

## ENVIRONMENTAL JUSTICE IN INDIA: A STUDY ON ENVIRONMENTAL IMPACT ASSESSMENT AND ENVIRONMENTAL COURTS

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### INTRODUCTION

In a time of rapid economic growth and industrialization, socio-economic inequalities and environmental degradation can become of secondary concern. In India, legal measures have been developed by the judiciary in an effort to address environmental concerns, including Green Benches in state high courts, the National Green Tribunal (NGT), and public interest litigation (PIL) (Government of India 2010). In addition, environmental impact assessment (EIA), a process of predicting and preventing adverse impacts of development, is utilized in the country. The purpose of this research is to scrutinize the EIA process and environmental court system by examining legal cases in the state of Gujarat. The specific objectives of this research are to: (i) describe those aspects of EIA process and practice that trigger Green Bench or NGT involvement; (ii) understand the extent to which EIA and related environmental clearance (EC) processes have addressed the concerns of affected communities; and (iii) assess the effectiveness of judicial institutions in resolving disputes arising from the EIA process.

### LITERATURE REVIEW

EIA in India was first established in law in 1994 (Choudhury 2013). In 1997, public hearings were introduced (Diduck et al. 2013) and in 2006 a new EIA notification was implemented with the objective of being more efficient, transparent and less political (Aggarwal et al. 2009). Many scholars have scrutinized EIA legislation and practice in India, including SWOT (strengths, weaknesses, opportunities and threats) analyses conducted by Paliwal (2006) and Rathi (2017). These authors and others have noted that EIA has not been entirely effective at preventing and mitigating impacts of intensive industrial development in the country due to restrictions, flaws and loopholes in the system (Aggarwal et al. 2009). The most recurrent limitations found in the literature include low quality EIA reports, lack of consideration of project alternatives, poor public engagement processes, and deficient monitoring mechanisms (Erlewein 2013; Diduck et al. 2013; Rathi 2017; Morgan 2012).

India's Supreme Court introduced PIL in 1982 as a tool for individual activists and organizations to request legal redress for vulnerable sectors of society (Curmally 2002; Bhushan 2004). This was followed by the Supreme Court's implementation of an informal bench of judges with technical expertise in environmental cases. Similarly, Green Benches in state-level high courts were soon established and in 2010, the establishment of the 'quasi-judicial' NGT gave rise to a new era of environmental jurisprudence in India. (Government of India 2010). Specialized environmental tribunals and benches provide an important opportunity for the mitigation of disputes arising from environment-versus-development debates in India.

## METHODS

This case study research followed an interactive and adaptive approach (Nelson 1991). The first stage involved an extensive review of literature and the selection of environmental legal cases. The two selected cases involved the proposal of a cement plant by Nirma Ltd. and a limestone-mining site by UltraTech Cement Ltd. Both case studies are located on the coastal region of the Mahuva Taluka in the Bahavnagar District of Gujarat. Semi-structured interviews were conducted with major stakeholders involved in the cases, including community members, NGOs, political leaders, and legal actors. 19 interviews were conducted for the Nirma Ltd. case and 22 for the UltraTech Cement Ltd. case. Though the interviews were conducted with diverse groups of people, no interviews were conducted with the project proponents. A conventional qualitative content analysis was used to analyze the existing literature to reveal common themes surrounding environmental justice, EIA and judicial environmental institutions in India. As well, data analysis software, NVivo 11, was used to perform an inductive thematic analysis of interview responses (Braun and Clarke 2006). Interview responses for the two case studies were combined during analysis due to very similar responses given in both cases.

## RESULTS

Study participants raised several concerns regarding the EIA process that may have triggered the involvement of the court system. Inadequate public participation was expressed in terms of lack of information about the project in 54% of interviews, lack of participation opportunities during public hearings (15%), and not being heard during public hearings (39%). Referring to the public hearing for the Nirma Ltd. case, one participant noted: “the Chairman invited women to speak, said they all have a right to speak but when they all stood up to speak, the jury members and pro-industrialists all walked out.”

Political influence during the EIA and EC processes was expressed in 66% of interviews with concerns about the ruling political party favouring industry and interfering in decision-making. Referring to the Nirma Ltd. case, one participant expressed: “the High Court’s decision was interfered by the government at that time, then the Supreme Court’s decision was influenced by another ruling party. The NGT decision was made after another government change. Now that it is back in the Supreme Court, I believe that the government will put pressure on the judge”.

Poor quality of EIA report was another concern expressed by participants, which was mostly described as a lack of site visits by the proponent/EIA consultant (24%). This is further evident when comparing the land description of the EIA reports and the description of the land by the villagers themselves: “In the EIA report, the company said that this whole area is a wasteland, but we can see different kinds of trees, plants and crops. How can they say this is a wasteland?”

