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INTERNATIONAL JOURNAL  
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# COMPARITIVE ANALYSIS OF EIA LAWS IN INDIA AND CANADA

Authored By- Meenakshy S Dev

## Abstract

*Environmental Impact assessment is the pillar of harmony between mankind and environment. This assessment is a procedure to ensure that environmental considerations are well respected before taking a decision to give rise to a project that may eventually prove fatal to the environment. The research paper focuses on the Environmental Impact Assessments of India and Canada and helps to understand the pros and cons of both legislation. Moreover, it will also help in identifying the key issues with Legislature while drafting such a legislation. Environmental Impact Assessments are directly under pressure and struggle in striking a balance between economical development and ecological integrity.*

**Keywords:** *Environmental Impact Assessment, economic development, ecological integrity*

## **I. Introduction**

Environmental Impact Assessment is an analysis of the potential impact or implications a developmental project could have on natural and human environment.<sup>1</sup> This assessment can help evaluate the consequences and to prevent or reduce damages and also seek technological solutions.<sup>2</sup> UNEP defines Environmental Impact Assessment as a tool used to identify the environmental, social and economic impacts of a project prior to decision-making. This process helps reduce economic investment, environmental damage, impacts of legislations etc.<sup>3</sup> Environmental Impact Assessment, though has various legislations and regulation across the globe, the stages are very much similar.

### **History Of Environmental Impact Assessment**

Before 1960s, very little care was given to environment and consequences of human action on the environment. Undoubtedly, there was pollution prevalent in those times, but due to lack of awareness, much actions or efforts were not adopted by people or nations to put an end to it. It was the because of Rachel Carson and her book “Silent Spring” that helped spread social awareness around 1960s due to which there were several environmental movements.<sup>4</sup> Due to these movements, during early 1970s and mid 1970, United States constituted the National Environmental Policy Act 1969, wherein EIA was made mandatory in the case of large scale projects.<sup>5</sup> The Act had a wide range influence across countries and this shifted the focus of many countries, especially Europe and Asia, on EIA introduction.

### **Environmental Impact Assessment- International Efforts In Legal Or**

#### **Regulatory Context**

International efforts such as legally binding international documents and non legally binding international documents were adopted to look into Environmental Impact Assessment and its approaches to minimize or reduce adverse effects on nature. Legally binding international documents included treaties and protocols such as United Nations Law of the Sea Treaty, Espoo

<sup>1</sup> Zhuang Yanhua, Hong Songa, Lin Hongyan, Niu Beibei, “Global Environmental Impact Assessment Research Trends”, 11 *Procedia Environmental Sciences* 1499 (2011).

<sup>2</sup> Dibya Jyoti, “Environmental Impact Assessment in India: An Appraisal”, 3 *Dimorian Review* 50 (2016).

<sup>3</sup> *Ibid.*

<sup>4</sup> Rabel J Burdge, “A brief history and major trends in the field of Impact Assessment”, 9 *Taylor & Francis* 94(1991).

<sup>5</sup> *Supra* note 4.

Convention, Biodiversity Treaty etc. Rio Declaration 1992 also emphasizes on Environmental impact assessment and calls it as a national decision making instrument which can be used to assess the impact of adverse effects on the environment. Principle 17 elucidates on this process and principle 15 backs up this assessment with the precautionary principle. Agenda 21 which is result of this Convention also proposes the importance or the need for the government to promote the sustainable development through environmental impact assessment.<sup>6</sup> It also proposed to have EIA procedures on projects which can have significant impact on biodiversity and to promote public participation in such cases.

It is also pertinent to note that several multi-lateral financial institutions such as Asian Development Bank, African Development Bank, Inter American Development Bank, European Bank for Reconstruction and Development were designed so as to promote economic growth and to overview the procedures of EIA.<sup>7</sup> Though the procedures vary from bank to bank, a standard procedure is followed when it comes to approval of EIA.<sup>8</sup> World Bank has various categories such as Category A, B and C for screening projects. Depending on the intensity of the impact a project can have on the environment this categorization is made.

