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# AN EVALUATION OF ENVIRONMENTAL IMPACT ASSESSMENT MECHANISMS IN INDIA WITH REFERENCE TO LEGAL LOOPHOLES, PROCEDURAL SHORTCOMINGS, AND RECENT AMENDMENTS

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## ABSTRACT

Environmental Impact Assessment (EIA) is a cornerstone of environmental governance and sustainable development policy in India. Introduced under the Environment (Protection) Act, 1986, and operationalized through executive notifications, the EIA framework aims to evaluate and mitigate adverse environmental impacts of developmental projects. However, over time, the system has been eroded by legal loopholes, procedural inadequacies, and political-economic pressures. This paper critically examines the statutory and institutional framework of EIA in India, highlighting systemic shortcomings such as defective screening and scoping, tokenistic public consultations, and post-clearance monitoring failures. Particular attention is paid to the controversial Draft EIA Notification 2020, which seeks to institutionalize post-facto clearances and weaken public participation—measures that contradict judicial precedents and constitutional environmental rights under Article 21. Through case studies involving legal persons such as LG Polymers, Vedanta Ltd., and Adani Enterprises, the paper demonstrates how corporate negligence, aided by regulatory laxity, continues to endanger public health and ecological stability. The study concludes by recommending structural reforms that realign the EIA process with principles of environmental justice, transparency, and accountability.

**Keywords:** Environmental Impact Assessment (EIA); Environment Protection Act, 1986; Draft EIA Notification 2020; Public Participation; Legal Loopholes; Corporate Accountability; National Green Tribunal (NGT); Environmental Governance; Sustainable Development; Article 21 of the Constitution.

## 1. INTRODUCTION

Environmental governance in India is intrinsically linked to the imperative of sustainable development, a principle enshrined in Article 21 of the Constitution of India through judicial interpretation that guarantees the right to a clean and healthy environment<sup>1</sup>. One of the critical regulatory instruments employed to ensure environmental sustainability and balance developmental objectives is the Environmental Impact Assessment (EIA) mechanism. EIA is a policy and legal tool designed to evaluate the probable environmental consequences of proposed industrial or infrastructure projects before they are approved and implemented. The objective is to prevent environmental degradation by ensuring that significant environmental effects are adequately considered in decision-making processes<sup>2</sup>.

The EIA framework in India finds its statutory basis under the Environment (Protection) Act, 1986, particularly through subordinate legislation in the form of notifications, the most important being the EIA Notification of 2006. This replaced the earlier 1994 Notification and sought to establish a more detailed and structured screening process based on sector-specific criteria<sup>3</sup>. However, the EIA process has often been critiqued for being more procedural than substantive, where compliance is reduced to a box-ticking exercise rather than a genuine tool for environmental protection<sup>4</sup>.

In recent years, particularly with the Draft EIA Notification 2020, the EIA regime has witnessed significant shifts that appear to prioritize ease of doing business over environmental sustainability. The draft proposal introduced controversial features, such as post-facto environmental clearance, increased exemption categories, and reduction in public consultation windows, raising alarm among environmentalists, legal scholars, and civil society organizations<sup>5</sup>. These proposed changes prompted widespread protests and over 2 million

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<sup>1</sup> *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420; see also *MC Mehta v. Union of India*, AIR 1987 SC 965, where the Supreme Court affirmed that the right to a pollution-free environment is part of the right to life under Article 21.

<sup>2</sup> Wang, Y., Morgan, R. K., & Cashmore, M. (2003). *Environmental impact assessment of projects in the People's Republic of China: new law, old problems*. *Environmental Impact Assessment Review*, 23(5), 543–579.

<sup>3</sup> Ahmad, A. (2021). *Environmental Impact Assessment in India: An Analysis of Law and Judicial Trends in Contemporary Perspective*. In: *Environment Impact Assessment*. Taylor & Francis. Available at: <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003198208-16>.

<sup>4</sup> Samant, S. (2023). *Assessing the Impact of Environmental Policy, 2006: A Critical Examination*. Semantic Scholar. Available at: <https://pdfs.semanticscholar.org/cea4/3a55c24bb8daa101b1066ceee1c9b857ad80.pdf>.

