ENVIRONMENT IMPACT ASSESSMENT IN INDIA: A SOCIO-LEGAL PERSPECTIVE
EIA IN INDIA: A SOCIO-LEGAL STUDY

I. STATEMENT OF PROBLEM

The universal degradation and devastation of human environment has posed serious dangers for the survival of human race on the planetary earth. Population explosion, resource depletion, phenomenal technological growth and industrialization resulted in an unprecedented air, water and noise pollution. According to one estimate 'each year six million hectares of productive dry lands turns into worthless desert which would amount to an area roughly as Saudi Arabia. More than eleven hectares of forest are destroyed yearly and this would equal an area about the size of India by the end of this century. The mass acid precipitation kills forest and lakes and this acidification of vast tract of soil may result the soil beyond reasonable hope of repair. The burning of fossil rises global warming. The green house raises sea level to flood coastal cities and ruination of national economies'.

At home we come across to startling revelations of the World Bank report submitted by Chafer Brandon and Kristen Hofmann. The water and air pollution imposes a heavy health cost borne by Indians due to the effect of massive environmental degradation is Rs. 34,000 crores. The figure for annual economic loss (Rs. 34,000 crores) is about 4.5 per cent of Gross Domestic Product [GDP]. This means the entire economic growth for the year was wiped out and that development has taken place solely at the expense of environment. Under this background environmental laws and regulations engrained the environmental impact assessment (EIA) as sine quo non for sustainable development. EIA has been identified as key mechanism for planned development by providing examination environmental of implication of proposed action for a more rational and structured decision making.

Indian EIA law is undergoing to an evolutionary phase and still remains in a state of influx. In pre-1994 phase i.e. the prior to the promulgation of EIA Notification of 1994 EIA has been ingrained in discretionary model under an administrative exercise and monitoring. Earlier the Department of Environment, Forest and Wildlife (DoE) under Ministry of Science and Technology was the agency responsible for EIA of
project costing more than Rs. 5 crores and which needs clearance from the Planning Commission. Despite this seemingly impressive record, the DOE had been faulted for being unequal to the task. It does not possess the environmental analysis of adequate number of projects nor the support facilities to thoroughly assess every project proposal. The EIAs are not used to make informed selections of project sites, but are limited to assessing the environmental consequences of projects at pre-selected sites. The process for environmental evaluation of developmental project is flawed because there is no opportunity for public comments. In the absence of public comment, it often became difficult for a potential plaintiff to construct the necessary base of facts for a suit to invoke judicial review of DOE’s administrative action. This approach is further precipitated by political interventions frequently which undermines DOE recommendations.

In the past the DOE required central project authorities to incorporate a chapter on environmental impact of the proposed action in the project feasibility report. The environmental assessment in the feasibility reports are generally to be much more than superficial evaluations prepared by inexperienced personnel. Private sector entrepreneurs were not under any statutory obligation to conduct environmental impact analyses for proposed industrial projects even in case of manufacturing, and handling of hazardous substances. Industrial licensing procedures required that before a letter of intent is converted into an industrial license, entrepreneurs secure clearance from state water and air Pollution Control Boards. In reality the procedure requiring environmental clearance prior to the grant of an industrial license is seldom enforced. The central licensing authority does not insist on environmental clearance and the majority of state boards do not undertake site approval studies. India lacks an adequate legal and administrative framework for the conduct of effective environmental impact analyses for private sector projects. Essential to implementing the EIA norms is the availability of financial resources to support the preparation of comprehensive impact statements and the hiring of environmental analysis. The existing administrative machineries for pollution control in the are starved for funds. India does not possess a large pool of trained environmental analyst employed at university faculties, professional consultancy firms which the DOE can readily draw for opinion and appraisal.

