Chapter-IV:
Critical analysis of the role of the Stakeholders EIA

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In the era of climate change, environmental good governance is *sine qua non* for achieving the doctrine of Sustainable Development in the real sense. For Sustainable Development, it is absolutely necessary to have an effective environmental policy design, with in-built control mechanisms such as EIA to minimize the various hazardous impacts of the developmental activities on the environment. According to the *Principle 17* of *Rio Declaration* (1992), the concept of EIA has been adopted as an environmental management tool to minimize the potential adverse impacts on the ecology often caused by of any socio-economic developmental project.

As we know that the EIA is an interdisciplinary and multi-dimensional concept, hence there are various stakeholders who play different roles. The major stakeholders of the EIA process are as follows:

10 Diagram illustrating various Stakeholders of EIA process
As per the said illustrative diagram the stakeholders of the EIA process are as follows:

- Manufacturers, Traders, Business and Industrial lobby,
- Environmental Consulting Firms,
- Regulators, Governmental authorities/concerned departments, Pollution Controls Boards, Ministries of Environment, Land, Industry, Trade and Commerce, etc.
- Local residents inhabiting at the site of developmental project or local residents likely to be affected by the said project,
- NGOs, Environmental Organizations, Social Activists
- Judiciary, members of the various adjudicating foras.

4.2 Critical analysis of roles played by EIA Stakeholders

Since the focus of this chapter is to draw attention towards the gaps existing between the EIA laws versus its implementational ground realities in India, hence now we need to focus our discussion from what law exists in reality (which will be discussed hereinafter) to what the law ought to be (as already discussed in the previous chapter). The method adopted for such discussion will be case studies, where briefly we will analyse a few cases related to the various developmental projects in India, which illustrate allegedly gross violations of the existing norms of the EIA Notifications and hence, such cases have been rightly termed as ‘EIA Scams’.

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201 Ibid.
These said few instances of EIA Scams which have occurred in recent years in India have raised serious concerns and questions over the implementational efficacy of the existing EIA laws and the role played by its each EIA stakeholder. The alleged EIA Scams have now posed greater challenges for all the stakeholders of EIA such as the policy makers, regulators, project proponents, the judiciary, environmental activists, etc to prove their real worth. Bearing this complex situation in mind, this chapter aims to critically analyse the existing EIA mechanism in India and its procedural lapses.

The objective is to also closely scrutinize the role of the stake holders of the EIA procedures, who play very crucial roles for seeking the environmental clearances by preparing the blueprint for compliances of the existing EIA norms in case of any developmental projects. Hereinafter, we would further discuss a few case studies from India in brief, which illustrates such EIA Scams caused due to procedural lapses.

### 4.2.1 Case Study I- Dandeli Hydropower Project

The first case is related to the Dandeli Hydropower project of on river Kali in Karnataka state, wherein the Murdeshwar Power Corporation (Hereinafter referred as MPC) was the project proponent and internationally reputed consulting firm Ernst & Young was responsible for preparing the EIA report. It was alleged that the said Ernst & Young had prepared and submitted the said EIA report by doing a ‘cut paste’ job where they used data of another project located at hundred kilometres within the same state. Between August-September, 2000 a local NGO known as Environment Support Group, at Bangalore exposed the whole issue.

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Further, it was discovered that then *The Energy and Resources Institute* (herein after referred as TERI) was asked to re-do the said EIA study. However, it ended up filing a *‘hurried and inadequate’*\(^{203}\) EIA report for seeking the said EC. At the end, it was at least satisfactory to know that on account of the said exposure the EC was withheld. Now whether there is a scope for holding the said project proponent *MPC* as well as both the consultants namely *Ernst & Young* and *TERI* legally accountable and also whether there is any scope for penalizing such defaulting EIA consultants on account of such lapses, remained still unanswered.

