PM2.5. To minimize dust generation, wet drilling is practiced. Drill machines are also fitted with dust suppression system. More and more use of surface miners/BWEs minimizes the requirement of drilling and blasting and thus the pollution load. Periodical maintenance of vehicles is carried out as per Manufacturer's standards to minimize the emissions.[110]Dust suppression systems are installed at loading, transfer and unloading points in mines. Additionally, water-spraying systems for arresting fugitive dust in washeries, CHPs, Feeder Breakers, Crushers, belt conveyors, haul roads and coal stock areas are installed.[111]

The history of mining law from the British Raj to the first two decades of Swaraj shows that the lust for the maximum mineral extraction resulted in the minimum health care of the mine workers and least concern for the protection of environment. It was only at the platinum jubilee of the law of mines that the environmental consciousness in Parliament and the Government of India started emerging.

[107] http://www.coal.nic.in/sustainable-development-cell/promoting-renewable
[108] Ibid
[109] http://www.coal.nic.in/sustainable-development-cell/eco-tourism-in-mining-area
[110] Ibid
[111] Ibid

Chapter 4

Environment Impact Assessment of coal mining in India

4.1 Environment Impact Assessment

"Environmental Impact Assessment is a critical tool in the planning process which provides a mechanism by which environmental impacts of proposed developments are predicted and used to inform decision making". - J Taylor

An Environmental Impact Assessment (EIA) is a process of predicting and evaluating an action's impact on the environment, the conclusions of which are to be used as a tool in decision making. It essentially attempts to reconcile developmental values and environmental values with 'sustainable development' as the aim.[112] Environmental Impact Assessment (EIA) has evolved over the years as a precautionary management tool to prevent or minimize the adverse effects of development on the environment. The initial idea was to make use of a formal study process to forecast the positive and negative effects on the environment of major developmental projects envisaged. Unfortunately, the emphasis shifted towards the assessment of negative impacts only, so that EIAs today focus mainly on potential and conflicts arising from natural resources that can affect the viability of a project. EIAs also examine how such projects may harm the people, their homeland and their livelihood, or other nearby developments. After anticipating potential problems, EIAs identify measures to minimize such problems and suggest ways of improving the projects to suit the environmental setting. It ensures that environmental issues are addressed at an early stage of project development in order to prevent negative impacts from leading to environmental degradation. The role of EIA is, therefore, to deal with the uncertainty and the potential harm any development project can cause to the environment, including the people.[113]

The EIA is a most significant process in the realm of environment protection. An assessment before a project is implemented will enhance its quality if views and counterviews are elicited. The project can be modified in that light. In the modern technological state, the reconciliation of the conflict between the environmental values and developmental needs is imperative. Thus,

[112] George Cyriac and Shatnik Sanjanwala, 'Environmental Impact Assessment in India: An Appraisal', Journal of the Campus Law Centre, Vol.10, (1998), p.74

[113] Madhushree Mazumdar, 'Environmental Impact Assessment in India', Journal of Social and Economic Development, Vol.III, No.1, Jan-June (2000), p.95 & 96

in order to bring about sustainable development, EIA is considered as a strong instrument of reconciliation.[114]

4.2 Evolution of EIA in India

Historically, the importance of EIA increased because of the political attention given to conservation of environment vis-a-vis economic development, emphasised for the first time in the Stockholm Conference (in 1972), which focussed on the improvement of the human environment. This idea of preservation of the environment was later expanded to the concept of carrying capacity of a spatial unit/setting in the UN Conference on Environment and Development, held at Rio 1992, which became famous for its Local Agenda 21 that proclaimed action planning for management of the environment at the local level. This focus on grassroots planning for the environment is now being internalized all over the world as a required planning skill for environmental management.[115]

Following the conference, the concept of sustainable development was suggested in the Brundtland Report in 1987, which came as a corollary to the World Commission on Environment, to restrict the use of resources in order to retain adequate reserves for future generations. Since then, environmental improvement is being intimately linked to sustainable development of resources to perpetrate continuity in development.[116]

The Brundtland Report

The World Commission on Environment and Development, headed by Geo Harlem Brundtland, Prime Minister of Norway, was set up as an independent body in 1983 by the United Nations. Its task was to fashion "global agenda for change", which would ensure that human progress would be sustained through development without bankrupting the resources of future generations. In response to the urgent call of the General Assembly of the United Nations, the commission made a broad range of recommendations in its report. The Brundtland report is notable for its global perception of environmental issues; its recognition that environment and development are not separate challenges but are inexorably linked; and its sensitivity towards the problems confronting developing nations. The report defines sustainable development as "a process of change in which the exploitation of resources, the

[114] Leelakrishnan P., "Environmental Law Case Book", 2nd edn, (New Delhi: Lexis Nexis, Buttersworth, 2006), p.426
[115] Supra note 113
[116] Ibid

direction of investments, the orientation of technological development, and institutional change are all in harmony and enhance both current and future potential to meet human needs and aspirations." Sustainable development, therefore, requires that the rate of depletion of non-renewable resources should foreclose as few future options as possible. To help reorient development policies, the commission has made a number of recommendations in the key areas of population, food security, genetic resources, energy, industry and human settlements. Significantly, it has also recommended institutional and legal changes at both national and international levels. It reviews the American experience with environmental impact assessment and in light of the lessons drawn from that experience, outlines a legislative and institutional framework for environmental assessment in the Third World setting in India.[117]

However, in many countries the EIA technique was adopted for environmental management much before the concept of sustainable development was instituted. For example in U.S.A. EIA came into practice soon after the legislation of the National Environment Protection Act, in 1969. In many European countries EIA came into vogue much before the 1984 Directive or the introduction of the concept of sustainable development after the World Commission on Environment in 1987. Even in India, which is a developing country, EIA was started informally around 1978-79. Planners and academicians are, therefore, worried about the distortions in the focus of this management tool. The question confronting decision-makers is, to what extent is EIA able to support/promote sustainable development? Is it only to deal with environmental degradation, or should it also integrate social and economic appraisal into the process?[118]

The technique of EIA finds its origin from the 'precautionary principle' which requires refusal of consent or approval of the developmental activity by the competent authority, if such project poses threat of serious or irreversible environmental damage. To determine the serious or irreversible nature of the environmental effects on the developmental activity, EIA is necessary. The 'precautionary principle' mandates that the EIA should be made obligatory for development activities which are likely to have significant adverse effect on the environment. In case EIA reveals that the developmental activity poses threat of serious or irreversible environmental damage, the competent authority must withhold the consent for approval or permission to such activity.[119]

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[117] Divan A Shyam, 'Making Indian Bureaucracies Think : Suggestions For Environment Impact Analyses In India Based On The American Experience.' (1988) 30 Journal of the Indian Law Institute 263.
[118] Supra note 113
[119] Gurdip Singh, 'Environmental Law in India', (New Delhi: Mc Millan India Ltd.2005). p.33

EIA is an exercise of evaluating and predicting future changes caused by proposed projects, plans or policies to the quality of the environment. Guiding to make informed trade-offs among conflicting aspects of environmental quality and between environmental quality and other societal objectives, EIA helps administrative agencies to choose correctly from among the various options for making environmentally sound decisions. Development projects or policies are either modified or abandoned when in an assessment they are found likely to result in significant adverse effects upon the quality of environment. EIA is a tool not only for identifying potential damage but also for probing methods of preventing such damage. The process is rooted in the principle that prevention is better than cure and carries the warning 'look before you leap'. Needless to say that prevention ensures not only ecological success but also economic success, since prevention is not only better than cure but also in many cases cheaper.[120]

EIA began in India by 1978-79 with the evaluation of river valley projects, much before the Ministry of Environment and Forests was set up. Since then the scope has expanded to include irrigation and hydro power projects, mining, industries, thermal power, atomic energy, ports and harbours, rail and road highways, bridges, airports and communications, and other infrastructure projects. Tourism in ecologically fragile areas and even human settlements have also been included.[121] Till the year 1992, India was following the administrative (discretionary) model of EIA. This resulted in an aura of confidentiality and secrecy shrouding many projects proposed in the past. It is not surprising that it has been often remarked that locating industrial projects is decided on parochial rather than environmental factors in India.[122]

The EIA Notification is the third in the series of notifications issued by the Central Government under the Environment Protection Act to regulate new projects or expansion/modernization of existing projects based on potential environmental impacts.[123] Under S.3(1) of the EP Act, the Central Government has the power to take "all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution". Further, it has the power to notify

[120] Leelakrishnan P, 'Environmental Impact Assessment : Legal Dimensions' (1992) 34 Journal of the Indian Law Institute 541.
[121] Supra note 113
[122] Supra note 114
[123] EIA Notification, S.O. 1533, September 14, 2006, available at http://www.moef.nic.in/ legis/eia/so1533.pdf (Last visited on 10 July 2021). The first two were Notification, S.O. 85(E), January 29, 1992, available at http://www.ceeraindia.org/documents/lib_c3s2_ EIAnoti_160300.htm (Last visited on 10 July 2021) and Notification, S.O. 60(E), January 27, 1994, available at http://www.envfor.nic.in/legis/eia/so-60(e).pdf (Last visited on 10 July 2021)

areas in which any industry, operation or processes or class of industries, operations or processes shall not be carried out or shall only be carried out subject to certain safeguards. This power to restrict or even bar projects has been the foundation for the Central Government to institute a system for grant of environmental clearances (EC), which projects are required to obtain before commencing construction work. The Ministry of Environment and Forests (MoEF), as the nodal agency of the Central Government for the EIA Notification, is responsible for the implementation of the notification.[124]

It was, however, with the enactment of the Environment Protection Act, 1986, that there was a broad move towards institutionalising environmental procedures. The Central Government, Under Sec.3 (1) and 3(2) of the EP Act, 1986 and under Rule 5(3)(a) of the Environment Protection Rules, 1986, issued a draft notification in 1992 laying down norms and procedures for impact assessment. This was followed by a final notification in 1994 and two other notifications amending it. This broadly constitutes the law relating to EIAs in India. The Procedure established by these notifications, and the alterations that these procedures have undergone in a short time have been examined here.[125]

Legal Procedure for Clearance under Draft Notification 1992

As per this notification, the expansion or modernisation of any existing industry, or the establishment of new projects listed in Schedules I and II to the 1992 Notification shall not be undertaken without obtaining an environmental clearance from the Central Government and the State Governments respectively. An application submitted to the appropriate authority should include an EIA Report and Environmental Management Plan (EMP) prepared in accordance with the guidelines issued by the Central Government. These reports are then assessed by the Impact Assessment Agency (IAA) which is the Ministry of Environment and Forests at the Central and State Levels in consultation with a committee of experts. The IAA will then prepare a set of recommendations based on technical assessment of documents and data furnished by project authorities, supplemented by data collected during visits to the sites or factory and interaction with affected population and environmental groups. The clearance is then given subject to these recommendations. Monitoring is done by the IAA by means of a half yearly report to be submitted to the agency by the project authorities. The legal framework created is clearly inadequate for reasons to be shortly examined. The position has also been

[124] Shibani Ghosh, 'Demystifying The Environmental Clearance Process In India' (2013) 6 NUJS Law Review 433.
[125] Supra note 113

exacerbated by the final notification which has eroded many of the positive aspects of the draft notification.[126]

Altered Procedure under Final Notification

The Final Notification issued in 1994 made the following substantial alterations to the earlier provisions[127]:

1) The two schedules setting out projects which require clearance from the Central and State Governments have been substituted by a single one whereby only Central Government clearance required. The schedule itself has been considerably shortens leaving out many crucial projects and for 16 projects, clearance is required only if the investment is in excess of 50crore. The small scale sector is also exempt.[128]

2) While earlier it was required that a detailed project report be submitted consisting of the EIA and the Environmental Management Plan, now only a summary feasibility report is required to be submitted.[129]

3) The EIA, EMP and the conditions subject to which the clearance is given are now available to environmental groups and other concerned groups as well and not to the concerned parties alone. Furthermore, comments of the public may be solicited, if so recommended by the IAA in public hearings.[130]

4) The public shall also be provided access to a summary of the EIA and the EMP at the headquarters of the IAA.[131]

The EIA Notification makes it mandatory for those industries mentioned in the said notification to obtain environmental clearance before an industry is to be established or expanded. Detailed procedural norms are prescribed in it. Subsequently, in the year 1997 there was a notable amendment. It made public hearing compulsory before impact was finalized.

EIA Notification 2006

[126] Supra note 113
[127] Notification, S.O. 60(E), January 27, 1994
[128] Ibid
[129] Ibid
[130] Ibid
[131] Ibid

The EIA Notification 1994 gave way to a notification 2006. There is a fundamental change. Both the Central agency and the state agency are given power to make impact study for projects of separate types with threshold limits. Ministry of Environment and Forests and the State Environment Assessment Authority (SEAC) are the regulatory authorities to render clearance at the Centre and the states respectively. The notification provides for prior environmental clearance before undertaking projects and activities scheduled therein. Expansion or modernisation of existing projects or activities requires clearance. Any change in product-mix in an existing manufacturing unit beyond the specified range also needs an impact study.[132]

The projects or activities are categorised as 'A' and 'B' in the schedule. This categorisation is based on the spatial extent of potential impacts and potential impact on human health and natural and manmade resources. Category 'A' projects and activities require clearance from Ministry of Environment and Forests on the recommendations of an Expert Appraisal Committee (EAC) constituted by the Central Government. Category 'B' projects and activities require prior clearance by State Environment Impact Assessment Authority (SEIAA) on the recommendation of State Expert Appraisal Committee (SEAC). These state authorities are constituted by the Central Government. However, in the absence of duly constituted SEIAA or SEAC category 'B' projects shall be regarded as category 'A' projects requiring Central clearance.[133]

4.3 Actors involved in the EIA process

At the Centre

The manner of implementation of the EIA Notification depends on several actors at the Central and the State level. At the Centre, the Central Government through the MoEF plays a key role. It has several responsibilities as the primary policy-maker and regulator under the Notification. As a policy maker, the MoEF is expected to ensure smooth implementation of the EIA Notification across the country by issuing office memoranda, clarifications, circulars etc. to other actors involved in the process when necessary. It is responsible for granting (or rejecting) applications for EC for Category A projects; appointing Expert Appraisal Committees at the Centre and State level; monitoring the implementation of the EIA Notification and compliance

[132] EIA Notification, S.O. 1533, September 14, 2006
[133] P.Leelakrishnan, "Environmental Law in India", 3rd ed, (Gurgoan: Lexis Nexis, 2013), p.318

with EC conditions. The monitoring functions of the MoEF are typically performed by the six regional offices of the MoEF.[134]

The Expert Appraisal Committees ('EACs') constituted by the MoEF under the EIA Notification play a crucial role in the process of considering applications for EC for Category A projects. Each category of project is dealt with by a different EAC.[135] The EACs meet once a month for two-three days to discuss and assess projects. The EACs' role is entirely recommendatory in nature. They do not have the power to grant or reject an application for EC as this power rests with the Government of the day through the MoEF. EACs are constituted for a term of three years and consist of professionals and experts with experience and expertise in areas such as environmental quality, EIA process, sectoral experts, risk assessment, environmental economics etc. The EACs are expected to work independently of the MoEF and there is only one official of the MoEF appointed to it as its Member Secretary.[136]

The Central Pollution Control Board ('CPCB') does not have a direct role to play in the EC process. However, some of its activities are relevant to the EC process. For instance, the CPCB has identified a list of critically polluted areas/ industrial clusters and a moratorium has been declared on grant of ECs for projects proposed in these areas/clusters. Furthermore, in accordance with the General Conditions in the Schedule, Category B projects located within ten kilometres of critically polluted areas as identified by the CPCB, have to be considered as Category A projects.[137]

A recent entrant to the EC process at the Centre is the Cabinet Committee on Investment ('CCI') which was set up in January 2013. The CCI, headed by the Prime Minister, has been set-up to identify projects involving investments of more than 1000 crore rupees in sectors such as infrastructure and manufacturing and, inter alia, to prescribe time limits within which approvals are issued to them. The CCI can also review processes adopted by the concerned Department or Ministry while granting or rejecting an approval. As an EC is a mandatory approval for many infrastructure projects, the CCI has the jurisdiction to make decisions

[134] Ghosh (n 125).
[135] EACs have been constituted for the following categories of projects – Coal Mining, Industrial Projects, Industrial Projects - 2, Infrastructure and Miscellaneous Projects & CRZ, Mining Projects, New Construction Projects and Industrial Estates, Nuclear Projects, River Valley and Hydroelectric Projects, and Thermal Projects.
[136] Ghosh (n 125).
[137] Ibid.

relating to the grant of EC to proposed projects. However, its relationship with the existing regulatory and accountability mechanisms is unclear.[138]

At the State level

At the State-level, the regulatory function is performed by the SEIAA, which is responsible for granting (or rejecting) applications for EC for Category B projects. These authorities are constituted by the MoEF in each State and Union Territory based on the nomination by the respective State Governments/ Union Territory administration. The state governments provide the financial and logistical support to the SEIAAs. The SEIAA consists of a Chairperson, a Member and a Member Secretary. The first two are required to have professional expertise similar to those of EAC members, with a term of three years. The Member Secretary is ordinarily a serving officer of the State Government or Union Territory administration familiar with environmental laws. It was not unusual for states to appoint the Member Secretary (or any other official) of the State Pollution Control Board as a member of the SEIAA. However, the NGT has directed the MoEF "to ensure that the Member Secretary or any other officer of the State (Pollution Control) Board should not be a Member in the SEIAA, in order to facilitate independent assessment of the projects at the SEIAA level"[139]

The SEIAA decides on EC applications based on recommendations made by the State Expert Appraisal Committees ('SEACs'). These authorities are constituted by the Central Government in consultation with the state governments, and their composition is along the same lines as the EACs at the central level.[140]

Most states have only one SEAC to appraise all categories of projects, unlike the EACs at the central-level. The number of members in the SEAC varies across states. As in the case of the SEIAA, the SEAC is provided with financial and logistical support by the concerned State Government. The SEAC, like the EAC, has a recommendatory role to play, with the SEIAA being the final decision making authority for Category B projects.[141]

The State Pollution Control Boards ('SPCB') or UT Pollution Control Committees are the third set of bodies at the state-level which play a crucial role in the EC process. The SPCBs are constituted by State Governments under Section 4 of the Water (Prevention and Control of

[138] Ibid
[139] Ibid
[140] Ibid
[141] Ibid

Pollution), Act 1974. They are responsible for facilitation and conduct of the public consultation component of the EC process for both categories of projects, and for reporting the proceedings to either the MoEF or the SEIAA, as the case may be. While the primary monitoring functions are performed by the regional offices of the MoEF, the SPCBs are also involved to a certain extent.[142]

4.4 The stages of EIA- screening, scoping, public consultation and appraisal

The EIA Notification divides the EC process (till the final decision) into four stages: screening, scoping, public consultation and appraisal. The process is initiated by the project proponent submitting an application for a prior environmental clearance to either the MoEF or the SEIAA ('appropriate regulator') – as the case may be. The application is made in Form 1 – a format provided in the EIA Notification.[143] Form 1 covers basic information about the project including alternative sites that are under consideration for the project, the nature and extent of physical changes the project is likely to cause, use of natural resources (area of land, water requirement, forest cover etc.), nature and amount of wastes and pollutants likely to be produced/released, risks of contamination and accidents, and potential cumulative impact due to proximity to other existing or planned projects with similar effects.

As part of Form 1, the project proponent has to propose a set of Terms of Reference ('ToRs') for the EIA studies that it would undertake for the project and a copy of a pre-feasibility project report. The EIA Notification originally did not contain any guidance on the nature of information required to be contained in the pre-feasibility report.[144] As a result, and as the MoEF observed, the pre-feasibility reports submitted to the MoEF were sometimes 'sketchy' and did not contain all the relevant information necessary for the EACs and SEACs to complete the scoping process, and to issue ToRs.[145] The MoEF issued Guidelines for the preparation of Prefeasibility reports in December 2010 to remedy this situation. Besides a general description of the project, the Guidelines require the report to include information such as the need for the project, the alternative sites considered, the basis for selecting the proposed site and 'non-environmental' factors such as direct and indirect employment generated, rehabilitation and resettlement ('R&R') plan, the project schedule and cost estimation.[146]

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[142] Ibid
[143] EIA Notification, 2006.
[144] For construction projects, project proponents have to submit a completed Form 1A (EIA Notification, supra note 5, Appendix II) along with Form 1, and a conceptual plan, instead of a pre-feasibility report.
[145] Ghosh (n 125).
[146] Ibid

Project proponents have to submit documents such as those mentioned above in hard as well as soft copy; otherwise the application in considered incomplete. Member Secretaries of EAC and SEIAA are expected to upload these documents on the official website. These requirements were introduced in the EC process in response to directions by the Central Information Commission ('CIC'). The CIC observed that such suo-moto disclosures were "crucial to ensure transparency and accountability in institutions". The following discussion of the EC process attempts to demystify various parts of the process, and to identify the gaps in the regulatory space.[147]

4.4.1 Screening

While all Category A projects are required to undertake EIA studies as part of the EC process, only certain Category B projects have to do so. This short listing of Category B projects takes place during the first stage of the EC process – the screening stage. The SEAC scrutinizes the application and determines, based on the 'nature and location specificity' of the project, whether further EIA studies need to be undertaken before appraising the project for the grant of EC. Projects that require EIA studies before appraisal are referred to as Category B1 projects and the rest are referred to as Category B2 projects. The act of screening determines the extent of impact assessment that will be undertaken before a project proposal is considered, and whether there will be any public consultation before the project is appraised. The EIA Notification requires the MoEF to provide guidance for this categorization between B1 and B2. It was only in December 2013 that the MoEF finally issued an Office Memorandum providing guidelines for categorizing certain types of projects into Category B1 and B2. Category B projects for which no guidelines have been provided in this Memorandum, are to be treated as Category B1.[148]

4.4.2 Scoping

'Scoping' requires the concerned EAC or the SEAC to issue "detailed and comprehensive Terms of Reference (TOR) addressing all relevant environmental concerns", for the preparation of the EIA report. This is done for all Category A and B1 projects, with few exceptions. Determining the appropriate ToRs for each project is an important part of the EC process. Impact assessment studies undertaken by the project proponent, and the subsequent

[147] Ibid
[148] Ibid

appraisal of the proposal by the EACs/SEACs and the regulator, are based on these ToRs.[149] In case the proposed project is an integrated or an inter-linked project (for example, a steel plant along with a captive port), the project proponent has to submit a separate application for EC for each component comprehensively describing the entire project. Then the relevant EAC for each component will consider the application and issue a separate set of ToRs (or reject the application)

The ToRs are typically drafted by the relevant EAC or the SEAC after considering the information provided by the project proponent in Form 1/1A and the draft ToRs proposed by it. The MoEF provides a set of model ToRs on its website for various sectors – which EAC and the SEACs can rely on. However, these are only generic sector specific ToRs, and the EACs and SEACs are expected to issue project specific ToRs, presumably based on the proposed project, its location and potential environmental impact. It may also decide to undertake a site-visit to the proposed project site and refer to any other relevant information that may be available to it (while framing the ToRs).[150]

A decision at the end of the scoping stage has to be issued within sixty days of the Form 1 being submitted by the project proponent. EACs and SEACs can recommend the rejection of a project proposal at the scoping stage. Subsequently, if the appropriate regulator decides to accept such recommendations and reject the project, the project proponent would have to be informed about the decision, along with reasons. If ToRs are recommended by the EAC/SEAC, then these have to be conveyed to the project proponent by the appropriate regulator and displayed on the regulator's website. If the ToRs are not finalized within sixty days, the ToRs suggested by the project proponent in Form 1/1A are deemed to be the final ToRs. The EIA Notification itself does not specify a time limit for which the ToRs are valid. As ToRs are issued based on information which is site-specific and which may change over time, the MoEF issued an Office Memorandum in March 2010 placing a time limit on the validity of the ToRs. The ToRs are valid for two years, for the submission of EIA report and/or Environment Management Plan ('EMP'), after the public consultation is over. This period can be extended to three years, if appropriate reasons are provided.[151]

The effectiveness of the scoping stage in the EC process is affected by one major factor – the time spent by the EAC/SEAC members and the quality of discussions in the EAC meetings

[149] EIA Notification, 2006.
[150] Ghosh (n 125).
[151] Ibid

while considering a project proposal prior to determining the ToRs. EAC meetings are held once a month for two-three days during which time several projects (at various stages in the EC process) are considered. The time that the committee members spend discussing each project is fairly limited. For instance, the agenda for EAC (non-coal mining) meeting in August 2013 reveals that EAC is scheduled to spend fifteen minutes per project before issuing ToRs, and over forty projects are listed for discussion for ToRs over three days. The limited time spent per project during a meeting coupled with the fact that the members of the EAC do not necessarily visit the proposed project site, raises serious questions about the quality of scrutiny of individual project proposal.[152]

4.4.3 Public consultation

Once the impact assessment studies are completed by the project proponent, the EC process enters its third stage. The stage of the EC process introduces the crucial component of public consultation in the decision of whether clearance should be granted. The EIA Notification defines public consultation as "the 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 in the project or activity design as appropriate".[153]

Public consultation is mandatory for all Category A and Category B1 projects. However, certain projects are exempted under the Notification. The list of projects exempted from public consultation can be amended by the MoEF through an Office Memorandum. For instance, in February 2012, the MoEF issued an Office Memorandum to exempt units coming up in National Investment and Manufacturing Zones ('NIMZs') from public hearing, if a public hearing has been held for the entire Zone. Interestingly, the Office Memorandum exempts the units from public hearings and not from the remaining part of the public consultation process as per the EIA Notification. It remains unclear whether this is an oversight or a deliberate effort to limit the scope of the exemption.[154]

In case of expansion or modernization or change of product mix in existing projects, the EACs and the SEACs have to decide, based on Form 1, whether it is necessary to prepare an EIA report and hold public consultation. The Notification therefore gives wide powers to the EACs

[152] Ibid
[153] EIA Notification, 2006.
[154] Ghosh (n 125).

and the SEACs to exempt expansion/modernization projects from the public consultation process. According to an Office Memorandum issued by the MoEF in June 2009, this power was not being properly exercised, as projects were often exempted from the public consultation process "without giving detailed justification"[155]. These projects were considered too small with an insignificant pollution load. To increase transparency in the decision to exempt projects from public consultation, the MoEF directed the concerned officials to apply the exemption judiciously, keeping in mind the additional pollution load and use of natural resources due to the expansion plans, and to maintain environmental integrity. The MoEF further directed that reasons for exempting a project from public consultation have to be specified in the minutes of the meetings of the EACs and SEACs. The Public Consultation stage has two components – public hearing/s and written responses – which are discussed below:

Public Hearing

The objective of a public hearing is to ascertain the concerns of the 'local affected persons'. Appendix IV of the EIA Notification details the process of conducting a public hearing and the SPCBs are responsible for facilitating and conducting such hearings. It has to be organized in a "systematic, time bound and transparent manner" with "widest possible public participation". The venue of the hearing could be either the project site or in 'close proximity' thereto. Procedural requirements for the public hearing process are discussed below in three parts before the public hearing, during the public hearing and after public hearing.