The administrative framework for environmental impact assessment is unsuited for integrating economic and ecological considerations in decision making. An administrative structure which better orients project
planning towards sustainable development remained an absent feature under the current arrangement. Moreover the decision making by integrating economic and environmental costs at the ministerial or departmental levels is likely to erode the belief subscribed by several ministries and departments that to be for the environment, is to be anti-development. The DOE is under pressure to clear projects and cannot introduce a time consuming public comment process which would involve public meetings, adequate time and opportunity for citizen comments and replies to such comments. The present environmental impact assessment process is over dependent on a couple of bureaucrats and hopelessly vulnerable to political caprice. India’s planners have ignored environmental costs which savage environmental degradation, torment the poorest in the land and threaten the security of every Indians. Government responsible for environmental protection, are institutionally separated from those responsible for promoting development. The most potent threat from the entrenched bureaucracy premised on a thinly concealed disrespect for bureaucratic expertise. *Under these circumstances, one has to seriously ponder as to why have it become common for EIAs in India to encounter problems of legitimacy? Are we going through a necessary learning phase or is there something fundamentally wrong about the assessment process? A cross-country comparison reveals that EIA is often used to provide a comprehensive assessment of the potential environmental impacts of heavy industry projects or infrastructure programmes that involve substantial resource processing or are likely to have far reaching impacts, some times simply because of their scale of action. The sociology of EIA law making in India deserves to be appraised under this background. The normative intent of EIA law manifested as a piece of delegated legislation or a rule than a central statutory enactment or by an amendment to India’s umbrella legislation of Environment (Protection) Act, 1986. A normative requirement as important as the EIA appeared suddenly in rule books with little public debate shaping its outcome as EIA Notification of 1994 it were inevitable that numerous unanswered questions would emerge, many of which could only be clarified ex post facto in administrative and judicial fora. The EIA law therefore lacks clear guidelines for risk assessment, credible procedure for approval, institutional inability to incorporate stakeholder’s participation and comprehensive legislative and regulatory framework. Under this problem antique overview the work proceeds to explore the socio-legal imperatives and relevance of EIA law in India.
II. SIGNIFICANCE OF STUDY

The premise of EIA legislation is often obscured by critical and juridical perspectives. Without ignoring its present inadequate institutionalization and intrinsic regulatory limitations, EIA should be accepted as a valuable political site which even in its present forms substantially contributes to both the environmental reorientation of modernity and democratization of the power over development. It can also be used to steer society in an environmentally responsible direction by facilitating democratic participation and normative orientation and social engineering. As a form of procedural law it established a decision making process characterized by detailed environmental information, publicity, political plurality and open textured deliberative obligation to decide decisional discourse. EIA as a substantially progressive and democratic state institution proceeds through a critique of anti-modern influences of environmental theory which have effect of marginalizing or even rejecting participatory state institutions.¹⁰

The legal requirement of public display of development proposals and environmental assessment documents, and the integration of comment from the public and relevant agencies, constitutes a democratic incursion into the once unilateral and insular shaping of the natural and social world by the state and private corporations. The publicity and pluralistic participation of EIA has undermined the sovereignty of market imperatives, private ownership prerogatives and technocratic expertise of bureaucracy. The pre-political determination of business and government to initiate development and determine its purpose location and design as well as ideological justifications touting the benefits of economic growth and technological progress, are now viewed as contestable for proposal likely to produce significant environmental impacts. EIA has institutionalized the importance of environmental needs, in relation to such projects, as a legitimate social concern.¹¹

State institutions like EIA require new forms of critical legal theory to explain the workings and social effects of decision making processes characterized by publicity, plurality, and open-textured deliberative obligations. We need to understand these procedural forms of law as significantly independent international context, rather than the tools of pre political forces as genuine political forums with the potential for changing the normative orientation and cultural practices that constitute
social life. EIA should be appreciated as a specific type of procedural law which expands the political space for contesting, redefining and constructing the normative orientations and cultural practices through which the forces of development shape our world from a more general social perspective, the publicity, plurality and deliberative obligations embodied in EIA, should also be valued for the way they enhance public political freedom through the facilitation of increased reflection and contestation over the terms and conditions of social life. In this wider sense, EIA warrants acknowledgement as an institution contributing to the constitution of modernity, where modernity is defined as political disputation and reflexivity over normatively and social objectives.