### 4.2.2 Case Study II Bauxite Mining Case

The next case illustration in this context is a multinational bauxite mining company’s case from the *Ratnagiri* district of *Maharashtra* state, which had applied lease for a 74 years and submitted its EIA report for seeking EC prepared by *Yogiraj Industrial Consultant*, a firm based in *Pune*. But thereafter, a RTI application was filed by a local NGO, which helped to discover that certain portion of the said EIA report was also copied from another bauxite mining project which was surprisingly located thousands of miles apart in *Russia*. A further close scrutiny revealed that there are several other such technical lapses such as the species of the flora-fauna that was mentioned in the said EIA report, could possibly be found only in a completely different geographical conditions such as the Northern Temperate climatic regions of *Russia or Norway* or *Alaska*, etc.\(^{204}\)

Hence, it was very aptly remarked that;

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\(^{203}\) *“The great Indian EIA Fraud”*, South Asian Network on Dams, Rivers and People, Pg. 3, JAN - MARCH Issue, 2008

"Unless, by some amazing coincidence, mineralization in the Barja river in India and the Vorykva river in Russia both peak at 452.95 mg/liter during the summer months, then the water quality information in the Indian EIA report for the Ashapura project in Ratnagiri is fraudulent."

4.2.3 Case Study III- Pulichintala Project

Another controversial EIA report was highlighted in the case of Pulichintala project, which was to come up between the Nagarjunsagar Sagar and the Srisailam projects in the state of Andhra Pradesh. The locals were agitating that after construction of the proposed Nagarjunsagar Sagar and Srisailam projects, the Pulichintala project was not required and also that the said project would result in submergence of around 50 villages in its surrounding areas having a population of 0.1 million approximately. Further, it was also discovered that the EC of the said project was insufficient and without a proper EIA report. It was also found even the public hearing was not conducted in the said case. Finally, it was due to the judicial intervention of the local Andhra Pradesh High Court, that an injunction was issued to stop commencement of work due to lack of EC.

4.2.4 Case Study IV- Pala Maneri Hydel Electric Project

Similarly, in another EIA related case in the state of Uttaranchal the EIA report of the Pala Maneri Hydel Electric Project in Uttarkashi district was also found to very

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erratic. When the said EIA report was placed before the public hearing proceeding on September 3rd 2004, *prime facie* it was found again to be a messy ‘*cut paste*’ job.

Additionally, it was observed that on page 17-18 of the said EIA report, the project’s name has been written by hand suggesting that entire portions had been copied from another project report, the name of that project removed using a whitener and *Pala Maneri* re-written over it.\(^{207}\) It was quite shocking when the authorities ignored all such glaring errors and yet granted the conditional clearance to the said project, even though it was seismologically falling under the zone II and had already faced an earthquake in the year 1991 which measured 6.7 on the Richter scale.

In this context one may completely fail to understand that how the said authorities could grant conditional clearance to the said project which was only capable of withstanding shock of intensity 4 on the Richter scale, which might even be much below the standard requirements. Last but not the least the said EIA report was also found to be conflicting with respect to the issue of adverse impact on the local natural vegetation.\(^{208}\) Finally, the project was called off and noted environmentalist and Ramon Magsaysay Award winner *Mahesh Chander Mehta* stated that;

> “the central government’s decision of stopping the *Pala Maneri* and *Bhaironghati* hydel projects on the *Bhagirathi* river as steps in the right direction.”

He also strongly advocated for the cancellation of all such projects on *Ganga*.\(^{209}\)

\(^{207}\) *Down To Earth*, October Issue, 2004.

\(^{208}\) South Asian Network on Dams, Rivers and People, Pg. 10, VOL 2-ISSUE 9-10-11 (Oct-Nov-Dec), 2004.

\(^{209}\) *Ibid* South Asian Network on Dams, Rivers and People.
Thus, after the said EIA scam, apart from the common man, onus was also put on the CPCB officials. Also the CPCB’s former president *Mr. Paritosh Tyagi* very rightly suggested that;

“A major chunk of pollution control efforts can be achieved if the CPCB employees do their respective work with sincerity and honesty” 210.

4.2.5 Case Study V- *Parbati -3 Hydropower Project*

In continuation to our discussion on the various types of lapses in EIA process in India, next we must look at a case again related to EIA of the *Parbati -3 Hydropower Project* located in the state of *Himachal Pradesh*, where the most premier environmental research organization of India *NEERI*211 was held responsible to making glaring mistakes while preparing its EIA report for seeking EC. For example, with regard to the aspect of availability of water as mentioned in the said EIA report, the facts and figures of the river *Jhelum*, which is geographically located in the state of *Jammu & Kashmir* were presented in the said EIA report, hence was locally irrelevant and inaccurate both. This is not the only project where the *NEERI* was held responsible for committing such errors; there were examples of such others cases too. For example even in case of *Karcham Wangtoo Hydro Power Project* of *Kinnaur* district of *Himachal Pradesh*; *NEERI* was again held responsible for making several errors while redoing the EIA report.

