

# The Draft EIA Notification 2020: *Reduced Regulations and Increased Exemptions*

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Part I: Comparison of the Draft EIA Notification, 2020 and the EIA  
Notification, 2006

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## Abbreviations

Accredited Consultant Organisation (ACO)  
Comptroller Auditor General (CAG)  
Consent to operate (CTO)  
Environmental Clearance (EC)  
Environment Impact Assessment (EIA)  
Environment Management Plan (EMP)  
Environment Permission (EP)  
Environment (Protection) Act, 1986 (EPA)  
Expert Appraisal Committee (EAC)  
Hectares (ha)  
MegaWatt (MW)  
Million Tonnes Per Annum (MTPA)  
Ministry of Environment, Forests and Climate Change (MoEFCC)  
National Accreditation Board of Education and Training (NABET)  
National Environmental Engineering Research Institute (NEERI)  
National Green Tribunal (NGT)  
Non-governmental Organisation (NGO)  
Odisha Mining Corporation (OMC)  
Office Memorandums (OMs)  
Opencast Coal Mine (OCM)  
Pollution Control Committee (PCC)  
Public Consultation (PC)  
Public Hearing (PH)  
Quality Council of India (QCI)  
Regional Office (RO)  
Small Hydropower Projects (SHP)  
State Level Environmental Impact Assessment Authority (SEIAA)  
State Level Expert Appraisal Committee (SEAC)  
State Pollution Control Boards (SPCB)  
Technical Expert Committee (TEC)  
Terms of Reference (ToR)  
Thermal Power Plants (TPP)  
Union Territory Level Environmental Impact Assessment Authority (UTEIAA)  
Union Territory Pollution Control Committee (UTPCC)

## **The Draft EIA Notification 2020: Reduced Regulations and Increased Exemptions**

The regulatory framework for Environment Impact Assessment (EIA) lays down a process to assess possible environmental impacts of industrial, mining and infrastructural projects before approving or rejecting its environmental viability. In India the formal legal framework governing the EIA process was brought about in the form of an EIA Notification in 1994<sup>2</sup>, which was enacted under Environment (Protection) Act, 1986. The 1994 Notification was amended several times in a span of 11 years<sup>3</sup> before the EIA Notification of 2006 replaced it.

As per the process laid down in the 2006 Notification, industrial, mining, infrastructure and other developmental projects are categorised based on the size and scale of the projects. Projects such as coal mines above 150 hectares (ha) and Thermal Power Plants (TPP) above 500 MegaWatt (MW) are Category A projects, and appraised at the central level. Smaller projects such as non-coal mining projects below 50 ha and river valley projects below 50 MW are Category B projects and appraised at the state level. The Category B projects go through a process of screening where the State Level Expert Appraisal Committee (SEAC) determines if a project requires an EIA report or not. Accordingly projects which require an EIA are called Category B1 projects and projects which don't are called Category B2 projects. The project proponents are then required to prepare a Draft EIA report based on the Terms of Reference given to them by an Expert Appraisal Committee (EAC) at the central and SEAC at the state level. This is followed by a public consultation in which the affected people are allowed to voice their opinions regarding the project. Thereafter, all documents are appraised by the EAC/SEAC. The EAC/SEAC may then either reject the proposal or grant an Environmental Clearance (EC) to the project.

The system created by the 2006 Notification is far from perfect. Over the last 14 odd years, there have been quality issues with respect to EIA reports,<sup>4</sup> several procedural lapses during public hearings<sup>5</sup> and a poor track record with respect to post clearance monitoring and compliance<sup>6</sup>. The

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<sup>2</sup> The Environmental Impact Assessment Notification, 1994, available at:

<http://extwprlegs1.fao.org/docs/pdf/ind4656.pdf>

<sup>3</sup> Kanchi Kohli and Manju Menon, *11 Years of Environmental Impact Notification 1994: How Effective Has it Been?*, May, 2005.

<sup>4</sup> Office Memorandum dated Oct 05, 2010, available at:

[http://moef.gov.in/wp-content/uploads/2017/09/OM\\_IA\\_ownershipEIA.pdf](http://moef.gov.in/wp-content/uploads/2017/09/OM_IA_ownershipEIA.pdf)

<sup>5</sup> M P Ram Mohan and Himanshu Pabreja, *Public Hearings in Environmental Clearance Process Review of Judicial Intervention*, Volume 51, Issue No. 50 Economic & Political Weekly 68 (Dec, 10 2016).

<sup>6</sup> *Report of the Comptroller and Auditor General of India on Environmental Clearance and Post Clearance Monitoring*, Report No. 39 of 2016, available at:

[https://cag.gov.in/sites/default/files/audit\\_report\\_files/Union\\_Government\\_Report\\_39\\_of\\_2016\\_PA.pdf](https://cag.gov.in/sites/default/files/audit_report_files/Union_Government_Report_39_of_2016_PA.pdf)

2006 Notification has also undergone changes over the years. There have been exemptions from public consultations given to certain categories of projects<sup>7</sup>, increase in the validity period of an EC<sup>8</sup> and even attempts to streamline and quicken the process of granting ECs<sup>9</sup>. Despite that, the 2006 Notification has continued to be used by project affected people and non-governmental organisations in order to reduce the social and environmental costs of projects.

On 23rd March 2020, the Ministry of Environment, Forests and Climate Change (MoEFCC) invited comments on a new draft EIA Notification.<sup>10</sup> The draft notification which seeks to replace the earlier 2006 Notification was made open for public comments for 60 days. However since the period for public comments coincided with the national lockdown in lieu of the COVID 19 pandemic several environmental groups demanded for the comment period to be extended. The MoEFCC has now extended the time for public comments till 30th June 2020.<sup>11</sup> Once the public comments are received, the MoEFCC will take them into consideration before finalising the draft notification. As per a recent amendment to the Environment (Protection) Rules of 1986 made on 18th March 2020<sup>12</sup>, the validity of all draft notifications has been extended to 725 days instead of 545 days, thereby giving the MoEFCC 725 days to finalise the draft notification.

This draft notification proposes changes that can dilute the provisions of the 2006 Notification. This analysis addresses the lacunae in the Draft EIA Notification, 2020 in two sections:

- I. Salient features of the changes proposed in Draft EIA Notification, 2020**
- II. Clause by Clause Comparison of the EIA Notification, 2006 and the Draft EIA Notification, 2020**

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<sup>7</sup> Debayan Gupta and Kanchi Kohli, [Environmental Exemptions now Allow for Piecemeal Expansions of Coal Mines](#), The Wire, Aug 29, 2019.

<sup>8</sup> Rupali Pruthi, [Union Ministry of Environment extended validity of Environment Clearance to 7 years](#), Jagran Josh, Oct 20, 2015.

<sup>9</sup> Digvijay Singh Bisht, [How the Centre is Diluting Green Clearance Norms](#), DownToEarth, Jan 15, 2019.