Before the public hearing

The process of public hearing commences with the submission of a letter by the project proponent to the relevant SPCB requesting it to arrange a public hearing.[156] The public hearing has to be completed within forty-five days from the date on which such letter is submitted.[157] If the proposed project site is situated in more than one district, a public hearing has to be held in every district in which the project is situated. If the project site lies in more than one state, separate letters have to be sent to the SPCBs of each state. A draft EIA report and its summary

[155] MoEF, Consideration of Projects under Clause 7(ii) of the EIA Notification, 2006 – Exemption of Public Hearing – Instructions Regarding (2009), June 3, 2009, available at http://moef.nic.in/divisions/iass/offc_ memo _instruction.pdf (Last visited on May 28, 2021)

[156] The letter has to be accompanied with ten hard copies and ten soft copies of the draft EIA report including the summary of the draft EIA report in English and in the official language of the state or the local language. See EIA Notification, as amended by Notification, S.O. 3067 (E), supra note 60, Appendix IV

[157] If the concerned SPCB is not able to organise a public hearing within 45 days or does not convey the proceedings of the public hearing to the appropriate regulator within the time stipulated, the appropriate regulator has to appoint another agency to conduct the public hearing

have to be prepared in accordance with the ToRs issued at the end of the scoping process. The project proponent has to also forward the draft EIA report and the Summary EIA report to the MoEF, the offices of the District Magistrate/District Collector/Deputy Commissioner, the Zilla Parishad or the Municipal Corporation or the Panchayat Union, the District Industries Office, urban local bodies, Panchayati Raj institutions, development authorities and the concerned regional office of the MoEF ('designated offices').

Within seven days of receiving the draft EIA reports from the project proponent, the Member Secretary of the concerned SPCB has to finalise the date, time and venue for the public hearing. This information has to be advertised through a notice in one major national daily newspaper and one regional vernacular/official state language daily.[158] The notice will also inform the public about the locations where the draft EIA report and its summary will be available.[159] In 2009, in compliance with an order of the High Court of Delhi,[160] the EIA Notification was amended to include an obligation on the competent authority to inform the local public residing in areas where newspapers are not available by beating of drums and announcements on radio and television. The public has to be informed about the public hearing at least 30 days in advance, so as to be able to furnish their responses.[161]

The EIA Notification does not provide guidance with respect to scheduling of public hearings and sometimes SPCBs would schedule more than one public hearing at the same time and venue. In 2009, the High Court of Delhi highlighted the undesirability of scheduling public hearings for more than one project at the same venue and time.[162] In response, the MoEF issued an Office Memorandum to the SPCBs directing that public hearings for different projects can be held on the same date and at the same venue only if there is sufficient time provided between two hearings.[163]

All the designated offices, other than the offices of the MoEF, are required to 'widely publicize' the draft EIA report in their respective jurisdictions and to request people to send their comments to the appropriate regulator. The draft EIA report has to be made available for

[158] EIA Notification as amended by Notification, S.O. 3067 (E) , December 1, 2009, available at http://moef.nic.in/downloads/ rules-and-regulations/3067.pdf (Last visited on June, 2021), Appendix IV
[159] Ibid
[160] Utkarsh Mandal v. Union of India, W.P. (C) No. 9340 of 2009, High Court of Delhi.
[161] Supra 159
[162] Supra 161
[163] Supra 159

inspection, electronically or otherwise, during office hours till the public hearing is over.[164] The SPCBs are also expected to publicize information about the project and make the summary of the draft EIA report available for inspection in select offices or public libraries or any other suitable location. They also have to provide copies of the draft EIA reports to the designated offices.[165]

A public hearing, once announced, cannot ordinarily be postponed and the venue cannot be changed. The only exception is if an 'untoward emergency situation' occurs and the District Magistrate (or District Collector or Deputy Commissioner) recommends the postponement. In such a situation a notice regarding the postponement has to be published in the same two newspapers in which the initial notice has been published. The notice for postponement has to be prominently displayed at all the designated offices by the concerned SPCB. The Member Secretary of the SPCB then has to decide on a fresh date, time and venue in consultation with the District Magistrate (or District Collector or Deputy Commissioner). All requirements relating to notice and publicity of the hearing mentioned above would have to be repeated in full.[166]

In case the SPCB reports to the appropriate regulator that it is not possible to hold a public hearing in which local people will be able to express their opinion freely, the appropriate regulator can decide that the public consultation for the proposed project need not include a public hearing component.[167]

During the public hearing

The District Magistrate, District Collector or Deputy Commissioner,[168] assisted by a representative of the SPCB, supervises the public hearing. There have been instances where public hearing have been presided over by officials other than those prescribed under the EIA Notification.[169] Noting this practice, the MoEF has directed the SPCBs to conduct public hearings in accordance with Notification as clarifying procedural irregularities was one of the

[164] The EIA Notification originally carried an obligation on the MoEF to display the summary of the draft EIA report on its website and to make the report available for reference at a notified place during office hours in the Ministry's office in Delhi. The 2009 amendment to the EIA Notification deleted this clause.
[165] Supra 159
[166] Ibid
[167] Ibid
[168] A representative may also be sent instead to supervise the panel but he or she cannot be below the rank of an Additional District Magistrate.
[169] Aparna Pallavi, Court Orders Fresh Public Hearing for Lanco Power Plant in Wardha, October 20, 2011, available at http://www.downtoearth.org.in/content/court-orders-fresh- public-hearing-lanco-power-plant-wardha (Last visited on February 24, 2021)

causes of delay in the EC process. Although the EIA Notification states that the public hearing is held to ascertain the concerns of 'local affected persons', there is no restriction on who can attend public hearing and the Notification does not contain any qualification (such as place of residence).

In a case the Delhi High Court observed, "From the terms of the Notification dated 14th September, 2006 it seems, prima facie, that so far as a public hearing is concerned, its scope is limited and con- fined to those locally affected persons residing in the close proximity of the project site. However, in our opinion, the Notification does not preclude or pro- hibit persons not living in the close proximity of the project site from participating in the public hearing - they too are permitted to participate and express their views for or against the project"[170]

There is no quorum requirement during a public hearing and therefore, a hearing can commence with only a few participants and the presiding panel. The attendance of each person present during the hearing has to be marked. The SPCB has to arrange for video recording of the entire proceedings. A copy of the recording and the attendance sheet has to be sent along with the written record of the proceedings to the appropriate regular.[171]

A representation of the project proponent begins the hearing by presenting the summary of the draft EIA report. All persons present during the public hearing have to be given an opportunity to present their views or seek clarifications on the project from the representative. At the end, the presiding panel has to prepare a summary of the proceedings "accurately reflecting all the views and concerns" expressed during the hearing. To verify this, the summary has to be then read over to the audience explaining the contents in the local/vernacular language. The 'agreed minutes' have to signed by the presiding officer on the same day and forwarded to the concerned SPCB. Along with minutes, a statement of issues raised by the public and the comments of the project proponent has to be attached.[172]

After the public hearing

Once the hearing is over, the proceedings of the public hearing have to be conspicuously displayed at the Panchayat office where the project is located, at the office of the Zilla Parishad, the District Magistrate (or District Collector or Deputy Commissioner) and the concerned SPCB. Additionally, the concerned SPCB has to display the proceedings on its website. If there

[170] In Samarth Trust v. Union of India & Ors., W. P. (C) No. 9317 of 2009, High Court of Delhi.
[171] Supra 159
[172] Ibid

are any comments, the same can be sent to the appropriate regulator directly, and to the project proponent. The SPCB has to forward the proceedings of the public hearing to the appropriate regulator within eight days of the completion of the public hearing. The project proponent is also provided with a copy of the proceedings.[173]

Written Responses

The second component of the public consultation process is that of written responses sent to the appropriate regulator by "other concerned person having a plausible stake in environmental aspects of the project or activity". The appropriate regulator and the SPCBs have to place the summary of the draft EIA and the application submitted by the project proponent on their website and seek responses from concerned persons. This has to be done within seven days of receiving a request for conducting the public hearing. The information placed on the website cannot include confidential information, including in- formation to which the project proponent holds intellectual property rights. As mentioned earlier, the MoEF was required to place the summary of the draft EIA report on its website before the public hearing until the requirement was deleted vide the amendment to the Notification in 2009. However, this requirement remains with regard to written responses.[174]

Other than the internet, the authorities can also use other means to widely publicize the project. If any person wants to access the draft EIA report, the authorities are obliged to make the same available during office hours at a notified office. All the responses received from the public have to be forwarded as soon as possible to the project proponent.[175]

The project proponent is expected to address concerns raised during the public hearing and in the written responses by submitting either a final EIA report or a supplementary report to the draft EIA report incorporating the concerns along with an action plan and financial allocation, item-wise. The EIA Notification, in one place, uses the phrase 'material environmental concerns' indicating that the project proponent has to focus on a particular type of concern – that is, environmental – raised during the public hearing and not respond to other concerns (for example, social and economic impact). But at other place in the Notification the word 'concerns' has not been qualified. The 2009 amendment to Appendix IV of the Notification (public hearing process) also does not qualify the word 'concerns'. In light of this a fair

[173] Ibid
[174] Ibid
[175] EIA Notification, S.O. 1533, September 14, 2006, available at http://www.moef.nic.in/ legis/eia/so1533.pdf (Last visited on February 19, 2021).

argument may be made that people can raise concerns that are related to project – even if they are not strictly environmental concerns – during the public consultation process. For instance, the extent of loss of livelihoods and resettlement policy for project affected persons may not relate to the environment directly, but are certainly concerns arising from the impact of the project on the surrounding environment.[176]

4.4.4 Appraisal and Initial Environmental Examination

Once the project proponent has submitted the revised EIA report and the Environment Management Plan ('EMP') after the public consultation stage, the fourth stage of appraisal begins. During this stage the EACs/SEACs undertake a 'detailed scrutiny' of the EC application and other documents including the final EIA report and the proceedings of the public hearing. While describing the role of the EAC, the High Court of Delhi has observed: "It is in essence a delegate of the MoEF performing an "outsourced" task of evaluation. The decision of the EAC may not necessarily be binding on the MoEF but is certainly an input into the decision making process. Considering that it constitutes the view of the expert body, its advice would be a valuable input."[177]

The appraisal has to take place in a transparent manner and an authorized representative of the project proponent may be invited to provide information if necessary about the project. The EACs/SEACs may then recommend the project for grant of EC based on certain conditions or reject the same, along with reasons. An application placed before the EAC/SEAC has to be appraised within sixty days from the day on which it is received along with requisite documents/ details. The minutes of the EAC/SEAC meeting have to be prepared within five days and uploaded on the website of the appropriate regulator. If the EC has been granted, the minutes of the meeting must provide the safeguard/conditions that have been imposed on the project. If the EC application is rejected, reasons for rejection have to be included in the minutes.[178]

The appraisal process, like the scoping process, is significantly affected by the nature and extent of consideration given to each project proposal by the EAC/SEAC. The problem is in fact magnified as the appraisal process is expected to be an independent, unbiased and technically sound assessment of the available information on the proposed project; and to

[176] Supra 159
[177] Utkarsh Mandal v. Union of India, W.P. (C) No. 9340 of 2009, High Court of Delhi
[178] Supra 176

weigh the justifications for the project against countervailing factors such as public opposition, potential environmental damage and lack of clear social benefits.[179]

The Final Decision (Grant or Rejection of Prior Environmental Clearance (EC))

The rules regarding Environmental Clearance are enshrined under EIA Notification 2006, Paragraph 8 and sub-paragraphs (i) to (vi) are as follows:

The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environmental Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.[180]

The regulatory authority shall normally accept the recommendations of the expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty-five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the applicant. The Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be final and conveyed to the applicant by the regulatory authority concerned within the next thirty days.[181]

In the event that the decision of the regulatory authority is not communicated to the applicant within the period specified in sub-paragraphs (i) or (ii) above, as applicable, the applicant may proceed as if the environment clearance sought for has been granted or denied by the regulatory

[179] Ibid
[180] Ghosh (n 125).
[181] Ibid

authority in terms of the final recommendations of the Expert Appraisal Committee Concerned. On expiry of the period specified for decision by the regulatory authority under paragraph (i) and (ii) above, as applicable, the decision of the regulatory authority, and the final recommendations of the Expert Appraisal Committee concerned shall be public documents.

Clearance from the other regulatory bodies or authorities shall not be required prior to receipt of applications for prior environmental clearance of projects or activities, or screening, or scoping, or appraisal, or decision by the regulatory authority concerned, unless any of these is sequentially dependent on such clearance either due to a requirement of law, or for necessary technical reasons. Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following principles of natural justice.[182]

Post Clearance Procedure

Before we could analyse the post clearance procedure under EIA let us consider the Organisational Set up for EIA Appraisal: The Impact Assessment Divisions: To deal with projects of different sectors, the ministry has an environmental impact assessment wing, comprising three impact assessment divisions with the following responsibilities:

1. Impact Assessment Division – I (IA-I): Responsible for river valley projects: major irrigation projects; and hydro power projects.

2. Impact Assessment Division – II (IA-II): Responsible for industrial projects, thermal power projects; and mining projects.

3. Impact Assessment Division – III (IA-III): Responsible for ports and harbour projects; tourism projects; human settlements; projects in ecologically fragile areas; and communication projects.

A multi-disciplinary staff is recruited in the respective divisions for scrutiny of the projects. Site visits wherever required, interaction with the project authorities and consultations with

[182] The MoEF cancelled the EC granted to M/s Sesa Goa Ltd. for iron ore mining in villages Pirna and Nadora in District North Goa, Goa due to "concealment of data in respect of vital parameters of the EIA study"

experts on specific issues, as needed for analysis of various aspects are also done to ensure accurate appraisals.

In addition to the Impact Assessment Divisions, the Forest Conservation Division in the ministry examines projects that involve diversion of forest land for non-forest uses. Single-window clearance has been introduced for the purpose, although separate letters are issued for the two sections. Further, to elicit multi-disciplinary inputs for project appraisal, MoEF has constituted environmental appraisal committees which should consists of experts from various disciplines like water resources management, pollution control, forestry, ecology, landscape planning etc. Membership of these committees must include specialists from the organizations concerned and from individuals who are knowledgeable about the projects under consideration (as mentioned in Schedule III of the Notification). The post clearance procedures are as follows:

Validity of Environment Clearance

The validity of the EC refers to the time period from the date on which the EC has been granted to the date on which the production operations commence or in case of construction activities, all construction work is complete. The EC is valid for 10 years for river valley projects. For mining projects the EC is valid for the entire life of the project, as determined by the EAC/SEACs, subject to a maximum of thirty years. The EC is valid for five years for the rest of the categories of projects. In case of Area Development projects, the validity period has to be calculated from the date on which the EC is granted to the date on which the developer, as the project proponent, has completed all the activities it is responsible for.[183]

Publicizing the Environmental Clearance (EC)

Originally, the EIA Notification did not contain any provision requiring the grant of the EC to be publicized in a time-bound manner either by the regulatory authorities or by the project proponent. In a significant amendment to the Notification in 2009, duties were cast on several actors to ensure that information about the grant of the EC is disseminated to the public. The project proponent has to permanently display the EC that has been granted on its official website. The appropriate regulator has to also place the EC on a government portal. For Category A projects, the project proponent has to advertise, at its own costs, the grant of the EC and the safeguards and conditions in case of Category B projects, the project proponent has

[183] Supra 159

to advertise the grant of the EC in two local newspapers and provide a link to the MoEF website where information about the EC would be available. The project proponent has to submit copies of the EC to heads of local bodies, Panchayats and municipal bodies and other relevant government offices. These bodies/offices have to display the EC for 30 days from the date of receiving the EC. The date on which the EC is made available in the public domain is particularly important from the standpoint of a potential litigation challenging the decision. A June 2009 circular issued by the MoEF states that the EC letter has to include a condition requiring the project proponent to also send the EC letter to local NGOs which may have sent suggestions/representations, while processing the project proposal.[184]

Compliance and monitoring

It shall be mandatory for the project proponent to submit half-yearly compliance reports in respect of the stipulated prior environmental clearance terms and conditions in hard and soft copies to the regulatory authority concerned, on 1st June and 1st December of each calendar year. All such compliance reports submitted by the project proponent shall be public documents. Copies of the same shall be given to any person on application to the concerned regulatory authority. The latest such compliance report shall also be displayed on the web site of the regulatory authority.[185]

Transferability of Environmental Clearance (EC)

A prior environmental clearance granted for a specific project or activity to an applicant may be transferred during its validity to another legal person entitled to undertake the project or activity on application by the transferor, or by the transferee with a written "no objection" by the transferor, to, and by the regulatory authority concerned, on the same terms and conditions under which the prior environmental clearance was initially granted, and for the same validity period. No reference to the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned is necessary in such cases.[186]

This is unlike the approval to undertake non-forest activities in forest areas under the Forest (Conservation) Act, 1980. This approval is granted to the concerned state government for a particular user agency and cannot be transferred to another user agency.

[184] Ibid
[185] Ibid
[186] Ibid

The possibility of transferring the EC could give rise to a situation in which a company with a record of civil and environmental rights violations could 'buy' an EC from the company which was initially granted the EC. As a result, the transferee's poor record which otherwise could have been a pertinent factor in the appraisal process, would become irrelevant.

Consequences of violation

The requirements under the EIA Notification are often not met either in letter or spirit. With the exception of Paragraph 8(vi) on concealment of information, the EIA Notification does not specify the consequences of the violations. As the EIA Notification is issued under the EP Act, contravention of any provision of the Notification would attract Sec.15 of the EP Act.

The MoEF has issued Office Memoranda on the issue of commencement of construction/ expansion/modernization activities before the grant of necessary EC. Once a complaint is filed, the MoEF and EAC (or the SEIAA and the SEAC) have to verify veracity of the complaint. If it is found that the complaint is valid, the project would be delisted and the project proponent would be required to submit a formal resolution of the Board of Directors (or equivalent management) stating that the violation would not be repeated. This has to be done within sixty days. If the project proponent does not respond within sixty days, the project file would be closed and future action would be taken only if a proponent applied de novo. At the same time, the State Government has to invoke its powers under Sec.19, Environmental Protection Act to take necessary action under Sec.15, EP Act. It has to then submit evidence of credible action taken to the MoEF. Information about the project proponent and its written commitment would have to be placed on the website of the MoEF.[187]

Directions will also be issued by the MoEF under Section 5, EP Act to suspend activities till appropriate EC is obtained. If such a direction is violated, action will be taken against the project proponent and the EC application will be summarily rejected. Once these conditions are met, the project will again be considered at the appropriate stage. However, the factum of violation would be a material consideration during the decision making process.[188]

The High Court of Bombay in Gram Panchayat Navlakh Umbre v. Union of India & Ors.,[189] held – "The issue as to whether an applicant for environmental clearance has acted in breach

[187] Ghosh (n 125).
[188] Ibid
[189] Gram Panchayat Navlakh Umbre v. Union of India & Ors., 2012(114) BOM LR 2695

of the condition which prohibits work prior to the receipt of environmental clearance is a material consideration in determining whether environmental clearance should be granted. A project proponent who seeks an environmental clearance under the law must demonstrably act in accordance with law.… That issue cannot be disassociated from the grant of an environmental clearance and a clearance could not have been granted without a definitive conclusion, arrived at in accordance with the principles of natural justice, on the issue of breach".

Even if the project proponent has met the conditions for the project to be listed again, the project proponent cannot by right expect the project to be considered for grant of EC. The MoEF or the SEIAA reserves the right to entirely reject the project proposal.

Grievance Redressal Mechanism

The grant of an EC or rejection of an application for EC by the appropriate regulator may be challenged in an appeal before the NGT. According to Sec.16 of the National Green Tribunal Act, 2010 ('NGT Act'), 'any person aggrieved' by such order – granting or rejecting an EC – can approach the NGT within thirty days from the date on which the order has been communicated to the person. The NGT in Save Mon Region Federation & Anr. v. Union of India & Ors,[190] while relying on Paragraph 10(i) of the EIA Notification, held that "the earliest of the following three dates: 1)the date on which the full order could be accessed on, and downloaded from, the website of the MoEF; 2)the date on which the full order could be accessed on, and downloaded from, the website of the project developer and was also published in the newspapers by the developer in accordance with the EIA Notification; and 3)the date on which local governmental authorities, such as the panchayats, displayed the entire EC order".[191] Issues relating to compliance with EC conditions may also be raised before the NGT. Under its original jurisdiction, the NGT has the power to hear "civil cases where a substantial question relating to the environment" is involved, and which relate to the implementation of any of the seven legislations listed in Schedule I to the NGT Act, Schedule I includes the EP Act. Consequently the NGT has jurisdiction to adjudicate cases relating to the implementation of the EIA Notification. Although the NGT Act provides a statutory appeal to the NGT against

[190] M.A.No.104 of 2012 in Appeal No.39 of 2012, National Green Tribunal, March 14, 2013, available, at http://www.greentribunal.in/judgment/104-2012(MA)_14Mar2013_final_order. pdf (Last visited on June 3, 2021).
[191] Shibani Ghosh, Case Note: Access to Information as Ruled by the Indian Environmental Tribunal: Save Mon Region Federation v. Union of India, 22 Review of European Community & International Environmental Law 202-206 (2013).

the grant or rejection of an EC application, it does not (and cannot) entirely exclude the jurisdiction of the High Courts. The writ jurisdiction of the High Courts under Article 226 of the Constitution of India may still be invoked for issues relating to the implementation of the EIA Notification, particularly in relation to the enforcement of the fundament right under Article 21 of the Constitution.[192]

4.5 The Environment Impact Assessment Notification, 1994 and amendments

In India for the first time EIA was conducted in the year 1977-78 to evaluate of River Valley Projects and later it was extended to mining, Industries, thermal power, port and harbors, atomic power, rail and road highways, bridges airport and communications, etc. The notification of 1994 brought a significant change in the functioning of Government including private sectors for environmental activities. The Central Government directed that on and from the date of publication of this notification in the Official Gazette, expansion or modernization of any activity (if pollution load is to exceed the existing one, or new project listed in Schedule I to this notification), it shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure hereinafter specified in this notification. The Central government exercised the power vested under the Environment (Protection) Act, 1986. Public hearing was included, for the first time, as an essential requirement for clearing large projects (UNEP, 2003). The EIA provision was hence made a mandatory requirement under the Environment Protection Act, 1986 with the following four objectives:

- forecast the environmental impact of projects proposed

- Discover methods to mitigate adverse impacts;

- Formulate the projects to suit local environment;

- Present the predictions and alternatives to the decision-makers.