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211 The National Environmental Engineering Research Institute (NEERI), Nagpur was established 1974, It is devoted to research and innovations in environmental science and engineering besides solving a range of problems posed by industry, government and public. It is a constituent of Council of Scientific & Industrial Research (CSIR).
This case is also a classic example of non-participation of locals in the decision making and only the members of the local Himachal Pradesh SPCB and the concerned project proponent arbitrarily played dominant role in the said decision making for granting EC. The locals had agitated as their voices and concerns, which were completely unheard by the said local regulator. Further, their right to information was also violated by denying them the copies of the EIA report in Hindi version. Lastly, despite of all agitations the public hearing was scheduled by the said pollution control board authorities. However, the locals demanded that as a condition precedent the said project proponent first must obtain a ‘No Objection Certificate’ from the local Gram Shabha, before conducting any such public hearing.\textsuperscript{212} This clearly shows that how the EIA norms are often violated in India.

At this juncture it will be worth mentioning the judicial view with regards to effective implementation of EIA norms. For example, the honorable High Court of Gujarat while hearing a PIL petition filed under Article 226 of the Indian Constitution, 1950 filed by, a local NGO,\textsuperscript{213} held that the executive summary which is required to be furnished by the any project proponent, was very often not available at the local level, hence the local participation for decision making in these public hearings are practically nil. It is only if the summary EIA reports are made available in the local language that there can be effective participation by the affected local people at the public hearings to achieve the objectives of the public hearings in true sense.

\textsuperscript{212} The Hindustan Times, reported on 10/11/2004.

\textsuperscript{213} A local environmental activist NGO Janvikas had filed PIL in the case of Centre for Social Justice v. Union of India (UOI) and Ors. AIR 2001, Guj. 71.
After the aforesaid discussion, we can say that numbers of such EIA scams are constantly on rise, where there are efforts to seek EC either by way of forging the data or putting irrelevant data without even doing any actual impact study on ground. Here, we need to acknowledge role of the NGOs, field activists, who in most of such cases are the whistle blowers and thus deserve due recognition and appreciation both from the civil society as well as the government.\footnote{Supra see, “EIA Scams: Decaying the EIA Legal Regime in India” by Parna Mukherjee, 2012.}

Furthermore, the recent emergence of RTI as an effective tool to seek information has played crucial role in unearthing such cases of EIA procedural violations and lapses. The RTI has strengthened the socio-environmental activism and related movements in India. This clearly shows that the EIA notification and its procedural rules are often violated in most of the developmental projects to seek EC and thus renders this whole exercise more or less a mere formality on a paper while it is being grossly violated on the ground.

4.3 The scope for imposing legal liability on EIA Stakeholders

The scope and possibility to impose the legal liability on the EIA stakeholders and the professional EIA consultants can be analysed by observing the different practices adopted under the existing legislative framework in the various countries.

In US in 1980 the CERCLA\footnote{In US the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 1980, commonly known as Superfund, was enacted by Congress on December 11, 1980, available at \url{http://www.epa.gov/superfund/policy/cercla.htm}, [visited last on March, 2013].} was enacted to achieve the followings objectives:
Established prohibitions and requirements concerning closed and abandoned hazardous waste sites;

Provided for liability of persons responsible for releases of hazardous waste at these sites; and

Established a trust fund to provide for cleanup when no responsible party could be identified.

There is scope for imposing liability on the environmental professionals and EIA consultants under CERCLA, where they may face environmental liabilities imposed by contract terms and under traditional Tort law. While the liabilities arising under these theories can be severe, the legal basis for such claims does not differ from the traditional principles applicable to the construction claims. As we know, that the liability faced by engineering consultants under environmental statutes, however, can be substantially broader than allowed under traditional theories.

In a recent article written by Susan Murphy216 it was illustrated how the Eighth Circuit declined to follow the Fourth Circuit and held in a given decision that;

“The environmental engineers are strictly liable for any contamination caused during pre-acquisition testing.”

In another case Tippins v. USX,217 the court held that a transporter that recommended four alternative waste disposal sites "actively participated" in the selection and hence

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is liable under CERCLA. Although, it was cast as a transporter case, the reasoning of the decision could be transferred to environmental consulting as well.