<sup>10</sup> Gazette Notification, S.O.1199 (E) dated Mar 23, 2020, available at: [http://environmentclearance.nic.in/writereaddata/om/6998FGGHOI\\_Gaztte\\_EIA2020\\_Comments.pdf](http://environmentclearance.nic.in/writereaddata/om/6998FGGHOI_Gaztte_EIA2020_Comments.pdf)

<sup>11</sup> Jayashree Nandi, [Govt extends time for public comments on environment impact regulation](#), Hindustan Times, May 07, 2020.

<sup>12</sup> Gazette Notification, S.O.1127 (E) dated Mar 18, 2020, available at: <http://moef.gov.in/wp-content/uploads/2020/03/545-to-725.pdf>

## SECTION I

### Salient features of the changes proposed in Draft EIA Notification 2020

The Draft EIA Notification, 2020 formalises many of the changes brought into the 2006 Notification through Office Memorandums (OMs) by the MoEFCC from time to time and also introduces some new concepts. This section analyses some of the key changes, which the draft notification seeks to bring, in light of their possible on ground implications.

- **The draft EIA Notification reduces the spaces for public participation:**

The provision for public consultation in the EIA process was incorporated through an amendment dated 10th April 1997 to the 1994 Notification.<sup>13</sup> Through the public consultation process the concerns of those affected by the project and other plausible stakeholders are taken into consideration. Presently, the public consultation process as per the 2006 Notification requires for a public hearing to be conducted in close vicinity of the proposed project area and also invites written responses from all plausible stakeholders. The issues raised during the public consultation process are then addressed by the project proponent in the draft EIA and EMP report before finalising them.

#### ***Reduction of notice period***

Since 1997, a 30-day notice was given before the carrying out public consultations. However, the draft notification reduces that to a 20-day notice period without any justification. EIA reports, the drafts of which are to be made available to the public upon announcement of a public hearing, are usually voluminous technical documents which require careful reading, analysis and discussions. Making these reports available less than 3 weeks before the public hearing will make it very difficult for people to verify the contents of EIA reports. This is of great consequence since the quality of EIA reports in the country has been poor (as has been acknowledged by the ministry itself)<sup>14</sup> in the past and the consequences of that have to be felt by the public.<sup>15</sup>

Additionally, public hearing processes in India have been riddled with procedural flaws in the past which have also made their way into the 30 day notice period. Many a times the EIA reports are not made available to the affected communities on time. For example, in *Utkarsh Mandal v.*

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<sup>13</sup> Kanchi Kohli and Manju Menon, [\*11 Years of Environmental Impact Notification 1994: How Effective Has it Been?\*](#), May, 2005.

<sup>14</sup> Office Memorandum dated Oct, 05, 2010, available at: [http://moef.gov.in/wp-content/uploads/2017/09/OM\\_IA\\_ownershipEIA.pdf](http://moef.gov.in/wp-content/uploads/2017/09/OM_IA_ownershipEIA.pdf)

<sup>15</sup> Manju Menon and Kanchi Kohli, [\*India disregards scientific opinion on environment\*](#), Hindustan Times, Aug 27, 2018.

Union of India, the Delhi High Court had observed how providing the EIA report a mere 9 days before the date of the public hearing was a mockery of the public hearing process.<sup>16</sup> Similarly, for the Jaitapur Nuclear Power Plant in Maharashtra, only one of the four affected Gram Panchayats received a copy of the EIA report in English 10 days before and in Marathi 4 days before the hearing.<sup>17</sup> This led to widespread protests during the public hearing.<sup>18</sup> More recently, when the Gevra Open Cast Coal Mine in Korba, Chhattisgarh was up for an expansion, the affected communities could not join the consultations since they were not provided with a notice for the same.<sup>19</sup>

The current draft instead of addressing these issues further reduces the notice period which increases the probability of such procedural lapses as the authorities would have lesser time to execute the process of public hearing.

### ***Exemptions from Public Hearings***

The draft notification has exempted a long list of projects from requiring public consultations. Some of the major exemptions are:

#### **Exemption of expansion/ modernisation proposals with capacity increase up to 50% from the Public Consultation process:**

The draft notification has exempted all Category A and B1 projects seeking an expansion or modernisation with a capacity increase of up to 50%, from requiring a public consultation. This means that a project with a production capacity of 10 Million Tonnes Per Annum (MTPA) can increase its capacity to 15 MTPA without undertaking public consultations. This was not the case with the 2006 Notification which did not grant such a blanket exemption to the expansion or modernisation projects. Only for coal mining projects, public consultations were exempted for up to 40% increase in capacity.<sup>20</sup> However the draft notification extends such an exemption to all expansion/ modernisation projects within a 50% increase in production capacity. This is done without providing any justification for the same and despite the fact that in case of expansions, the past compliance of the project should be of utmost importance, for which

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<sup>16</sup> Utkarsh Mandal v Union of India, Writ Petition (Civil) No. 9340/2009 & CM APPL Nos. 7127/09,12496/2009.

<sup>17</sup> (Jun 16, 2020, 01:00 PM) [https://www.domain-b.com/industry/power/20100517\\_nuclear\\_project.html](https://www.domain-b.com/industry/power/20100517_nuclear_project.html)

<sup>18</sup> Meena Menon, [Protests stall public hearing on Jaitapur nuclear project](#), The Hindu, Sep 22, 2020.

<sup>19</sup> Jayashree Nandi, [Didn't get notice to join consultations: Villagers](#), Hindustan Times, Jun 04, 2020.

<sup>20</sup> 15<sup>th</sup> Thermal & Coal Mining Expert Appraisal Committee Minutes, Agenda No. 15.5 ( Feb, 25, 2017), available at:

<http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/010820176ABWO9WXApprovedMOM15thEACheldon25July2017Coal.pdf>

the public can play a formidable role. For example, when the Kulda Opencast Coal Mine (OCM) in Sundergarh, Odisha was seeking an expansion in its production capacity from 10MTPA to 15 MTPA (which is 50% increase from its earlier capacity), the poor track record of compliance of the company and the incremental impacts of the proposed expansion were spoken about by the communities largely during the public hearing.<sup>21</sup> The transportation of coal from the mine through public roads caused heavy dusting along the route, the water discharge from the mine contaminated the water in the local stream and constant fires in the overburden dump of the mine caused thick smoke in the villages.<sup>22</sup> The EAC in their meeting dated 15th and 16th February 2018 recorded such non-compliances brought forth by the project affected community members and accorded an EC to the project for only one year with a reduced capacity increase till 14 MTPA.<sup>23</sup> Further in August 2019 when the company approached the EAC for expansion from 14MTPA to 15 MTPA, the EAC deferred the expansion for want of action taken report on the public hearing commitments of the company among other additional information.<sup>24</sup> This shows how the space for public hearing and the subsequent commitments towards the issues raised in public hearing was crucial to understand the past non-compliance by the project and critically evaluate the potential impacts of the proposed expansions on the environment and the communities.