The historical significance of EIA extends even further. EIA is not only a pluralistic, reflexive form of procedural law, in which environmental concerns oppose, potentially modify and even defeat particular projects. It is also an institution which has assumed a pivotal role in more general processes of interpretation and communication. The establishment and operation of EIA has allowed the forces behind development to become the focus of general deliberation and contestation in a wide network of discursive arenas. EIA has contributed to a pervasive acknowledgement that it is politically and morally acceptable, for instance, to defend particular cultures and life styles against the developer power of the state and private corporations; to try to protect “non-commodity values” such as biological diversity; to promote multifaceted relationships with nature – the poetic, playful, sorrel and fraternal and not only those grounded in human and technical mastery. The influence of EIA also extends beyond environmental concerns. The establishment and operation of EIA give legitimacy to a variety of social movements motivated by the common purpose of promoting the democraticisation and public accountability of political and economic decisionmaking.

India being one of the largest democratic and mega bio-diversity regions of the world necessitates a vibrant EIA law and policy to meet the basic precepts of sustainable development. The existing ontology of EIA law in India is glaringly conspicuous by its gross absence of socio-legal researches oriented to fill void of policy, law enforcement and development. The study therefore strives to build the corpus of EIA law research in pragmatic fashion to illumine the policy in prescription and policy in implementation for a vibrant EIA regime in India. Perhaps all researches on EIA law in India are now of historical value simply because most of the works are carried out prior to the promulgation of EIA Notification of 1994, 1995, 1997, 1998 and 2001. Moreover these studies
have substantially tailored to gauge of the relevance comparative EIA law to suit the Indian requirements. The origin and development of EIA in rudimentary, evolutionary and developmental phase have not been seriously undertaken. Almost negligible amount of work exists which is documented to establish EIA law and practice through the EIA clearance data analyses. The whole law is seldom viewed in socio-legal framework to establish cross cultural and cross-contextual requirement of EIA in India. The present work wishes to fill this gap and desideratum by offering a doctrinal analysis and socio-legal experimentation of EIA law in India.

III. SURVEY OF LITERATURE

The socio-legal study of EIA law and policy is considered to be an intriguing subject of investigation of legal research. Research work relating to environment generally carries an analytical study of the working of the law in the wake of judicial interventions. But no serious effort has been made to estimate, account and analyze the working of EIA law in socio-legal perspective as has been the case of U.S.A, E.U., U.K. and Australia and many other countries. The impact of NEPA like enactment and assessment of court’s contribution to evolution and development of EIA law is grossly conspicuous by its absence in enviro-legal researches of India. The evolution and development of international EIA law has been traced by scholars like Patricia W. Bernie & Alan E. Boyle, Robert G. Connelly, Jonas Ebbesson, Will A Irwin and Christopher Wood necessarily constitutes the basic literature to hone out the Indian strategy to develop EIA law at national level. Some saner lessons are to be drawn from the comparative EIA law working through out the globe which has been often described remarkably varied and typically vigorous. The working of EIA law in U.S.A. and NEPA framework described by S.K. Fairfax, and H.M. Ingram, V.M. Fogleman as standard administrative reform having far reaching ramifications. U.S. EIA studies undertaken by L.K. Caldwell, Robert D. Clark, Joseph Lee Rodger, and M.C. Blumm S. Legore present an intellectually insightful analysis for drawing a framework of Indian EIA law. The impact studies of NEPA formulated by T. Stribling, G.M. Touni, and Council on Environmental Quality, M. Bisset and R.O. Robert are highly informative for the analysis of the present work. While N.C. Yost, R.M. Druley and F.R. Anderson comes out with a more
penetrating experiment of NEPA in terms of content and impact in substance, procedure and compliance. The European encounter with EIA law also finds an interesting discourse for Indian analysis and observation. Studies offered by Christopher Wood, N. Lee, Stanley P. Johnson, P. Wathern, and R.H. William constitute the necessary backgrounder of evolution of EIA law and policy in India. A practical account of working of EIA in U.K. is offered through the works of scholars such as G. Dobry, P. Wathern, T. O. Riordan, Michael Clark, John Herington, J. Catlow and C.G. Thirlwall, John Glasson, and R.G.H. Turnbull paves the way for blueprinting of model EIA law for India. The institutional and regulatory model of EIA law compliance by House of Lords, Project Appraisal for Development Control (PDCA), Planning and Transport Advisory Council, Department of Environment, and Council for Protection of Rural England are of great relevance for institutional overhauling of EIA process in India.