<sup>5</sup> Jolly, S., & Singh, S. (2021). *Environmental Impact Assessment Draft Notification 2020, India: A Critique*. *Chinese Journal of Environmental Law*, 5(1). Available at: [https://brill.com/view/journals/cjel/5/1/article-p11\\_2.xml](https://brill.com/view/journals/cjel/5/1/article-p11_2.xml).

objections submitted by the public, indicating deep-seated concern over the dilution of environmental protections<sup>6</sup>.

Moreover, the effectiveness of EIA in India has been undermined by legal loopholes, bureaucratic opacity, and institutional capture. Projects are often broken into phases to evade full-scale assessment (a process known as "salami slicing"), while public hearings are conducted in a perfunctory manner, sometimes excluding affected populations by language or location barriers<sup>7</sup>. Additionally, monitoring of post-clearance conditions remains grossly inadequate, with studies showing that less than 40% of the projects are ever revisited by the authorities after clearance is granted<sup>8</sup>.

Adding complexity to the scenario is the rising trend of environmental harm caused by legal persons—corporate entities, public-sector undertakings, and even government authorities. Major industrial disasters such as the LG Polymers gas leak in Visakhapatnam (2020) and the Sterlite Copper contamination in Tamil Nadu reveal the inadequacies of existing EIA protocols in anticipating, mitigating, and penalizing environmental violations by such entities<sup>9</sup>.

Therefore, a comprehensive re-evaluation of India's EIA mechanism is both timely and necessary. This paper aims to examine the legislative architecture, procedural flaws, and loopholes in India's EIA system, analyze the implications of recent legal developments, and contextualize the debate within the broader framework of corporate environmental accountability and citizen-centric environmental justice.

## 2. LEGAL FRAMEWORK OF EIA IN INDIA

### 2.1 Statutory Foundations

The Environmental Impact Assessment (EIA) framework in India is not codified through a standalone legislation but operates through subordinate legislation under the broader umbrella

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<sup>6</sup> Centre for Policy Research (2020). *Over 2 million public objections received against EIA 2020*. Available at: <https://www.cprindia.org/news/over-2-million-objections-eia-2020>.

<sup>7</sup> Ghosh, S. (2013). *Demystifying the Environmental Clearance Process in India*. NUJS Law Review, 6(3). Available at: [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/nujslr6&section=28](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/nujslr6&section=28).

<sup>8</sup> Islam, Z., & Wang, S. (2022). *The Progress and Prospect of EIA in India: From 1994 to 2020 Notification*. EQA – International Journal of Environmental Quality. Available at: <https://eqa.unibo.it/article/view/15427>.

<sup>9</sup> Devarhubli, G., & Shrivastava, A. (2024). *The Advancement of Environmental Procedural Rights in India: An Analysis of Issues, Problems and Prospects*. Cogent Social Sciences. Available at: <https://www.tandfonline.com/doi/abs/10.1080/23311886.2024.2312949>

of environmental laws, most notably the Environment (Protection) Act, 1986. This Act empowers the Central Government to take measures to protect and improve environmental quality and to prevent and control pollution, thereby serving as the bedrock of India's environmental governance mechanism<sup>10</sup>. Under Section 3 of the Act, the government is authorized to make rules and issue notifications for environmental protection, which has been the legal basis for the issuance of the EIA Notification of 1994, subsequently superseded by the EIA Notification of 2006<sup>11</sup>.

The EIA Notification 1994 marked a significant regulatory shift by mandating environmental clearance for 29 categories of development projects, including mining, thermal power plants, and infrastructure projects. However, this framework had several procedural weaknesses, such as absence of scoping and weak public participation mechanisms. Consequently, it was replaced by the EIA Notification of 2006, which refined the regulatory process by introducing a two-stage appraisal system: (i) screening and scoping; and (ii) public consultation and expert appraisal<sup>12</sup>.

The 2006 Notification also introduced the categorization of projects into Category A and B, based on their scale and potential environmental impact. Category A projects require clearance from the Ministry of Environment, Forest and Climate Change (MoEFCC), while Category B projects are assessed by the State Environmental Impact Assessment Authorities (SEIAAs)<sup>13</sup>. Further, the 2006 framework introduced the concept of Terms of Reference (ToR), an essential scoping tool aimed at guiding the project proponent in preparing an EIA report aligned with environmental sensitivities of the site and nature of the activity<sup>14</sup>.