### **Exemption of Category B2 Projects from Public Consultation Process:**

Category B2 projects have been exempted from undertaking a public consultation process in the 2020 draft. This was also the case earlier in the 2006 Notification. However this exemption has to be discussed in the context of other changes introduced in the draft notification. As discussed earlier, SEAC had the power to classify Category B industries into B1 and B2 as per the 2006 Notification. This process of screening has been removed in the draft notification. Instead of the screening process the draft notification provides a clear definition for B2 projects [as those which are required to only prepare an Environment Management Plan (EMP) report and are granted a prior EC if they go through an appraisal process (as specified in the schedule of the notification) or a prior Environment Permission by the Regulatory Authority] and specifies them in the Schedule

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<sup>21</sup> *MCI mines expansion protested in S'garh*, The Pioneer, Jan 11, 2018.

<sup>22</sup> Centre for Integrated, Rural and Tribal Development (CIRTD) & Centre for Policy Research (CPR)-Namati Environmental Justice Program, *Closing the enforcement gap: Groundtruthing of environmental violations in Sundargarh, Odisha*. India: CPR-Namati Environmental Justice Program, 2019.

<sup>23</sup> 27th Coal Mining Expert Appraisal Committee Minutes, Agenda No. 27.1 ( Feb, 27, 2018), available at: <http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/090320186BARNOA4FinalizedMOMEACheldon27February2018furtherupdatedbyADSKSon.pdf>

<sup>24</sup> 48th Coal Mining Expert Appraisal Committee Minutes, Agenda No. 48.7 ( Oct, 3-4, 2019), available at: <http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/14102019IB0QM5DMFinalApprovedMoMof48EAC.pdf>

of the draft notification. This takes away the possibility of putting polluting industries or certain industries in areas which are critically or severely polluted through a stricter environmental scrutiny by appraising them as B1 Category projects (which would require them to prepare an EIA report and conduct a public consultation process). This could be done earlier since the SEAC had the power to screen these projects and categorise them accordingly. For example-Vapi which is an industrial town in Valsad District of Gujarat was classified as a critically polluted area in 2009.<sup>25</sup> There are more than 10,716 small and medium scale industries in Valsad involved in manufacture of chemicals, paper, dyes & stuff etc.<sup>26</sup> The draft notification classifies medium and small industries involved in manufacturing organic chemicals, dyes, bulk drugs, paints, varnish etc. into Category B2 projects and exempts them from the public consultation process. In a place like Vapi with a legacy of pollution, such an exemption will not allow affected communities to voice their concerns and location specific impacts of such hazardous industries from being taken into account.

- **The draft EIA Notification establishes a weaker post clearance compliance system:**

Once the EIA process is concluded, the EAC/SEAC while granting approvals to the projects lays down a set of conditions in the approval letter. The projects are legally mandated to follow the conditions specified in the EC. These conditions are requisite environmental and social safeguards in order to prevent or mitigate the possible impacts which were identified during the EIA process and public hearings. Such conditions or social and environmental safeguards could be restrictions on chemical companies to dump untreated toxic wastes in a water body, or necessary physical infrastructure to be built by mineral handling projects such as high boundary walls or green belt to contain fugitive dust from its storage yard etc. As per the regulation, project proponents are required to prepare compliance reports, proactively sharing the status of compliance to the conditions mentioned in their approval letter to regulatory bodies. This is further monitored by the regulatory agencies such as regional offices of MoEFCC and State Pollution Control Boards (PCB), to ensure the projects are not causing any ecological damage.

However, these mechanisms of compliance and monitoring have been one of the neglected aspects of our environmental regulation. Under the 2006 Notification, the project proponents are expected to ensure compliance of the EC conditions and report about the same to the concerned regulatory bodies on a regular basis. This approach has failed as there has been overwhelming evidence of rampant non-compliance of EC conditions across various industrial and

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<sup>25</sup> Ankur Paliwal, [Vapi Tops List of Critically Polluted Areas](#), DownToEarth, September 17, 2015.

<sup>26</sup> *Brief Industrial Profile of Valsad District*, available at: <http://dcmsme.gov.in/dips/BIP%20VALSAD%20SEPT2912.pdf>

infrastructure projects.<sup>27</sup> This situation is further exacerbated by the poor monitoring efforts by the regulatory agencies, which lack regularity and clear guidelines. In fact, most regulatory bodies undertake monitoring only focusing on the data provided by the project proponents in their compliance reports, further compromising the neutrality or objectivity of such efforts. Since 2009 many studies and reports both by research organisations<sup>28</sup> and the Comptroller Auditor General (CAG)<sup>29</sup> have repeatedly highlighted that the pervasiveness of non-compliance and lack of adequate monitoring by regulatory bodies is leading to irreversible environmental damages.<sup>30</sup> Even the courts in the recent past have heavily penalised violating units for their non-compliance to environmental regulations, e.g. The National Green Tribunal (NGT) imposed penalties over INR 873 crores as fines for environmental violations in the first quarter of 2019 – an amount that is close to the total fines imposed in 2018.<sup>31</sup> However, rather than tightening these loose ends to protect our overstressed ecology<sup>32</sup>, the draft notification further intensifies these problems.

### ***Dilution of reporting requirements***

The 2006 Notification required for compliance reports to be submitted twice a year. The draft notification however reduces the frequency from semi-annual requirement to an annual requirement.<sup>33</sup> Currently, the non-submission and inaccuracy of these compliance reports are a longstanding problem which ails the post-clearance compliance mechanism.<sup>34</sup> In 2016, through a performance audit the CAG found that there was a shortfall of 43% to 78% by the sampled

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<sup>27</sup> Ayaskant Das, [Singrauli's Fly Ash Flood was an Industrial Disaster Waiting to Happen](#), News Click, Apr 16, 2020; Mayank Aggarwal, [Coal India, World's Largest Coal Producer, Slipping on Environmental Norms: CAG](#), The Wire, Dec 22, 2019; Nawneet Vibhaw, [High time for MSMEs causing pollution to comply with environmental norms before govt shut them](#), Financial Express, Dec 04, 2019; Krithika Dinesh, Meenakshi Kapoor, Kanchi Kohli Manju Menon and Preeti Venkatram, [How Effective Are Environmental Regulations To Address Compliance And Monitoring Of Industrial And Infrastructure Projects In India](#), Nov 04, 2016.

<sup>28</sup> Kanchi Kohli and Manju Menon, [Calling the Bluff: Revealing the state of Monitoring and Compliance of Environmental Clearance Conditions](#), Kalpavriksh, 2009.

<sup>29</sup> In 2016, CAG report noted that the percentage of non-compliance by sampled projects to specific conditions ranged from 5% to 57%.

<sup>30</sup> *Report of the Comptroller and Auditor General of India on Environmental Clearance and Post Clearance Monitoring*, Report No. 39 of 2016, available at: [https://cag.gov.in/sites/default/files/audit\\_report\\_files/Union\\_Government\\_Report\\_39\\_of\\_2016\\_PA.pdf](https://cag.gov.in/sites/default/files/audit_report_files/Union_Government_Report_39_of_2016_PA.pdf)

<sup>31</sup> Manju Menon and Kanchi Kohli, [Regulatory Reforms to Address Environmental Non-Compliance](#), Centre for Policy Research, Jun 03, 2020.