The socio-legal study of EIA law in India becomes quite germane in the framework of receptivity and application of EIA beyond U.S.A., U.K. and E.U. to the developing countries. This constitute core of the research focus as comparative EIA law of developing countries depicts enormous variations between context and content. The most conspicuous feature relates to the fact that the first EIAs to be carried out were usually demanded by development assistance agencies on a project by project basis, not as a response to a widespread indigenous demands for better environmental conditions. S. Rayners, Asit K. Biswas, Q. Geping, S.B. Agarwal, R.G.H. Turnbull, Y.G. Ahmad, G.K. Sammy, L. Ortolano Robert Fowler, and Dune Bernard accounts vividly the cross-cultural and contextual purview of EIA law. In Asian context studies undertaken by B.F.D. Barrett Rieki Threival, R. Wenger, H. Wang X. Ma J. Formby, A. Gilpin, N. Harvey R.J. Fowler, Asit K. Biswas, and S.B. Agarwala are of great relevance to arrive at a pragmatic discourse and prognostic solutions. A kaleidoscopic perception of literary survey of EIA law in India depicts gloomy picture. Armin Rosencranz, Shyam A. Divan and P. Leelakrishnan have produced primary researches on EIA law in India relatable to pre-EIA Notification phase. In spite of their brilliant analysis and impressive display of legal propositions they are antiquated in the contemporary scenario. The present works makes a radical departure from the fast and offers a doctrinal analysis and socio-legal examination of EIA laws in India.
VI. RESEARCH METHODOLOGY

Since EIA law is both a natural and normative science it lays standards for environmentalism and ecologically oriented human behavior enforceable through state action for sustainable development. This fact along with the fact that stability and certainty of EIA law are desirable goals and social values to be pursued, make doctrinal and socio-legal research to be of primary concern of the present work. Doctrinal research involves analysis of case law, arranging, ordering, systematizing legal propositions, and study of legal institution but it does more—it creates law and its major tool (but not the only tool) to do so is through legal reasoning or rational deduction. The rules and principles of case law have never been treated as final truths, but as working hypotheses, continually retested in those great laboratories of the law, the courts of justice. Moreover the life of law has not been logic it has been experience. The objective and philosophy of doctrinal research has to be social engineering through law. The law in modern times leaves a large scope, a large leeway, and the leeway may be more in some cases and less in others, but it is there, for molding and adapting it to the society, social change and sustainable development.

On the other hand socio-legal research has now become symbols of progressions to identify precisely the more significant methods of research that may point out the difficulties involved in applying these methods and the ways of overcoming them. This kind of research explains the relevant juridical concepts, and analyses statutory provisions, picks out significant judicial dicta, formulates principles deducible from judicial decisions, and arranges the whole material in logical order. EIA law is not, an insular one discipline. It has a visceral affinity with other disciplines.

The EIA Law in India: A Socio-Legal Study extends their range of investigation beyond law to enforcement and adaptive changes in society to promote sustainable development. Any socio-legal study will thrive only under two conditions. First, the output should be such as can capture the attention of all policy makers and not merely the members of the legal academics, enforcement agencies, forensic profession and Para-legal personnel. It should be intelligible to non lawyers as well. Second, the forensic profession, especially the bench, should be receptive to Tran disciplinary methods of enquiry and not adopt rigidly insular postures. A
strict attitude of we refrain from making policy will be discouraging, while an attitude that welcomes “Brandies briefs” will be stimulative\(^{48}\).