In addition to the EIA Notification, several other statutes and regulations contribute to the legal architecture of environmental assessment in India. These include:

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<sup>10</sup> Environment (Protection) Act, 1986, No. 29 of 1986, § 3(1), Acts of Parliament, 1986 (India).

<sup>11</sup> Ministry of Environment and Forests (MoEF), *Notification on Environmental Impact Assessment of Development Projects*, S.O. 60(E) (27th January 1994); superseded by S.O. 1533(E) (14th September 2006), [EIA Notification, 2006].

<sup>12</sup> Ahmad, A. (2021). *Environmental Impact Assessment in India: An Analysis of Law and Judicial Trends in Contemporary Perspective*. In: Environment Impact Assessment. Taylor & Francis. Available at: <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003198208-16>

<sup>13</sup> Samant, S. (2023). *Assessing the Impact of Environmental Policy, 2006: A Critical Examination*. Semantic Scholar. Available at: <https://pdfs.semanticscholar.org/cea4/3a55c24bb8daa101b1066ceee1c9b857ad80.pdf>

<sup>14</sup> Ghosh, S. (2013). *Demystifying the Environmental Clearance Process in India*. NUJS Law Review, 6(3). Available at: [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/nujslr6&section=28](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/nujslr6&section=28)

- The Air (Prevention and Control of Pollution) Act, 1981: Grants authority to regulatory bodies to control emissions and mandates environmental clearance for industries likely to emit air pollutants.
- The Water (Prevention and Control of Pollution) Act, 1974: Focuses on water pollution control and complements EIA by setting effluent standards for various industries.
- The Forest (Conservation) Act, 1980: Requires separate clearances for diversion of forest land for non-forest purposes and often overlaps with EIA procedures in infrastructure and mining projects.
- The Biological Diversity Act, 2002: Mandates conservation of biodiversity and benefits sharing which indirectly links with EIA requirements, especially in ecologically sensitive areas<sup>15</sup>.

Despite the structural detailing in EIA 2006, gaps remain in the statutory foundations. Firstly, the absence of a dedicated EIA statute makes the system vulnerable to dilution through executive notifications and circulars, as was evident in the Draft EIA Notification 2020. Secondly, inadequate interlinkage between various environmental statutes and EIA procedures creates procedural ambiguities and jurisdictional overlaps<sup>16</sup>.

Furthermore, India is a signatory to several international conventions—such as the Rio Declaration on Environment and Development (1992)—which emphasize the *Precautionary Principle* and *Public Participation*, both foundational to EIA processes. While Indian courts have internalized these principles into domestic jurisprudence, their consistent application in statutory rule-making remains inconsistent<sup>17</sup>.

### 3. PROCEDURAL SHORTCOMINGS

The implementation of Environmental Impact Assessment (EIA) procedures in India has

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<sup>15</sup> Ministry of Environment, Forest and Climate Change (MoEFCC), *Handbook of Environmental Procedures and Guidelines* (2016), Chapter on EIA. See also, Forest (Conservation) Act, 1980 and Biological Diversity Act, 2002.

<sup>16</sup> Islam, Z. & Wang, S. (2022). *The Progress and Prospect of EIA in India: From 1994 to 2020 Notification*. EQA – International Journal of Environmental Quality. Available at: <https://eqa.unibo.it/article/view/15427>

<sup>17</sup> *Vellore Citizens' Welfare Forum v. Union of India*, AIR 1996 SC 2715; the Supreme Court emphasized that principles from the Rio Declaration such as the Precautionary Principle and Polluter Pays Principle are part of Indian environmental law.

consistently revealed critical procedural deficiencies that undermine its very purpose — ensuring environmentally responsible development. While the EIA Notification of 2006 structurally addressed earlier gaps by introducing a categorization of projects, mandatory Terms of Reference (ToR), and public consultation norms, in practice, these processes are frequently bypassed, misapplied, or diluted. The lack of institutional transparency, unchecked discretion vested in regulatory authorities, and limited participation by affected communities collectively contribute to an ineffective EIA regime. These shortcomings are most evident in the three critical stages of the EIA process: screening and scoping, public consultation, and compliance monitoring.