<sup>32</sup> BS Reporter, [Pollution costs India \\$80 bn a year: World Bank](#), Business Standard, Jul 18, 2013.

<sup>33</sup> Centre for Policy Research (CPR)- Namati Environmental Justice Program, [Making the Law Count: Environment justice stories on community paralegal work in India \(Version 2\)](#), CPR-Namati Environmental Justice Program, 2019.

<sup>34</sup> BALCO's Bodai Daldali Bauxite Ore Mining: The six-monthly compliance report, dated 23.11.2018, for April 2018-September 2018, specifies that the overburden soil is being concurrently backfilled, but photographs, Google Earth images collected by the research team in 2018 of the mine lease area show barren lands with upper laterite, no topsoil and no plantation. The images also show the abandoned void pits and some backfilled pits with no top soil reclamation.

projects in submission of their half yearly compliance reports on time.<sup>35</sup> The draft notification does not include any provision to address these issues so as to make the compliance mechanism stronger. However it further goes on to reduce the frequency of requirement to report compliance with clearance conditions. This extended reporting time provides opportunity for the projects to delay compliance with conditions. For example- construction of structures like garland drains and sedimentation ponds are necessary to check any discharges from the project into nearby water bodies and they need to be constructed in a timely manner. With a six-monthly reporting requirement the project would have to show compliance with construction of these structures twice through the year which will aid the regulatory bodies to verify the progress of the compliance frequently. But with an annual reporting requirement compliance with such conditions can be delayed by the projects. Timely reporting of compliance with environmental safeguard conditions is an important tool in the hands of the state/regional PCB/MoEFCC and communities to monitor the compliance of projects. Hence the extended reporting would impair the ability of regulatory bodies and project affected communities to constantly monitor the projects.

### ***Non participatory and inadequate monitoring framework***

The draft notification, similar to the 2006 Notification completely ignores the critical role of the project affected communities and limits the monitoring and compliance process to government agencies and project proponents. One of the more practical ways to strengthen the monitoring efforts is to empower project affected communities to undertake monitoring activities to supplement their efforts. Owing to their proximity to the projects and the impacts from non-compliance, project affected communities can monitor projects effectively. The CPR-Namati Environmental Justice Program is an action based research program which has carefully documented more than 250 cases where non-compliance to environmental regulations by projects were identified and reported by project affected community members. These instances of non-compliance have not only led to environmental damage but have also adversely impacted livelihoods and health of at least 4, 00,000 community members across four states in India. Out of these cases, in 164 instances the project affected community members were able to push for compliance by effectively collaborating and supplementing the monitoring efforts of the regulatory bodies including the MoEFCC, SPCBs, groundwater regulating agencies etc. Affected communities can play a critical role in not only bringing these instances of non-compliance to the notice of concerned regulatory bodies but also in strengthening the monitoring process through their meaningful and active participation. One such example is, in 2017, the residents of

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<sup>35</sup> *Report of the Comptroller and Auditor General of India on Environmental Clearance and Post Clearance Monitoring*, Report No. 39 of 2016, available at: [https://cag.gov.in/sites/default/files/audit\\_report\\_files/Chapter\\_7\\_Post\\_Environment\\_Clearance\\_Monitoring\\_by\\_Regional\\_Offices\\_Union\\_Government\\_Report\\_39\\_of\\_2016.pdf](https://cag.gov.in/sites/default/files/audit_report_files/Chapter_7_Post_Environment_Clearance_Monitoring_by_Regional_Offices_Union_Government_Report_39_of_2016.pdf)

Loidapada and Rugudihi in Keonjhar district of Odisha complained about Shree Metallik Pvt. Ltd with respect to the non-compliance of conditions mentioned in the Consent to operate (CTO) issued by State Pollution Control Board (SPCB), which is a legal requirement as per their EC letter. The affected people used the conditions in the CTO to monitor the situation and worked with the SPCB to secure compliance.

### ***Delegation of monitoring powers to government institutions***

The draft notification also mentions, *in order to supplement the efforts of the regulatory bodies, the MoEFCC may empanel a government institution of national repute to carry out compliance monitoring of projects.* However it doesn't offer any clarification on how these institutions will be selected, who will be paying them to undertake such monitoring and what kind of monitoring framework will be followed by them. There have been numerous instances where such government institutions of national repute have failed to uphold the basic mandates of the EIA regulation to carry out studies or participatory processes to ascertain actual impacts. For example- the National Environmental Engineering Research Institute (NEERI) Nagpur, on two accounts has allegedly prepared faulty EIA reports; one for the Karcham-Wangtoo hydroelectric power project in Himachal Pradesh<sup>36</sup> and the other for Multipurpose all weather sea port in Tadadi, Karnataka. Yet it is one of the accredited EIA consultants in the country as of May 2020.<sup>37</sup> There is a huge gap between the numbers of times monitoring is actually done and the number of times it's required to be done.<sup>38</sup> Hence, adding third-party monitoring through additional government agencies may contribute only marginally to improve the organisational capacity of regulatory bodies to undertake regular monitoring. Lack of clarity in the monitoring frameworks has also been a longstanding problem which still remains unaddressed in the draft notification. These issues have been brought to the notice of MoEFCC on numerous occasions both by research organisations<sup>39</sup> and the CAG. In 2016 CAG found “inadequacies in monitoring by third party/agencies in 201 projects”. In the absence of a well-defined monitoring framework, the onus of designing and conducting the monitoring activity falls on each RO of MoEFCC & PCB.

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<sup>36</sup> [\*The Clearance Process\*](#), DownToEarth, June 28, 2015.

<sup>37</sup> *Scheme for Accreditation of EIA Consultant Organisation, NABET* available at: <https://www.qcin.org/nabet/EIA/documents/Accredited%20consultants.pdf>

<sup>38</sup> **Low frequency monitoring:** The MoEF's data reveals that on an average every regional office is able to monitor each project once in three or four years depending on the number of projects to be scrutinized in that particular region. Source: Kanchi Kohli and Manju Menon, [\*Calling the Bluff: Revealing the state of Monitoring and Compliance of Environmental Clearance Conditions\*](#), Kalpavriksh, 2009; Scrutiny revealed that out of 352 projects selected in audit, only 147 projects were monitored by ROs. Source: CAG report 2016, available at: [https://cag.gov.in/sites/default/files/audit\\_report\\_files/Union\\_Government\\_Report\\_39\\_of\\_2016\\_PA.pdf](https://cag.gov.in/sites/default/files/audit_report_files/Union_Government_Report_39_of_2016_PA.pdf).