Post-independent India specially the Post-Forty Second Constitutional Amendment of 1976 Phase is characterized by the talismanic use of the environmental law making technique in the handling of problems of social change and sustainable development. The quality of law making is, however, diverse and variable. Some laws are made after mature consideration and detailed enquiry; they are assured of supportive structures (administrative enforcement, public opinion). But of necessity, a large number of legislations are characterized by short gestation periods, little or no pre-legislative social enquiry and feeble supportive structures. Moreover some laws are clearly symbolic gesturing or rituals, intended to serve social function different from controlling behavior through coercive implementation\(^{49}\). EIA law needs to be understood scientifically as pre requisites of effectiveness or impact. Considerable conceptual elucidation of the notions of “environment” “impact” “assessment” is the first, and a grasp of methods of measurement of “effectiveness” or “impact” is the second, among the prime preliminary tasks. Assessment and impact has to be determined by reference not merely to the declared policies of the legislation but also by reference to its unintended consequences. Measures of impact and assessment will also very according to the initial decision to regard a law symbolic” or “instrumental”, a task full of hazards. Since EIA law happens to be an instrumental legislation, the evaluation has at least to take account of both enforcement and compliance without enforcement. The effectiveness of EIA law involves time dimension, intervening variables (e.g. judicial decisions, amendments, administration) will have to be comprehended in analytical and critical ways. These are some of the methodological postulates which are taken into cognizance in the entire scheme of the study.

V. SCHEME OF STUDY

The work in hand encompasses the theoretical, juridical, legal, and judicial dimension of EIA law in India in the socio-legal context and doctrinal holism. Chapter one dives deep into the genesis of EIA as a tool of sustainable development. The definitional, conceptual and theoretical dimensions summons a lucid explanation to comprehend the legal and
juridical perspective of EIA law. The origin and development of EIA is a progression from science to management and from management to a legal proposition. An analysis of EIA law necessarily steps out from the polemical comprehensions of its theoretical and conceptual framework. Having a subtle delineation of theoretical and juridical concerns of EIA, the Chapter Second proceeds to explore the receptivity and acceptability of EIA under the environmental and developmental policies and programmes of India. The ‘policies in prescriptions’ and ‘policies in implementation’ either reflect the juridical concerns of EIA or guide the legal orientation of EIA law in India. The chapter therefore extensively surveys the economic policies, industrial policies, water policy, forest policy, wildlife policy, agriculture policy, mineral policy, pollution control polices, sustainable development policy for adequate focus of EIA law and policy in India. These policies and plans share the passion of the horizons EIA which needs to be further explicated for a more refined EIA law and policy in India.

Chapter third is primarily devoted to the analysis of pro-development enactments reflected under India’s industrial-cum-labor legislations of India. In order to appropriate the contribution of industrial laws to EIA law, the chapter studies these enactments in three distinct phases. The first phase happens to be prior to Forty Second Constitutional Amendment, 1976 which obligated the state and citizen to protect and improve the environment. The second phase happens to be post Forty Second Constitutional Amendment phases wherein an effort has been made to draw environmental sensitivity of industrial laws. Enactment like Archeological Monument and Historical Site Remains Act of 1958, Factories Act of 1948, Industrial Development and Regulation Act of 1951, Merchant Shipping Act of 1958, Atomic Energy Act of 1962, Radiation Protection Rule of 1972, Factories Amendment Act of 1987 are some of the industrial, labor and heritage conservation legislations which have been scanned to reflect the rudimentary formations of EIA law in India. The ambit and scope of environmental legislations passed in pre and post Forty Second Constitutional Amendment and Stockholm Declaration, are being analyzed to lend appropriate credence to the origin and development of EIA law.

Chapter Fourth is laced with an in depth analysis of pollution control legislations, resource conservation laws and compensatory and administrative environmental enactments to appropriate the sweep and range of traditional EIA law under substantive procedural environmental legislations. Pollution control legislation such as Water (Prevention and Control of Pollution) Act of 1974 and Air (Prevention and Control of Pollution) Act of 1981 incorporates the EIA provisions under their schemes
of license and permit in juvenile fashion. Resource conservation laws such as *Wildlife Protection Act* of 1972, *Forest Conservation Act* of 1981, and *Environment Protection Act* of 1986 make pro-active provisions for EIA in different context. The enviro-administrative legislations such as *Public Liability Insurance Act* of 1991 and *National Environment Tribunal Act* of 1997 also underlines the basic precepts of social and environment impact. The study of environmental law from the perspective of the EIA reveals primary phase of evolution and development of EIA law in India.