### 3.1 Screening and Scoping Deficiencies

One of the foundational stages of the EIA process — screening and scoping — has proven to be procedurally compromised. Screening determines whether a project requires an EIA, while scoping defines the extent of issues to be addressed in the Environmental Impact Statement. In India, however, projects often receive exemptions from comprehensive EIA on the pretext of falling under Category B2, which eliminates the requirement for public hearings or detailed environmental studies<sup>18</sup>. This loophole has been misused in sectors like real estate, highways, and mining, where project developers seek segmentation of projects (a practice termed “salami slicing”) to stay under regulatory thresholds and avoid scrutiny<sup>19</sup>.

Further, scoping remains a mechanical exercise. Though the 2006 Notification mandates that ToRs be project-specific, authorities frequently issue generic ToRs, ignoring site-specific environmental sensitivities. Experts have noted that the Expert Appraisal Committees (EACs) often approve projects with scant discussion, limited scientific evaluation, and negligible site visits, thereby diluting the effectiveness of the scoping stage<sup>20</sup>. The absence of cumulative impact assessments, especially in regions hosting multiple industrial projects, further

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<sup>18</sup> Juhi. (2024). *Interpretation of Environmental Impact Assessment Laws in India*. Jus Corpus Law Journal, Vol 5. HeinOnline.

<sup>19</sup> Devarhubli, G., & Shrivastava, A. (2024). *The Advancement of Environmental Procedural Rights in India: An Analysis of Issues, Problems and Prospects*. Cogent Social Sciences. Available at: <https://www.tandfonline.com/doi/abs/10.1080/23311886.2024.2312949>.

<sup>20</sup> Ahmad, A. (2021). *Environmental Impact Assessment in India: An Analysis of Law and Judicial Trends in Contemporary Perspective*. In: *Environment Impact Assessment*. Taylor & Francis. Available at: <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003198208-16>.

undermines holistic environmental review<sup>21</sup>.

### 3.2 Public Consultation Constraints

Public consultation is a cornerstone of participatory environmental governance and has been explicitly incorporated into the EIA 2006 framework through a two-stage process: a public hearing and written responses from stakeholders. Yet, ground-level implementation reveals systemic deficiencies. Many hearings are hurried, poorly advertised, or held in inaccessible locations, effectively excluding local stakeholders from participation<sup>22</sup>. In some instances, hearings are conducted in English or Hindi in regions where the local population speaks a different language, raising significant barriers to understanding the issues at hand<sup>23</sup>.

Moreover, there have been credible reports of manipulated or falsified records of public hearings, suppression of dissent, and police intimidation during hearings, especially in tribal and forest regions where opposition to resource-intensive projects is strong<sup>24</sup>. Additionally, written submissions are often ignored or not reflected in the final decision-making reports. Scholars and environmentalists argue that public consultation in India operates more as a formality than a meaningful opportunity for participatory decision-making, thus failing the democratic spirit of environmental law<sup>25</sup>.

### 3.3 Weak Compliance and Monitoring

Even when projects receive conditional environmental clearance, the post-clearance monitoring regime in India is grossly inadequate. While the EIA Notification requires periodic submission of compliance reports, studies have shown that a significant number of project proponents either do not submit reports or submit incomplete and unverifiable data<sup>26</sup>. In a

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<sup>21</sup> Islam, Z. & Wang, S. (2022). *The Progress and Prospect of EIA in India: From 1994 to 2020 Notification*. EQA – International Journal of Environmental Quality. Available at: <https://eqa.unibo.it/article/view/15427>.

<sup>22</sup> Ghosh, S. (2013). *Demystifying the Environmental Clearance Process in India*. NUJS Law Review, 6(3). Available at: [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/nujslr6&section=28](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/nujslr6&section=28).

<sup>23</sup> Menon, M. & Kohli, K. (2019). *Environment Impact Assessment in India: Contestations Over Development*. Elgar Research Handbook on Environmental Law. Available at: <https://www.elgaronline.com/view/edcoll/9781784717452/9781784717452.00035.xml>.

<sup>24</sup> Jolly, S., & Singh, S. (2021). *Environmental Impact Assessment Draft Notification 2020, India: A Critique*. Chinese Journal of Environmental Law, 5(1). Available at: [https://brill.com/view/journals/cjel/5/1/article-p11\\_2.xml](https://brill.com/view/journals/cjel/5/1/article-p11_2.xml).