Study participants raised numerous concerns regarding the potential impacts of the projects that were not adequately addressed in the EIA reports. These were classified into two primary themes. The first, environmental impacts, encompasses negative impacts to air and land (56%), water pollution and increase in salinity (63%), and negative impacts on wildlife (29%). The environmental impact most expressed involved

the increase in salinity in the soil and water as a result of the removal of limestone, which currently acts as a natural barrier to salinity. Since both projects claimed that the study sites were located on wasteland, impacts of salinity ingress were not addressed (Min Mec Consultancy Pvt. Ltd. 2008; J.M. EnviroNet Pvt. Ltd. 2016). The second theme, socio-economic impacts, is categorized into loss of employment (49%), increase in seasonal migration (56%), loss of land (71%), safety concerns (41%), and health concerns (29%). In this agriculture-dependent region, participants explained that with an increase in salinity and pollution to their lands, these would become unfertile causing the rates of unemployment and forced migration to increase.

While questioning participants about the impacts of the projects, several people shared their insight on the type of development they would prefer to see in their communities, mainly agriculture-based industry (44%) and any industry that is not harmful for the environment (7%). One participant recognized: “Industries are important in this area for development, but agricultural industries, such as onion dehydration and cotton ginning are important. Government should promote industries that support agriculture as the land is so fertile here.”

When asked about the NGT and other judicial institutions, concerns expressed by respondents included inaccessibility of courts due to the high cost (24%) and to the education required to participate in court procedures (24%), as well as inconsistent court decisions (12%), NGT operating under limited legislation (5%), and political interference (46%). One participant explained: “Court is expensive and in English. Farmers here cannot understand what is being said. English in High Courts makes it very easy to misguide people who don’t speak the language.”

## DISCUSSION

Inadequate public participation has been a recurrent theme in academic critiques of EIA in India. These study participants’ complaints about lack of awareness of project details, suggest inadequate provision of information from the proponent and the government to locally affected communities (Paliwal 2006; Diduck et al. 2013; Rathi 2017). This finding, combined with the fact that public hearings are held after the EIA has been completed, suggests that public hearings are treated as a mere procedural requirement rather than as an opportunity for the proponent to incorporate local knowledge into their project planning.

Political interference within the EIA and EC processes has been implied in academic literature as “loopholes” in the EIA system (Aggarwal et al. 2009). The perception of corruption by local people in this study could be explained by the Indian government’s neoliberal push to further industrial development at all costs (Thompson 2008). In the case studies, the proponent and government will surely experience the benefits of the development projects, while as cautioned by Williams and Mawdsley (2006) the affected communities will be left with the burden of environmental degradation resulting in a loss of land and livelihood.

Poor quality of EIA reports is another common criticism of India’s EIA system (Paliwal 2006). Many study participants were concerned that EIA reports were created without proper field visits and this was made evident when analysing the two cases. The project sites were described as wasteland, when field visits could have proven otherwise.

Inadequate EIA studies may be facilitated by the self-assessment approach employed in India. However, this model has been successful in many countries where rigorous, well resourced and transparent reviews by regulators and the public are in place (Muldoon et al. 2015), suggesting that such checks and balances are lacking in the Indian system, and as called for by Sinclair and Diduck (2017) new ways of involving the public into decision-making must be developed in order to ensure decisions truly reflect local knowledge, values and aspirations.

In both case studies, one major discrepancy between the EIA report and the perceptions of impacts by local people pertains to land classification and land use. Additionally, the loss of land and subsequent loss of employment resulting in forced migration, were concerns that were expressed in nearly all interviews with affected rural communities. Both industries failed to provide solutions for the loss of livelihood and even mentioned that forced displacement would not occur (Min Mec Consultancy Pvt. Ltd. 2008; J.M. EnviroNet Pvt. Ltd. 2016). This directly relates to Thompson's (2008) understanding of how poor citizens, in a neoliberal government, are the shock absorbers of society and are forced to either tolerate or flee from environmental degradation. Study participants expressed agriculture-based industry as a preferred type of industrialization. However, analysis of project alternatives are rarely specified in terms of reference for EIAs in India, which results in inadequate consideration of big-picture impacts or site location alternatives (Rathi 2017).

Justice in India has been consistently inaccessible to poor citizens who inequitably receive the environmental risks of industrialization and none of the benefits. Though PIL demonstrates an important advancement in accessing justice, there remains a lack of technical and financial aid to support community involvement in court proceedings. Additionally, study participants viewed the NGT as being flawed for having an inadequate scope of authority. Perceived corruption within the courts system by study participants strongly reinforces the idea that the neoliberal government in India has the power to silence civil society and represents a major obstacle in achieving environmental justice.

## CONCLUSION

EIA in India falls short in several respects, mainly public participation, consideration of project alternatives, and quality of impact assessment studies. Meaningful public participation, which includes sharing information, involving communities at early stages of decision making and taking community aspirations into consideration (Momtaz and Gladstone 2008) would be an important first step in restoring public trust in environmental decision making in India. Proper consideration of project alternatives would help to find better locations for certain projects while enhancing existing industries in certain areas. Finally, better quality EIA reports are necessary to truly understand the significance of potential impacts in order to adequately prevent and mitigate adverse effects and optimize positive impacts.

Accessing the court system in India remains incredibly difficult for poor and marginalized sectors of society. Due to the seemingly close ties between the court system and the government, it is commonly perceived that court decisions favour industry over poor citizens hoping for justice. If such favour exists, institutional change is urgently

required to better shield court decisions from political interference, and if it does not exist, change is required to improve access to justice, which might have the effect of instilling greater confidence in the justice system.

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