## **II. OBJECTIVES OF THE RESEARCH PAPER**

- **To compare the EIA Legislations and procedure in India and Canada**
- **To analyse the challenges and drawbacks of the EIA system in India**

## **III. RESEARCH METHODOLOGY**

Considering the nature of study, doctrinal and analytical research methodology is adopted. The research shall involve an in-depth study of primary and secondary materials. Primary sources shall include Statues, government reports etc. Secondary sources shall include articles, research papers, websites etc. The study shall be comparative in nature.

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<sup>6</sup>Sustainable development Agenda, available at: <https://www.un.org/sustainabledevelopment/development-agenda-retired/> ( Last Visited December 2, 2021).

<sup>7</sup> William V Kennedy, EIA and Multi lateral Financial Institutions, available at: <https://www.oecd.org/investment/investmentfordevelopment/2076277.pdf> ( Last Visited on October 14, 2021).

<sup>8</sup>*Ibid.*

#### IV. EVOLUTION OF EIA IN INDIA & CANADA

##### India

Late 1970s witnessed the evolution of Environmental Impact Assessment when the then Planning Commission examined the river valley project from an environmental perspective. The Environment (Protection) Act was enacted in the year 1986 to improve the environmental quality and to reduce the pollution. In compliance with principle 17 of Rio Declaration, States were to implement Environmental Impact Assessment as a national instrument and accordingly, a notification was issued in 1994 which went through subsequent amendments and in the year 2000 it was made statutory.<sup>9</sup> The Environment (Protection) Act 1986 is the only Act which governs EIA in India to which a number of notifications were issued.

##### Canada

Environmental Impact Assessment conducted for the purpose of development of projects in Canada is based on law. EIA was introduced in Canada in the year 1973 by the federal Environmental Assessment and Review Process (EARP) which was a two phased approach initial assessment phase and public panel review phase.<sup>10</sup> In order to clarify the roles and responsibilities of various parties involved in the implementation of EIA, Minister of Environment issued guidelines.<sup>11</sup> In the year 1989, the Court passed an order to draft an Act and to replace the written piece of EARP guidelines for better EIA governance. The Federal Government took the direction seriously and went on to draft an EIA legislation which was known as the Canadian Environmental Impact Assessment Act (CEAA). It was passed in the year 1993 after a series of debates and was finally promulgated in the year 1995. In the year 2012, a revised version of CEAA 1995 came into effect with significant changes. Recently in 2019, a new Act named Impact Assessment Act replaced the CEAA 2012 which governs the environmental assessments.<sup>12</sup>

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<sup>9</sup>Historical Background of EIA, *available at*:

[https://nitsri.ac.in/Department/Civil%20Engineering/CWE\\_222\\_Lectures\\_19,20,21.pdf](https://nitsri.ac.in/Department/Civil%20Engineering/CWE_222_Lectures_19,20,21.pdf) (Last Visited on October 19, 2021).

<sup>10</sup>Dr. M. Husain Sadar & Dr. William J. Stolte, "An Overview of the Canadian Experience in Environmental Impact Assessment (Eia)" 14 *Taylor & Francis* 216 (2012).

<sup>11</sup>*Ibid.*

<sup>12</sup>Canada's proposed new Impact Assessment Act: Good from afar but far from good?, *available at*: <https://www.wcel.org/blog/canadas-proposed-new-impact-assessment-act-good-afar-far-good> (Last Visited on October 20, 2021).

## V. COMPARITIVE ANALYSIS OF EIA LAWS IN INDIA AND CANADA

### Canada

The Impact Assessment Act 2019, is the most recent Act which replaced the Canadian Environmental Impact Assessment Act (CEAA). In the new Act, there has been inclusions to improve the process and adaptations from the previous Act which are quite beneficial.

The Impact Assessment Act 2019 has laid down assessment timelines for layout of the process. The **first phase** is the planning phase and for this a timeframe of 180 days is given, which in itself is divided into two timeframes of 80 days and 100 days. The first timeline of 80 days is further divided into sets of four steps with 30 days, 10 days, 30 days and 10 days. The next 100 days is divided into sets of four steps with 30 days, 30 days, 30 days and 10 days.