<sup>25</sup> Samant, S. (2023). *Assessing the Impact of Environmental Policy, 2006: A Critical Examination*. Semantic Scholar. Available at: <https://pdfs.semanticscholar.org/cea4/3a55c24bb8daa101b1066ceee1c9b857ad80.pdf>.

<sup>26</sup> Parikh, M. (2020). *Critique of Environmental Impact Assessment Process in India*. Environmental Policy and Law, 50(6), 475–484. DOI: 10.3233/EPL-190171.

performance audit conducted by the Comptroller and Auditor General (CAG) of India, it was found that the MoEFCC failed to take action in over 90% of the cases where conditions of environmental clearance were violated<sup>27</sup>.

The lack of field verification, minimal use of technology such as satellite imagery or drones, and an under-resourced enforcement apparatus further aggravate the problem. Regulatory agencies often rely on self-reported compliance documents from project developers, leading to a clear conflict of interest and absence of independent verification<sup>28</sup>. The National Green Tribunal has frequently criticized this practice, underscoring that mere issuance of clearance does not conclude the role of regulatory bodies but requires ongoing oversight, which remains conspicuously absent<sup>29</sup>.

#### 4. LEGAL LOOPHOLES

Despite the structural evolution of the Environmental Impact Assessment (EIA) framework in India, its efficacy has been seriously compromised by the presence of legal loopholes that enable project proponents to circumvent rigorous environmental scrutiny. These gaps are not accidental but often embedded into the legal architecture through ambiguous language, delegated executive authority, and the absence of enforceable obligations. Among the most controversial aspects are the exemptions from EIA requirements and the legalisation of post-facto clearances, which directly contradict established environmental jurisprudence. Compounding the problem is the limited power and scope of environmental adjudicatory forums like the National Green Tribunal (NGT), which, although progressive in theory, faces practical limitations in enforcement, jurisdiction, and compliance.

##### 4.1 Exemptions and Post-Facto Clearances

The EIA framework under the 2006 Notification, and more egregiously in the Draft EIA Notification 2020, provides for wide-ranging exemptions that erode the protective intent of environmental clearance. These include strategic defence and linear projects, B2 category projects (such as inland waterways, small irrigation schemes, and certain building

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<sup>27</sup> Comptroller and Auditor General of India (CAG). (2016). *Performance Audit of Environmental Clearance and Post Clearance Monitoring*, Report No. 39. Available at: <https://cag.gov.in>.

<sup>28</sup> Arunkumar, N., & Dharshini, V. (2025). *Decriminalizing Environmental Offenses: Implications of Removing Penalty Provisions in Indian Environmental Law*. LawFoyer Int'l Journal of Legal Research. HeinOnline.

<sup>29</sup> *Save Mon Region Federation v. Union of India*, OA No. 61/2013 (NGT), where the Tribunal directed stricter monitoring after observing prolonged violations post-clearance.



constructions), and modernisation projects which allegedly do not increase pollution load but in practice pose significant ecological risks<sup>30</sup>. Notably, these exemptions are often framed using vague and discretionary criteria, which empowers the Ministry of Environment, Forest and Climate Change (MoEFCC) to approve projects with minimal scrutiny<sup>31</sup>.

The most contentious legal development has been the normalisation of post-facto clearances, wherein industries operating without prior environmental clearance are later granted approvals after violations have occurred. This was observed in the Supreme Court's ruling in *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati* (2020), where the Court categorically held that such clearances are “unsustainable in law” as they defeat the preventive and precautionary principles under environmental law<sup>32</sup>. Nevertheless, the Draft EIA Notification 2020 attempted to legitimize post-facto approvals by incorporating specific clauses allowing for the regularisation of violations, subject to payment of penalty — a clear deviation from the constitutional mandate under Article 21, which guarantees the right to a pollution-free environment<sup>33</sup>.

Further, environmental clearances are often granted without rigorous impact assessments by segmenting large projects into multiple smaller sub-projects, thereby falling below the threshold limits that trigger mandatory EIA. This practice, known as “salami slicing”, undermines the purpose of cumulative impact assessments and was flagged by the Comptroller and Auditor General (CAG) in its 2016 report as a significant regulatory weakness<sup>34</sup>.