The notification provided the procedure to obtain Environmental Clearance (EC) for such projects, and also provided for the only element of public participation that there is in the entire process, as such public input is critical, among other things, for example, to ensure that the sustenance of local people in the project area are not at stake.

[192] Gajubha (Gajendrasinh) Bhimaji Jadeja & Ors. v. Union of India & Ors., W.P. (PIL) No. 21 of 2013, High Court of Gujarat

Some of the key amendments to this notification are discussed as follows:

Amendment on 10th April, 1997:

The process of public hearing was introduced as part of the environmental clearance process and the SPCBs were assigned to carry out public hearing to get the views and concerns of the affected community and interested parties for the proposed project. It was also entrusted with forming a committee to ensure fair representation in the public hearing process.

Amendment on 13th June, 2002:

This amendment eased out process by exempting many industries from the EIA process or from the entire environment clearance process on the basis of level of investment and their potential impact. It exempted pipeline and highway projects from preparing the EIA report, but they need to conduct public hearings in all the districts through which the pipeline or highway passes. A number of projects were granted full exemption if the investment was less than Rs 100 crore for new projects and less than Rs. 50 crore for expansion/modernization projects. It is pertinent to mention that majority of industries exempted had a very high social and environmental impact even if the investment was less than Rs 100 crore. For instance, in case of Hydro power projects, irrespective of the investment, there will be social impacts due to displacement. No EIA was required for modernization projects in irrigation sector if additional command area was less than 10,000 hectares or project cost was less than Rs. 100 crore.

Amendment on 7th May 2003:

The notification was amended to expand the lists of activities involving risk or hazard. In this list, river valley projects including hydro power projects, major irrigation projects and their combination including flood control project except projects relating to improvement work including widening and strengthening of existing canals with land acquisition up to a maximum of 20 metres, (both sides put together) along the existing alignments, provided such canals does not pass through ecologically sensitive areas such as national parks, sanctuaries, tiger reserves and reserve forests.

Amendment on 4th August 2003:

Any project sited in a critically polluted area, within a radius of 15 kilometres of the boundary of reserved forests, ecologically sensitive areas, which include national parks, sanctuaries,

biosphere reserves; and any State, had to acquire prior environmental clearance from the Central Government.

Amendment on September 2003:

Site clearance was made mandatory for green field airport, petrochemical complexes and refineries. No public hearing was required for offshore exploration activities, beyond 10 km from the nearest habitation, village boundary, goothans and ecologically sensitive areas such as, mangroves (with a minimum area of 1,000 sq.m), corals, coral reefs, national parks, marine parks, sanctuaries, reserve forests and breeding and spawning grounds of fish and other marine life.

Amendment on 7th July, 2004:

It made EIA mandatory for construction and industrial estate.

Amendment on 4th July 2005:

The projects related to expansion or modernization of nuclear power and related project, river valley project, ports, harbours and airports, thermal power plants and mining projects with a lease area of more than 5 hectares could be taken up without prior environmental clearance. The Central Government in the Ministry of Environment and Forests may, depending upon each case, in public interest, relax the prerequisite of obtaining prior environmental clearance and may, after satisfying itself, grant temporary working permission on receipt of application in the prescribed format for a period not exceeding two years, during which the proponent shall obtain the requisite environmental clearance as per the procedure laid down in the notification. The grant of temporary working permission would not necessarily imply that the environmental clearance would be granted for the said project.

It is suggested that the above mentioned amendments have voted for prejudiced view of MoEF towards industries. This criterion of exempting projects on the basis of investment limits had established an escape-gate for various projects for which there was a necessity to effectively check their impact on environment. To illustrate, until 2002, projects above Rs 50 crores needed clearance but this was amended to Rs 100 crores. The Mahadayi Diversion Scheme in the ecologically sensitive Western Ghats region is a good example to this. The Karnataka State Government proposed to build two earthen dams on the Bhandura & the Kalasa Nalas (streams) of the Mahadai to divert water to the east flowing Malaprabha. Both these projects, had the combined cost over Rs. 90 crores, which would have made it necessary to obtain environment

clearance had the amendment not occurred. As the dams were shown as two independent projects, it bypassed the environment clearance procedure merely on the basis of an investment limit.

There was a wide spread belief that the EIA notification, 1994 along with its subsequent amendments was not able to address all the concerns and had several loopholes. The EIA movement in India has been severely disfigured by the consistent amendments over the years affecting the clarity of this tool among the law abiders. It has become a formality rather than an obligatory measure to preserve the environment. The experience with these assessments has been far from satisfactory. EIA has been conducted in an incomplete and inadequate manner where the projects were granted permission, despite criticism and protests at large.

4.6 The Environment Impact Assessment Notification, 2006

MoEF introduced the EIA 2006 notification as a consequence of the recommendations of the Govindarajan Committee on 14th September, 2006. The objective of this notification was to address the limitations in the old EIA Notification (1994). Various modifications were made taking into account the feedback from diverse stakeholders. It was constituted to examine the procedures for investment approvals and project implementation. The aim of the notification was to curb the delay in projects caused by the environment clearance and that the cumbersome procedures are modified.[193]

One major change effected by the 2006 EIA regulation was an increase in the number of projects requiring environmental clearance. Apart from this, the notification engaged states in granting clearance for projects mentioned in Schedule I, and mandated the formation of a state-level appraisal committee (SEAC), the recommendations of which were to be considered before granting approval. The responsibility of conducting public hearings was given to the pollution control boards instead of the proponents of the project.[194]

In the Samarth Trust Case[195], the Delhi high court had considered EIAs "a part of participatory justice in which the voice is given to the voiceless and it is like a jan sunwai, where the community is the jury." The 2006 Notification aimed at bringing in more number of projects within the purview of the environmental clearance process. As a result, a revised list of projects

[193] Sandhu Brea &Kaur Varanpreet, 'Expedition Of Environment Impact Assessment In India : Where Do We Stand In 2020 ?' (2020) 3 International Journal Of Law Management & Humanities 1180.
[194] Ibid
[195] Samarth Trust and Anothers v. Union Of India and others, Writ Petition (Civil) No. 9317 of 2009 on 28 May, 2010

and activities has been redrawn that requires prior environmental clearance. There is no categorization of projects requiring EIA based on investment. The size or capacity of the project is the determining factor for the clearance to be received by the central or state government. Decentralization power to the State Government is the major point of difference in the EIA Notification 2006.

Environment Impact Assessment Notification of 2006 has decentralized the environmental clearance projects by categorizing the developmental projects in two categories, i.e., Category A (national level appraisal) and Category B (state level appraisal).

- Category A projects are appraised at national level by Impact Assessment Agency (IAA) and the Expert Appraisal Committee (EAC) and Category B projects are apprised at state level.

- State Level Environment Impact Assessment Authority (SEIAA) and State Level Expert Appraisal Committee (SEAC) are constituted to provide clearance to Category B process.

After 2006 Amendment the EIA cycle comprises of four stages i.e. screening, scoping, public hearing and appraisal. Categories A projects require mandatory environmental clearance and thus they do not undergo the screening process. Category B projects undergo screening process and they are classified into two types.

- Category B1 projects (Mandatorily requires EIA)
- Category B2 projects (Do not require EIA).

Earlier all the projects under schedule 1 went to the Central Government for environmental clearance. However, as per the 2006 notification, significant number of projects will go to the state for clearance depending on its size/capacity/area. For this, the notification has made a provision to form an expert panel, the Environment Appraisal Committees (SEAC) at the State level. In reality, however, the 2006 notification failed to strengthen the public consultation process – which is one of the key stages in an EIA.

4.7 Critical analysis of the EIA Notification, 2006.

This section discusses some of the problematic aspects in the design and implementation of the Notification, particularly, the power dynamics between the Centre and the States, the poor quality of the assessment reports, problematic means by which public consultations are held

and weak appraisal and monitoring mechanisms.[196] The government has responded to some extent to calls for reform – some even arising from the judiciary.

Power to regulate and the federal set up

The EP Act gives extensive powers to the Centre to regulate actions which have an impact on the environment and to initiate measures for the protection of the environment. A fair question that then arises is – whether he EIA Notification issued under the EP Act strikes an appropriate balance of power between the Centre and the states. There is no doubt that the regime of regulating the development and construction of projects through the EC process affects the interests of states - commercial and otherwise. To what extent, then, should states have a say in the process, i.e. how decentralised should the process be? Or are there countervailing interests that are served if the Centre controls the decision making?

When the EIA Notification was being drafted, one of the objections raised by environmental groups was the manner in which projects were categorized in the Schedule. According to some commentators, placing a large number of projects in Category B risked prejudiced decision making at the state-level, as states, keen to encourage investment, would clear projects indiscriminately.[197] Others found the Notification to reduce "the meaningfulness of decision making levels across all projects: in the case of category A projects, the role of the State and local governments is eliminated, and in the case of category B projects, the role of the central and local governance structures is eliminated". Objections were also raised by various state governments which believed that the proposed EIA Notification did not devolve adequate powers to the states and made the process too cumbersome. Some of their objections lent credence to the apprehension that states would like the EC process to be expedited, and consequently less rigorous.[198]

The division of powers under the EIA Notification has been discussed above. Category B projects are regulated at the state level by SEIAAs – unless they are subject to the general conditions. During the screening stage, the SEACs identify Category B projects which do not have to undergo Extensive Impact Assessment studies and therefore have a less cumbersome clearance process. SEIAAs and SEACs are constituted by the Central Government – but on the

[196] Ghosh (n 125).

[197] Manju Menon & Kanchi Kohli, Equations' Critique on Environmental Impact Assessment Notification, 2006, February 2007, available at http://www.equitabletourism.org/files/fileDoc- uments373_uid10.pdf (Last visited on February 24, 2021)

[198] Kanchi Kohli, States Unhappy with Centralised Clearances, June 14, 2006, available at http:// www.indiatogether.org/2006/jun/env-eiastates.htm (Last visited on February 24, 2021)

nomination/ recommendation of the relevant state governments. Moreover, these bodies are provided logistical and financial support by the respective state governments. Thus the state governments, through their nominees, do have a very critical role in the regulation of Category B projects.

But the Central Government can whittle down the state's powers by amending the Schedule to bring more projects under Category A.[199] It can also introduce various procedural requirements which increase the administrative burden on the state government machinery. For instance, pursuant to a judgment of the Supreme Court,[200] the Centre issued an Office Memorandum in May 2012 directing the SEIAAs to regulate all leases for minor minerals with lease area upto 50 hectares, including those with an area less than 5 hectares. Mining projects with lease area less than 5 hectares were previously excluded from the ambit of the EIA Notification.

At the same time, the Centre can also amend the Notification to increase the state governments' regulatory jurisdiction (and reduce the Centre's) by adding projects under Category B or to reduce the administrative burden on state governments. An amendment to the EIA Notification in December 2009 placed coal mining projects with lease area between 5 to 150 hectares in Category B. Originally all mining projects, including coal mining, with area above 50 hectares were Category A projects and required clearance from the Centre.

Another set of state-level bodies playing an important role is the state government constituted SPCBs which facilitate public hearings. However, the role of the SPCBs under the EIA Notification is essentially that of a moderator and to some extent that of a monitor – with limited regulatory powers. Therefore, while there are other ways in which SPCBs can regulate industries (such as, through approvals to be issued under the Water Act and the Air Act)[201], the EIA Notification provides limited avenues.

There is another concern of federalism in the EC process that has more to do with party politics than the design of the Notification. If the coalition parties in power at the Centre are not in power in the states, allegations of bias have been made. The Biju Janata Dal ('BJD') – the party in power in Odisha and not a coalition partner of the UPA – has accused the UPA of giving Odisha 'step motherly' treatment by denying clearances to two major infra- structure projects that are both Category A projects in the State. According to the party, the Centre while stalling

[199] Environment (Protection) Act, 1986, Section 3(2)(v)(1)

[200] Deepak Kumar v. State of Haryana & Ors., (2012) 4 SCC 629.

[201] Water (Prevention and Control of Pollution) Act, 1974, Section 25 and Air (Prevention and Control of Pollution) Act 1981, Section 19

these projects in Odisha, has permitted the Polavaram dam project in neighbouring Andhra Pradesh, even though it would submerge many villages in Odisha.

Centre-state relations in India are often strained[202] and the EC process is no exception. State governments would like to retain as much regulatory control as possible on industrial and developmental projects within their jurisdiction. This is not surprising. But it could be problematic if the decision making process is faulty, biased and geared to run counter to the aims and objectives of the EP Act and the EIA Notification. If it is difficult to insulate state governmental institutions from external, particularly political, pressures then perhaps it is advisable to limit their discretionary powers and give Centre the final say, in the interest of protecting the environment. While Central regulatory institutions may be unaffected, in most part, by local pressures, and thus better placed to give an unbiased decision, it would be wrong to assume that they are altogether immune from extraneous factors. It is also difficult to make the claim that the institutions at the Centre are better equipped or have greater ac- cess to technical expertise than their State-level counterparts.

Given the regulatory experience thus far, I remain relatively agnostic on where the balance should lie between the Centre and the states. Perhaps the focus instead should be on adopting a strong regulatory ethic at both levels that is sufficiently robust to meet the objectives of the law (EIA Notification, in this case) and to merit stakeholder confidence. As the discussion below illustrates, there are several features of the EC process which require redesign or reinforcement in order to meet these parameters.

Quality of the EIA Mechanism

The EIA studies are a significant part of the information base in the EC process. An EIA report submitted by a project proponent must include an analysis of the potential impacts and benefits of the proposed project, pro- posed mitigation measures, possible alternative technology and sites for the project, and an environmental monitoring plan. However, as the following discussion will illustrate, the quality and credibility of reports submitted by project proponents is often suboptimal, and reliance on information provided in such reports can lead to gravely erroneous decisions**.**

1. EIA report is paid for by the project proponent

The EIA reports are prepared by consultants engaged by the project proponents. There are many private and government agencies which pro- vide such services at a fee paid by the proponent. Herein lies perhaps the most crucial problem with the impact assessment process –

[202] Govinda M. Rao & Nirvikar Singh, Natural Resources in Political Economy of Federalism in India (2005).

an entity hired by the project proponent can hardly be expected to prepare an entirely unbiased impact assessment report. The EIA report is, for this reason, a less than credible source of data as the consultant may downplay the adverse aspects of the project. This problem is particularly magnified in the Indian context as it is unlikely that any other stakeholder would have the wherewithal to commission an alternative impact assessment and even more unlikely that such an entity would have access to accurate information about the proposed operations.

The Supreme Court of India has also noted the undesirability of this arrangement. In T.N. Godavarman v. Union of India ('NOIDA Park case'), the Court in its judgment observed:

"We would also like to point out that the environmental impact studies in this case were not conducted either by the MoEF or any organization under it or even by any agencies appointed by it. All the three studies that were finally placed before the Expert Appraisal Committee and which this Court has also taken into consideration, were made at the behest of the project proponents and by agencies of their choice. This Court would have been more comfortable if the environment impact studies were made by the MoEF or by any organization under it or at least by agencies appointed and recommended by it"[203]

A report published by the Planning Commission of India in 2007 recommended – "it would be desirable for an independent agency, perhaps the MoEF, to select the consultant, sponsor the studies and pay for them".[204] However, in 2009 and 2010, when there was a flurry of proposals from the MoEF to bring changes to the institutional set up under the EIA Notification, an independent regulator was proposed to improve the appraisal of project proposals and monitoring of projects, but not to undertake independent impact assessment.[205] This was an anomalous course correction suggested by the MoEF – improved appraisal and monitoring mechanisms may be a step in the right direction but the underlying problem of unreliable impact assessment data can hardly be ignored.

Then in 2011, the Supreme Court directed the Central Government to "appoint a National Regulator for appraising projects, enforcing environmental conditions for approvals and to

[203] T.N. Godavarman v. Union of India, (2011)1 SCC 744. During the hearing of a case concerning illegal limestone mining by a French company in Meghalaya, the Supreme Court commented that the system was akin to "paying the piper to call the tune". See Krishnadas Rajagopal, Cos Pay Experts for Favourable Green Impact Report: SC, The Indian Express March 5, 2011

[204] Planning Commission of India, Report of the Task Force on Governance, Transparency, Participation & Environmental Impact Assessment and Urban Environmental Issues in the Environment and Forests Sector for the Eleventh Five year Plan (2007-2012), 2007, available at http://planningcommission.nic.in/aboutus/committee/wrkgrp11/tf11_govnc.pdf (Last visited on April 24, 2021)

[205] MoEF, Discussion Paper for Comments: Towards Effective Environmental Governance: Proposal for a National Environment Protection Authority, September 17, 2009, available at http://www.moef.nic.in/downloads/home/NEPA-Discussion-Paper.pdf (Last visited on February 24, 2021)

impose penalties on polluters" under the provisions of the EP Act.[206] As the Central Government failed to comply with this direction, the Supreme Court on January 6, 2014 directed it to do so by March 31, 2014.[207] While the exact design of the proposed regulator is not yet known, the Court's emphasis on the regulator's appraisal and monitoring role appears to exclude the function of independent impact assessment – unless the term 'appraisal' is so broadly interpreted as to include first-level assessment of the project (and not merely second-level appraisal of the EIA studies submitted)

Preference for 'rapid EIA'

A rapid EIA report involves impact assessment based on data of one season (other than the monsoon), and a comprehensive EIA report makes an assessment based on all seasons' data. The two types of EIA reports are not mentioned in the EIA Notification but are defined by the MoEF in its 2001 EIA Manual.[208] According to the EIA Manual, a project proponent is permitted to submit a rapid EIA on the pre-condition that it does not compromise on the quality of decision making. The Manual also states that a comprehensive EIA report would generally be a 'more efficient approach'. As the Manual is ambiguously worded, and the EIA Notification itself does not require a comprehensive EIA report, most project proponents choose to commission the less time-consuming rapid EIA report, which in many cases is an inadequate assessment.[209]

The environmental impact of an activity often varies according to weather conditions. For instance, the wind direction may change over seasons in a region. As a result, the spatial impact of an industry's emissions would naturally vary. A rapid EIA report does not capture such variations in impact. Unfortunately, project proponents continue to exploit this regulatory ambiguity by preparing EIA reports in the months most favourable to them. The 2007 report of the Planning Commission had identified the need to discourage 'quick EIAs' and recommended guidelines to require biodiversity profiles to be done over at least one year.

Even the High Court of Himachal Pradesh was constrained to observe that it was time that the MoEF framed guidelines as to the projects which could be granted EC based on a rapid EIA and those which would require a longer term detailed study. However, the MoEF is yet to issue any order or guidelines in this regard.[210]

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[206] Lafarge Umiam Mining Private Limited v. Union of India &Ors., (2011) 7 SCC 338.

[207] T.N. Godavarman v. Union of India & Ors., W.P. (C) No. 202 of 1995, Supreme Court of India.

[208] MoEF, Environment Impact Assessment- A Manual, January, 2001, available at http://envfor.nic.in/divisions/iass/eia/Cover.htm (Last visited on February 24, 2021).

[209] Ibid

[210] Supra 198

Lack of cumulative impact assessment

EIA reports only look at the impact of the proposed project as a stand-alone entity, and not as one among many sources of environmental damage. A preferred approach is the cumulative impact assessment that looks at the aggregate environmental impact of multiple projects/ activities in an area.[211] The EIA Notification requires project proponents to provide information about the cumulative effects of the proposed project on account of its proximity to existing or planned projects – but only in a pro forma manner as a question in Form 1. The question is often answered cryptically by project proponents without any substantive cumulative impact studies. At the appraisal stage, EACs can recommend such studies before considering the project for clearance. On the few occasions when the EACs have made such recommendations, they have been in diluted form. The lack of a mandatory requirement for cumulative impact assessment – particularly for projects proposed in dense industrial areas – is a serious lacuna in the EIA Notification.[212]

The lack of cumulative impact assessment has been a concern agitated before the NGT on several occasions. In a case concerning an iron ore mining project in Maharashtra, one of the main issues raised was that there were four mining projects proposed in the same area and the mine in question was in close proximity to a school, a temple and human habitation. However, the impact of the four mines cumulatively had not been considered. The NGT, in its final judgment, directed the EAC to re-examine the project in light of a fresh impact assessment report of the cumulative environmental impact of all the mines.[213]

In another judgment, the NGT struck down the EC granted to a thermal power plant project in Chhattisgarh. Inter alia, the Tribunal found that the MoEF, prior to granting the approval, had "failed to anticipate probable ill impact of the project, in conjunction with the pollution level caused due to the other projects already existing in the surrounding area".[214] In this case, the proposed power plant was in close proximity to three other power plants, five ash ponds, and to the industrial town of Korba – which had been declared the fifth most critically polluted

[211] Asha Rajvanshi et al., Assessment of Cumulative Impacts of Hydroelectric Projects on Aquatic and Terrestrial Biodiversity in Alaknanda and Bhagirathi Basins, Uttarakhand, 2012, available at http://www.indiaenvironmentportal.org.in/files/file/SEA-Hydro-Report.pdf (Last visited on July 5, 2021).

[212] Shripad Dharmadhikary, River Basin Studies: A Half-Hearted Attempt, June 16, 2009, available at http://www.indiatogether.org/2009/jun/env-basin.htm (Last visited on February 24, 2021).

[213] Sarpanch Gram Panchayat, Tiroda & Ors. v. MoEF & Ors., Appeal No. 3 of 2011, National Green Tribunal, September 12, 2011, available at http://www.greentribunal.gov.in/judgment/3-2011(Ap)_12sept_final_order.pdf (Last visited on February 24, 2021)

[214] Jeet Singh Kanwar & Anr. v. Union of India & Ors., Appeal No. 10 of 2011 (T), National Green Tribunal, April 16, 2012, available at http://www.greentribunal.in/judgment/10- 2011(T) 16 April 2013_final_order.pdf (Last visited on February 24, 2021).

industrial cluster in India. Neither the EAC in its appraisal, nor the MoEF before granting approval, considered the cumulative impact of all these developments along with the proposed project.

The MoEF has recently acknowledged the significance of cumulative impact assessment. It has commissioned cumulative impact assessment studies for hydroelectric projects on certain river basins.[215] An Office Memorandum issued in May 2013 states that when a second project comes up on a river basin, "it should be incumbent on the developer of the second/other project(s) to incorporate all possible and potential impact of other project(s) in the basin to get a cumulative impact assessment done". It is further stated that the requirement of conducting such a study has to be incorporated in the ToRs itself. It remains to be seen how rigorously this condition will be implemented.

Poor quality of draft EIA reports

The EIA Notification does not provide guidance regarding the required 'quality' of a draft EIA report and the extent to which a final EIA report can deviate from the draft version. As mentioned above, a draft version of the EIA report is presented to the public before the public consultation process commences. The project proponent is then expected to address the 'material concerns' raised during the consultation process and to submit a final report for appraisal to the regulatory authority. This course of action is deeply problematic for two related reasons – first, that the public forms an opinion about the proposed project based on an impact assessment report which may be incomplete and/or inaccurate; and second, since the final EIA report is not available to the public before appraisal, the information provided by the project proponent in the final EIA report is not independently verifiable. It is not uncommon for project proponents to introduce new information in the final EIA report. Sometimes, this could be in response to concerns raised during the public consultation process but in such instances, the public does not get an opportunity to review this information and consider the same in a meaningful manner.

In Ossie Fernandes v. Union of India,[216] the NGT found that the draft EIA report prepared before the public consultation for a thermal power plant in Tamil Nadu had 'significant omissions' when compared to the final EIA report. The Tribunal observed that the fact that the final EIA report was not available for public perusal could "allow all mischief to be done by the project proponent". A day after this judgment, in a different case, the NGT made certain

[215] Supra 212

[216] Appeal No. 12 of 2011, National Green Tribunal, May 30, 2012, available at http://www.green-tribunal.gov.in/judgment/12-2011(AP)_30 May 2012_final_order.pdf

suggestions to the MoEF regarding draft EIA reports, including evolving a system of verifying the correctness of a draft EIA report, ascertaining that there are no drastic variations between the draft and the final report and placing the final EIA report in the public domain before the EC is granted. Till date, the MoEF is yet to implement these suggestion.