The purpose behind the first 80 days is with respect to indigenous people and their rights and in engaging them to identify the issues and potential impacts related to the projects.<sup>13</sup> During this period a detailed description about the project has to be produced and key issues have to be discussed and depending on this a decision has to be arrived at whether to carry out impact assessment or not. The purpose behind the remaining 100 days is provide with four plans namely Impact Assessment Cooperation Plan, Indigenous Engagement Partnership Plan, Permitting Plan and Public Participation Plan. In Impact Assessment Cooperation Plan issues are identified and a plan for cooperation with other jurisdictions is set up. The Indigenous Engagement Partnership Plan is carried out to clarify and further provide certainty through public participation. To have a check on the regulatory needs, a permit plan is carried out. Another guideline which highlights the requirement of documents related to proponent's impact plan is the tailored impact assessment. These guidelines are arrived at by the process of scoping that took place in this phase of planning. Moreover, these guidelines help in collecting information which will be useful for the purpose of preparing the impact statement.

The **second phase** is the Impact Statement Process which begins when the agency issues notice of commencement. Thereafter the proponent drafts the impact statement which is based on the tailored impact assessment.<sup>14</sup> This is done thoroughly as the proponent gathers all the information required through means of studies. Thereafter the same is carried out in consultation with the indigenous groups and the public. The proponent seeks advice from the Agency and federal authorities, as necessary, to better reflect the guideline requirements in the Impact Statement. The agency checks

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<sup>13</sup>*Ibid*,

<sup>14</sup> Further guidance is provided in the Practitioner's Guide to Federal Impact Assessments under the Impact Assessment Act, *available at*: [https:// www.canada.ca/en/environmental-assessment-agency/services/policy-guidance/](https://www.canada.ca/en/environmental-assessment-agency/services/policy-guidance/) ( Last Visited on October 20, 2021).

if the information collection is reliable and true and has met the requirements. If not, then further information is collected from the proponent. Once satisfied with the information, the agency accepts the Impact Statement. This whole process has to be carried out within 3 years.

The **third phase** is the Impact assessment process which begins when the agency accepts the impact statement and issues notice of determination. Impact assessment as per Section 22(1) of the IAA, 2019, is carried out to evaluate the negative and positive impacts of the projects on environment, economy, society etc. These assessments are conducted either by an agency or a review panel. For assessment process, the impact statement is analysed and reviewed. Thereafter a draft impact assessment report is prepared with the views and opinions of the indigenous groups and the public.<sup>15</sup> Hereafter, a final report is prepared with the potential impacts and is sent to the Minister. The report must include positive and negative impact of the project on the environment, comments received from the public, recommendations with respect of the follow up program and the conclusions drawn out of it.

The **fourth phase** which is the decision-making phase is categorized as category A which is the ministerial decision and category B which is referred to the Governor in Council for consideration. Determination of the adverse effects is based on public interest. Public interest determination is based on impact assessment report and other factors such as the project's contribution to sustainability, the related mitigation measures, impacts it will have on indigenous groups and their rights etc. Based on all these the Minister should make a final decision statement.<sup>16</sup>

The **final phase** which is the follow up and monitoring is the post decision phase wherein the accuracy and effectiveness of the report and the mitigation measures are verified, whether opportunities were provided to indigenous groups and public to participate etc.<sup>17</sup> In Impact Assessment Act, a new authority is given to the Minister to make amends post decision making, however the determination of public interest cannot be altered. In this phase, compliance is verified and in case of non-compliance corrections are made wherever necessary. In addition to these, the new Act has also introduced new penalty scheme with increased fines.

The input of the public is given importance and increased opportunity for developers. Moreover, the whole process has become more transparent and efficient. The Act emphasizes on the early start of public participation and it should not merely be considered as a checklist like in any other system. Public participation ensures mutual learning and active listening will double the chances of

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<sup>15</sup>Canadian Environmental Assessment Agency, Overview of the Impact Assessment Act, *available at*: <https://www.canada.ca/content/dam/iaac-acei/documents/mandate/president-transition-book-2019/overview-impact-assessment-act.pdf> (Last visited on Decemeber 1,2021).

<sup>16</sup>*Ibid.*

<sup>17</sup>*Supra* note 16. *Ibid.*

environmental safety.<sup>18</sup> A reciprocal dialogue will ensure that the public has been heard and to allow reaching at a right decision making.

### **Critical Analysis**

The IAA 2019 has improved the EIA procedures in the country but it has its own drawbacks as well. To point out a few, first of all, the environment agency to whom the sole responsibility has been placed, has widened the powers of the Agency and they can be held responsible in case of any negative impact. It can be considered and counted as a poor framework with respect to public participation, as has not been mandated.