<sup>39</sup> Kanchi Kohli and Manju Menon, [\*Regulatory Reforms to Address Environmental Non-Compliance\*](#), Centre for Policy Research, June 7, 2019

Owing to this, the monitoring efforts lack regularity and rigor and are often inaccurate and inadequate in their findings with respect to actual impacts on the ground.<sup>40</sup>

- **The draft EIA Notification provides a process to legalise post-facto clearances:**

In March 2017, the MoEFCC issued a notification<sup>41</sup> which allowed for those projects which had undertaken construction activities or were operating without obtaining an EC to apply for a post-facto EC. Prior to this notification, there were several attempts by the MoEFCC to legalise such projects overtime. Different office memorandums to deal with violation projects under the 2006 Notification were issued first in 2010 and then in 2012.<sup>42</sup> The OM issued in 2012<sup>43</sup> was set aside by the NGT<sup>44</sup> which noted that it was against the provisions of EPA 1986 and the 2006 Notification. This was followed by the 2017 Notification which mentioned that the MoEFCC had been receiving violation projects for approval, and hence deemed it necessary ‘for the purpose of protecting and improving the quality of the environment’ to bring such “violation” projects under regulation. While the 2017 Notification provided a six month window from the date of its issue for any violation project to seek for a clearance, the draft notification has institutionalised the concept of such post-facto clearances.<sup>45</sup>

The institutionalisation of the violation process will provide an opportunity for several projects which have been operating illegally to apply for a post-facto EC. The proposed amnesty to be granted to the illegal projects, as proposed by the draft notification, negates the very purpose of EIA which is to try and ascertain social and environmental risks of a project before it starts

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<sup>40</sup> Kanchi Kohli and Manju Menon, *Calling the Bluff: Revealing the state of Monitoring and Compliance of Environmental Clearance Conditions*, Kalpavriksh, 2009. In the 500 MW Prototype Fast Breeder Reactor at Kalpakkam, Tamil Nadu, of the Indira Gandhi Centre for Atomic Research, reporting for several special conditions in the MR site visited on 22 September 2004 is identical to that of the compliance report submitted on 18 October 2004 by the proponent.

<sup>41</sup> Gazette Notification, S.O. 804(E) dated Mar 14, 2017 available at: <http://egazette.nic.in/WriteReadData/2017/174746.pdf>

<sup>42</sup> Krithika Dinesh and Kanchi Kohli, *From Prior to Post: Legalising environmental violations?*, Centre for Policy research, Jul 1, 2017.

<sup>43</sup> Office Memorandum dated Dec 12, 2012, available at: <http://ismenvis.nic.in/WriteReadData/CMS/om-12122012-b.pdf>

<sup>44</sup> SP Muthuraman & Others v. Union of India & Others, Original Application No. 37/2015, Jul 07, 2015.

<sup>45</sup> Sumedha Pal, *Draft EIA Notification 2020: ‘Compilation of Environmental Violations’ Say Activists*, News Click, Mar 13, 2020.

functioning.<sup>46</sup> Further, the violation provision is against the precautionary principle<sup>47</sup> and can lead to a *fait accompli* situation.<sup>48</sup>

One such example of a violation project being appraised under the 2017 Notification is in Odisha. M/s Odisha Mining Corporation run Dubuna- Sakradih Iron & Manganese ore mine had conducted illegal mining of iron ore from 1989 and of manganese ore from 1991 till 2006-07.<sup>49</sup> People impacted by this project while looking for conditions or approval letters with environmental safeguards found out that the entire mine had been operating without an approval. The mine had been operating in violation of the EPA of 1986, without obtaining an EC (for 2006-07). The SC in litigation against this illegal mining ordered the company to pay heavy fines for the same in 2017.<sup>50</sup> The company has now applied for a fresh EC in August 2018 with the EAC (Violations). The project has contributed to several environmental and social issues in the region like loss of tribal livelihoods, destruction of forests, pollution of local water bodies, adverse impacts on the wildlife.<sup>51</sup> Despite this the company was accorded a standard ToR with specific conditions by the EAC (Violations) in January 2019.<sup>52</sup> If all other clearances for the project also come through, it is going to lead to a further loss of 1234.27 Ha of forest land and other social impacts in addition to all the impact caused due to the illegal mining.

Another project which is listed before the EAC (Violations) for grant of post-facto clearance is LG Polymers. On 7<sup>th</sup> May, 2020 a toxic gas leakage was reported from its plastic manufacturing plant in Visakhapatnam. The tragic incident ended up taking 11 innocent lives and injured over 1000 people.<sup>53</sup> A closer look into the functioning of the plant revealed that it was allegedly working without necessary clearances for over two decades.<sup>54</sup> The plant had undertaken

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<sup>46</sup> Parul Gupta, [The Draft EIA Notification 2020 Is A Desperate Attempt To Dilute The Existing Environmental EIA Regulations](#), Live Law, May 09, 2020; Amar Patnaik, [Many problems with draft green impact assessment](#), The New Indian Express, May 20, 2020.

<sup>47</sup> Tiasa Adhya, [The Govt is Trying to Make it Easier for Industries to Avoid Environmental Accountability](#), The Wire, May 06, 2020; Nikita Kansal and Madhulika Reddy, [Ease of business at a high cost](#), The Statesman, Jun 11, 2020.

<sup>48</sup> Definition- *fait accompli*: “something that has already happened or been done and cannot be changed”, available at: <https://dictionary.cambridge.org/dictionary/english/fait-accomplis>; Ayaskant Das, [‘Post Facto’ Environmental Clearance Set to be New Normal in India](#), News Click, May 04, 2020; Mayank Agarwal, [India’s push for ease of doing business will weaken environmental checks on development projects](#), Scroll, May 21, 2020.

<sup>49</sup> Express News Service, [Panel raises order on Odisha Mining Corporation toeing SC illegal mine ruling](#), The New Indian Express, Feb 17, 2020.

<sup>50</sup> Jayajit Dash, [SC Imposes 100% Penalty on Odisha’s Illegal Mining](#), The Wire, Aug 02, 2017.

<sup>51</sup> Anupam Chakravartty, [M B Shah Commission report: Odisha’s mine of scams exposed](#), DownToEarth, Aug 17, 2015.

<sup>52</sup> 17th Violation Expert Appraisal Committee Minutes, Agenda No. 17.4.2 (Jan, 29, 2019), available at: [http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/07022019CNXBFHJL17thEAC\(Violation\)MoM-Final.pdf](http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/07022019CNXBFHJL17thEAC(Violation)MoM-Final.pdf)

<sup>53</sup> The Wire Staff, [Vizag Gas Leak: LG Polymers Operated Without Appropriate Environment Clearance](#), The Wire, May 08, 2020.

<sup>54</sup> Manish Kumar, [Years of neglect led to Vizag gas tragedy](#), Mongabay, May 20, 2020.

expansion of its production capacity and also changed its product mix without applying for an EC under the 2006 Notification.<sup>55</sup> The EAC (Violations) considered the project on 19<sup>th</sup> May. The Committee taking note of the violations, deferred the project till the submission of reports by different committees and orders from the High Court and NGT.<sup>56</sup> While the project is still pending with the EAC (Violations), the toxic gas leak in Visakhapatnam on May 7<sup>th</sup> depicts how illegality can bring along serious implications for environment and human life.<sup>57</sup>

This provision of creating a process to legalise violations also circumvents different judicial orders<sup>58</sup> including a recent Supreme Court order in April 2020<sup>59</sup> in which the court observed that the concept of post-facto clearances go against established theories of environmental law.