In another case\(^\text{218}\) in *New South Wales*, Australia, an environmental consulting firm, *Orogen Pty. Ltd*, and its director have been found guilty of an offence under the existing *Australia Law of National Parks and Wildlife Act*. The director of the said firm was held liable for giving incorrect advice, which consequentially led to the damage of the habitat of a local threatened species of *Koalas*.

In contrast to this, in India the scope of imposing the legal labiality on the defaulting EIA consultants are still very low. The premier body responsible for the registration and training of EIA consultants itself has admitted in its report that; even though there are issues related to improper scoping for the EIA as most of the EIA Consultants do not have adequate understanding for developing the EIAs. The existing EIA reports are infected with poor quality of inputs to EIAs and often found to be “*copy-cut-paste*” job; yet, there are very little checks on the competency of the EIA consultants and more or less no liability of the EIA consultants, which makes the whole issue further more critical.\(^\text{219}\)

Recently, a small ray of hope was generated when the MoEF took few small though positive steps by proposing that from 2011 the EC will be granted only when the EIA


report is prepared by the QCI accredited consulting firms.\footnote{Subject: Accreditation of EIA Consultant by Quality Council of India. Source: http://moef.nic.in/downloads/public-information/Quality-council.pdf [visited as on July 2010]} But the implementation of the said notification has again run into several complications and counter allegations.

At this juncture, it is significant to mention a recent case filed at the National Green Tribunal (Hereinafter referred as NGT)\footnote{V. Srinivasan (Appellant) vs. Tamil Nadu State Environment Impact Assessment Authority And Others (Respondents) Appeal No. 18 of 2011 (T), Before the Hon’ble National Green Tribunal, Principal Bench, New Delhi.}, represented by a noted environmental activist lawyer of India, Mr. Ritwick Dutta, on behalf of the appellant submitted an appeal on the implications of wrongful advise given by an EIA consultant and its consequential implications, thus asking the NGT to hold the EIA consultant legally liable on the said account.

Further, in the said appeal filed against the EIA clearance granted by the local regulator i.e. the Tamil Nadu State Environmental Impact Authority, the petitioner rightly submitted before the NGT that;

“\textit{That the Appellant respectfully submits that the issue in the present Appeal is not merely one of jurisdiction (i.e. whether the project is to be treated as a Category A or Category B), but rather an issue which raises serious doubts on the manner in which Environment Impact Assessment Reports are prepared, the quality of data and study, the nature of appraisal by the SEIAA and the general lack of seriousness on the part of all the key actors in the Environmental Clearance process to implement the EIA Notification in letter and spirit.}”
“In such a situation, a disproportionate burden is put on concerned or affected individuals and citizens groups to ensure that the EIA Notification is followed. Unless deliberate violation, as in the present case, is viewed seriously, and action taken against those who deliberately conceal vital facts which are material to screening, scoping, appraisal and decision making, such instances will be repeated. The poor quality of EIA and the casual manner in which the reports are prepared and approved, seriously influences environmental decision-making and makes a mockery of the EIA process.”

“Such instances should not be seen as mere mistakes or technical omissions, but as instances of serious fraud since the results of faulty decisions, concerning the environment are usually irreversible and paid for by the present as well future generations.”

Further, it was added that if we look at the text of the para 8 (vi) of the EIA Notification, 2006, it only mentions that in case of suppression of any vital information in EIA report, or in case of misleading and false information or data which is important and material for the further process of screening or scoping or appraisal or the final decision, the application would be liable for rejection, and cancellation of prior EC granted. If an EC had already been granted then rejection of an application or cancellation would be decided by the respective regulatory authority, by giving a personal hearing to the applicant and following the principles of Natural Justice.

222 V. Srinivasan (Appellant) vs. Tamil Nadu State Environment Impact Assessment Authority and Ors. Appeal No. 18 of 2011 (T), see para 5.
However, the said provision remains silent on the issue of scope of imposing legal liability of the EIA Consultants in case of any such fraud or deliberate omission, as there is no specific mention of any liability or legal implications to be imposed on the responsible EIA consultants.

In the said context certain issues still remains a bit obscure, like among the various stakeholders of EIA regime, who should be blamed for the lapses or the violations of the EIA laws? Whether the legislative for making ineffective laws, or the executive and officials of the concerned departments like MoEF, CPCB, SPCB, etc for their failure to ensure the effective implementation of the EIA norms, or the lobby consisting of the project proponents and environmental consultants and consulting firms, who are only interested in seeking quick clearances at the cost of environment by flouting the laws, or lastly the civil society who often remains passive and does not bother to voice their concerns by participating in any decision making exercises such as public hearings. In an article on the concept of Sustainable Development, it has been critically remarked that;

“India’s existing model for socio-economic development which focuses heavily on certain material goods and services is profoundly unsustainable!”

