



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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The Evolving Jurisprudence on Environmental Clearance for Infrastructural Projects: A Critical Examination

Introduction

Concern for the protection of the environment is not a new phenomenon but has existed since the Vedic era. However, there has been a trend of unprecedented growth in environmental pollution in the past few decades. This trend has led to a concern that we must not develop industries at the expense of the environment¹.

In recent years India, the discourse surrounding environmental clearance for infrastructural projects has undergone significant evolution. With growing concerns about sustainability, biodiversity conservation, and climate change, regulatory frameworks and judicial interpretations have adapted to address these pressing issues. has witnessed a burgeoning demand for infrastructure development to support its growing economy and population.

However, this pursuit of progress has often collided with environmental concerns, leading to a complex interplay between developmental aspirations and ecological preservation. Central to this dynamic is the evolving jurisprudence surrounding environmental clearance for infrastructure projects in India.

The Evolution of Environmental Clearance

During the period of British rule in India, there was a tendency to exploit natural resources while neglecting efforts towards forest conservation. The Forest Act was introduced in 1865 and later revised in 1878², becoming applicable to a majority of territories. Additionally, the

¹ <https://nliulawreview.nliu.ac.in/wp-content/uploads/2022/01/Volume-V-Issue-II-155-167.pdf>

² https://www.indiacode.nic.in/bitstream/123456789/6197/1/indian_forest_act%2C1927.pdf

Indian Penal Code of 1860³ addressed environmental concerns and outlined penalties for specific violations.⁴

The enactment of the Environmental Protection Act in 1986⁵ marked a significant step towards regulating activities with environmental impacts. Subsequent amendments and judicial interpretations have played a crucial role in shaping the legal framework governing environmental clearances. Initially focused on pollution mitigation, this framework gradually expanded to encompass biodiversity conservation and resilience to climate change. Modern environmental jurisprudence now takes into account indirect and cumulative impacts, along with the principles of sustainable development.

Judicial Intervention and Public Interest

The Environmental Impact Assessment (EIA) Notification of 2006⁶ is a crucial legislation in India's environmental governance framework, requiring developers to assess potential environmental impacts before undertaking projects. However, the enforcement and interpretation of the EIA Notification have been subject to judicial intervention, reflecting the judiciary's role in ensuring environmental protection.

Judicial intervention focuses on two key aspects: ensuring compliance with procedural requirements and upholding environmental safeguards. Courts have often intervened to ensure strict adherence to procedural requirements, such as obtaining necessary clearances and conducting public consultations. They have also aimed to uphold environmental safeguards, assessing the adequacy of mitigation measures, evaluating potential risks to sensitive ecosystems, and consider principles of sustainable development and the precautionary principle.

Landmark judgments like *the Lafarge*⁷ and *Vellore Citizens Welfare Forum*⁸ cases have exemplified judicial intervention in environmental clearance processes, addressing deficiencies in assessments and emphasizing public participation. Judicial intervention also helps to

³ <https://l1ddashboard.legislative.gov.in/sites/default/files/A1860-45.pdf>

⁴ Id. at 1

⁵ https://www.indiacode.nic.in/bitstream/123456789/6196/1/the_environment_protection_act%2C1986.pdf

⁶ <http://www.environmentwb.gov.in/pdf/EIA%20Notification,%202006.pdf>

⁷ 2011 7 SCC 338

⁸ 1996 (5) SCC 647

interpret and refine the legal framework surrounding environmental clearances, providing clarity on ambiguous provisions and promoting responsible development practices.

Emerging Challenges and Complexities:

The environmental clearance process for infrastructural projects encounters numerous challenges and complexities. The importance of considering climate change has grown, necessitating evaluations of greenhouse gas emissions, susceptibility to climate-related risks, and strategies for resilience. Traditional assessments often neglect the invaluable ecosystem services provided by natural habitats, highlighting the need to include ecosystem services valuation. While technological advancements like artificial intelligence and remote sensing offer promise for process enhancement, they also introduce challenges in data handling and precision. The intricate nature of cumulative impacts and the social and cultural dimensions of development projects present further hurdles.

Cross-border implications are increasingly prevalent, demanding coordination among different jurisdictions to reconcile varying environmental regulations and ensure equitable outcomes. Compliance with legal and regulatory requirements remains challenging, requiring continuous capacity building, training, and institutional fortification.

Public engagement and stakeholder involvement are indispensable for fostering transparency, accountability, and societal endorsement of infrastructural endeavors. Tackling these challenges mandates a comprehensive approach that integrates diverse expertise, embraces technological innovations, encourages stakeholder engagement, and supports adaptive management approaches.

The Role of International Law and Standards

International law and standards play a pivotal role in shaping the environmental clearance procedures for infrastructural projects, establishing normative frameworks, guidelines, and principles to advance environmental preservation and sustainable development. These frameworks are established through international agreements and conventions such as the UN Framework Convention on Climate Change and the Convention on Biological Diversity⁹.

⁹ <https://unfccc.int/process-and-meetings/what-is-the-united-nations-framework-convention-on-climate-change>

International bodies like the World Bank and IFC develop guidelines for environmental impact assessments and management systems, which serve as benchmarks for nations when crafting and executing their processes. Moreover, international law facilitates collaboration across borders and the alignment of environmental standards, ensuring that environmental clearance procedures account for transboundary implications¹⁰.

Additionally, international organizations offer assistance and capacity-building initiatives to aid developing nations in fortifying their environmental governance structures, including clearance procedures. Sustainable development is underscored by international law, striving to harmonize economic growth, social equity, and environmental safeguarding.

Compliance and accountability mechanisms are often integrated into international accords, while public involvement and information accessibility are championed. By adhering to global standards, countries can establish transparent, inclusive, and efficient environmental clearance mechanisms, thereby safeguarding the environment and the welfare of both current and future generations.

Conclusion

The legal principles governing environmental clearance for infrastructure projects in India represent a multifaceted issue that involves balancing developmental needs with environmental protection. India's efforts to harmonize economic progress with ecological sustainability have been shaped by both the historical exploitation of natural resources and the introduction of regulatory frameworks like the Environmental Impact Assessment Notification of 2006¹¹.

Judicial involvement has significantly influenced this landscape, exemplified by landmark cases such as *Lafarge Umiam Mining Pvt. Ltd. v. Union of India*¹², which have established rigorous scrutiny of project proposals and rigorous enforcement of environmental safeguards. Despite these advancements, obstacles persist, including delays, opacity, and insufficient public engagement in the environmental clearance process. Enhancing institutional

¹⁰ <https://documents1.worldbank.org/curated/en/586771490864739740/pdf/113849-WP-ENGLISH-IFC-Performance-Standards-PUBLIC.pdf>

¹¹ Supra note at 6

¹² Id at 7

frameworks, simplifying approval procedures, and promoting environmental consciousness are imperative for navigating the changing legal landscape concerning environmental clearance.