Incidents of plagiarism and inaccurate impact assessment

EIA consultants hired to prepare EIA reports have been found to plagiarise material from EIA reports of other projects, including inaccurate and/or incomplete assessments.[217] Needless to say, such actions are unethical and unprofessional and more importantly, deeply worrying as the value of the entire impact assessment process can justifiably be questioned.

In 2006, a bauxite mining project in Maharashtra was granted EC by the MoEF. It was later found that the EIA report submitted by the project proponent had portions copied from a report prepared for a Russian bauxite mining project.[218] Several variables such as surface water quality, precipitation, bird and mammal densities, number of species and impacts of the project were copied verbatim from the earlier Russian report. In another instance, in 2011, it was found that parts of an EIA report for a bulk drug manufacturing plant in Andhra Pradesh were copied from an EIA report of a sponge iron plant. The plagiarism was not difficult to detect. The EIA consultant had not deleted certain references to a sponge iron plant in the drug manufacturing plant's EIA report.

After several such instances of plagiarism were brought to the notice of the MoEF, it has issued an Office Memorandum stating that if any EIA report is found to be copied, the project would be summarily rejected.[219] If the EC has already been granted, it will be withdrawn. However, in the same document, the MoEF admits that it would be 'time consuming' for the MoEF and the EACs to identify possible plagiarism and therefore it places the onus on the project proponent to ensure that the contents of the EIA report are correct.[220]

Lack of accountability of EIA consultants

As the above discussion indicates, the quality of environmental impact assessment in India leaves much to be desired. The Quality Council of India has observed that EIA reports submitted by project proponents "do not measure up to the desired quality". What aggravates

[217] EAS Sarma, 'The Saga of Sompeta: Public Deception, Private Gains, XLV Economic and Political Weekly' 38-43 (2010)

[218] Ghosh Padmaparna, Are the Govt's Green Clearances a Farce?, The Mint, December 17, 2007

[219] MoEF, Office Memorandum dated October 5, 2011 in No. J-11013/41/2006-IA-II(I): Ownership of EIA Report and Other Documents by the Project Proponent, October 5, 2011, available at http://moef.nic.in/downloads/public-information/OM_IA_ownershipEIA.pdf (Last visited on February 24, 2014)

[220] Ibid

this situation is that there is no effective accountability mechanism under the EIA Notification for EIA consultants. The onus to provide factually correct information in an EIA report has been placed on the project proponent – and not on the EIA consultant. There is a requirement for EIA consultants to include an undertaking in the EIA report that the contents are factually correct, but the repercussions for providing false information are not clear.[221]

Since December 2009, an accreditation process for EIA consultants carried out by the Quality Council of India ('QCI') and the National Accreditation Board of Education and Training ('NABET') has been initiated by the MoEF. Consultants who are not accredited by the QCI/NABET are not eligible to prepare EIA reports for projects seeking an EC. Although the accreditation process has been criticized for various reasons, including the fact that the QCI receives industry support,[222] it offers a possible avenue for accountability – an accredited consultant can be delisted if an EIA report prepared by it is found to have been plagiarized. However, at present, there is no information on the MoEF's website about any process for such delisting.

Effectiveness of the public consultation process.

The public consultation component of the EIA process has been considered as "an embodiment of the principles of natural justice".[223] It is the only stage in the entire process during which the people affected, directly or indirectly, by the proposed project can raise concerns and voice their opposition (or support) to the project.[224] The importance of public consultation in policy making generally, and in environmental decision making particularly, is well- documented.

However, what requires to be emphasized is that it is imperative that the public consultation mechanisms are designed – and implemented – in a manner that encourages constructive deliberation and (potentially) for the public to have an impact on the final decision. Unfortunately, the EIA Notification fails on both accounts for many reasons, some of which are discussed below.

For a public hearing to have a substantial impact on the EC process, at least four conditions have to be satisfied. First, affected and interested persons should have access to accurate and comprehensible information about the proposed project, based on which they can formulate an

[221] National Accreditation Board for Education and Training &Quality Council of India, Scheme for Accreditation of EIA Consultant Organizations, 2011, available at http://nabet.qci.org.in/environment/Accreditation_EIA_Consultant_organizations.pdf (Last visited on May 24, 2021).

[222] Kanchi Kohli, 'Is MoEF's Green List of EIA Consultants Good Enough?', January, 2012, available at http://www.civilsocietyonline.com/pages/Details.aspx?82 (Last visited on June 22, 2021)

[223] S. Nandakumar v. The Secretary to Government of Tamil Nadu Department of Environment and Forest and Ors., W.P. Nos. 10641 to 10643 of 2009, High Court of Madras.

[224] Samarth Trust v. Union of India & Ors., W. P. (C) No. 9317 of 2009, the High Court of Delhi.

opinion. Second, they should have an adequate opportunity to express their opinion and raise concerns. Third, their opinion and doubts have to be accurately recorded along with the response of the project proponent, if any. Finally, the decision making process should be designed in a manner that public consultation can potentially impact the outcome. It would seem that the EIA Notification – in letter – fulfils the first three conditions. But evidence from public hearings across the country suggests that public hearings are often not conducted in accordance with law, and therefore the quality of public consultation is so poor that it may not even reflect the true views of the public. With regard to the last condition, it could be argued that the public should have a say in the project from an earlier stage (e.g. when the site is being selected) in the decision making process. There are at least five significant ways in which the public consultation process is undermined.

First, the blanket exemption from public consultation enjoyed by some categories of projects risks excluding projects with significant impact. By way of example – buildings and development projects are exempt from public consultation. This is unfortunate as the potential impact of such projects on groundwater usage, sewage generation and disposal, ambient air quality (be- cause of diesel-run generators) is immense. Furthermore, if in case a prima facie need is felt, the EIA Notification does not even afford discretion to the relevant regulatory authority to initiate public consultation for the excluded projects.

Second, the public consultation process as designed in the EIA Notification does not provide adequate safeguard mechanisms to ensure that the local communities are effectively consulted. There is no quorum requirement for starting a public hearing, and even if affected/concerned persons are unable to participate on account of foreseeable reasons (distance of venue from village, lack of public transport,[225] major religious events etc.), there is no duty on the SPCBs to reschedule the hearing. Moreover, panels are composed entirely of government officials. There was a provision in the EIA Notification 1994 to include members of the local community in the presiding panel of the hearing but this was subsequently removed in 2006.

Third, the notice requirements are not adhered to in many cases – either in letter or spirit. The EIA Notification requires the summary of the EIA report and the EIA report to be available in English and the official/local language of the area where the proposed project site is located. The objective is to make the information in the EIA report accessible to the local community. But this is often not implemented. Furthermore, while a notice for a public hearing has to be issued at least thirty days before the date of the public hearing, there is no specified date by

[225] B. Madhu Gopal, 'Public Hearing Sans People', The Hindu October 4, 2008.

which the EIA documents have to be made publicly avail- able. The High Court of Delhi has found this ambiguity to be legally indefensible and has held that the executive summary of the EIA report has to be made available at least thirty days in advance of the public hearing to allow people sufficient time to form an opinion on the matter.[226]

Despite this clear pronouncement from the Delhi High Court[227] and the self-evident need to provide at least basic information about the pro- posed project to the public, this requirement was completely disregarded before the public hearing for the Jaitapur Nuclear Power Plant proposed on the coast of Maharashtra. Of the four villages potentially affected by the project (and which were notified about the public hearing), only one village received a copy of the summary draft EIA report in English two weeks before the hearing. It received the Marathi version four days before the hearing. The three other villages did not receive the draft EIA report or the summary.[228]

Strict directions must be issued by the MoEF to SPCBs to ensure that the notice requirements for the public hearing process are properly followed, and communities are made aware of the public hearing and have access to information about the project well in advance of the hearing.[229]

The MoEF should also put in place an accountability mechanism in case the SPCBs fail to do so.

Fourth, the arrangements made for the public hearing, and the manner in which it is conducted can influence the outcome significantly. The High Court of Madras while adjudicating the legality of allotment of 70 acres of land for a solid waste management plant, considered the adequacy of public consultation –

"Such public hearings should not be a make belief affair, just to comply with the requirements of the notification. It is the responsibility of the District Magistrate or officers of equal status to see that all the affected persons are given audience. The panel of officers conducting the public hearing must re- member that such hearings are conducted only to record the views of the affected parties. The statutory panel should hear the views of the affected persons and not those who have assembled in the meeting hall at the behest of the developer with a hidden

[226] T. Mohana Rao v. Ministry of Environment and Forests & Ors., Appeal No. 23/2011, National Green Tribunal, May 23, 2012, available at http://www.greentribunal.gov.in/judgment/23-2012(T)_23May2012_final_order. pdf (Last visited on July 2, 2021).

[227] Utkarsh Mandal v. Union of India, W.P. (C) No. 9340 of 2009, High Court of Delhi.

[228] Praful Bidwai, People vs Nuclear Power in Jaitapur, Maharashtra, XLVI Economic and Political Weekly 10-14 (2011)

[229] Him Privesh Environment Protection Society & Ors. v. State of Himachal Pradesh & Ors., CWP No. 586 of 2010 and CWPIL No. 15 of 2009, High Court of Himachal Pradesh.

agenda to block or prevent the opposition to the project……the attempt should be to conduct the hearing in an open and transparent manner with opportunity to ex- press even the dissenting views without fear. … The minutes of the hearing should contain a true note of what has transpired in the meeting. Such positive steps on the part of the statutory authorities would inspire confidence in the affected people"[230]

The location and capacity of the venue, accessibility of the venue (e.g. availability of public transport), presence of locally influential persons and the police force, who is allowed to speak and for how long – all these factors affect the quality of deliberation in a public hearing. If the conditions are unfavourable to free speech, members of the public may decide to not participate, or to not express themselves freely.[231]

Fifth, the process currently gives the project proponent undue discretion while responding to concerns raised in the hearing. The duty on the project proponent to "address all the material environmental concerns… and make appropriate changes in the draft EIA…", is not limited by any criteria to determine what is 'material'. Furthermore, the amended/finalised EIA report is not made available in the public domain, making it difficult to ensure that the concerns raised during the public consultation process are, in fact, adequately accounted for.

The need for public participation in the decision-making processes cannot be emphasized enough, particularly when the final outcome of the processes potentially impacts, often irreversibly, the lives, livelihoods and beliefs of so many people. In that context, the design and implementation of the public consultation process in the EIA Notification leaves much to be desired.

Weak appraisal mechanism

The appraisal mechanism is a vital opportunity for independent verification of the information provided by the project proponent. Unfortunately, the mechanism has not worked very well. To begin with, the composition of EACs, and particularly the chairperson appointees, has come under the scanner. The membership of the Committee often does not reflect the varied expertise that is necessary to assess projects of wide-ranging impact. Furthermore, instances have been brought to light where the appointed chair- person of a Committee did not have the appropriate

[230] S. Nandakumar v. The Secretary to Government of Tamil Nadu Department of Environment and Forest and Ors., W.P. Nos. 10641 to 10643 of 2009, High Court of Madras.

[231] S. Nandakumar v. The Secretary to Government of Tamil Nadu Department of Environment and Forest and Ors., W.P. Nos. 10641 to 10643 of 2009, High Court of Madras.

qualifications and could potentially have a conflict of interest with respect to matters being considered by the Committee.[232]

The reconstituted Committee for hydel-power projects is a case in point.[233] It has been criticized as it does not include any expert on biodiversity, rivers, climate change or disaster management.[234] Given the issues relating to resettlement and rehabilitation that the EAC is expected to consider, the dominance of government officials and representatives from government- funded institutions and the corresponding lack of representations from non-government organisations, has been criticized. The Committee is headed by a former bureaucrat who does not possess any environmental credentials and is known to have demanded a speedier clearance process for coal mining projects.

The EACs have also been criticized for the quality of deliberation in their meetings where recommendations are made to the MoEF. From the minutes that are prepared at the end of each meeting, it is often difficult to conclude that the EAC has adequately applied its mind to the issues at hand and particularly to the objections that might have been raised against the project. Given the number of projects the EAC has to consider in every meeting, relatively little time is spent considering each individual project. The minutes are often cryptically written and fail to meaningfully deal with relevant issues. Finding the unrealistic burden on the EACs to be 'an unsatisfactory state of affairs', the High Court of Delhi has recommended that the MoEF seriously consider placing a cap on the number of projects that the EAC can consider in a day (five projects). The MoEF has not imposed such a cap till date and a large number of projects (at various stages of the EC process) are included in the agenda of various EACs every month.

The significance of the appraisal mechanism and the crucial role played by the EACs and the SEACs has also been highlighted by the Bombay High Court. In the context of SEACs and the SEIAAs, the Court observed –

"The decision making process of those authorities besides being transparent must result in a reasoned conclusion which is reflective of a due application of mind to the diverse concerns arising from a project such as the present. The mere fact that a body is comprised of experts is not sufficient a safeguard to ensure that the conclusion of its deliberations is just and proper.

[232] Sarpanch Gram Panchayat, Tiroda & Ors. v. MoEF & Ors., Appeal No. 3 of 2011, National Green Tribunal, September 12, 2011, available at http://www.greentribunal.gov.in/judgment/3-2011(Ap)_12sept_final_order.pdf (Last visited on June 21, 2021)

[233] MoEF, Order dated September 5, 2013 in No. J-12011/EAC /2010-IA-I: Re-Constitution of Expert Appraisal Committee (EAC) for EIA for River Valley & Hydro Electric Project –Regarding, September 5, 2013, available at http://moef.nic.in/sites/default/files/EAC- Order-05092013.pdf (Last visited on February 24, 2021)

[234] Gargi Parsai, 'Activists Oppose New Panel on Hydel Projects', The Hindu September 9, 2013

That safeguard, particularly for the wider community, must be reflected in the manner in which the authority conducts its process and in the outcome of its process. In matters of environmental governance the only available safeguard for the community at large is that the process which the authority follows must adhere to fair and transparent principles established by law and that the reasons which emanate from the public body must be suggestive of the decision maker having taken into consideration all relevant aspects and having borne in mind the need to preserve and protect the environment".[235]

In a recent case before the NGT relating to a port in Gujarat, the Tribunal highlighted the poor quality of appraisal. According to the NGT, "the process of 'Appraisal' requires application of mind, independently, and evaluation of the material in order to find out whether it is a project worth grant of EC or for the purpose of refusal of the EC"[236]. Based on the facts before it, the NGT found that the EAC had accepted the project proponent's statements as 'gospel truth' and failed to consider several important issues including the written representations made by the public. The EC was kept in abeyance and the MoEF was directed to reconsider the clearance given to the project.

The quality of appraisal is also naturally affected by the quality of information available to the EAC members. While the project proponent or its representative is required to be present at the meeting to respond to queries, there is no requirement to invite civil society groups, not even those who objected to the project during the public consultation process. Site visits to verify information submitted by the project proponent are not mandatory, and often the only information about the proposed site accessible to the EAC members is that provided by the project proponent in its EIA reports. Furthermore, there have been complaints about delays in setting of the agenda and of interference by the government.[237] As a result of all these factors, there is certainly a cloud over the efficacy of the process.

Poor monitoring of compliance

The primary responsibility to monitor compliance with conditions listed in the EC lies with the MoEF. The EIA Notification requires project proponents to submit half-yearly compliance reports that are to be made avail- able on the website of the appropriate regulatory authority.

A subsequent circular issued by the MoEF also requires the project proponent to upload the status of compliance with EC conditions on its own website. However, it has a poor monitoring

[235]Gram Panchayat Navlakh Umbre v. Union of India & Ors., 2012 (114) BOM LR 2695

[236] Gau Raxa Hitraxak Manch v. Union of India & Ors., Appeal No. 47/2012, National Green Tribunal, August 22, 2013, available at http://www.greentribunal.gov.in/judgment/47_2012(Ap)_22Aug2013_final_order.pdf

[237] Snehal Rebello, 'Six Green Panel Members Resign Citing Interference', Hindustan Times July 18, 2013.

record. The EIA Notification does not separately identify a mechanism to monitor the compliance of the conditions in the EC and does not include a comprehensive protocol or guideline on how monitoring should be conducted, how frequently and through what process.

A Committee constituted by the MoEF to examine issues relating to monitoring found that "increasingly the effectiveness of the post project monitoring mechanism for ensuring an effective compliance to the stipulated conditions and environmental safeguards is a cause of concern". It highlighted some of the shortcomings, such as inadequate infrastructure and trained man- power, procedural and administrative deficiencies, and deficiencies in the legal provisions. The MoEF does not have comprehensive data on the extent of compliance/non-compliance with clearance conditions and there is no analysis of compliance reports submitted by project proponents.[238]

If the Ministry does detect non-compliance with conditions, it can issue a direction under Section 5, EP Act for closure, prohibition or regulation of the industry. The penalty for non-compliance with EC conditions is detailed in Section 15 of the EP Act – the defaulting company/official can be fined an amount of upto one lakh rupees and/or be imprisoned for a term extending to five years. Subsequent failure to comply with the stipulated conditions could lead to a fine of five thousand rupees per day and imprisonment of upto seven years. Not only is the fine a paltry sum for most project proponents, but additionally the legal procedure to bring these cases to court is long and cumbersome. Therefore, the penalty provision has little deterrent effect in practice.

The EIA Notification is a complex procedural mechanism. Over the years, it has been modified in several ways – some diluting the process and making it less rigorous (for example, removing public consultation requirements for certain categories of projects); others intended to improve the quality of decision making (for example, measures to increase accountability for EIA reports). While the objectives behind these efforts vary – from complying with judicial pronouncements, to incentivizing 'development imperatives', to responding to public outcry, the efforts have been generally piecemeal. Little, if any, effort has been expended on introducing systemic changes that would make the decision making process robust, such that the process is, at least, procedurally acceptable to stakeholders (even if there is disagreement about the substantive outcome).

[238] Kanchi Kohli & Manju Menon, 'Calling The Bluff: Revealing The State Of Monitoring And Compliance Of Environmental Clearance Conditions' (2009)

4.8 The Draft EIA Notification 2020

Under Section 3 of the Environment Protection Act, 1986 the central government has the authority to take necessary measures with the aim to protect and improve the quality of environment. The Draft Notification, 2020 is the outcome of the exercise of the aforesaid power by the Central Government with the objective to make the environment clearance process more transparent and expedient by digitalising the process, further delegations, rationalisation, standardization of the process etc. The draft in question will supersede notification of 2006 in addition to all subsequent amendments till date.

Important features of the Draft EIA Notification 2020

On a positive note, the Draft EIA notification begins with the definition clause which includes various terms incidental to the procedure. Such an extensive definition will clearly aid the law abiders to understand the policy alleviating ambiguity which was omitted in the previous notifications. The definition of EIA as provided by Clause (3) (23) the notification is: "Environment Impact Assessment (hereinafter referred to as 'EIA') Report" is the document prepared by the Project Proponent through an ACO for the proposed project based on the Terms of Reference prescribed by the Regulatory Authority and as per the generic structure given in the Appendix-X of this notification;

a. "Draft EIA Report" is the EIA Report prepared for the purpose of Public Consultation or in accordance with the directions of the Regulatory Authority;

b. "Final EIA Report" is the EIA Report prepared, after public consultation, including mitigation measures duly addressing the concerns raised by the public, time bound action plan, budgetary provision for the commitments made therein by the project proponent, for the purpose of appraisal;"[239]

The notification of 2020 has kept the categorisation of the projects as envisaged by the previous notification into Category A, Category B1 and Category B2 on the basis of their social and economic impact keeping in mind its impact on environment simultaneously. The EIA Notification 2020, including its listed exemptions, does not disclose the reason for exemption and operate against the basic tenets of administrative law, which requires exceptions to be culled out based on reasonable reasons. The new construction projects up to 1,50,000 sq m are

[239] Draft Environment Impact Assessment Notification, 2020, Ministry of Environment and Forest of India (July 29, 2021, 7:07 PM) , http://environmentclearance.nic.in/writereaddata/Draft_EIA_2020.pdf

not required to go through detailed scrutiny by and expert committee whereas earlier this limit was upto 20,000 sq m. While exempting the solar projects from the EIA's ambit, the government has disregarded the best institutional practices as well as created ground for possible differences between projects. The solar projects has been funded by World Bank in India, insist on an effective EIA as a prerequisite. The Rewa Solar Park in Madhya Pradesh inaugurated by the Prime Minister Narender Modi is funded by the World Bank which was commissioned after a comprehensive EIA. The EIA report revealed that it had adverse impact on the drainage system and recommended measures to mitigate the problem. The World Bank including other multilateral international development banks is expected to insist for an EIA even if this draft notification is implemented. Hence, exemption list as discussed above is reducing the scope of EIA.

Effect on Public Hearing:

The time for the response by the public affected by the project proposed has also been reduced from 30 days to 20 days as per Appendix I16 of the new notification. This reduction is in contradiction with the directions in 2000 of the Gujarat high court in Centre for Social Justice v. Union of India,[240] when it insisted on a minimum of 30 days for public hearing. The forest dwellers or villagers or otherwise are mostly affected by such projects and they do not have access to information and technology. In a developing country like India, it is difficult for the public to put forward their objections or opinions amid lack of awareness and education. The shortening of the time for public consultation will have adverse effect on the people of the country. Public hearing is one of the core values of EIA to fulfil its objective of bringing integrity and harmony in the surroundings we live in. It is suggested that such changes will have negative influence on the goal of sustainable development.

Moreover, the projects falling under the Category B2 are fully exempted from public hearing. These projects includes up to 25 megawatts hydroelectric power generation, not more than 5 hectares of mining of minor minerals lease area , dump mining of major minerals (excavation or handling of dump or overburden or waste material), 10,000 to 20,000 hectares of culturable command area for irrigation, small and medium enterprises etc. To sum up modernisation or irrigation projects, all building constructions and area development projects, expansion or widening of national highways, all projects concerning national defence and security, are included in the list. This draft will strengthen discretionary power of government while limiting

[240] Centre for Social Justice v. Union of India, AIR 2000 Guj 71

public participation in protecting the environment. The EIA notification, 2020 exempting such massive construction projects under category B2 as a consequence the controversial Central Vista project will not have to undergo public scrutiny. The lack of effective environmental assessment of an area which according to the Delhi Pollution Control Committee has contribution of 30% of air pollution is beyond legal justification.

Public hearing constitutes a fundamental factor of EIA report recognised under Principle 10 of the Rio Declaration which is read as follows: "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

The state practice on public participation has undergone quick revolution. Initially adopted through non-binding declarations such as Agenda 21 and the Rio Declaration, the idea found specific expression in a number of environmental conventions. At the International level, the issue of public participation in EIA has been discussed in detail in the Convention on Environmental Impact Assessment in a Transboundary Context ("Espoo Convention"). In Costa Rica v Nicaragua[241], the procedure has been highlighted as an exemplary standard for the process to be followed when conducting an EIA by Justice Dalbeer Bhandari. Keeping in mind the two decades of remarkable judicial interventions in the field of environmental impact assessment to make it consistent with the international developments, the EIA notification of 2020 is a regressive step back.

The role and importance of involvement of public has been emphasised by the judiciary in Orissa Mining Corporation Ltd. v. MOEF [242](Vedanta Case) where it was held that the gram sabha would have to be considered before the MOEF grants environmental approvals for developmental projects involving rights of individuals and communities in scheduled areas.

Ex post facto Clearance route

[241] Costa Rica v Nicaragua, [2013] ICJ Rep 354,://www.icj-cij.org/files/case-related/152/18860.pdf
[242] Orissa Mining Corporation Ltd. v. MOEF, (2013) 6 SCC 476

The foremost amendment which will distress the earlier governance of EIA by the concerned authority is the application of the new EIA notification 2020 on the ongoing or completed project for which EIA clearance was never sought or granted and the construction of the project took place anyway. In other words, the aforesaid projects will be awarded ex post facto clearance who had started the project violating the norms. Hence the draft proposes a permanent means for industries infringing the 2006 norms by creating an opportunity for post-facto approvals. The Para 23 of Supreme Court judgment passed on 01.04.2020 in the case of Almebic pharmaceuticals limited v. Rohit Prajapati and others[243] by Justice Y. Chandrachud and Justice Ajay Rastogi is appropriate to comprehend subject in hand:

"The reason why a retrospective EC or an ex post facto clearance 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. An EC can be issued only after various stages of the decision-making process have been completed. The requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decision-making process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development."