### **India**

EIA was made mandatory in India under the Environmental Protection Act of 1986. The Ministry of Environment and Forests (MoEF), Government of India, has prepared environmental guidelines, to help the project proponents to work out an EIA.<sup>19</sup> The two major notifications for EIA, one in 1994 and 2006 and recently a new draft has been introduced. The EIA 2006 notification included the stages of screening, scoping, public consultation and appraisal.

### **Eia Notification, 2006**

The salient feature of this notification or amendment is that developmental projects were categorized into two, Category A projects and Category B projects. Category A is basically national level appraised projects are these carried out by Impact Assessment Agency (IAA) and category B is state appraised and is usually carried out and given clearance by State Level Environment Impact Assessment Authority (SEIAA) and State Level Expert Appraisal Committee (SEAC).<sup>20</sup> Category A projects need mandatory environmental clearance and they needn't undergo screening process whereas Category B projects have been further classified into two broad categories Category B1 and Category B2 and they have to undergo screening process, but the main difference is that Category B1 projects mandatorily requires EIA category B2 projects doesn't require EIA.<sup>21</sup>

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<sup>18</sup>*Ibid.*

<sup>19</sup> Nikhil Coutinho, Anupama Dhanu & Dr. Siddhesh Pai, "Critical Assessment of Environmental Impact Assessment (Eia) Reports In India: Challenges And Recommendations", *7 Journal of Critic Reviews* 1377 (2020).

<sup>20</sup>EIA 2006 Notification

<sup>21</sup>Gautami Kulkarni, A Critical Analysis of Environmental Impact Assessment (EIA) Draft Notification, 2020, 4 *International Journal of Law Management and humanities* 897 (2020).

## **Draft EIA, 2020**

A draft EIA notification has been proposed in the year 2020 by the Ministry of Environment, Forest and Climate Change (MoEF&CC) to replace the existing EIA Notification, 2006 under the Environment (Protection) Act, 1986. There has been some major inclusions and exclusions and Some Of Which Are:

### **The Four Stage Process Has Been Replaced By A Six Stage Process**

Earlier there were only four stages for EIA as per the 2006 notification whereas as per the 2020 draft notification, it has been raised to six which are scoping, preparation of draft EIA, public consultation, final EIA, appraisal and grant or rejection of environmental permission. One of the most significant changes in the new draft is that screening process has been completely taken out. Category B projects had to go through screening process but now due to the exclusion of screening process, they will not have to go through this.<sup>22</sup>

### **Categories Of Projects Have Been Added**

The current 2006 notification has only three categories of projects but the draft 2020 has proposed to increase the number of projects to five.<sup>23</sup> Project A required to have prior environmental clearance from the Ministry, B1 projects fulfilling General Conditions mentioned in Clause 3 are required to get prior clearance from the Ministry, B1 projects not fulfilling General Conditions mentioned in Clause 3 are required to get prior clearance from SEIAA or UTEIAA, B2 projects required to be placed before Appraisal Committee are required to get clearance from SEIAA or UTEIAA, and B2 projects not required to be placed before the Appraisal Committee are required to get prior environmental permission from SEIAA or UTEIAA.<sup>24</sup>

### **Reduction In Time For Notice Period**

In the current 2006 framework, the time period allotted for public hearing was 30 days, however, with the new draft framework, it has been reduced to 20 days.<sup>25</sup> This reduced the time period for written response of the public and in turn, public participation takes a step backwards. Expecting the public to give such a fast reply to a project is not reasonable and it won't be able to give a genuine written reply in such short notice too.

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<sup>22</sup>Supra note 21.

<sup>23</sup>Ministry of Environment, Forest and Climate Change, Draft Notification, available at: [http://environmentclearance.nic.in/writereaddata/Draft\\_EIA\\_2020.pdf](http://environmentclearance.nic.in/writereaddata/Draft_EIA_2020.pdf) (Last Visited on December 8, 2021).

<sup>24</sup>Supra note 23. Ibid.

<sup>25</sup>Ibid.

### **Post Facto Clearance**

Another major inclusion in the draft 2020 is that it has granted post facto clearance, i.e., a project that has been operating even without environmental clearance, can apply for the clearance and be regularised.<sup>26</sup> This adds to more complexity and fails the whole objective behind Environmental Impact Assessment.