- **The draft EIA Notification weakens existing institutions in the appraisal process:**

### ***Central control over SEIAAs***

Among the various institutions such as the EAC, the State Level Environmental Impact Assessment Authority (SEIAA) set up by the 2006 Notification, was to carry out appraisals for those projects which fell under Category B and were comparatively smaller in scale than those in Category A, such as coal mines which are less than 150 ha, thermal power plants below 500 MW. While the SEIAA was earlier constituted by the Central Government in consultation with the State Government, the 2020 draft allows the Central Government to formulate these bodies entirely on its own in case the State Government fails to forward the names of the members within a particular time period. Decentralisation is one of the rationales for the draft notification, but in contradiction to that it allows the Centre some powers to constitute the state level committees.

### ***Seeking additional information by EACs***

The draft notification further places a restriction on the EAC, from carrying out additional studies. While this is being done in order to reduce the time taken to grant a clearance, these additional studies are of great consequence in arriving at a decision. During the appraisal of

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<sup>55</sup> Anubhuti Vishnoi, *LG Polymers didn't have all approvals, changed mix: MoEF*, Economic Times, Jun 01, 2020.

<sup>56</sup> 33rd Violation Expert Appraisal Committee Minutes, Agenda No. 33.4.4 (May, 19, 2020) available at: <http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/26052020ZWRZFOA233rdMoMEACViolation.pdf>

<sup>57</sup> Rohini Mohan, *Toxic gas leak factory in India operated without an environmental permit for 23 years*, The Straits Times, May 13, 2020.

<sup>58</sup> Ayaskant Das, *'Post Facto' Environmental Clearance Set to be New Normal in India*, News Click, May 04, 2020.

<sup>59</sup> *Alembic Pharmaceuticals Ltd. v Rohit Prajapati & Ors.*, Civil Appeal No. 1526 of 2016 [https://main.sci.gov.in/supremecourt/2016/2562/2562\\_2016\\_0\\_1501\\_21582\\_Judgement\\_01-Apr-2020.pdf](https://main.sci.gov.in/supremecourt/2016/2562/2562_2016_0_1501_21582_Judgement_01-Apr-2020.pdf)

Parsa OCM located in the densely forested Hasdeo Arand<sup>60</sup> in Chhattisgarh, several studies were commissioned to be carried out even after the EIA report had been finalised.<sup>61</sup> This was a result of inputs being made during the public hearing and subsequent submissions from local communities which led to the EAC having to apply its mind. Putting such restrictions on conducting additional studies can lead to decisions based on incomplete and inadequate assessment.

***Quorum of EACs not addressed.***

The 2006 Notification did not explicitly specify the required quorum for EAC meetings. This has led to several decisions being taken in meetings attended by less than 1/3rd of the total members of the EAC.<sup>62</sup> Some of the decisions taken during this meeting included the grant of expansion proposals for coal mines located in Telangana and Nagpur, grant of a ToR for a coal mine in Chhattisgarh and the revalidation of an EC granted to a coal mine in Odisha. While the draft notification does not speak to the requirement of a quorum, it allows for the possibility of multiple EACs to be set up. At a time when the existing committees are being unable to operate at full capacity, the setting up of multiple EACs is impractical.

- **The draft EIA Notification dilutes the requirements for projects undergoing modernisations/expansions:**

As per the 2006 Notification, expansions and modernisations in most cases were required to go through the entire EIA process. Only a few categories such as coal mining had been given certain exemptions which allowed up to 40% capacity enhancement without having to carry out a public hearing.<sup>63</sup> The draft notification however has significantly diluted the concept of expansion and modernisation. In cases where the modernisation is carried out with an increase in capacity up to 10%, only an application for prior EC and a revised EMP will be required. If it is an increase between 10% and 25% an appraisal will be carried out on the basis of the revised EMP. Only for

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<sup>60</sup> The Hasdeo Arand Coalfield is spread over three districts of Chhattisgarh and 30 coal blocks are located in an area which has over 1500 square km of forest cover; (Jun 16, 2020, 01:20 PM)

[https://global-uploads.webflow.com/5d70c9269b8d7bd25d8b1696/5dbffdbed8384f399e321e58\\_Implications-of-Mining-in-Hasdeo-Arand-coloured.pdf](https://global-uploads.webflow.com/5d70c9269b8d7bd25d8b1696/5dbffdbed8384f399e321e58_Implications-of-Mining-in-Hasdeo-Arand-coloured.pdf)

<sup>61</sup> 26th Coal Mining Expert Appraisal Committee Minutes, Agenda No. 26.1 ( Feb, 15-16, 2018), available at: <http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/260220184SGDFHLFApprovedMOMof26thEAC15-16Feb2018.pdf>

<sup>62</sup> Jayashree Nandi, [9 members of panel for green nod to coal projects skipped key meeting](#), Hindustan Times, Jun 26, 2019.

<sup>63</sup> 15<sup>th</sup> Thermal & Coal Mining Expert Appraisal Committee Minutes, Agenda No. 15.5 ( Feb, 25, 2017), available at: <http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/010820176ABWO9WXAApprovedMOM15thEACheldon25July2017Coal.pdf>

an increase above 25% would an EIA report be required to be prepared and only for more than 50% increase in capacity will public consultations be required to be carried out.

The draft notification therefore formalises a procedure which had been earlier applicable to only coal mining and has uniformly applied it across all project types. This has been done without the understanding that even a 10% increase in capacity can lead to significant environmental impact. An example of this comes from the city of Korba in Chhattisgarh wherein three large coal mines, Dipka, Gevra and Kusbunda have over the last few years been making use of the exemption in place for the coal mining projects to increase their capacity in a piecemeal manner.<sup>64</sup> Resultantly, the environment and the health of the local communities have been suffering.<sup>65</sup> Thus, it is important that such blanket exemptions are not given to projects which are undergoing expansions or modernisations.

The above analysis brings out some of the serious contentions with respect to the Draft EIA Notification 2020. The proposed draft tries to expedite the EIA process undermining some very critical aspects of the process, which could in turn have wide ramifications for the environment and the people. While the 2006 Notification was nowhere near perfect in terms of protecting the environment, the 2020 draft goes several steps towards unhinging some of the positive features of the 2006 Notification. If passed, the 2020 Notification will be the legal instrument which will govern the EIA process in the country, affecting several lives and livelihoods. Thus, the stakeholders are plenty. Unfortunately, the draft is out for public comments during the time of a global pandemic while the country is grappling with an unprecedented public health emergency. These revisions cannot be brought about where the communities, an important stakeholder, is in no position to freely discuss, debate and participate to evaluate these changes and suggest the best way forward to the regulatory bodies.