This is catastrophic because we already have various projects that are running without EIA clearances. For instance the LG Polymer Plant in Vishakhapatnam, where the styrene gas leak happened on May 7, 2020[244]. It exposed that the plant had been running for over two decades without clearances.

A similar episode was reported on May 27, 2020 where due to poor compliance of environment norms, the natural gas of Oil India Limited in eastern Assam's Tinsukia district had a blowout

[243] Almebic Pharmaceuticals Limited v. Rohit Prajapati and others order on 1. Apr.2020, Supreme Court https://main.sci.gov.in/supremecourt/2016/2562/25622016015012158 2Judgement_01-Apr-2020.pdf
[244] LG Polymers: Was negligence behind India's deadly gas leak? BBC NEWS (JULY 30,2020, 4:08 pm) https://www.bbc.com/news/world-asia-india-52723762

and burst into flames on June 9, 2020. This proved to be detrimental to the livelihoods in the region rich with biodiversity. The State Pollution Board, Assam, had reported that the oil plant had been operating for over 15 years without obtaining prior consent from the board. Consequently, the Pollution Board has also given closure notice to the company on June 19, 2020.[245]

It is pertinent to mention that the ex post facto contradicts the environmental principles like precautionary principle and polluter pays principle. The importance of these doctrines has been emphasised by Supreme Court of India from time immemorial. In the case of Vellore Citizens' Welfare Forum v. Union of India,[246] popularly known as Tamil Nadu tanneries case is a suitable judgment to understand the significance of above mentioned doctrines to ensure sustainable development of the country.

The Ministry has put reliance on the 'polluter pays principle' as one of the justifications for bringing violation projects under regulation. This principle in addition to other things talks about remedying the damage done by the one causing the pollution. However, such post facto approvals have also been considered as antithesis to 'polluters pay principle' as these propagate and legitimise pollute and pay principle.[247]

Reduction of monitoring period post clearance

The process of EIA does not end with the grant of environment clearance by the concerned authorities. Therefore a follow up is necessary to ensure the compliance of the environmental norms by the people carrying out the project in hand. To monitor these project post the grant of environment clearance a half yearly compliance report was made mandatory by project management in respect of the stipulated prior environmental clearance terms and conditions in hard and soft copies to the regulatory authority concerned, on 1st June and 1st December of each calendar year by the 2006 notification. On the contrary, the frequency of these monitoring reports has been reduced by the EIA Notification 2020. In the proposed draft the project managers need to submit this report on yearly basis. The monitoring mechanism will not be effective because the compliance report will be filed by the project proponents themselves.

[245] Assam blowout: Pollution board gives closure notice to OIL, The Hindu News (July 30, 2020, 5:45 PM), https://www.thehindu.com/news/national/other-states/assam-blowout-pollution-board-gives-closure-notice-to-oil/article31878907.ece
[246] Vellore Citizens' welfare Forum v. Union of India, (1995) 5 SCC 647
[247] Ghosh Shibani, Is the MoEFCC Encouraging Environmental Violations?, Centre for Policy research, Aug, 2016

These compliance reports act as a check and balance for the regulatory authorities and the project affected communities. The local affected may use these reports to draw attention to the instances of non-compliance before the administrative bodies. The compliance reports also helps to evaluate the past-track record of the project in complying with prescribed EC conditions before granting EC for renewals or expansions.[248]

Another lacuna to the proposed compliance framework in the draft notification is the minimal fine and penalty imposed on non-compliant units. The project proponent often challenge the fines imposed in the court of law extending the actual payment of these fines for years; simultaneously the impacts from non-compliance stays or worsens in reality.

Lastly, it provides that if projects are found to be non-compliant in submitting the compliance reports for three continuous years EC will be suspended. This is good step in the right direction but falls short in terms of implementing the precautionary principle of the environmental law. The effectiveness of this provision depends on the submission of these reports regularly. This will give an opportunity to both regulatory bodies and project affected communities to continuously monitor these projects. However the action taken as mentioned above after three years of continuous non-compliance may be an intrusion delayed in the process of environmental protection.

The draft notification includes third party monitoring by the governmental institutions to supplement the monitoring efforts. The issues such as lack of regularity, clear and uniform protocols for monitoring remain unaddressed. Moreover, how this will be actually implemented is ambiguous because there is no information on what criterion these institutions will be selected and empanelled, their finance and what procedure they will follow.

Violation cases

Clause 22 of the EIA Notification 2020 provides for the dealing with the violation cases. It is Sub clause (1) of the said clause is as follows: "The cognizance of the violation shall be made on the:-

(a) Suo-moto application of the project proponent; or

(b) Reporting by any Government Authority; or

[248] Varanpreet (n 194).

(c) Findings during the appraisal by Appraisal Committee; or

(d) Findings during the processing of application, if any, by the Regulatory Authority"

The penalties to be paid for violation of environmental norms when proved are provided by Sub Clause (8) and (9) of the above mentioned clause:

"(8) On cognizance of violation through suo moto application, a late fee of Rs. 1,000/- per day in case of Category 'B2' projects; Rs. 2,000/- per day in case of Category 'B1' projects; and Rs. 5,000/- per day in case of Category 'A' projects shall be paid by the Project Proponent, at the time of application, calculated for a period of date of violation to date of application.

(9) On cognizance of violation reporting by any Government Authority or found during the appraisal by Appraisal Committee or processing of application, if any, by the Regulatory Authority, a late fee of Rs. 2,000/- per day in case of Category 'B2' projects; Rs. 4,000/- per day in case of Category 'B1' projects; and Rs. 10,000/- per day in case of Category 'A' projects shall be paid by the Project Proponent, at the time of application, calculated for a period of date of violation to date of application."[249]

It is suggested that the penalties provided by the EIA notification 2020 are not in proportion to the damage such activities may cause to our environment and the local people. The hazardous and large scale projects not following the terms and conditions on which they were granted the environmental clearance can cause irreparable damage to the environment, its bio diversity and the localities. These large scale operations can easily ignore the violations by paying a small amount of their running business. Such penalties will not prove to be detrimental for these projects. Therefore such minimal penalties will create a lot of room for discrepancies.

Another point to be noted is that this clause dealing with violation cases do not provides for any application by the public adversely affected by such malpractices or negligence of the project proponents. This will reduce the scope of this provision. Hence many projects proponents may not come forward to file application for violation cases. Consequently such infringements will be ignored and may not be brought before the concerned authorities to take the necessary action. Therefore, public involvement is necessary so that they may raise their voices against these practices affecting their surroundings. In the long run, this provision may not be fully utilised as envisaged by the law makers.

[249] Ibid

4.9 Current status of the EIA Draft Notification, 2020

The Ministry of Environment, Forests and Climate Change (MoEFCC) released a new draft EIA Notification On 23rd March 2020 and invited public comments on it within 60 days. However since this period for public comments and objections coincide with the national lockdown due to COVID 19 pandemic several environmental groups insisted for the comment period to be extended. The MoEFCC had extended the time for public comments till 30th June 2020.

In Vikrant Tongad v Union of India[250], Dehli High Court has further extended the period for sending public comments till 11th August 2020. In this case 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.[251]

In nutshell Environmental impact assessment must realize decision-making based on the inputted information including potentially important factors and it must be beneficial for both the proponent and the citizens. EIA rules must meet the requirements of the precautionary principle of avoiding harm, and intergenerational equity. Diluting the EIA process spells a path of no return. In the process, EIA far from serving as a bulwark for environmental justice came to be regarded as a mere inconvenience, as a bureaucratic exercise that promoters of a project had to simply navigate through. The draft environmental impact assessment 2020 is a brazen attempt to weaken critical checks and balances. Therefore, the EIA process if implemented rationally can be minimize the loss being caused to our environment.

[250] Vikrant Tongad v. Union Of India W.P. (C) 3747/2020 & CM APPL. 1342/2020 (30.06 2020) can be accessed on https://elaw.org/system/files/attachments/publicresource/EIA%20Notification%20case%20Order.pdf

[251] 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]

Chapter 5

Human Rights Impact Assessment

"*We end, I think, at what might be called the standard paradox of the twentieth century: our tools are better than we are, and grow better faster than we do. They suffice to crack the atom, to command the tides. But they do not suffice for the oldest task in human history: to live on a piece of land without spoiling it*." -Aldo Leopold (1938)

While discussing about the macro level changes of mining, micro-level aspects cannot be overlooked. It is observed that, although mining has provided the arena for better infrastructural development and rise of financial capital, at the same time it is responsible for varieties of socio-economic issues. Mining can be held responsible for viable economic development of a region. But at the same time it fails to bring equality among the project affected communities. With better employment opportunity, mining also affords the environment for expenditure on varieties of aspects such as health and housing. Basically, mining is a profitable juncture for state and central level economic development but its regional impact is very restricted in nature. The 'Human Rights impact assessment' can be defined as a process for identifying, understanding, assessing and addressing the adverse effects of the business project or activities on the human rights enjoyment of impacted rights-holders such as workers and community members.[252]

However, mining necessitates mass scale acquisition of land which reduces the accessibility of affordable housing and also responsible for local emergency services. Simultaneously, mining affected mass is getting involved in varied criminal and anti-social activities. While the present generation is passing through the social distresses such as inequality, disempowerment, and competition leaving its foot prints for the future generation to continue the same. However, the mining companies are spreading the awareness among the local communes regarding the short term benefits and ignoring the spreading of any awareness regarding the negative outcomes such as displacement, relocation and pollution.

The introduction of coal mining projects embracing some other socio-economic issues such as depletion of crop land, pollution of water bodies, increase of landless farmers etc. The rural residents are entirely dependent on land to sustain their livelihood. But the expansion of mining activities is not only displacing them from their major sources of livelihood but simultaneously

[252] "Human Rights Impact Assessment: Guidance and Toolbox", The Danish Institute for Human Rights, Copenhagen, 2016

forcing them to become landless farmers. This situation forces them to deviate from their own cultural inheritances as they have emotional and cultural affinity with their indigenous farmlands. However, a minimal development is being taking place in the economic aspect of project affected people. This can be cited in the fold of infrastructural developments such as schools, clinics, roads, boreholes and pipe water supply. But the local residents express their dissatisfaction regarding the economic development which resulted as strikes, road blocks, and destruction of company's assets. Though the mining companies are justifying their CSR activities, but without the presence of community relations and development (CRD) functions, they are doing only 'core business'. But for the successful implementation of sustainable development agenda, the functional equity needs to be established.

5.1 The Social impact assessment

Every individual has a right of ownership over the resources, natural or man-made, which he creates purchases lawfully or inherits from ancestors. One such natural resource is land. Even though scarce in quantity, the use of land is unlimited. It can be beneficial either to an individual or a group of individuals or for the government, indirectly benefitting the public. India being predominantly an agricultural society, there exist a strong linkage between the land and the personal status in the social system.[253] Not only the personal status, but also the family status is determined by the amount of land owned. Thus, right to own property is the natural and inherent right of an individual which the State must protect. Moreover, the Constitution of India, prior to the Constitution (Forty-fourth Amendment) Act, 1978 expressly provided under Article 19(1)(f) that every citizen of India has a right to property. The natural law jurists consider the "protection of property", along with the protection of life and liberty of a person of paramount importance and necessity in a free society. The U.S Constitution in the V Amendment ordains: "No person can be deprived of his life, liberty or property without due process of law"[254]. The Indian Constitution, however, following USSR's socialist philosophy expressly recognized the Right to acquire, hold and dispose of property as a fundamental right of every citizen.[255] Apart from the fundamental right, India also recognizes the Doctrine of Eminent Domain which empowers the State to take private property for public use. It is supposed to be based upon an implied reservation by the State that property acquired by its citizens under its protection may be taken, or its use controlled, for public benefit irrespective

[253] Waman Rao v. Union of India, AIR 1981 SC 271
[254] M.P Jain (2014), p. 1298
[255] Article 19(1)(f), Omitted by the Constitution (44th Amendment) Act, 1978

of its wishes of the owner. The condition, however, is that property shall not be taken for public use without just compensation.

Throughout the history of mankind, societies have tried to balance between individual rights and the power of the State, often a coercive one. The year 1991 was a turning point for India's economic sphere as India adopted the Liberalisation, Privatisation and Globalisation ("LPG Policy"). The post-liberalization economic boom continues to create a voracious appetite for space to meet the demands of industrialization, infrastructure building, urban expansion and resource extraction. With each passing day, there is increased pressure on the land to satisfy the needs of various groups owing to the problems of urbanization, rapid economic development, increasing infrastructure requirements, etc. To satisfy such need, lands are acquired both by private entities and government. In India, the Land Acquisition Act, 1894 was the legislation relating to acquisition of land for public purposes and also for companies to determine the amount of compensation to be made on account of such acquisition. However, with growing industrialization, particularly with the coming in the early 1990s of the New Industrial Policy, the said Act seemed to be inadequate in addressing certain issues related to the exercise of statutory powers of the State for involuntary acquisition of private land and property. The Act did not address issues of rehabilitation and resettlement to the affected persons and their families. Also it did not contain any provision on Social Impact Assessment. It was considered, by many, that the Act had outlived its life and should be done away with. In place of it, a new legislation should be brought eliminating the defects and contemporary enough to tackle the contemporary issues.[256]

Earlier, it was believed that two separate legislations, one dealing with "Land Acquisition" and another with "Rehabilitation and Resettlement" should be enacted. Subsequently, in 2007 two Bills that is, the Land Acquisition Bill and the Rehabilitation and Resettlement Bill were proposed. However, with the lapse of the Land Acquisition (Amendment) Bill of 2007 and Rehabilitation and Resettlement Bill of 2007, it was proposed to enact, even though criticized by many, a single legislation dealing with both land acquisition and rehabilitation and resettlement. Thus, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill was introduced in 2013. The said Bill was proposed to address concerns of farmers and those whose livelihoods are dependent on the land being acquired, while at the same time facilitating land acquisition for industrialization, infrastructure

[256] Dr. Preeti Jain Das, Social Impact Assessment: Can we do away with it? https://www.teriin.org/article/socialimpact-assessment-can-we-do-away-it

and urbanization projects in a timely, participatory and transparent manner. The Act came into force on April 1, 2014.[257]

The 2013 Act (hereinafter referred as "LARR Act") introduced several concepts which were not covered by the 1894 legislation such as Social Impact Assessment[258] , Special Provision to Safeguard Food Security[259] , Rehabilitation and Resettlement Award[260] , Procedure and Manner of Rehabilitation and Resettlement[261] , Establishment of National Monitoring Committee for Rehabilitation and Resettlement[262] and Establishment of Rehabilitation and Resettlement Authority[263], etc. The Act was enacted to ensure a humane, participative, informed and transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization, in consultation with institutions of local self-Government and Gram Sabhas established under the Constitution, and also to provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and also to make adequate provisions for their rehabilitation and resettlement.[264] The present article deals, in the Indian context, with the Social Impact Assessment (hereinafter referred as "SIA"), the object of such assessment, principles, tools and mechanism for carrying out such assessment and a critical evaluation of such mechanism vis-à-vis the environmental impact assessment. Part I deals with introduction and gives a brief background of SIA in India. Part II deals with the conceptual framework of SIA. It is divided into two sections-Section A and Section B. The former deals with the international framework of SIA while the latter deals with SIA under the Indian laws, in particular under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Part III deals with certain SIA Reports submitted to the Government of India in relation to infrastructure and public projects vis-à-vis the

[257] Ibid
[258] Chapter II of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013)
[259] Chapter III of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013)
[260] Chapter IV of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013)
[261] Chapter VI of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013)
[262] Chapter VII of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013)
[263] Chapter VIII of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013)
[264] Preamble of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013)

compliance of the 2013 Act. Finally, Part IV draws certain conclusions from the existing framework of SIA and gives constructive suggestions.

SIA is the study of the potential effects of natural physical phenomena, activities of government and business, or any succession of events on specific groups of people. Government regulations, for example, requiring compliance with residential waste water disposal standards have social impacts on individual families and neighbourhoods. Likewise, closures of mental health facilities have social impacts on the patients of those facilities and also on the individuals and groups who must subsequently care for those former patients. Thus, every governmental policy/project has some impact on the society which may be either positive or negative. With the growing importance being attached to SIA, it becomes necessary to define it for its better understanding. In a general sense, SIA means analyzing, monitoring and managing the social consequences of development. It is a field of research and practice, or a paradigm consisting of a body of knowledge, techniques, and values; and should be understood not only as a method of predicting social impacts in an impact assessment process. But as a methodology or instrument, it assesses the social impacts of planned interventions or events, and to develop strategies for the ongoing monitoring and management of those impacts. SIA includes the processes of analyzing, monitoring and managing the intended and unintended social consequences, both positive and negative, of planned interventions (policies, programs, plans, projects) and any social change processes invoked by those interventions. Its primary purpose is to bring about a more sustainable and equitable biophysical and humane environment.[265]

The important characteristic features of SIA are as follows[266]:

(a) To bring about a more ecologically, socio-culturally and economically sustainable and equitable environment. Impact assessment, therefore, promotes community development and empowerment, builds capacity, and develops social capital (social networks and trust).

(b) The focus of SIA is not just the identification or amelioration of negative or unintended outcomes but is a proactive stance to development and better development outcomes; not just minimizing harm from negative impacts but to assist communities and other stakeholders to identify development goals, thereby maximizing positive outcomes.

[265] Supra 257
[266] Ibid

(c) The methodology of SIA can be applied to a wide range of planned interventions, and can be undertaken on behalf of a wide range of actors, and not just within a regulatory framework.

(d) SIA contributes to the process of adaptive management of policies, programs, plans and projects, and therefore needs to inform the design and operation of the planned intervention.

(e) SIA builds on local knowledge and utilises participatory processes to analyse the concerns of interested and affected parties. It involves stakeholders in the assessment of social impacts, the analysis of alternatives, and monitoring of the planned intervention.

(f) The good practice of SIA accepts that social, economic and biophysical impacts are inherently and inextricably interconnected. Change in any of these domains will lead to changes in the other domains. SIA must, therefore, develop an understanding of the impact pathways that are created when change in one domain triggers impacts across other domains, as well as the iterative or flow-on consequences within each domain. In other words, there must be consideration of the second and higher order impacts and of cumulative impacts.

(g) In order for the discipline of SIA to learn and grow, there must be analysis of the impacts that occurred as a result of past activities. SIA must be reflexive and evaluative of its theoretical bases and of its practice.

(h) While SIA is typically applied to planned interventions, the techniques of SIA can also be used to consider the social impacts that derive from other types of events, such as disasters, demographic change and epidemics.

The germs of SIA could be traced under the framework of EIA. With regard to environment, the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 form the trinity of Environment protection legislations in India. These legislations were enacted to fulfill India's obligations at Stockholm Conference, 1972. However, the provisions of EIA did not find any mention in any of these legislations when they were originally enacted. Even without an express legislative mention, India did not shy away from adopting EIA. The first experience of India with EIA started in 1976-77 when the Planning Commission of India asked the Department of Science and Technology to examine river-valley projects from an environmental angle, and by 1994 Environmental Clearance from the Central Government, as an administrative requirement, became mandatory.[267] The first legislative mention of EIA in India

[267] Understanding EIA https://www.cseindia.org/understanding-eia-383accessed on May 10, 2021

could be found in the Hazardous Wastes (Management and Handling) Rules, 1989.[268] But the mention was in a crude form as it authorized the State Government or any person authorized by it to conduct such study. Finally in 1992, the Draft EIA Notification was published mandating environmental clearance from the Central Government or State Government, as the case may be, for certain projects. Also in the 1980s, several new methods of enquiry emerged such as RRA, PAR and PRA. These methods sought to make people and communities active participants, rather than mere objects of assessment.

The Land Acquisition Act, 1894 was a Central legislation relating to acquisition of land for public purposes and for companies.[269] With regard to its applicability, the Act applied to acquisition of land as distinguished from requisition of land.[270]Throughout its existence, the Land Acquisition Act, 1894 was amended not only by the Central Government but by the State Governments as well. Public concerns were raised over land acquisition, especially those of multi-cropped irrigated land by Multi-National Corporations (MNCs). India did not have any Central law to deal with the issues of rehabilitation and resettlement of displaced persons. As land acquisition and rehabilitation and resettlement have to be considered as two sides of the same coin, it became imperative to enact a Central legislation dealing with all these issues. Hence, it was felt that there was a need to enact a law maintaining a fine balance between social development and land acquisition.

With such importance being attached to land, it becomes imperative to consider, in the Indian context, the definition of land as "property". Under the Seventh Schedule of the Constitution of India, the subject of "land"[271] falls under State List whereas the subject of "acquisition and requisition of property"[272] is placed under the Concurrent List. In the former, the State Governments are empowered to enact laws relating to land, right or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land, land improvement and agricultural loans; colonization whereas in the latter, both the Central as well as State Governments are empowered to enact laws. In case of repugnancy between the Central law and State law, the Central law will prevail. However, when a law enacted by the legislature of a State with respect to a matter enumerated in the

[268] Rule 8 (3) of Hazardous Wastes (Management and Handling) Rules, 1989 provides as under: "The operator of a facility, occupier or any association of occupiers shall undertake an environmental impact assessment (EIA) of the selected site(s) and shall submit the EIA report to the State Pollution Control Board or Committee."
[269] Preamble, The Land Acquisition Act, 1894
[270] Paras Chandra Chatterjee v. State of Assam AIR 1962 SC 167
[271] Entry 18 of State List (List II)
[272] Entry 42 of Concurrent list (List III)

Concurrent List, which contains a provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to the matter, then, the law so enacted by the legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State.[273] In a general sense, the term "property" has a very wide connotation, and is indicative and descriptive of every possible interest which a person can have. Not only the thing which is the subject-matter of ownership, but even dominium, or the right of ownership, possession, etc. fall within the scope of this term. With respect to Right to acquire and hold property, Article 19(1) (f)[274] and 31[275] are worth a mention. Article 19(1) (f) expressly provided every citizen the right to hold, acquire and dispose of property. The term "property" appearing under Article 19 was earlier narrowly interpreted so as to limit the guarantee thereunder. So narrow was the interpretation of the term "property" that the right of voting enjoyed by the shareholders of a company, or their right to select the directors, or their right to pass resolutions, or institute winding up proceedings, were held to be not "property"[276]. With the course of time, however, the Supreme Court of India, to some extent, moved away from the restrictive view of property and specifically held that there was no reason why the term "property" as used in Article 19(1) (f) should not be extended to those well-recognized types of interests which have the characteristics of proprietary rights. Thus, Article 19(1) (f) applied equally to concrete as well as abstract rights of property[277] and comprised every form of property, tangible or intangible, including debts and choses in action.[278]

Apart from the Fundamental Right of Right to Property, Article 31 provided for compulsory acquisition of property. Clause (1) of Article 31 laid down that no person could be deprived of his property without the authority of law. Moreover, Clause (2) of Article 31 provided as under:

"No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with

[273] Article 254 (1) of Constitution of India,1950
[274] Omitted by the Constitution (Forty-fourth Amendment) Act, 1978 "Article 19: Protection of certain rights regarding freedom of speech, etc. (1) All citizens shall have the right- (f) to acquire, hold and dispose of property"
[275] Omitted by the Constitution (Forty-fourth Amendment) Act, 1978
[276] Chiranjit Lal v. India AIR 1951 SC 41; 1950 SCR 869
[277] Commissioner, Hindu Religious Endowments v. Lakshmindra AIR 1954 SC 282; 1954 SCR 1005 S.M. Transports v. Sankaraswamigal Mutt AIR 1963 SC 864; 1963 Supp (1) SCR 282
[278] M.M. Pathak v. Union of India AIR 1978 SC 803; (1978) 2 SCC 50 Jayantilal R. Shah v. R.B.I. AIR 1997 SC 370; (1996) 9 SCC 650

such principles and given in such manner as may be specified in such law, and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash."

With reference to land acquisition, the general rule in India is that all the structures or the trees or any material attached or fastened to the land sought to be acquired would also be the subject-matter of acquisition along with such land, but the rule nowhere mentions or even implies that without the land to which the things attached or permanently fastened, such things by themselves independently or singularly could be the subject-matter of acquisition. Thus, once the land is acquired, it would vest free from encumbrances in the Government. All things attached to such land would also vest in the Government along with all benefits arising out of such land, including the super structure in land.[279]

Under Article 31(2), the State could acquire or requisition property for a public purpose only. Therefore, a subsequent legislation could in no way, grant the power to acquire property for private purpose. Under Entry 42 of List III, a legislature could acquire property even without a public purpose, but Article 31(2) would be an obstacle for such a law. However, such obstacle would disappear if the law fell within the compass of Article 31A.