### **Annual reports**

As per the new draft, reports on compliance need be submitted annually and not every six months as per the 2006 notification.<sup>27</sup> A regular check on compliance would have been better to keep a check on if it is being carried out in a proper manner.

### **Critical Analysis**

Draft EIA 2020 has brought in a number of inclusions and exclusions and to point out, most of the changes are against environmental governance and compromise safeguards. Moreover, it also goes against the fundamental guidelines put up by Supreme Court of India and National Green Tribunal. In addition to this, draft EIA 2020 has cut down public participation and has reduced the timeframe for public opinion from 30 days to 20 days. The draft even lets the industries violate the norms of EIA with the aid of post facto clearance.

#### **VI. COMPARISON TABLE – IAA,2019 vs DRAFT EIA 2020**

<b>Points to differentiate</b>	<b>India- EIA 2020</b>	<b>Canada-IAA 2019</b>
<b>Classification of projects</b>	Projects are categorized into phases like A, B1 & B2	A project list is designed where all the projects under the jurisdiction of the IAA 2019 are listed
<b>Public Participation</b>	An environmental impact statement is prepared where all the issues raised by the public are listed.	Public participation is highlighted in the Preamble and is considered important

<sup>26</sup>Rule 22, Draft EIA Notification, 2020

<sup>27</sup>Rule 20, Draft EIA Notification, 2020

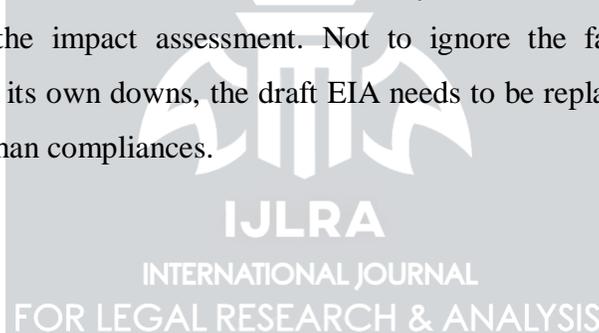
		through the planning phase.
<b>Timeframe for public opinion</b>	The public has to give their opinion in 20 days time	The Public is involved through out the planning process which takes place for a period of 180 days
<b>Stages of EIA</b>	(i)Scoping (ii) preparation of draft EIA, (iii) public consultation(iv) final EIA, (v)appraisal and (vi) grant or rejection of environmental permission.	(i)Planning(ii)impact statement (iii) impact assessment (iv) decision making, and (v) post-decision.
<b>Powers vested</b>	Powers vested in Impact Assessment Agency, State Level Environment Impact Assessment Authority (SEIAA) and State Level Expert Appraisal Committee (SEAC)	Powers stretched and solely lies with the environment agency.
<b>Presence of Regional Assessment</b>	Presence of strong regional assessment	Lack of regional assessment
<b>Post-facto clearance</b>	Presence of post facto clearance nullifies the effect of EIA	Goes through proper scrutiny and since public participation is at an upper hand, it leads to zero chance of post facto clearance
<b>Transparent and accessible information flows</b>	Refrains transparency and access to information on certain project to the public	No access to information beyond the follow up stage.

## **Vii. Conclusion**

What is done to the environment, is what we get back. Globalisation and industrialization has been in the limelight and is one of the status symbol of many countries and environmental degradation is at stake. Environmental Impact Assessments are basically not for nature, but for the nature to protect life. Legal frameworks should be in such a manner that it promotes sustainable development, or otherwise the future can be dark.

From the study and availability of data, the pros and cons of both the legislations in India and Canada are very evident. Public participation is the hallmark of a good impact assessment and it plays a pivotal role in decision making. Public interest has to be borne in mind while framing any legislation and not to forget, the environment is a helping hand to the human beings for survival.

On an overall assessment, the Canadian Impact Assessment Act 2019 has an upper hand when compared to the Draft EIA 2020. EIA 2020 has taken away the soul of the 2006 notification which had a stronger side in the impact assessment. Not to ignore the fact that Canadian Impact Assessment Act 2019 has its own downs, the draft EIA needs to be replaced with better provisions as it has more violations than compliances.



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