The current government has been trying to reduce the number of days taken to grant an EC in order to facilitate the ease of doing business.<sup>66</sup> The draft notification formalises an expedient manner of granting clearances by compromising on the rigor of the process through rushed timelines, exempting large categories of projects from requiring clearances, or by cutting down spaces for public participation. In doing so it has been creating a strong narrative of growth versus environment, which is an antithesis to the principle of sustainable development which this notification claims to embody.

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<sup>64</sup> Debayan Gupta and Kanchi Kohli, [Environmental Exemptions Now Allow for Piecemeal Expansions of Coal Mines](#), The Wire, Aug 25, 2019.

<sup>65</sup> PTI, [12% population in polluted Korba industrial area highly vulnerable to COVID-19: Chh"garh minister](#), Outlook, Apr 10, 2020.

<sup>66</sup> Web Desk, [Govt to speed up environmental clearance for businesses](#), The Week, Jul 09, 2019.

## SECTION II

A detailed clause by clause comparison between the EIA Notification, 2006 and the Draft EIA Notification, 2020 has been laid out in the table below. It elaborates the major differences between the two laws and possible implications of these changes.

### Clause by Clause Comparison of the EIA Notification, 2006 and the Draft EIA Notification, 2020

<b>Definitions</b>		
<b>Relevant Provision</b>	<b>EIA Notification 2006</b>	<b>Draft EIA Notification 2020</b>
Definition Clause	There is no separate clause for definitions.	Includes a separate clause with 60 definitions of various terminologies and concepts relevant under this legislation.

**Possible implications of the changes:**

The 2006 Notification does not include a definition clause which makes it difficult to interpret different terms used in the law. The draft notification has a separate clause dedicated to define important terms and concepts, which remedies this situation and helps in clearing the ambiguity which exists in the present law.<sup>67</sup> While the Ministry has brought in clarity with the inclusion of a definition clause, experts have argued that on a closer look some definitions need to be revisited as they have diminished the scope of EIA.<sup>68</sup> For example ‘Capital dredging’ under the 2006 Notification requires an environmental clearance.<sup>69</sup> However, the definition of capital dredging in the draft notification only includes capital dredging in the sea bed which thereby excludes any dredging in rivers from its purview.<sup>70</sup> Further, the draft notification defines a ‘study area’ for a project which includes an aerial distance of 10 kms around the boundary of the project falling under Category A or 5 kms around the boundary of

<sup>67</sup> Amit Kumar, [Environment Ministry's Draft EIA Notification Pushes 'Investment at Any Cost'](#), The Wire, Mar 25, 2020.

<sup>68</sup> Mayank Aggarwal, [India's proposed overhaul of environment clearance rules could dilute existing regulations](#), Mongabay, Mar 18, 2020; Vindhyan Ecology & Natural History Foundation, [Comments and Objections to the Draft EIA Notification](#), Apr 27, 2020.

<sup>69</sup> EIA 2006, Schedule 1, Entry 7(e).

<sup>70</sup> Draft EIA 2020, Clause 3(8).

the project falling under Category B.<sup>71</sup> However, this sets a fixed study area for different types of projects without taking into account their site or project-specific considerations. Different categories of projects will have different degrees of spread of impacts which can be beyond the study area e.g. area impacted under river valley projects could be wider or the operational capacity of a thermal power plant. Therefore, a fixed study area without taking into consideration project specific details may limit the power of EAC to study the impact beyond the area even if need be.

<b>Committees</b>		
<b>Relevant Provisions</b>	<b>EIA Notification 2006</b>	<b>Draft EIA Notification 2020</b>
Appraisal Committees and State or Union Territory regulatory authorities	<ul style="list-style-type: none"> <li>- Sector specific EAC to be constituted.</li> <li>- State/ Union Territory appraisal committees to be constituted after consultation with the concerned State Government or Union territory Administration.</li> </ul>	<ul style="list-style-type: none"> <li>- If deemed necessary by the government, more than one EAC for a sector can be constituted.</li> <li>- A timeframe has been introduced for constituting state appraisal committees. If the State Government or Union Territory Administration fails to comply with the given timeline, the Ministry has power to constitute an appraisal committee without any consultation.</li> </ul>
<p><b>Possible implications of the changes:</b></p> <ul style="list-style-type: none"> <li>● Absolute powers have been given to the Ministry to constitute State or District regulatory authority and appraisal committees in case there are any delays from State Government in formulating or forwarding the names for these bodies. This is a clear departure from the 2006 Notification which required the ministry to consult with the State Government before the committees were constituted. This is against the principle of decentralisation, which is one of the original objectives behind this draft notification,</li> </ul>		

<sup>71</sup> Draft EIA 2020, Clause 3(55).

as some of the powers to constitute an appraisal committee and a regulatory authority will sit with the Ministry.

- The draft notification mentions that the Ministry can constitute more than one EAC for a particular sector if it deems necessary. This push may be on the backdrop of a more expedited appraisal process but this constitution of multiple EACs has to be done cautiously for at least a couple of reasons. First, the existing constitution of appraisal committees under the 2006 Notification has come under the scanner for the lack of ‘expertise and experience’ of the members.<sup>72</sup> The expertise of members in the committee directly has a bearing on the quality of assessment for individual projects. A compromise on the prescribed expertise of members can lead to improper consideration of an application by the committee.<sup>73</sup>

Secondly, the draft notification like the 2006 Notification mentions only the maximum strength of an EAC which is fifteen. It fails to mandate the minimum number of members required to constitute an EAC or establish a quorum for an appraisal meeting. There have been instances in the past where projects with significant environmental impacts have been considered without the presence of a majority of members.<sup>74</sup> The EAC decides on the sustainability of the projects and thereafter recommends clearances based on certain important conditions. For this reason a multi-disciplinary expert committee which can consider the facts in a much more holistic manner is essential. Hence creation of multiple EACs before the existing gaps in the constitution and the working of these bodies are rectified, has the possibility of diluting the relevance of such bodies.

<p>Technical Expert Committee (TEC)</p>	<p>This committee was not a part of the 2006 Notification.</p>	<p>It's a new clause that is introduced in the draft notification. This committee will be constituted by the Central Government comprising maximum 10 members. It will undertake categorisation or re-categorisation of projects on scientific principles, including any streamlining of procedures and any other tasks assigned to the committee.</p>
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<sup>72</sup> Srestha Banerjee, [Experts without expertise](#), DownToEarth, Jun 11, 2015.

<sup>73</sup> PTI, [Don't appoint inexperienced persons in Expert Appraisal Committee: NGT tells MoEF](#), Economic Times, Jul 17, 2014.

<sup>74</sup> Jayashree Nandi, [9 members of panel for green nod to coal projects skipped key meeting](#), Hindustan Times, Jun 26, 2019.