The concept of public purpose connotes the idea of "public welfare" which furthers the general interest of the community as opposed to particular interests of the individuals. Some of the examples of what comprises "public purpose" are as follows:

- Finding accommodation for an individual having no housing accommodation;
- Housing a staff member of a foreign consulate;
- Accommodating an employee of a road transport corporation-a statutory body;
- Accommodating a government servant;
- Nationalization of land;
- Agrarian reform abolishing intermediaries between government and tillers of the soil;
- Establishing an institution of technical education;
- Constructing houses for industrial labour by a company;
- Promoting co-operative housing societies in Delhi to relieve housing shortage;
- Planned development of Delhi;
- Development of housing, shopping and industrial sites

[279] Bai Halimabu v. State of Gujarat, 1978 UJ 203 (SC)

Thus, a law enacted for the purpose of acquiring or requisitioning property but having no "public purpose" to support it, was unconstitutional.

The Land Acquisition Act of 1894 did not contain any provision for Social Impact Assessment. This gap was filled by Section 4 of the LARR Act, which envisages for the preparation of Social Impact Assessment Study whenever the Appropriate Government intends to acquire land for a public purpose taking into consideration amongst other things, the impact that the project is likely to have on various components such as public and community properties, assets and infrastructure particularly roads, public transport, drainage, sanitation, sources of drinking water, sources of water for cattle community ponds, grazing land, plantations, public utilities, such as post offices, fair price shops, food storage godowns, electricity supply, health care facilities, schools and educational or training facilities, anganwadis, children parks, places of worship, land for traditional tribal institutions, burial and cremation grounds, etc.[280] Moreover, if the study is to be done at village or ward level and the land falls under the control of concerned Panchayat, Municipality or Municipal Corporation, as the case may be, then the study shall be done in consultation with them. This is in line with the Preamble of the Act i.e. to adopt a consultative and participative approach towards land acquisition, rehabilitation and resettlement.

The provision, as such, is silent on the scope of SIA and neither restricts the conduct of such study to some specific cases. This gives a wide scope and accordingly, SIA study could be done for a variety of projects, including projects of diverse sectors like dams, sanitation and health, mining, urban transport systems, pastoral development programmes and livelihood support projects. Therefore, the provisions of Section 4(1) provides that "whenever the Appropriate Government intends to acquire land for a public purpose, consultation and social impact assessment study are mandatory before acquisition" The only case where SIA is mandatory is provided in the Proviso of Section 6. It envisages that in respect of irrigation projects where EIA is required under any other law for the time being in force, the provisions of the Act, relating to SIA shall not apply. In contract to this, the Act also provides that the EIA study, if any, shall be carried out simultaneously and such study shall not be contingent upon the completion of the SIA study. Moreover, Section 9 provides that where land is acquired

[280] Section 4, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013)

invoking the urgency provisions under Section 41, the Appropriate Government may exempt undertaking of the Social Impact Assessment study.

The provision of SIA under LARR gives scope to the authorities to conduct such study involving a broad array of methods involving both quantitative and qualitative methods. However, irrespective of the method adopted the study should compulsorily involve participatory methods. The choice of method would depend on several factors such as time and resource constraints, availability of experts, the location and mature of project.[281]

As mentioned earlier, SIA method can be quantitative or qualitative. The former includes Land Acquisition Surveys, Census Survey, Socio-economic survey, Other Administrative Records such as NSS, whereas the latter would include Key Informant Interviews, Focus Group Discussions (FGDs), Rapid Appraisal, Public Hearing.

Once SIA is done, a formal Report with a brief Executive Summary is to be submitted to the sponsoring authority. Such Report is divided into several distinct sections, each dealing with different aspects of SIA Process[282]:

(a) Introduction

(b) Description of the Project

(c) Methods in Identifying Project impacts

(d) Anticipated Project Impacts

(e) Affected Population

(f) Affected Vulnerable Groups

(g) Inventory of Losses to Households

(h) Losses to the Community

(i) Public Consultation and Disclosure

(j) Findings and Recommendations

(k) Mitigation Plan

[281] Supra 257
[282] Ibid

(l) Recommendations

(m) Sharing SIA Report with Stakeholders

Section 5 seeks to ensure that the Appropriate Government shall conduct public hearing at the affected area, after making adequate publicity regarding date, time and venue for such hearing. Such public hearing is done to ascertain and record the views of the affected families and it must be included in the SIA Report. Moreover, Section 6 provides that the Appropriate Government shall ensure that the SIA study Report along with the Social Impact Management Plan (SIMP) are prepared and made available in the local language to the Panchayat, Municipality or Municipal Corporation and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall also be adequately published in the affected areas and shall also be uploaded on the website of the Appropriate Government.[283]

The SIA Report shall be made available to the Impact Assessment Agency authorized by the Central Government to carry out EIA. However, this provision is not applicable where irrigation projects are carried on and EIA is mandatory under any law.

After the preparation of SIA Report, it shall be evaluated by an independent multi-disciplinary Expert Group constituted by the Appropriate Government. The Expert Group shall comprise of:

(a) Two non-official social scientists;

(b) Two representatives of Panchayat, Gram Sabha, Municipality or Municipal Corporation;

(c) Two experts on rehabilitation; and

(d) A technical expert in the subject relating to the project.

The essence of SIA in India is to mandate the Government to answer the following questions:

-To state in clear terms the purpose for acquiring a land,

- The area of land required and how much of it is actually being acquired?

- Who will be affected by such acquisition?

- Who is liable for compensation?

[283] Ibid

- What is the nature of “public purpose”?

The enactment of the Right to Fair Compensation, and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 mandates carrying out of SIA prior to every land acquisition. However, some States have proposed amendments to the Act by which they propose to bypass SIA in case of Government projects, as it ultimately benefits public. But Private Projects and Public-Private Partnerships (PPP) are not exempted.

Thus, the mandate for social impact assessment signifies a paradigm shift in the domain of land appropriation for public purpose, through the recognition of the landowners' 'Right to be Informed' and the 'Right to be Heard'.

The consultative approach with negotiated settlement of benefits to landowners and livelihood-dependent people, as part of the SIA process, is a well thought out mechanism to abandon the path of confrontation in favour of conciliation. The undermining of the salient features of the RFCTLARR Act, 2013 has the potential to revive land conflicts that have, in the past, proven to be detrimental to the industrial and infrastructure development of the country.[284]

5.2 Rehabilitation of displaced people

Development-induced displacement and resettlement is probably the second largest category of displacement worldwide after disaster-induced displacement.[285] Each year, approximately fifteen million people are displaced as a consequence of large development projects.[286] In India, more than 25 million people have been displaced due to development projects and about 12 % are due to mining industries-2.5 million (1951-2000). Only 24.7% persons got rehabilitation.[287] The size of coal mines has grown from an average of 150 acres in the 1960s to 800 acres in the 1980s. Open cast mines require more land and displace more persons but create fewer jobs than underground mines do.[288]

All mining projects have immense impact on the physical, social, cultural, and psychological life of human societies and biodiversity irrespective of the country in which they live and

[284] Dr. Preeti Jain Das, Social Impact Assessment: Can we do away with it? https://www.teriin.org/article/socialimpact-assessment-can-we-do-away-it
[285] The most dynamic category of internal displacement is disaster-induced displacement: 42 million people were displaced by natural hazards in 2010, 14,9 million in 2011, and 32,4 million in 2012 according to the Internal Displacement Monitoring Centre (IDMC) report
[286] M.M. Cernea, "Development-induced and conflict-induced IDPs: bridging the research divide", Forced Migration Review, Special Issue, December 2006, pp. 25-27
[287] http://iced.cag.gov.in
[288] Ibid

whether they are urban or rural, tribal or non-tribal. The mining industries have produced many environmental refugees, caused a massive livelihood displacement. The social impact of mining goes far beyond loss of land. “Failure to mitigate or avoid these risks have generated ‘new poverty’, as opposed to the ‘old poverty’ that peoples suffered before displacement.

The uprooting of millions of people to new unknown places is a matter that is now becoming increasingly contentious. Such displacement results in profound socio-economic and cultural disruption to the people affected as well as the disturbance of social fabric of local communities. And the displacement, rehabilitation and resettlement are not by choice but mostly by compulsion.

5.2.1 The Land Acquisition Act 2013

The short title of the new Land Acquisition Legislation is 'the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013' (hereinafter referred to as 'the LARR Act, 2013' or simply 'the Act' for brevity's sake). LARR Act, 2013 repeals the “Land Acquisition Act, 1894” ('the 1894 Act'). In order to streamline the provisions of compulsory acquisition of land and reduce hardships to the owners of the land and other persons dependent upon such land, it is necessary to repeal the “1894 Act”, and to replace it with a new Act with adequate provisions for rehabilitation and resettlement for the affected persons and their families. The 1894 Act did not address the issues of rehabilitation and resettlement to the affected persons and their families and not did it properly define the term “public purpose”.

The 1894 Act only provides for payment of compensation for land acquired to the owner. It makes no provision for payments to rehabilitate and resettle those displaced by land acquisition including land owners, livelihood losers etc. The 2013 Act contains provisions on R&R package in the Second Schedule to the Act. Social Impact Assessment Study made mandatory before any land acquisition.

Section 107[289] of the Act provides that any State may enact any law to enhance or add to entitlements enumerated under the Act which confers higher compensation than payable under the Act or make provisions for rehabilitation and resettlement which is more beneficial than provided under the Act. Section 108(1) of the Act provides that “where a State law or a policy

[289] Sec. 107 of “The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013”

framed by the Government of a State provides a higher compensation than calculated under this Act for the acquisition of land, the affected persons or his family or member of his family may at their option opt to avail such higher compensation and rehabilitation and resettlement under such State law or such policy of the State. Section 108(2) of the Act provides that where a State law or a policy framed by the Government of a State offers more beneficial rehabilitation and resettlement provisions than under the Act, the affected persons or his family or member of his family may at his option opt to avail such rehabilitation and resettlement provisions under such State law or such policy of the State instead of under the Act".

"Section 16(1) of the Act provides that upon the publication of the preliminary notification by the Collector, the Administrator for Rehabilitation and Resettlement shall conduct a survey and under-take a census of the affected families, in such manner and within such time as may be prescribed". The survey and census shall include—

(a) "particulars of lands and immovable properties being acquired of each affected family";

(b) "livelihoods lost in respect of land losers and landless whose livelihoods are primarily dependent on the lands being acquired"

(c) "a list of public utilities and Government buildings which are affected or likely to be affected, where resettlement of affected families is involved" and

(d) "details of the amenities and infrastructural facilities which are affected or likely to be affected, where resettlement of affected families is involved".

(e) "details of any common property resources being acquired. Section 16(2) of the Act provides that the Administrator shall, based on the survey and census as above, prepare a draft Rehabilitation and Resettlement Scheme, as prescribed".

The draft R&R scheme shall :

(A) "include particulars of the rehabilitation and resettlement entitlements of each land owner and landless whose livelihoods are primarily dependent on the lands being acquired and where resettlement of affected families is involved— a list of Government buildings to be provided in the Resettlement area; details of the public amenities and infrastructural facilities which are to be provided in the resettlement area". [section 16(2)]

(B) "include time limit for implementing Rehabilitation and Resettlement Scheme"; [section 16(3)]

(C) “be made known locally by wide publicity in the affected area and discussed in the concerned Gram Sabhas or Municipalities”. [section 16(4)]

Section 16(5) of the Act provides that “a public hearing shall be conducted in such manner as may be prescribed, after giving adequate publicity about the date, time and venue for the public hearing at the affected area and in case where an affected area involves more than one Gram Panchayat or Municipality, public hearings shall be conducted in every Gram Sabha and Municipality where more than 25% of land belonging to that Gram Sabha or Municipality is being acquired. The consultation with the Gram Sabha in Scheduled Areas shall be in accordance with the provisions of the Provisions of the Panchayats”. “(Extension to the Scheduled Areas) Act, 1996”

“Section 16(6) of the Act provides that the Administrator shall, on completion of public hearing submit the draft Scheme for Rehabilitation and Resettlement along with a specific report on the claims and objections raised in the public hearing to the Collector”.

Section 17(1) of the Act provides that the Collector shall review the draft Scheme submitted by the Administrator with the Rehabilitation and Resettlement Committee at the Project level.

Section 17(2) of the Act provides that “the Collector shall submit the draft Rehabilitation and Resettlement Scheme with his suggestions to the Commissioner Rehabilitation and Resettlement for approval of the Scheme”.

Section 18 of the Act provides that “The Commissioner shall cause the approved Rehabilitation and Resettlement Scheme to be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and be published in the affected areas, in such manner as may be prescribed, and be uploaded on the website of the appropriate Government”

Section 45 of the Act provides that “where land proposed to be acquired is equal to or more than 100 acres, the appropriate Government shall constitute a Committee under the chairmanship of the Collector to be called the Rehabilitation and Resettlement Committee, to monitor and review the progress of implementation of the Rehabilitation and Resettlement scheme and to carry out post-implementation social audits in consultation with the Gram Sabha in rural areas and municipality in urban areas”

5.2.2 The Coal Bearing Areas (Acquisition and Development) Act, 1957

Normally the coal block lands are either reserve forest or a private patch or non-forest government land or a mix of all the categories of land. Government has the power to give permission for surface right on forest land and non-forest government land as both these categories of land belongs to government. Only requirement is to follow the process of forest diversion and environment clearance before excavating the land for mining. Such thing is not very common or usually easy in case of private land. Government of India enacted the CB Act deriving the provisions of LA Act 1984 for acquiring the private land of the coal blocks by the government of India companies, such as CIL and its subsidiaries like MCL, ECL etc and NTPC. The practice of private company captive coal block, land acquisition is done through LA Act 1894. Since LA Act 1894 has been repealed w.e.f 1st January 2014, now all the private land acquisition in the coal blocks where CB Act is not applicable are to follow the land acquisition process of new LA Act, The right to Fair Compensation and Transparency in Land Acquisition , Resettlement and Rehabilitation Act (RFCTLARR Act 2013).[290]

The Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) provides for acquisition of Land containing or likely to contain coal deposits and for matters connected therewith for Government companies like CIL and their subsidiaries, NTPC etc. CBA Act is limited to acquisition of coal mining areas by government companies only.

Both the LA Act of 1894 and the CBA Act of 1957 empowered for acquisition of land, however, there is a small but important difference that the surface right of the land is transferred to the requisitioning agency once land is acquired applying Old LA Act, whereas both mining rights and surface rights of the patch of land is transferred automatically when the land is acquired on application of CBA Act.

Under the new LA Act; the preliminary notification will be made along with the summary of the SIA report; CB Act does not require so much of exercise at the time of preliminary notification. Even at the time of publication of declaration under the RFCTLARR Act, the summary of the R&R Scheme is mandatory to be attached with the declaration by Government before making the award for compensation payment. CB Act is independent of this responsibility. RFCTLARR Act requires passing of award in two phases. (i) Land Acquisition Award, and (ii) Rehabilitation & Resettlement Award. There is also provision for additional compensation in case of multiple displacements. The special provision of SC/ST; procedure

[290] Binod Mishra, 'The Impact of New Land Acquisition Act 2013 (RFCTLARR Act 2013) on the Coal Bearing Areas (Acquisition and Development) Act 1957' (2014) 2013.

and manner of R&R benefits, safeguards the interest of the displaced people and affected people which is not there in the CB Act. The only common thing that can be noticed from the new LA Act with that of CB Act is the provision of special court in case of the disputes arising out of the decision of the Land Acquisition Officer' s order relating to award.

The compensation that has been calculated in new LA Act is almost four times the compensation i.e. committed in CB Act. This is a huge difference in shape of cost and benefits to the company and people respectively.

Comparing the provisions, it can be well imagined that the land coming within the coal block area, which will be acquired through CB Act and the land falling just outside the area but is acquired for the coal block development like approach road or water corridor or rail connectivity, township land will have a different mode of compensation calculation and payment. Will people accept the huge process difference and cost deference. It's a big question mark.

The companies like Coal India Ltd. (CIL) and its subsidiaries as well as NTPC in India who have been privileged that, acquiring land with coal block through CB Act are facing the toughest opposition of the people for the accessories land that is going to acquire to make the coal mining operative. This will have a far reaching impact on both cost and time and requires a special study and understanding the ground reality that is going to be experienced by the company in future on the advent of new Act of 2013.

5.2.3 The Panchayats Extension to Scheduled Areas (PESA) Act, 1996

The PESA Act was enacted by the Centre to ensure self-governance through Gram Sabhas for people living in scheduled areas. Although several laws were tweaked to adjust for this law, it lacks direct rules and thus can't be implemented. However, the law popularly known as PESA remains disempowered as 40% of the states under its purview have not been able to frame their rules for its implementation even after 25 years of its existence.

The Central Government enacted Panchayats Extension to Scheduled Area (PESA) Act 1996 following the recommendations of the Bhuria Committee Report in 1995. The Bhuria Committee favoured democratic decentralization in scheduled areas. All states with Scheduled Areas were to enact a suitable legislation within a year that are consistent and not in contradiction to PESA, the central Act.

India's PESA legislation enacted in 1996 provides that the prior recommendations of the Gram Sabha or Panchayat at the appropriate level shall be made mandatory for granting mining leases for minor minerals in the Scheduled Areas.

Gram Sabha has the power to safeguard and preserve the traditions and customs of people, their cultural identity, community resources and customary mode of dispute resolution. It also has power to approve plans, programmes and projects for social and economic development, to identify persons as beneficiaries under the poverty alleviation and other programmes, to give certificate of utilisation of funds for various plans and programmes.

If there is an acquisition of land in these areas, Gram Sabha must be consulted. However, actual planning and implementation of the projects shall be co-ordinated at the state level. So, in land acquisition, the role of Panchayats in these areas is advisory only. The recommendation of the Gram Sabha or the Gram Panchayats is mandatory for grant of prospecting licence or mining lease for minor minerals in that area.

Section 4(A) of PESA Act states that no state legislation shall be inconsistent with the customary law, social and religious practices and traditional management processes of community resources. This is not directory in nature but mandatory.

Thus, it can be seen that the PESA Act has been an important legislative framework to be enacted by the state legislatures for the tribals to have their control and rights over natural resources and conserve and preserve their identity and culture and that too in a participatory manner through the institution of gram Sabha.

International treaties that India is a party to as well and other standards on the rights of Indigenous Peoples, however, require the government seek the free, prior and informed consent of Indigenous communities before the approval of any project that is likely to affect them. The United Nations Permanent Forum on Indigenous Issues endorsed a Report in 2005 which stated that 'prior' implies that the consent should be sought sufficiently in advance of any authorisation for or commencement of the concerned activity.[291]

5.2.4 The Schedule Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

[291] Report of the International Workshop on Methodologies Regarding Free and Prior Informed Consent and Indigenous Peoples, Permanent Forum on Indigenous Issues, 4th Sess., May 16 – 27, 2005, U.N. Doc.

After T.N. Godavarman Case (2005) Central Government passed a law as The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. This Act recognises and vests the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations.

The recognised rights of the forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwellers. The Act also recognises the tenurial rights and its consolidation for forest dwellers.

Under the Act following rights have been identified;

(a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;

(b) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;

(c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;

(d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

(e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;

(f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;

(g) rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;

(h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;

(i) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;

(j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;

(k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;

(l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;

(m) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005.[292]

Section 4 deals with recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers. Section 5 provides for following duties of forest dwellers:

(a) To protect the wild life, forest and biodiversity;

(b) To ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected;

(c) To ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;

(d) To ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.

[292] Section 3 of The Scheduled Tribes And Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

Section 6 provides for authorities for better administration of forest dwelling rights. It comprises of Gram Sabha and District Level committee and Sub-divisional Committee to be appointed by State Government. Section 7 says that, “Where any authority or Committee or officer or member of such authority or Committee contravenes any provision of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees. The offence shall not be deemed to be committed if any member of the authority or Committee or head of the department or any person referred to in this section liable to any punishment proves that the offence was committed without his knowledge or that he had exercised.

5.2.5 The National Resettlement and Rehabilitation Policy (NRRP) of 2007

To address various issues related to land acquisition and rehabilitation and resettlement comprehensively the Department of Land Resources has formulated a National Rehabilitation and Resettlement Policy, 2007. The new policy has been notified in the Official Gazette and has become operative with effect from the 31 October 2007, based on which many State Governments have their own Rehabilitation and Resettlement Policies.

i. The National Resettlement and Rehabilitation Policy (NRRP) 2007 is applicable to all development projects leading to involuntary resettlement of people.

ii. The policy aims to minimize displacement and promote, as far as possible, non-displacing or least displacing alternatives.

iii. The policy also aims to ensure adequate rehabilitation package and expeditious implementation of the rehabilitation process with the active participation of those affected. iv. The policy also recognizes the need for protecting the weaker sections of the society especially members of the Scheduled Castes and Scheduled Tribes.

The objectives of the National Rehabilitation and Resettlement Policy are: to minimise displacement and to promote,' as far as possible, non-displacing or least-displacing alternatives; to ensure adequate rehabilitation package and expeditious' implementation of the rehabilitation process with the active participation of the affected families; to ensure that special care is. taken for protecting the rights of the weaker sections of society, especially members of the Scheduled Castes and Scheduled Tribes, and to create .obligations on the State for their treatment with concern and sensitivity; to provide a better standard of living, making concerted efforts for

providing sustainable income to the affected families; to integrate rehabilitation concerns into the development planning and implementation process; and where displacement is on account of land acquisition, to facilitate harmonious relationship between the requiring body and affected families through mutual cooperation.[293]

This policy has made another very important improvement by including many more things, that affect the lives of the displaced people, under its fold for rehabilitation purposes. It says that the projects displacing people above a threshold number will have to conduct a Social Impact Assessment (SIA) which will identify impact of the project on properties of common interest. It includes public and community properties, buildings, infrastructure and other assets. These provisions are good for both the developers and the public as these things would not require much investment, are also not controversial in terms ownership but will go a long way in making the displaced feel more comfortable in their new neighbourhood.

The principle of rehabilitation before displacement once it comes in force, would definitely pave the way to make sure that the displaced people are not forced to live in temporary arrangements and that these housing related infrastructure are in place before the actual displacement takes place. It will also help in quicker accomplishment of R&R activities as it incentivizes the developers to finish these things fast, in the way that they cannot begin the construction on their project site unless they are done with rehabilitation related work.[294]

The R&R policy has clearly set the rules for deciding who should be the administrator for rehabilitation & resettlement. According to this policy, R&R activities for a project displacing 400 people (200 in hilly areas) will be administered by the official appointed the concerned state government and he/she should not be of a rank lower than of District Collector.

The policy states that the land acquired for public purpose cannot be transferred to any other purpose but a public purpose, and if the acquired land remains unused for more than five years, it will be reverted back to the government. This provision is there to make sure that the land is used for the same purpose for which it was acquired and that project developers don't acquire more than what is actually required. In the past what used to happen is that projects would acquire land far in excess of their requirement and then use if commercial or other purposes less useful for the society. One such incident worthy of being mentioned here is of Narmada

[293] http://www.indiaenvironmentportal.org.in/content/270279/national-rehabilitation-and-resettlement-policy-2007/
[294] National Rehabilitation and Resettlement Policy-2007, F. No.26011/412007-LR

dam project where six villages were acquired for developing extravagant project colonies and the residents of the village were not considered for rehabilitation. That piece of land is still lying unused and it is now being proposed to be handed over for constructing a golf course, while the displaced residents are still fighting for their compensation. This provision would make sure that such grotesque incidents are not repeated in future

NRRP 2007 also talks about not just compensating but about improving the living standard of the affected families by making them more employable. Before it was just about compensating them with land, cash or if possible a job at the project site, but all this had no intention of improving the affected lives in the long run. But after the implementation of this policy the developers are expected to focus on imparting employable skills and run programs for training and capacity building for the members of affected families.

After the approval of this policy the Government of India soon announced that it would be building central body to oversee R&R related activities. Having a national body for monitoring would make the entire process much more uniform and structured, it will lead to better transparency and thus better control.

Even though the new policy has many improvements but it still has a number of limitations.