Chapter fifth is exclusively directed to assess the potentiality of EIA laws promulgated basically through the regime of delegated legislations. The actual sweep and impact of *EIA Notification* of 1994 amended and re-amended until 2001, is traced to build the corpus of EIA legislation in India. The gradual refinement of EIA and its contiguous Notifications, form the subject matter of the study with suggestive and reformative generalizations. Chapter sixth culls out the varieties of regional EIA laws passed under the delegated legislation under the backdrop of indigenous demand and disquiet. The range and coverage of regional EIA laws have been impressively displayed by their critical evaluation in the chapter. This analysis leads to the organic growth of pro-active and progressive EIA legislation constituting a backgrounder and precursors for comprehensive parent legislation on EIA. A comparison and contrast between the central and regional EIA laws logically culminates into five tuning and embellishing the present legal structuring of EIA.

The study of theoretical juridical and legal dimensions of EIA in socio-legal holism and doctrinaire legacy will be perhaps incomplete without a penetrating examination of the EIA inspectorate authorities in India. The size and volume of central and regional EIA laws became determining factors for the onset of series of enforcement authorities for EIA law in India. The propensity of central and regional EIA authorities is being gauged upon to reflect the functional and pragmatic notions of EIA law. The potential and portent of the swelling rank of EIA authorities of central and regional level is seriously scrutinized to suggest administrative reform for better regime of EIA law in India. Logically connected is the study of role of enforcement in the actual implementation and development of legal norms of EIA. Chapter seventh collates the data of environmental clearance approved by the nodal agency *i.e.*, EIA Division of Ministry of Environment and Forest during the period from 1994 to 2001. An statistical study of yearly implementation of the EIA laws through administrative structure of Union Ministry is carried out to assess the voluminity and tendency of EIA clearance of development project in India. Since the
Annual Report of 2002 is not made available to public till the conclusion of the work, the statistical account of the year falls beyond the purview of our analysis. This study is also of seminal significance in heralding industry wise EIA model guidelines and legislation to reform the present legal regime.

Chapter ninth strives to read between the working of EIA laws and institutions and judicial organ of the country in giving effect to EIA laws. The study of judicial policy is of great necessity to hone out the strategy of EIA law reform in the country. Since most of the judicial pronouncements are related *ex post facto* EIA clearances the Supreme Courts and High Courts seems to be guided by the public policies, economic imperatives and neutralization of environmental degradation. The study also reveals that in cases of minor development projects the Courts have exhibited their zeal for rigorous compliance of EIA laws. While in cases of major and mega development projects where in massive pumping of national exchequer has already taken place, a soft judicial policy towards EIA is discernable. The judicial policy in the pre and post EIA Notification phase represents the evolutionary phase of judicial formulations which often shuttles between the bare compliance to just protection of environment than any pro-active stand or a religions adherence to EIA laws.

Four chapters devoted to study of EIA Laws in India (Chapter III to Chapter VI) two chapters taking account of functional ambit of EIA (Chapter-VII & VIII), and two chapters related to study of EIA in the light of governmental and judicial policy (Chapter II and Chapter IX) culminates into the conclusive suggestive and reformative discourse of EIA legal regime in India. Chapter first which extensively appraised into the theoretical and judicial framework of EIA and comparative law perspective of EIA logically strengthens the EIA law reform strategies in India. The Chapter tenth being in nature of conclusion and summation of work embark on the substantive, procedural and methodological upheavals of EIA law to blue print a model central enactment for EIA in India by incorporating social, environmental and strategic impact assessment. This desideratum felt since long summons great urgency to embellish the present legal regime of EIA for the promotion of sustainable development and inter generational equity among the peoples of mega diversity regions one of the world.
NOTES AND REFERENCES


12. Supra note 9 at 50.

13. Id. at 51.


30. See: N. Lee & C. Wood, Environmental Impact Assessment of Physical Plans In the European Communities [Document
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43. See: S.N. Jain, Doctrinal and Non-Doctrinal legal Research XXIV (2 & 4) *Journal of India Law Institute* 341 (1982).

47. *Id.* at 256.