## 4.2 Lack of Environmental Courts' Powers

India's principal environmental adjudicatory body, the National Green Tribunal (NGT), was established under the National Green Tribunal Act, 2010 to provide a specialized forum for environmental litigation, based on principles of *natural justice*, *precaution*, and *polluter pays*. While the NGT has issued landmark judgments — such as the closure of the Sterlite Copper plant in Tamil Nadu and the quashing of environmental clearances for coal mining in Hasdeo

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<sup>30</sup> Ministry of Environment, Forest and Climate Change (MoEFCC). *Draft Environmental Impact Assessment Notification, 2020*. Gazette of India, S.O. 1199(E), March 2020.

<sup>31</sup> Islam, Z., & Wang, S. (2022). *The Progress and Prospect of EIA in India: From 1994 to 2020 Notification*. EQA – International Journal of Environmental Quality. Available at: <https://eqa.unibo.it/article/view/15427>

<sup>32</sup> *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati*, 2020 SCC OnLine SC 347; the Court held post-facto environmental clearance is contrary to both statutory mandate and constitutional principles.

<sup>33</sup> Jolly, S., & Singh, S. (2021). *Environmental Impact Assessment Draft Notification 2020, India: A Critique*. Chinese Journal of Environmental Law, 5(1). Available at: [https://brill.com/view/journals/cjel/5/1/article-p11\\_2.xml](https://brill.com/view/journals/cjel/5/1/article-p11_2.xml)

<sup>34</sup> Comptroller and Auditor General of India (CAG). (2016). *Performance Audit Report No. 39 on Environmental Clearance and Post Clearance Monitoring*. Available at: <https://cag.gov.in>

Arand — its effectiveness is increasingly hindered by limited enforcement powers and jurisdictional constraints<sup>35</sup>.

A significant challenge lies in the lack of contempt powers — the NGT cannot enforce its own orders beyond levying monetary compensation or recommending action to statutory authorities. The Tribunal must rely on executive agencies such as the Pollution Control Boards (PCBs) or the MoEFCC for actual enforcement, often leading to bureaucratic inertia and non-compliance<sup>36</sup>. Additionally, appeals against NGT decisions lie directly with the Supreme Court, but in environmental cases, the Court has at times diluted the Tribunal's findings or failed to act swiftly, further limiting its deterrent effect<sup>37</sup>.

Another limitation is the inaccessibility of the NGT to affected rural and tribal communities, many of whom lack the legal literacy, resources, or standing to approach the Tribunal. Unlike High Courts under Article 226, the NGT has no suo motu jurisdiction, though it has creatively interpreted its powers in some cases<sup>38</sup>. Moreover, NGT benches are limited in number and geographically concentrated, with long pendency of cases and increasing reliance on virtual hearings post-COVID-19, which disadvantages marginalised communities<sup>39</sup>.

Thus, while the NGT has potential as a watchdog for environmental justice, its powers remain heavily dependent on the executive branch, and it lacks the institutional independence and procedural autonomy required to function as a robust environmental court.

## 5. RECENT AMENDMENTS AND THEIR IMPACT

The Environmental Impact Assessment (EIA) regime in India has experienced substantial modifications through executive rulemaking rather than parliamentary enactment. Among the most consequential of these reforms is the Draft EIA Notification, 2020, proposed by the Ministry of Environment, Forest and Climate Change (MoEFCC). Positioned as a move to

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<sup>35</sup> Menon, M., & Kohli, K. (2019). *Environment Impact Assessment in India: Contestations Over Development*. In: Research Handbook on Law, Environment and the Global South. Edward Elgar Publishing. Available at: <https://www.elgaronline.com/view/edcoll/9781784717452/9781784717452.00035.xml>

<sup>36</sup> Ghosh, S. (2013). *Demystifying the Environmental Clearance Process in India*. NUJS Law Review, 6(3). Available at: [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/nujslr6&section=28](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/nujslr6&section=28)

<sup>37</sup> *Sterlite Industries (India) Ltd. v. Union of India*, 2019 SCC OnLine NGT 331; the NGT order closing Sterlite was challenged, but upheld by the Madras High Court under Article 226 jurisdiction.