The EIA scams are the result of the non-compliance and ‘non-compliance has been termed as a symptom of Failure of EIA norms in India’. In the span of more than two decades of its existence the EIA norms have been amended for almost more than a dozen times and mostly to favour the project proponents and rarely for the sake of the environment. Hence, we need to put an urgent check on the constant dilution of

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any legislative norms by way of successive amendments, which ultimately renders the said enactment ineffective and futile.

Repeated occurrence of such EIA scams has by and large defeated the very legislative intent and the purpose behind such enactments. There must be strict liability imposed on all the defaulters whether they are the project proponents, or the regulators either from the SEAC/SEIAA or the consulting firms responsible for such EIA scams. There should be nothing less than imposition of strict penal actions as well as exemplary fine and also banning such violators for the future course.

The judiciary has already issued an ultimatum against the EIA scams and its procedural lapses in India and in one of its landmark judgments on EIA held that;

“Public participation in environmental decision making is now desideratum.”

Now in light and scope of the aforesaid discussion on the illustrated case studies and the existing challenges and issues which has emerged out of the said the EIA scams, we need to focus more on how to enhance the efficacy of the existing EIA laws, which can be achieved to certain extent by adopting a few measures, which are enumerated herein below.

We need to adapt different mind-set towards the very need and purpose of the EIA process. We need to educate all the stake holders of the EIA process that it is not a merely a onetime EC process, rather in the long run, it actually helps to evolve better developmental policy designs. Further, we may also consider that an accurate EIA report and its effective implementation itself can serve as an indicator of our

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225 Centre for Social Justice (Janvikas) vs. Union of India (UOI) and Ors., AIR 2001, Guj. 71.
sustainable socio-economic developmental pattern in longer run. They can also be the guiding tools for the planning and designing for all such future projects.

The right to access information has helped us to unearth the gross violations of the EIA norms. Hence, it needs to be further strengthened by creating awareness towards the proper use of RTI as a tool to access, disseminate and use information for better environmental decision making. Beside this, we also need to enhance the peoples’ participation from being a mere formality to more active, meaningful and a real participatory exercise by way of recording of the proceeding of EPHs and making them available in the public information domain.

We need to emphasise on the scope for increasing the transparency and participation in the environmental decision making process by way of encouraging the public-state–private partnerships.

Merely by changing the process for granting the ECs from centralized to decentralized system, we cannot ensure its efficacy, unless the whole process of decentralization is established well. The very institutions which are engaged in such process, must be first evaluated on the basis of their strength and weaknesses and accordingly supported by adequate technical know-how, in-house training facility, adequate resources, etc to conduct the environmental assessment, evaluation and monitoring.

After the conditional EC is granted, the ‘post clearance compliance’ remains as another often neglected or unmonitored area in the post EC stage. At this juncture, we must understand clearly that EIA norms cannot be effectively implemented to achieve its inherent objectives, unless it not supported by the process of Environmental Auditing (herein after referred as EA). The very purpose of the EA process is to ensure the compliance of the existing environmental guidelines and also to maintain
the *status quo* such compliances through the process of systematic and periodical monitoring including the evaluation and assessment. Basically, the EA process ensures the adoption of sustainable practices not only at the clearance stage, but also throughout the existence and operational phase of any project. Thus, we need to adopt the EA monitoring system by way of appropriate legislative enactment on an urgent basis.

Furthermore it has been reiterated by the MoEF that as per the mandate of the EIA notification of 2006, that without the prior environmental clearance no project proponent is allowed to do construction or start any kind of development of the site except for boundary for preventing encroachment and in case of any violation strict penal action will be imposed\(^\text{226}\).

Lastly, we need to learn from the past experiences of these EIA scams to further evolve more effective policy on EIA and take a pledge that there will be neither any substantial or procedural deviation nor any constant dilution in the existing laws, in the name of promoting economic growth and development. Achieving the goal of Sustainable Development by striking the balance between the environment and development should our prime objective.

We must remember that saying no to environment means we are choosing such developmental policies, by which the very existence of mankind on earth may be wiped out soon. Hence, there will be neither any scope nor any need for further development, if we continue with our agenda of such unsustainable developments!