The prime objective of this new policy on R&R is to minimize displacement but it doesn't say what should be the steps taken by developers to do so and at what stage such considerations should be made. One of the most effective ways to do so is through the choice of technology and not just the size of it. It is not clear how the policy would ensure that such criterion is followed at the different stages like conception, design and preparation.

The R&R policy makers have been quite liberal with clauses like 'as far as possible' and 'if available'. We know it quite well that such ambiguities have been used widely and extensively by project authorities to evade obligations. A policy as crucial as NRRP, or for that matter any policy, should have no place for such loopholes and if they are still there they would again be used very 'wisely' by our project developers.

The policy has some very important mechanism for grievance redressal, like Project/District R&R Committees, an Ombudsman, a National Monitoring Committee, a National Monitoring Cell and a National Rehabilitation Commission, but stays mum on what powers these bodies would have and what authority they would be able to command if some issue comes up.

5.3 Corporate Social Responsibility

Corporate Social Responsibility, or CSR, is a shifting concept. People often talk about it as if it was a recent phenomenon, but in reality its core is the ongoing effort to understand business as part of society and that is an effort that is as old as business endeavour.[295] Despite the growing awareness and popularity of the term Corporate Social Responsibility, there is no general consensus as to what it actually means. In fact, CSR is often used interchangeably with various other terms, such as corporate philanthropy, corporate citizenship, business sustainability, business ethics and corporate governance. Although these other terms do not all mean the same thing, there is one underlying thread that connects them all- the understanding that companies have a responsibility not just towards their shareholders but also towards other stakeholders, such as 'customers, employees, executive, non-executive board members, investors, leaders, vendors, suppliers, governments, NGOs, local communities, environmentalists, charities, indigenous people, foundations, religious groups and cultural organisations. All of these stakeholders are equally important to a corporation, and it should therefore strive with sincerity to fulfil the varied expectations of each.[296] Corporation does not exist in isolation. Therefore, they should feel some level of responsibility for the community of which they are a part, and should work for the development and progress of that community and society at large.[297]

Social Responsibility is actually a normative theory suggesting that corporation sought to take actions which promote a role which is beneficial towards society. In simple words, the corporation ought to give "something" back to society. Although the terms used may not be the same, concepts analogous to social responsibility exist for centuries. In India, in the Vedic literature as Valmiki Ramayana, the Mahabharata [includes the Bhagavad - Gita and the Puranas and Kautilya's Arthasastra provides an inside-out approach to Corporate Social Responsibility, which is development of the individual leader's self-conscience, contrary to the western approach that takes an outside - in perspective. CSR goes beyond the normal charity activities of an organization aid this requires that the responsible organization take into full account of its impact on all stakeholder and on the environment when making decisions. In a

[295] Halina Ward & Craig Smith, Corporate Social Responsibility at a cross road: Futures for CSR in the UK to 2015, International Institution for Environment and Development 1 (2006).
[296] Aayush Kumar, 'Mandatory Corporate Social Responsibility: An experience Vision?' 1(3) Company Law Journal 113 (March 2013).
[297] United Nations Global Compact, (05 July, 2016), http://www.unglobalcompact.org.

nutshell, CSR requires the organization to balance the need of all stakeholders with its need to make a profit and reward shareholders adequately.[298]

A widely quoted definition by the World Business Council for Sustainable Development states that:[299] "Corporate social responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large."

The prime aim of business is to earn profit by its various processes. These processes of business entities have a great impact on the environment as well as on the life and livelihood of the people surrounding them. There is a need to conserve resources that are over used during various courses of business activities. However, to achieve sustainable growth there is need for environmental protection along with resource conservation. Therefore, companies should realize its responsibility towards its surrounding, including environment and ecology, natural resource conservation, people and their livelihood, infrastructure, socio-economic aspirations.

The scene of CSR in India changed with the introduction of Section 135 of the Companies Act 2013. The new Companies Act has removed the weakness in the old Companies Act of 1956 in the area of corporate social responsibility activities. Of late government had a view to make it mandatory for corporate social responsibility activities and to make it funding public. With the implementation of the new company law from April 1, 2014, India has become the only country in the World with legislated corporate social responsibility (CSR) and spending threshold of up to $ 2.5 billion (Rs. 15,000 crore).[300] Corporate social responsibility (CSR) has been made mandatory under the new regulation and there are provisions of penalties, in case of failure.

Section 135 has two parts, first specifies the companies that are subject to mandatorily complying with CSR norms and the second part provides for the obligation that needs to be fulfilled. Section 135 only applies to firms that satisfy at least one of three criteria in any financial year,

- either having net worth exceeding INR 5 billion,
- turnover exceeding INR 10 billion, or
- net profits exceeding INR 50 million.

[298] Balakrishnam Muniapan and Mohan Dass, 'Corporate Social Responsibility: A philosophical Approach from an ancient Indian Perspective', International Journal of Indian Culture and Business Management 408, Vol. 1 No. 4 (2008).

[299] Gail Thomas and Margaret Nowak, Corporate Social Responsibility: A definition, Working Paper Series No. 62 (Curtin University of Technology, Graduate School of Business) (December 2006), at 3

[300] India now only country with legislated CSR, (20 July, 2016), https://www.business-standard.com.

All public companies and private companies with operations in India including foreign-owned firms are subject to Section 135 if they cross any of the three criteria.

The companies fulfilling any of the three categories must constitute "a Corporate Social Responsibilities committee with one independent director and three directors. The composition of the CSR committee must be disclosed.

In case of a foreign company, the CSR Committee should comprise of at least two persons of which one person should be a person resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company and another person should be nominated by the foreign company.

The companies shall formulate CSR policy that will recommend the CSR spending and Committee must monitor the policy and the board has to approve and publicise the companies" CSR policy after taking CSR committee's recommendations and act and observer that the policy is duly followed. The board has to ensure the company spends at least a percentage of the companies average net profit of the previous three years on the activities mentioned under schedule VII of the Companies Act.[301]

Failure to comply or explain the reason not to spend the amount on CSR can attract liability because the formation of a committee is a mandatory process however due explanation can be provided for not spending two percentage if the same is not properly explained this too can attract a penalty. The penalty on the Company and every officer of the company who violates Section 135 is INR 10,000 for the first day of the violation plus an additional INR 1,000 a day if the violation continues.[302]

Activities which may be included by companies in their Corporate Social Responsibility Policies is given in Schedule VII to the Companies Act, 2013. They are as follows-

(i) Eradicating extreme hunger and poverty;

(ii) Promotion of education;

(iii) Promoting gender equality and empowering women;

(iv) Reducing child mortality and improving maternal health;

(v) Combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;

(vi)Ensuring environmental sustainability;

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[301] Abhishek Anand and Charvi Singh, 'Corporate and Social Responsibilities in India and United States of America: A Comparative Analysis' II Lexforti Legal Journal.

[302] Nidhi Tandon, "The Role of Corporate Social Responsibility in India" <https://www.researchgate.net/publication/312084577_The_Role_of_Corporate_Social_Responsibility_in_India>

(vii) Employment enhancing vocational skills;

(viii) Social business projects;

(ix) Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and

(x) Such other matters as may be prescribed.

Out of ten major areas of CSR activities, the item (vi) refers to activities directly relevant to environment and environmental sustainability. The broad areas include 'ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, Agro forestry, conservation of natural resources and maintaining quality of soil, air and water'. This is the most positive feature among other scheduled activities under the CSR. These activities are going to contribute in a significant way for the betterment of environment.

The environmental benefits due to practice of environment CSR arise out of recycling of pollutants or waste or effluent, effective disposal of waste, proper treatment of smoke or ash, installation of equipment to protect environment, regular environmental audit, tree plantation, natural resource management, integrated watershed development, rain water harvesting, reclaiming of waste land and environmental awareness programs in schools or colleges.[303]

Mandatory CSR argues that companies have the responsibility beyond the company's shareholders and towards the society at large. This responsibility in developing countries increases considerably to support the government or generate resources to meet the developing goals. The triplet line approach encapsulates the idea that a company should achieve a balance of economic, social and environmental objectives while addressing the wishes of Shareholders and stakeholder, some believe CSR mandate can be a problem in companies' efficient operation and stakeholder model have several objectives which create complexities of the companies. Major problem is to decide that where CSR can be practised and each year the company has to come up with a way to spend resources on CSR on stakeholders and choosing one stakeholder among several can put the company in serious dilemma and thinking. There are high possibilities that committee formed for such task such as the Companies Act, 2013 can divert resources for personal benefits and that will defeat the very objective of mandatory CSR that is followed by the Indian Companies. Mandatory CSR imposes great threat to the

[303] Environment CSR initiatives of manufacturing units in India-An empirical study, Available at http://www.academicjoumals.org/AJBM/environment_ CSR initiatives of manufacturing units in india.pdf

smaller and young companies which need profit as a source of Funds and Investment which can lead to loss of efficiency of the Indian economy.[304]

A thorough perusal of the self-regulatory measures evidences the fact that they are all voluntary and not obligatory in nature. The corporates are free to decide their actual plan of action, if any. Even, in the Companies Act, 2013 non- compliance with the provision directing spending of 2% of said profits amounts merely to an explanation in the Annual Report and no more.[305]

Finally, globalization, together with the economic reforms of 1990s, has brought about a fundamental transformation in the outlook of India as far as CSR is concerned. No longer are corporations operating in India approaching CSR in a restricted manner through sporadic philanthropy. Today, they are more involved in developing a stake- holder-oriented approach, and use their core competencies in addition to committing financial resources to accomplish their CSR goals.

[304] Anand and Singh (n 293).

[305] Gitanjali Ghosh and Shishir Tiwari, 'Governance of Corporate Environmental and Social Responsibilities in India: Sketching the Contour of Legislative Evolution and Reforms.' (2014) 6 IMJ 35.

Chapter 6

Judicial Approach on Mining of Coal

India has been one of the first countries to recognize healthy environment as a right to life. In 1991, the Supreme Court of India (here after referred to as the Court) while deliberating on a matter of pollution discharges from coal washeries and industrial units in Bokaro (then under the state of Bihar) observed that the right to a clean environment is a fundamental right of Indian citizens under the Constitution of India. Interpreting Article 21, the Court underscored that the "right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse".[306]

Pronouncements by the Court thereafter has repeatedly upheld such rights of a citizen. Such observations have also come into light pertaining to cases on mining adjudicated by the Court. Alongside the right to clean environment, the Court's observations have also upheld the right of citizen liberty and scope of engagement in decisions of developmental projects.

This section analyses some of the flagship judgements, related orders and directions pronounced by the Court with respect to coal that upheld such fundamental rights along with underscoring other environmental and social obligations. The case laws as discussed in this section have primarily been discussed in a time-series manner to sequentially understand the developments over the years and subsequent actions.

6.1 M.C. Mehta vs Union of India[307]

In this case, the Apex Court clarified legal provision in respect of EIA Notification, 1994 in the context of mining. The Apex Court held that no mining operation can be commenced without obtaining Environmental Clearance in terms of the Notification. According to the Applicant, ratio of the Judgment in M.C. Mehtas case is that even in case of renewal of mining lease, it has to be deemed to be a wholly new project/expansion in EIA Notification which, therefore, requires prior Environmental Clearance (EC) before it can operate

6.2 Karunakar Samal and another vs Member-Secretary, State Pollution Control Board, Orissa and another Orissa, 2009

[306] Supreme Court of India, 1991, Subhash Kumar v. State of Bihar, AIR 1991 SC 420
[307] M.C. Mehta vs. Union of India, A.I.R. 2004 S.C. 4016

The appellants, who are the residents of village Kankili under Talcher P.S. of Angul district, being aggrieved by the inaction of the State Pollution Control Board, Orissa, (hereinafter 'the Board') on the complaint filed by them vide Annexure-8 have filed this appeal under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 praying to set aside the Consent Order given to operate the coal washery (dry coal beneficiation plant) set up in village Kankilli. The appellants have also prayed for a direction to restrain the respondent from operating its plant.

The main ground of challenge advanced by the appellants in this appeal is that the Board in granting consent to operate in favour of the respondent unit has violated the Environment Impact Assessment (EIA) Notification dated 14.9.2006 issued by the Ministry of Environment and Forest (MoEF), Govt. of India, under the provisions of the Environment (Protection) Act, 1986 and the Rules made thereunder inasmuch as the unit had not obtained the environmental clearance as required under the aforesaid notification. In support of the aforesaid ground, learned counsel for the appellants placing reliance upon certain communications of the MoEF regarding applicability of the EIA Notification, 2006 to certain coal washeries (dry process), namely, M/s. Maheswari Coal Beneficiation and Infra Pvt. Ltd., Chhatisgarh, M/s, Phil Minerals Beneficiation and Energy Pvt. Ltd., Chhatisgarh, and M/s. Jindal Power Ltd., New Delhi, contended that both dry process and wet process of coal beneficiation plants were required to obtain environmental clearance as per the EIA Notification, 2006 and as such the respondent unit being a dry coal beneficiation plant is required to obtain the environmental clearance under the EIA Notification, 2006.

The said appeal was dismissed by judgment dated 19.4.2008 with the following observations.

"In view of the judgment rendered by us in Appeal No.11-A of 2007, we hold that this appeal is not maintainable and is accordingly dismissed. It is open to the appellants to approach the Board for redressal of their grievance, if any, in accordance with law."

6.3 Padmakar Vinayak Deshmukh and Ors. v. Union of India and Ors[308]

In this case the petitioner contended that for a new project of setting up of coal based thermal plant, public hearing for granting of environment clearance is one of the most important steps. In the present case there was serious dispute of ruckus at hearing. Though the number of villagers present were about 5000 only 15 person spoke and about 190 written representations

[308] Padmakar Vinayak Deshmukh and Ors. v. Union of India and Ors, 2012 (1) AIR BOM R 378

were submitted. There was hue and cry about denial of opportunity of being heard. Facts showing that public hearing was not conducted as it should have been, Environmental Clearance already granted on basis of other factors such as appraisal by Expert Environment Appraisal Committee etc. The Bombay High Court held, post decisional public hearing is to be given to villagers. And Ministry would be entitled to review earlier Environmental Clearance in total or in part depending on outcome of public hearing.

6.4 Manohar Lal Sharma v. Principal Secretary[309](First Coal Block Judgment)

In the judgment delivered on August 25, 2014 in Manohar Lal Sharma v. Principal Secretary, (2014) 9 SCC 516 (First Coal Block Judgment) a unanimous three judge bench of the Supreme Court declared the entire allocation of coal blocks, made as per the recommendations of the Screening Committee, and through the Government Dispensation Route, as suffering from "the vice of arbitrariness and legal flaws". The Court held that this was because the Screening Committee did not follow "any objective criteria in determining as to who is to be selected or who is not to be selected".

Manohar Lal Sharma and Common Cause, an NGO, ('Petitioners') challenged licenses that the Central Government appointed Screening Committee had granted to private companies and certain public sector undertakings ('PSUs'). The Screening Committee over a period of time had allocated 216 coal blocks to companies for carrying out coal mining in seven states. The grants were challenged, principally on the following grounds:

- Central Government did not follow mandatory procedure under the Mines & Minerals Act;
- Section 3(3)(a)(iii) of the Coal Mines Act, which provides for parties entitled to carry on mining operations, was violated by Central Government by making allocations in favor of ineligible companies;
- Screening Committee granted licenses to ineligible applicant companies over a course of 36 meetings based on subjective and arbitrary criteria.

The Supreme Court first examined the scheme of the regulatory and legislative framework in respect of coal mining operations. Entry 23 of List II in Schedule 7 of the Constitution of India, 1950 ('Constitution'), empowers States in the Union to enact laws in respect of mines and mineral development. However, Entry 23 is subject to Entry 54 of List 1 in terms of which

[309] Manohar Lal Sharma v. Principal Secretary, (2014) 7 MLJ 315 (SC)

Central Government is empowered to legislate in respect of mines and minerals. Generally, legislative powers of States defer to those of Central Government in the event of a conflict.

Section 4 of Mines & Minerals Act provides that all mining operations shall be under a licence. Under the Mineral Concession Rules of 1960, ('Rules'), framed in exercise of powers under Section 13 of the Mines & Minerals Act, an applicant would first make an application to the relevant State Government. Thereafter, the applicant is required to submit the plan to the Central Government and once approved by Central Government, the applicant was entitled to licence from the State Government. The Mines & Minerals Act and the Rules provide for the grant of licence for operating in respect of mines and minerals stated under the Mines & Minerals Act.

In 1973, the Central Government nationalized mining activities through the Coal Mines Act to reorganize and reconstruct coal mines and ensure coordinated and scientific development and utilization of coal. The objective was to distribute coal resources as best to subserve the common good. Section 5(1) of the Coal Mines Act empowers Central Government, through an order in writing, to vest the right, title and interest of an owner in relation to a coal mine a Government company. Section 1A, inserted by way of an amendment, empowered the Central Government to 'take under its control the regulation and development of coal mines'. Section 1A (3) of the Coal Mines Act restricted the right to carry on coal mining operations exclusively in favor of[310]:

- The Central Government or a Government company, or a corporation owned, managed or controlled by the Central Government,
- A person to whom a sub-lease had been granted by such Government, company or corporation, or,
- A company engaged in the production of iron and steel.

In 1991, Section 3 (3) of Coal Mines Act was amended to allow private sector participation in coal mining operations for captive consumption towards generation of power and other end use. Due to various factors including the dismal power situation, shortage in coal production and inability of Coal India Limited ('CIL'), the approval of Cabinet was sought by Cabinet Note dated 30.01.1992 for 'allowing private sector participation in coal mining operations for captive consumption towards generation of power and other end use, which may be notified by

[310] http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/newsid/2609/html/1.html?no_cache=1

Government from time to time.' Although projects were to be approved on a case-to-case basis, Section 3 (3) of the Coal Mines Act was amended to enable companies engaged in generation of power, washing of coal obtained from a mine or such other end use as the Central Government may specify. In this background rival submissions were urged on the power of Central Government to allocate coal blocks in favor of private companies.[311]

The Supreme Court held that the power of allocating coal blocks could not be traced to the Mines & Minerals Act or the Coal Mines Act. The Supreme Court also rejected the contention that executive power would extend to all matters in respect of which Central Government had legislative competence. The Supreme Court noted, based on submissions of various States of the Union, that their role was completely denuded and consequently, their powers under the two laws was completely whittled down. The Supreme Court held that the amended provisions of both laws did not restrict the role of State Government but the system of the Screening Committee, effectively denuded the powers of the State Government.

The Supreme Court held that if the two laws required an act to be done in a particular way, such act could be done only in that way or not at all. The Supreme Court rejected the interpretation that Central Government was exercising powers under Section 1A of the Coal Mines Act since the manner of exercise by the Central Government reduced the statutory role of State Governments to only complete formalities. Even the amended Section 3 of Coal Mines Act did not empower Central Government to make allocation of coal blocks. Central Government did not frame rules nor issue notifications regarding the process to be followed for allocation of coal blocks. The Supreme Court held that the amended provision of Section 3 of Coal Mines Act would determine the application of the Mines & Minerals Act and that Mines & Minerals Act would not determine the manner of operation of the Coal Mines Act.

The SC Order then examined the system adopted by the Screening Committee and whether it was the most appropriate process for allocation coal blocks since allocation of coal blocks conferred largesse on the companies. The Attorney General contended that auctioning of coal blocks would have led to an artificial increase in the price and this would in turn have affected cost of power. Given the sensitivity of price of coal and its application auctioning of coal would not have been viable and State Governments supported this statement. The Supreme Court,

[311] Khagesh Gautam, 'The coal block cancellation judgment: a critical examination' (2015) I Law & Policy Brief 1.

reiterating its ruling in the 2G Scam case[312], held that auctions did not have to be carried out in each and every case and that courts were not equipped to formulate a policy on allocation of public resources, however, where such allocation was arbitrary and violated principles of reasonableness under Article 14 of the Constitution, the same would be struck down.

The Supreme Court noted that the Screening Committee framed certain guidelines however rejected the same as the guidelines applied were 'totally cryptic and hardly meet the requirement of constitutional norms to ensure fairness, transparency and non-discrimination.' On an examination of the minutes of meetings of the Screening Committee, the Supreme Court observed that:

- The procedure followed was in contravention of Section 3(3)(a)(iii) of the Coal Mines Act;
- The procedure for comparison of competing companies was not as per constitutional norms;
- Consideration of 'consortium of companies' was impermissible under Coal Mines Act. The system of issuing allocation letters to one leader company and imposing obligations on an associate company was completely impermissible under the Coal Mines Act;
- The system of 'consortium leader' and 'associate companies' was completely violative of Section 3 of the Coal Mines Act, showed failure to consider *inter se* merits of applicants and showed failure of applying objective standards;
- Norms applied by the Screening Committee changed from meeting to meeting and were not consistent;
- Minutes of several meetings failed to disclose the rationale and reasons as to why certain companies were selected;
- Minutes even failed to disclose the particulars of the consideration of successful applicant;
- Several applicants did not have recommendation of the State Government

The Supreme Court also examined whether Central government could allocate coal blocks to PSUs. The Supreme Court held that allocation of coal blocks to PSUs through the government dispensation route was violative of Section 3 of the Coal Mines Act as the Coal Mines Act permitted coal mining operations only by specified companies stated in the Section.

The ruling emphasizes the importance of adhering to procedural due process. However, the burden is clearly on companies that contract with government to satisfy themselves that

[312] Centre for Public Interest Litigation & Ors. v. Union of India & Ors. [(2012) 3 SCC 1] and also on In re Special Reference No.1 of 2012 [(2012) 10 SCC 1]

government has the power to contract with companies. Companies contracting with government should also be prepared to defend these contracts in courts as they can be challenged by anybody and at any time. The principle of laches has been completely ignored and the Supreme Court has cancelled actions of the Central Government even though they relate to 1993. The additional levy of Rs. 295/- per metric ton imposed uniformly on every allocatee without any finding of wrong doing against them is a double whammy for the allocatees. While the rewards from doing business with Government of India may be high, the risks appear to be even higher.

6.5 Manohar Lal Sharma v. Principal Secretary [313](Second Coal Block Judgment)

In the follow up order passed on September 24, 2014 in Manohar Lal Sharma v. Principal Secretary, (Second Coal Block Judgment) the allotment of these 'arbitrarily' allotted coal blocks was quashed. The beneficiaries of this 'arbitrary' allotment were also ordered to pay to the Government, as compensation, an "additional levy" of ₹295 per metric ton for the coal extracted from the date they started extracting coal. The determination of this amount was based on the Comptroller and Auditor General's (CAG) report. In the run up to the coal block cancellation by the Supreme Court and in its aftermath much has been written about the issue.

6.6 Agnes Kharshing v State of Meghalaya[314]

Grievance in the application was against the illegal mining of coal by cement companies at East Jaintia Hills district, Meghalaya. Case set out in the application was that the cement plants in question were undertaking mining causing pollution to Lukha and Lunar rivers resulting in death of fishes.

The NGT directed the 12 member Committee headed by Additional Secretary MoEF&CC, which was constituted to look into illegal coal mining in the state to look into the present matter and take appropriate action in accordance with law. It is stated that the 2 activities noticed in the said report are still continuing in violation of judgement of the Hon'ble Supreme Court Deepak Kumar v. State of Haryana[315]

[313] Manohar Lal Sharma v. Principal Secretary , (2014) 9 SCC 614)
[314] Agnes Kharshing v State of Meghalaya, Original Application No.61/2020 (EZ), Before the National Green Tribunal Principal Bench, New Delhi
[315] Deepak Kumar v. State of Haryana (2012) 4 SCC 629

6.7 State of Meghalaya v. All Dimasa Students Union, Dima-Hasao District Committee[316]

In this case the SC held "Natural resources of the country are not meant to be consumed only by the present generation of men or women of the region where natural resources are deposited. These treasures of nature are for all generations to come and for intelligent use of the entire country."

The bench of Ashok Bhushan and KM Joseph, JJ has directed the State of Meghalaya to transfer the amount of Rs.100 Crores to Central Pollution Control Board from the Meghalaya Environment Protection and Restoration Fund (MEPRF) which amount shall be used by Central Pollution Control Board only for restoration of Environment.

The Court noticed that the said amount is neither a penalty nor a fine imposed on the State of Meghalaya. Accepting the submission that State of Meghalaya has very limited source of finances and putting an extra burden on the State of Meghalaya to make payment of Rs. 100 Crores from its own financial resources may cause great hardship to the State of Meghalaya, the Court directed that the ends of justice be served in modifying the direction of NGT dated 04.01.2019 to the extent that State is permitted to transfer an amount of Rs. 100 Crores from the amount lying in the MEPRF to the Central Pollution Control Board.