<sup>38</sup> Parikh, M. (2020). *Critique of Environmental Impact Assessment Process in India*. Environmental Policy and Law, 50(6), 475–484. DOI: 10.3233/EPL-190171.

<sup>39</sup> Arunkumar, N. & Dharshini, V. (2025). *Decriminalizing Environmental Offenses: Implications of Removing Penalty Provisions in Indian Environmental Law*. LawFoyer Int'l Journal of Legal Research. HeinOnline

“streamline” the clearance process and boost the “ease of doing business,” the 2020 draft, however, drew severe criticism from environmentalists, legal experts, and civil society organizations for diluting environmental safeguards and undermining public participation<sup>40</sup>.

### 5.1 Draft EIA Notification 2020

The Draft EIA Notification 2020, issued on 12 March 2020, sought to replace the existing EIA Notification 2006. While it promised to consolidate various amendments and bring clarity to procedures, the draft was widely viewed as regressive, primarily for three key reasons: legalization of post-facto clearances, exemptions from public consultation, and curtailment of public participation timelines<sup>41</sup>.

First, the notification proposed legalising post-facto environmental clearances—allowing industries that had begun operations without prior environmental clearance to regularize their status retrospectively by paying penalties. This move was strongly criticized for contradicting judicial precedents, especially the Supreme Court’s decision in *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati*, which held such clearances to be “unsustainable in law” and contrary to the precautionary and polluter pays principles enshrined in Indian environmental jurisprudence<sup>42</sup>.

Second, the draft expanded the list of projects exempted from public consultation, including highway construction in border areas (defined as 100 km from the Line of Control), inland waterways, certain building and construction projects, and modernization of existing facilities. This posed a serious concern for ecologically sensitive zones and communities whose lives and livelihoods are directly impacted by such projects.<sup>43</sup>

Third, the notification reduced the time window for public comments on draft EIA reports from 30 days to 20 days, significantly limiting the ability of affected people, especially in remote or tribal areas, to respond effectively. In addition, no legal mechanism was proposed to ensure

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<sup>40</sup> Ministry of Environment, Forest and Climate Change (MoEFCC). *Draft Environmental Impact Assessment Notification, 2020*. Gazette of India, S.O. 1199(E), March 2020.

<sup>41</sup> Jolly, S., & Singh, S. (2021). *Environmental Impact Assessment Draft Notification 2020, India: A Critique*. Chinese Journal of Environmental Law, 5(1). Available at: [https://brill.com/view/journals/cjel/5/1/article-p11\\_2.xml](https://brill.com/view/journals/cjel/5/1/article-p11_2.xml)

<sup>42</sup> *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati*, (2020) SCC OnLine SC 347; the Supreme Court held that post-facto clearances are legally impermissible.

<sup>43</sup> Ghosh, S. (2013). *Demystifying the Environmental Clearance Process in India*. NUJS Law Review, 6(3). Available at: [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/nujslr6&section=28](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/nujslr6&section=28)

that public objections are adequately addressed before environmental clearances are granted<sup>44</sup>.

The Draft Notification triggered an unprecedented civil response — over 2 million objections were submitted by citizens and organizations during the consultation period<sup>45</sup>. Despite this, the MoEFCC has not withdrawn the draft entirely, and its provisions continue to reflect the government's inclination towards expediting industrial clearances at the cost of environmental diligence. Legal experts argue that the 2020 draft, if implemented, will institutionalize regulatory leniency and weaken judicial oversight, resulting in long-term environmental degradation<sup>46</sup>.

## 6. CASE STUDIES OF ENVIRONMENTAL NEGLIGENCE BY LEGAL PERSONS

The systemic weaknesses of the EIA mechanism become most visible when examining high-profile environmental disasters involving legal persons—corporate entities and organizations—whose activities have caused irreversible environmental harm. These case studies demonstrate the consequences of flawed EIA processes, inadequate monitoring, and regulatory complacency.

### 6.1 LG Polymers Gas Leak (Visakhapatnam, 2020)

On 7 May 2020, a styrene gas leak occurred at the LG Polymers plant in Visakhapatnam, killing 12 people and affecting over 5000. Investigations revealed that the company had been operating without a valid environmental clearance, despite the expansion of its storage capacity. The National Green Tribunal (NGT) held the company strictly liable under the *principle of absolute liability*, and imposed an initial penalty of ₹50 crore. The incident exposed serious lapses in post-clearance monitoring and the failure to enforce environmental norms even for hazardous industries<sup>47</sup>.

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<sup>44</sup> Islam, Z., & Wang, S. (2022). *The Progress and Prospect of EIA in India: From 1994 to 2020 Notification*. EQA – International Journal of Environmental Quality. Available at: <https://eqa.unibo.it/article/view/15427>

<sup>45</sup> Centre for Policy Research. (2020). *Over 2 million objections submitted against EIA 2020*. Available at: <https://www.cprindia.org>

<sup>46</sup> Menon, M., & Kohli, K. (2019). *Environment Impact Assessment in India: Contestations Over Development*. In: Research Handbook on Law, Environment and the Global South. Edward Elgar Publishing. <https://www.elgaronline.com/view/edcoll/9781784717452/9781784717452.00035.xml>

<sup>47</sup> National Green Tribunal, *In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village*, Original Application No. 73/2020.

## 6.2 Sterlite Copper Plant (Thoothukudi, Tamil Nadu)

Operated by Vedanta Ltd., the Sterlite copper smelter faced massive protests due to allegations of toxic emissions, groundwater contamination, and flouting of EIA conditions. In May 2018, during a peaceful protest against the plant's proposed expansion, 13 protestors were killed in police firing. Subsequent investigations revealed that the plant had operated without valid renewal of Consent to Operate, and had a history of environmental violations. The Tamil Nadu Pollution Control Board (TNPCB) ordered its closure, and the NGT upheld this decision, stating that continued operation posed a significant threat to public health and the environment<sup>48</sup>.

## 6.3 Hasdeo Arand Forest Coal Mining (Chhattisgarh)

In one of India's last intact forest tracts, mining activities approved for Adani Enterprises Ltd. triggered protests by tribal communities. Although the region is a biodiversity hotspot and critical elephant habitat, mining clearances were granted under questionable circumstances, with allegations of fraudulent Gram Sabha consents and flawed EIAs that did not reflect ground realities. The case illustrates how strategic projects are often cleared despite environmental and social opposition, undermining the constitutional rights of indigenous communities<sup>49</sup>.

## 6.4 Delhi NCR Construction Sector and Air Pollution

Several construction and infrastructure companies have been routinely fined by the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs) for dust pollution, non-compliance with construction waste disposal norms, and unregulated vehicular emissions. Despite repeated orders from the Supreme Court and NGT, non-compliance continues due to weak enforcement and absence of stringent penalties. This contributes significantly to Delhi's hazardous air quality levels, especially during winter months<sup>50</sup>.

These case studies reflect not only the institutionalized negligence of legal persons, but also the structural flaws in India's EIA system that permit such negligence to persist. The common

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<sup>48</sup> *Vedanta Ltd. v. Tamil Nadu Pollution Control Board*, 2018 SCC OnLine NGT 312; Madras High Court upheld the closure in W.P. No. 5558 of 2019.

<sup>49</sup> Devarhubli, G., & Shrivastava, A. (2024). *The Advancement of Environmental Procedural Rights in India: An Analysis of Issues, Problems and Prospects*. Cogent Social Sciences. DOI: 10.1080/23311886.2024.2312949.

<sup>50</sup> *MC Mehta v. Union of India*, (2020) 4 SCC 567 – Supreme Court directions on construction bans and compliance in Delhi NCR pollution crisis

pattern includes inadequate environmental scrutiny, delayed regulatory response, and inconsistent judicial enforcement — all symptoms of a larger malaise within India's environmental governance.

## **7. CONCLUSION**

The Environmental Impact Assessment (EIA) mechanism in India, though conceptually aligned with sustainable development, is plagued by legal, procedural, and institutional shortcomings. The dilution of environmental safeguards through executive notifications like the Draft EIA 2020, coupled with the legitimization of post-facto clearances and weakened public consultation, has significantly eroded the preventive spirit of the EIA framework. Case studies such as the LG Polymers gas leak and the Sterlite Copper crisis demonstrate how legal persons exploit regulatory gaps, resulting in irreparable harm to public health and ecosystems. Strengthening the EIA process thus requires not just technical reforms, but a reorientation of environmental governance toward transparency, accountability, and citizen participation.

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