The Court was hearing the appeals challenging the various orders of National Green Tribunal wherein several directions were issued, measures to be taken to check and combat the unregulated coal mining in Tribal areas of State of Meghalaya which coal mining resulted not only loss of lives but damaged the environment of the area. Noticing that in the course of rat-hole coal mining by flooding water several employees and workers have died, NGT held that the illegal and unscientific mining neither can be held to be in the interest of people of the area, the people working in the mines nor in the interest of environment.

It, hence, directed

- the rat-hole mining operation, which has been going on in Jaintia Hills in the State of Meghalaya for last many years without being regulated by any law, be stopped forthwith throughout the State of Meghalaya and any illegal transport of coal shall not take place until further orders passed by the Tribunal.

[316] State of Meghalaya v. All Dimasa Students Union, Dima-Hasao District Committee, 2019 SC 822, decided on 03.07.2019

- while permitting the transportation of the already extracted coal lying in open near the mining sites, NGT constituted a committee for supervising such transportation.

On the power of NGT to issue various directions, the Court held that Rule 24 of National Green Tribunal (Practice and Procedure) Rules, 2011 empowers the Tribunal to make such orders or give such 195 directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. There is no lack of jurisdiction in NGT in directing for appointment of a committee and to obtain a report from a Committee.

"NGT by directing for constitution of committee has not delegated essential judicial functions. The Tribunal had kept complete control on all steps which were required to be taken by the committees and has issued directions from time to time. The State is always at liberty to obtain appropriate directions if aggrieved by any act of the committee."

It also noticed that NGT by issuing direction to constitute the committee for transportation of the extracting mineral, for preparing time bound action plan to deal with the restoration of environment and to ensure its implementation does not in any manner interfere with the powers of the District or Regional Councils.

Further directions:

1. All extracted coal as assessed by State of Meghalaya lying in different districts of State of Meghalaya which as per order of NGT is in custody of State of Meghalaya shall be handed over to Coal India Ltd. for proper disposal.
2. The Katakey Committee after discussion with Coal India Ltd. and State of Meghalaya shall formulate a mechanism for transport, weighment of all assessed coal.
3. The Coal India Ltd. shall auction the coal so received by it as per its best judgment and remit the proceeds to State to the extent as directed above.
4. All coal seized by the State for which cases have already been registered shall be dealt by the State in accordance with Section 21 of 1957 Act.

A total of 15 miners were trapped on December 13 last year in an illegal coal mine at Ksan in East Jaintia Hills district of Meghalaya, about 3.7 km deep inside a forest, when water from the nearby Lytein river gushed into it. Only two bodies have been recovered from the mine so far. The Supreme Court had earlier refused to allow miners to transport extracted coal lying at various sites in Meghalaya. The National Green Tribunal had fined the Meghalaya government on January 4.

6.8 State of Assam v. Union of India[317]

In the present appeal, the Court discussed the suo-moto PIL filed and ordered before according to which an approval allegedly was given for a coal mining project in Saleki Reserve Forest, which is a part of Dehing Patkai Elephant Reserve. It was been pleaded that Dehing Patkai Elephant Reserve of which Saleki is a part, is the largest rainforest in India and stretches for 575 square kilometres across districts of Upper Assam. The virgin forestland also referred to as the 'Amazon of the East'. Biodiversity of the forestland is rich and unique. Dehing Patkai region continues to be threatened by high polluting industries such as coal mine, oil refineries, and gas drilling which adversely affects the biodiversity of the region. There are varieties of animals and birds living in the area. Large numbers of reptiles that are rare have their abode in the area. It was alleged in the PIL that environmental disaster would be caused if approval was given by the Ministry of Environment, Forest and Climate Change to allow coal mining project in this area without proper scientific study, discussions, and taking into consideration various aspects of protecting the environment.

It was further asserted by the petitioners that environmental impact was to be assessed before any such activity could be allowed in the said area. However, the Environment Impact Assessment Report was not prepared to ensure safeguarding natural habitat and protection of animals, birds and reptile species existing in the region.

T.J. Mahanta, counsel for the State pointed out that the Governor of Assam ordered an enquiry. The fact that an enquiry was ordered from the highest level in the State was reflected in the Assam Gazette published on 20-07-2020.

In exercise of powers conferred under Section 3 of the Commissions of Inquiry Act, 1952, the Governor of Assam constituted a 'One-Man Enquiry Commission' headed by Justice B.P. Katakey, retired Judge of the Gauhati High Court to causing an enquiry with the following Terms of Reference for the Commission:

1. Enquire if from 2003 any illegal activities were undertaken by any organization or individual in and around Saleki Proposed Reserved Forest including the Tikok Open Cast Project of Coal India Limited.
2. Identify organization(s) and individual(s) responsible for undertaking such illegal mining activities, in and around the aforesaid forest area.

[317] State of Assam v. Union of India, PIL (Suo Moto) No. 3 of 2020, dated 01-09-2020

3. Enquire the manner of processing of any application, by any organization or individual for grant of mining lease in the forest area 2003 onwards, and enquire if grant of any mining lease during the said period was in compliance and in conformity with the provisions of applicable laws.
4. Assess the extent of illegal mining activities, in and around the forest areas and assess the impact of such activities on the flora and fauna found in and around area.
5. Enquire and fix responsibility upon government officials of any department found involved in commission of any illegal mining or any other illegal activity in commission or abetment of the aforesaid forest area.
6. Enquire and suggest measures for recovery of loss, if any, caused due to unlawful coal mining activity under the jurisdiction of Digboi Forest Division, either in the form of rent, royalty, penalty, land arrears or tax in terms of Section 21(5) of the Mines and Minerals (Development & Regulation) Act, 1957 or under any other law in force during commission of offence of illegal mining or commission of any other illegal activity.
7. Suggest measures for restoration, rehabilitation and reclamation of areas damaged due to illegal coal mining and ancillary activities and approximate amount of costs to be incurred for such purpose.
8. Find out if any other prohibited regulated activities inside all forests and wildlife sanctuary under Digboi Forest Division and suggest remedial measures to check such activities.

The review of flagship mining cases adjudicated by the Supreme Court underscores some fundamental principles that have been repeatedly invoked to ensure responsible mining practices and effective mining governance. The Court has applied four key principles that serves the interests of local communities, the environment, while also taking into account economic considerations that must serve the public by large, and not just certain groups. These include the international principles of sustainable development, the precautionary principle, the polluter pays principle and the intergenerational equity.

What is clear from this is, while the Court has responded to specific petitions or applications as it appeared before the bench, in the process the judiciary has tried to address the fundamental philosophies of resource management and exploitation, and has dealt with the complexities of balancing the interests of environment, the local community, as well as the economy. This is clear in the Court's pronouncements from all the judgements.

Chapter 7

Conclusion and suggestions

The Indian coal mining sector is highly regulated with strong legal and regulatory mechanisms with the government introducing cum revamping several acts, policies, rules at the central and state levels. Since mining sector is a highly polluting industry causing severe environmental and social problems, India has been quite progressive in establishing institutions and regulatory framework in order to counter balance the negative externalities caused by this sector. But unfortunately the governance system has been stymied by political and administrative hurdles that need immediate attention to act upon. From the regulatory point of view, the most urgent necessity is to ensure effective, efficient and purposive administration of the existing mining and environmental laws.

For promoting environmentally and socially sustainable coal mining it is important that the Indian government devise governance mechanism that can be effectively adopted by the small mining operators. In this regards the government should give more impetus to develop business models based on consortia of small mining enterprises which should be provided with technical advisory services so that they can undertake sustainable and scientific mining practices. Also the government should promote self-regulation and adoption of ethical business practices by mining enterprises for achieving sustainable mineral development.

In the front of sustainable mining practices, CIL has done pilot projects on longwall mining (which is already accepted as standard by many countries across the world) along with other eco-friendly technologies developed by their R&D branch. Sesa Strelite Limited has done quite some work in adopting biotechnology solutions in order to recover the mine site after closure of the mines by improving the degraded land to acceptable levels.

In India, coal has remained the dominant source of energy at the national level, followed by oil, natural gas, renewables and others. Coal and oil are projected to dominate India's current energy mix until 2040. India's draft National Energy Policy, however, envisages that replacing them with natural gas and renewables will mitigate concerns about climate change and local air pollution. A shift to domestic sustainable energy resources (wind and solar) will also improve energy security (NITI Aayog, 2017)

India uses several levers to shape its energy mix, including subsidies in the form of fiscal incentives, regulated energy prices and other forms of government support. Coal subsidies benefit coal through the entire value chain, from mining to the construction and operation of coal power plants. IISD estimates that the level of quantified subsidies to coal in India has remained relatively stable, at USD 2.6 billion in fiscal year (FY) 2014 and USD 2.4 billion in FY 2017. The IMF (2019) estimated that the total value of subsidies in India, including externalities, in 2018 (latest available figure) was USD 209,490 million. USD 159,270 million of the total value are subsidies and externalities for coal.

Coal-fired power plants produce a range of external costs, including local air pollution. The current price of coal does not fully reflect these costs, although India has begun to internalize some of them through its clean environment cess: a tax of USD 5.7 per tonne of coal produced, with a fund earmarked for supporting clean energy technology research and projects. With the introduction of the Goods and Services Tax (GST) in 2017, the clean environment cess has been replaced with the GST compensation cess, which is no longer directed into the National Clean Energy and Environment Fund.

The Government of India is making strides to adopt clean energy. As a part of its international commitment, India put forward its NDCs under the Paris Agreement. It has set quantifiable targets to be met by 2030: reduce the emission intensity of its GDP by 33–35 per cent from 2005 levels; install 175 GW of renewables by 2022; install 40 per cent of cumulative electric power capacity from non-fossil fuel sources by 2030; and create an additional carbon sink of 2.5 billion to 3 billion tonnes of carbon dioxide equivalent.

India has already installed 78 GW of renewable capacity as of April 2019 (CEA, 2019), a 70 per cent increase in less than three years. Dramatic reductions in solar and wind power costs and resulting competitive prices in auctions have resulted in tremendous progress in the installation of renewables in the country. In the future, electric vehicles (EVs) could be another major disruptor in India’s energy system. While no formal target has been established, government officials have suggested that 30 per cent of vehicle sales will be EVs by 2030.

In the past three years, government support to renewables has increased almost six-fold: from USD 431 million in FY 2014 to USD 2.2 billion in FY 2017 .This is a positive trend, showing public finances flowing in line with major sustainability objectives and goals to improve India’s energy security via increased use of domestic resources. However, at 10 per cent of total

quantified energy subsidies (USD 23.0 billion in FY 2017), it remains a minor share of overall energy subsidies.

Taking into account the growing levels of innovations worldwide, more advanced technologies like Acid Mist Suppressants, Dust Control Systems, Electrostatic Precipitators, Scrubbers, Process Ventilation Systems and Pollution Control Systems are now available for deployment to efficiently control the alarming rise of pollutants in the environment. New advanced technologies are gradually being adopted by major mining companies but mass-scale adoption is still a long way to go for the entire India mining sector. Moreover, it is mostly the private sector entities that have progressed more in this direction as compared to the public entities. Thus, it is necessary for this industry to stop its reliance over older technologies and adopt newer technologies and processes. There are many technologies that are being adopted in small ways by large-scale individual operators as they find themselves benefiting. But these practices are only limited to big players (public and private entities) that have the financial capabilities to adopt advanced technological solutions and alongside have also been able to incorporate sustainable mining practices.

On the whole, the key for creating a sustainable mining industry is moving from individual adoption to a large-scale adoption by the entire mining industry which has to be supported by a robust regulatory and legislative mechanism. While legislative and regulatory reforms have to an extent led to many better practices, the government and industry leaders must designs best-practices to ensure an overall profitability and sustainability of the mining sector.

New regulations allowing private participation in the mining sector is a double-edged sword; that is, it has its fair share of advantages and disadvantages. The coal mining industry has been dominated by the public sector for decades on end; the new regulations open up this sector to private participants with the aim to draw in more investors. This new regulation has relegated the minority status of the private sector by opening up biddings through coal mine auctions. On the one hand, this seems like a great step towards attracting investment but, on the other hand, it is highly unlikely that there would be a large flow of investors, as expected in the wake of the pandemic

Energy security has always been an economic driver for the country, contributing to the GDP; however, over the years, there have been several shortfalls in meeting the requisite targets of imports.

Further, the goal of driving up demand is highly unlikely to be met considering the costs that would be incurred in an attempt to procure cheaper coal; costs such as miner's prices, government taxes, transportation costs, etc., need to be taken into consideration before investing in the industry. The new regulations only affect the miner's costs only by a small amount; therefore, no drastic change in the pricing is bring brought about through these regulations. The new regulations are said to open up new mines in order to explore the full potential of national reserves. However, new mines may take years to develop, there- fore, putting any developer or potential investor in a frenzy as to whether investing in such mines is a risk they are willing to take.

The new Amendment raises a vast array of environmental concerns, considering that the whole world is moving towards more sustainable alternatives to fossil fuels and India, on the other hand, is trying to capitalize on the same by increasing demand and supply. In keeping with the aim of attracting foreign investment in the coal and mining sector, India is jeopardizing its commitments made under the Paris Agreement, consequently jeopardizing the health and safety of employees that is a natural result of inhaling toxic fumes. The new Amendment also opens its doors for potential overexploitation of resources through increased competition and rivalry in the sector.

The main environment protection legal regime for coal in India is the EIA mechanism. Till the year 1992, India was following the administrative (discretionary) model of EIA. The Bhopal Gas Tragedy is the best example of discretionary model of EIA. The EIA Notification is the third in the series of notifications issued by the Central Government under the Environment Protection Act to regulate new projects or expansion/modernization of existing projects based on potential environmental impacts. Under S.3(1) of the EP Act, the Central Government has the power to take "all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution". It was, however, with the enactment of the Environment Protection Act, 1986, that there was a broad move towards institutionalizing environmental procedures. The Central Government, Under Sec.3 (1) and 3(2) of the EP Act, 1986 and under Rule 5(3) (a) of the Environment Protection Rules, 1986, issued a draft notification in 1992 laying down norms and procedures for impact assessment. This was followed by a final notification in 1994 and two other notifications amending it in the year 2006 and 2016 respectively. This broadly constitutes the law relating to EIAs in India.

EIA 2006 regulates the construction, expansion and modernisation of developmental projects that have a potential threat to the environment in different parts of India. This law mandates prior environmental clearance to be obtained for a listed project before starting any operation. It is obtained through a series of steps that includes screening of the project, scoping (preparation of detailed terms of reference), engagement with project-affected communities through public hearings, preparation of the EIA report and an appraisal of project documents by a group of experts. As per 2006 notification, EIA is required for projects listed in category A and B1 project. In the case of mining sector more than 50 hectares of mining lease area in respect of non-coal mine lease and 150 hectares of lease area in respect of coalmine lease are included in Category 'A', along with offshore and onshore, oil and gas exploration and development. Category 'B' projects cover mining lease area between 5-150 hectares in respect of coal and 5-50 hectares in respect of other minerals. Mineral prospecting, however, is excluded from prior environment clearance.

The EIA Notification has become a complex procedural mechanism. Over the years, it has been modified in several ways – sometime diluting the process and making it less rigorous (for example, removing public consultation requirements for certain categories of projects); others intended to improve the quality of decision making (e.g., measures to increase accountability for EIA reports). While the objectives behind all these efforts vary – from complying with judicial pronouncements, to incentivizing 'development imperatives', to responding to public outcry, the efforts have been generally piecemeal. Little, if any, effort has been expended on introducing systematic changes that would make the decision making process robust, such that the process is, at least, procedurally acceptable to stakeholders (even if there is disagreement about the substantive outcome)

On the basis of a review of bottlenecks in EC procedure by Indian branch of a global consultancy group Environmental Resources Management (ERM) to recommend "Good Practices" to MoEF and the report of Govindarajan committee, "set up by the Cabinet Secretariat in September 2001 to recast the government's investment approvals and regulations framework", a note titled 'Reforms in the Grant of Environmental Clearances' was prepared. This note was circulated during the meeting organised by MoEF on November 29, 2004 to address the modified recommendations on reducing the "delay" in granting EC to projects. In 2004 and 2005, open letters were sent to the Prime Minister by a group of citizens to critique the EC process, which was used to make the draft of a new EIA Notification, published on September 15, 2005. The draft was kept open for online public comments for 60 days and it

was published only in the English language. Therefore, not a single comment from local communities and panchayat committees were received, who are mostly the frontline communities that face the brunt of the damages caused by these developmental activities. As an outcome of the meeting with apex industry associations on May 22, 2006, and comments received from central government ministries, the draft was finalised and the re-engineered EIA Notification was published on September 14, 2006.

Later, between 2014-2019, more than 40 Office Memorandums were published by the Union Environment Ministry to bring amendments in EIA Notification, 2006. It was observed that most of these amendments were made to assist speedy clearance mechanisms for projects.

The recently published draft EIA Notification, 2020 plans to further dilute provisions of EIA Notification 2006 by reducing transparency, further shrinking the space for public engagement and so on. The inputs on this draft were originally sought from citizens from April 11, 2020, to June 11, 2020, when most of the people were struggling to make ends meet during the strict lockdown. After a petition in the Delhi High Court, the last date for comments was extended to August 11, 2020. In an Order dated 30th June 2020 the Delhi High Court ordered the central government to publish draft EIA Notification, 2020 in 22 local languages, within next 10 days. However, an RTI revealed that the draft was translated into only 3 languages-Marathi, Nepali and Odia, until 10 days before the last date for sending comments. People from different walks of life have utilised the online resources like national consultation, campaigns etc., to understand the dangers posed by the amendments proposed to EIA Notification 2006. Consequently, around 17 lakh comments were received by the Union Environment Ministry through emails and online petitions, demanding to scrap the draft EIA Notification 2020.

Despite the fact that many research works have uncovered the rising burden on India's public health and the ecosystem due to pollution, groundwater depletion, destruction of eco-sensitive zones etc., as well as, deprival of communities from social and environmental justice, it is unfortunate that in most cases the well-being of the environment and people are never at the centre of decision making in our country.

The current drop in carbon emissions and pollution should be celebrated. After all, air pollution kills over seven million people globally. We need to maintain the new environmental baseline as a country committed to addressing the climate crisis.

Coronavirus has shown us the scale of the response needed to fight the climate crisis and address human sustenance in the post-COVID-19 world. Walking back instead of adapting is out of the question. We are a democracy. The natural resources of India are our lifeline.

The draft notification 2020 has to be withdrawn. It is a poorly drafted piece of delegated legislation. Indeed, its language is incomprehensible in parts, and it serves no discernable environmental protection goal. A regulatory overhaul is necessary but that requires a proper understanding of how and why the current system has failed, an openness to public debate, significant enhancement in institutional capacity and, most importantly, a clear prioritization of improved environmental outcomes over other, primarily economic, policy goals. This is a tall ask, but we need to start moving towards it.

In the meantime, the government ought to stop undermining the current regulatory framework for reasons that do not align with the larger and critical goal of environmental protection.

Suggestions:

India's government should be able to ensure that proposed new mining projects are subject to scrutiny capable of detecting likely negative community and environment impacts or inevitable violations of the law. The current framework fails this test and often amounts to little more than a rubber stamp. At present, India's government lacks any effective mechanism to ensure that new mining projects are not approved on the basis of incorrect or deliberately falsified data.

The following suggestions try to fill up the gaps in India's regulation and oversight of the coal mining sector.

(i) Dramatically Improve the Environmental Impact Assessment Regime

The Environmental Impact Assessment (EIA) framework is the most important and also the most dysfunctional facet of the approvals process for proposed new mining projects. Some of reforms suggested are as follows:

- Mandate a stronger focus on community impacts:
  While EIA reports do include an assessment of community impacts, this issue is often relegated to a mere footnote in reports whose overwhelming focus is on environmental concerns. The Ministry of Environment and Forests should amend the 2006 EIA Circular to mandate more lengthy and detailed consideration of community impacts

within EIA reports, and require these to make specific reference to human rights protections under international law. Alternatively, the government could mandate an entirely separate community and human rights impact assessment process to be undertaken alongside the EIA process.

- Institute Independent Funding of EIA reports.

  India's government should end the practice of requiring project proponents to select and fund the consultants who carry out EIA reports. This process does not allow for sufficient independence since the authors of EIA reports are financially beholden to project proponents. The central government could require companies to pay into a fund the government will use to select and hire the consultants who carry out the required EIAs.

- More Thorough Consideration of New Projects.

  The Expert Appraisal Committees that consider the EIA reports submitted for proposed mines and other projects should either slow down their consideration of new projects or dramatically expand their capacity to consider multiple projects at the same—including by expanding committee membership and providing them with permanent expert support staff. Committee members should be encouraged to undertake field visits to the sites of proposed projects, and be provided with the staff and funding they need to undertake that function regularly. Views reflected at mandatory public consultations around new mining projects should also be considered in more depth and responded to explicitly by the committees.

- Better Quality Control.

  The Indian government has recognized the poor quality of EIA reports as a problem and, since October 2011, it has limited the consultants allowed to perform this work to those accredited by the Ministry of Environment and Forests. Many critics have questioned whether this progress is rigorous enough and have criticized the choice of accrediting agency -the Quality Council of India-is independent from the consultants it is trying to accredit. One 2012 article noted that some of the consultants who have earned accreditation "have been involved in the worst EIA scenarios in recent times."[318]

  The laboratory cited above in the Goa case study as an apparent example of cutting and pasting, Bhagavathi Ana Labs, was among those that were accredited to carry out EIAs

[318] Kanchi Koli, "Is MOEF's green list of EIA consultants good enough?," Civil Society Online, January 2012, http://www.civilsocietyonline.com/pages/Details.aspx?82 (accessed June 1, 2021).

as of 2011. Certainly, the scale of existing problems means that considerable vigilance is needed for the government's accreditation measures to be meaningful.

(ii) A Review of all Existing Environmental Clearances for Mining Projects

While repairing the approvals process for new mining operations, the central government should also review the data underpinning existing mine clearances. Goa's state government has provided a useful model for this kind of an initiative—as discussed above, it has commissioned an NGO-led effort to examine the Environmental Impact Assessment reports underlying all mine clearances in the state to determine how many contain false or misleading data. The central government should undertake a similar initiative nationwide, or encourage and coordinate initiatives by the state governments to do so. The government should also ensure that all of the EIA reports reviewed through this initiative are published and made available online.

If the EIA report underpinning a mine clearance is found to contain materially important false information, the government should use its power to revoke that clearance and shut down the mine, forcing it to reapply for environmental clearance. Existing rules allow this where submission of false or misleading data is "deliberate" and "material."

(iii) Stricter Oversight of Existing Mines:

The central government should institute more rigorous monitoring of mining projects. In particular, resources available to the MOEF regional offices responsible for much of that work should be dramatically increased. Those offices should have the staff and resources needed to conduct regular in-field assessments, including unannounced inspections. State governments should increase the resources available to state-level pollution control boards and mines departments to enable them to carry out in-field visits and inspections themselves.

The central and state governments should consider ways in which the Supreme Court's Central Empowered Committee (CEC) could be a useful model for expanded and more rigorous government oversight. In recent years the CEC, which has a mandate to monitor violations of the Forest Act, has launched numerous mining-related investigations and provided detailed, rigorous and independent critiques of illegal and irresponsible practices. The government could explore whether the CEC's model of independent, court-supervised monitoring could usefully be expanded into broader oversight of the mining industry.

(iv) New Steps to Ensure Accountability for Illegal and Abusive Actions

The patterns of corruption and impunity that underlie many mining-related abuses are impossible to separate from India's broader epidemic of official corruption. The scandal-plagued years of 2010 and 2011 across India brought a range of public institutions into disrepute, not just in the mining sector. India's regulatory framework is in urgent need of repair, but even a perfect system will fail to curb mining-related abuses unless impunity and corruption are reined in.

In nutshell Environmental impact assessment must realize decision-making based on the inputted information including potentially important factors and it must be beneficial for both the proponent and the citizens. EIA rules must meet the requirements of the precautionary principle of avoiding harm, and intergenerational equity. Diluting the EIA process spells a path of no return. In the process, EIA far from serving as a bulwark for environmental justice came to be regarded as a mere inconvenience, as a bureaucratic exercise that promoters of a project had to simply navigate through. The draft environmental impact assessment 2020 is a brazen attempt to weaken critical checks and balances. Therefore, the EIA process if implemented rationally can be minimize the loss being caused to our environment.

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