		The tenure of the committee is five years and it has the power to visit any site connected with any project or activity for the purpose of assessing the environmental impact.
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**Possible implications of the changes:**

Currently, the process of categorisation or re-categorisation of projects under the 2006 Notification is done through amendments which are usually open for public consultations.<sup>75</sup> These Notifications are to be opened for public comments before they are finally brought in as an amendment. The requirement of doing away with the public comments is to be exercised only in exceptional circumstances and with due justification.<sup>76</sup> However, the draft notification provides that such amendments will be done by TEC based on scientific principles without giving any further details about the procedure for the same. This is likely to curtail participation of the public in this process, rendering these changes to be brought about in a non-transparent and undemocratic manner. The gravity of this specially weighs in when there is categorisation or re-categorisation of let's say, project B1 as a category to B2 project, given all category B2 projects are exempted from public consultation and have an expedited process for EC or EP, as the case may be under the draft notification. This process will also have an effect when the project is shifted from category A to B or vice-versa. E.g. Under the 2006 Notification, there has been a continuous push for consideration of more projects at the state level which has drawn criticism. This increased workload at the state level is argued to be particularly worrisome as the state bodies mostly lack the requisite systems to ensure accountability with transparency in the clearance process.<sup>77</sup> Turning an amendment process into a closed door process, without involving relevant stakeholders such as regulatory bodies, appraisal committees and affected people can also lead to confusion and conflict on the ground.

<sup>75</sup> Gazette Notification, S.O. 1960(E), dated Jun 13, 2019, available at: [http://ismenvis.nic.in/Database/Notification\\_13th\\_June\\_2019-SO1960E\\_22053.aspx](http://ismenvis.nic.in/Database/Notification_13th_June_2019-SO1960E_22053.aspx)

<sup>76</sup> Environment (Protection) Rules 1986, Rule 5(3).

<sup>77</sup> Ikshaku Bezbaroa, [Centre proposes more power for states to grant environmental clearance](#), DownToEarth, Dec 27, 2017.

<b>Public Consultation</b>		
<b>Relevant Provisions</b>	<b>EIA Notification 2006</b>	<b>Draft EIA Notification 2020</b>
Public Consultation (PC)	<p>1. PC shall have two components A)a public hearing (ph) at the site B)written responses from plausible stakeholders</p> <p>2. PC to be undertaken by Category A and B1 projects with 8 exceptions.</p> <p>3. Time for SPCB/PCC to forward proceedings of the PH- 45 days</p> <p>4. Time to complete PH in case the regulatory authority engages a public agency/authority to carry out PH- 45 days</p> <p>5. Time for SPCB/PCC to place the summary EIA report on the website- 7 days</p> <p>6. Time for SPCB/PCC to finalize date, time and venue of hearing- 7 days from receipt of the draft EIA.</p> <p>Minimum notice period was provided to the public for their responses- 30 days.</p> <p>7. PH could be presided over by District Magistrate/District Collector /Deputy commissioner or his or her representative not below the rank of Additional District Magistrate</p>	<p>1. In addition to the two components of PC as per 2006 notification, if required, based on the nature of the project PC through any other appropriate mode can be recommended by the EAC or the Regulatory authority.</p> <p>2. PC to be undertaken by Category A and B1 projects which are new or are expansion or modernisation proposals with capacity increase of more than 50%.</p> <p>3. Exemptions given to more than 20 project categories including off-shore projects and linear projects etc. from PC process.</p> <p>4. Time for SPCB/PCC to forward proceedings of the PH has been reduced to 40 days.</p> <p>5. Time to complete PH in case the regulatory authority engages a public agency/authority to carry out PH has been reduced to 40 days.</p> <p>6. Time for SPCB/PCC to place the summary EIA report on the website is increased to 10 days.</p> <p>7. Changes in Appendix-1- the SPCB/PCC has been given the power to look at the documents</p>

		<p>submitted by the project proponent and decide if PH needs to be conducted in some additional or alternate place and inform the project proponent of the same within 15 days of receipt of the request. If they decide so then a period of 40 days would be given to the relevant authorities of the additional/alternative place to carry out the subsequent process.</p> <p>8. Time for SPCB/PCC to finalize date, time and venue of hearing has been increased to 10 days from receipt of the draft EIA.</p> <p>Minimum notice period to be provided to the public for their responses has been reduced to 20 days.</p> <p>9. PH could be presided over by District Magistrate/District Collector /Deputy commissioner or his or her representative not below the rank of Additional District Magistrate for Category A projects and Sub-Divisional Magistrate for Category B projects.</p>
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**Possible implications of the changes:**

- The draft notification provides for public consultation through ‘any other appropriate mode’ which can be recommended by the EAC or the regulatory authority, if required. This provision is newly introduced here and was absent in the 2006 Notification. However, the provision is very vague as it does not specify the instances where the requirement of public consultation through any other appropriate mode might arise. This gives discretionary powers to the EAC/regulatory authority to bypass physical on site PH. The provision also does not specify what consists of ‘any other appropriate mode’ which again gives subjective powers to the EAC/regulatory authority. E.g. In

Maharashtra, the state pollution control board conducted public hearings for sand mining projects using zoom video application which allegedly impaired free and fair participation by poor and the affected community members who do not have access to such technology. This has now been challenged before the Maharashtra high court.<sup>78</sup>

- Exemption of modernisation/expansion proposals with capacity increase within 50% from PH process is very wide. As per this provision a mining project operating at 10 metric tonnes per annum (MTPA) can take an expansion up to 15MTPA without conducting a public consultation process. This was earlier made possible for coal mining projects but has been extended to all expansion projects in the draft notification. This exemption can make it easier for non-compliant and polluting projects to get further expansions, without weighing the concerns of project affected communities over the poor past track record of compliance by the project and its impacts. As mentioned in detail in Section I of this paper, in the case of Kulda Open Cast Mining Project in Sundergarh Odisha, which wanted expansion in its capacity from 10 MTPA to 15 MTPA, the public hearing space played a crucial role in understanding the past non-compliances of the project and their on ground impact on the communities as well as the possible implications of the expansion.
- The reduction of notice period from 30 days to 20 days has been given no justification in the draft. On ground the public hearing information is circulated to the panchayats and then it is the panchayat's responsibility to disseminate the information. 20 days is not enough time for people to get the information, access, understand and evaluate the facts from technical summary EIA reports and prepare for the public hearing. In addition to this there have been many procedural flaws in the process which has been spoken about in detail in Section I which puts a lot of limitations on free and wide participation of people in the public hearing process. Such reduced timelines will tremendously limit the ability of the project affected communities to fully understand the potential impacts and present their concerns and objections during the PH process.

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<sup>78</sup> Vaibhav Ganjapure, [MPCB's Sand Mining Public Hearings on Zoom Challenged](#), Times of India, Jun 10, 2020.

<b>Appraisal Process</b>		
<b>Relevant Provisions</b>	<b>EIA Notification 20026</b>	<b>Draft EIA Notification 2020</b>
Stages in the prior EC/EP process	<p>The stages are:</p> <ul style="list-style-type: none"> <li>- Screening</li> <li>- Scoping</li> <li>- Public Consultation</li> <li>- Appraisal</li> <li>- Grant/ Rejection of EC</li> </ul> <p>(The preparation of Draft EIA and Final EIA are embedded in these stages)</p>	<p>For Category A and B1 the EIA process include-</p> <ul style="list-style-type: none"> <li>- Scoping;</li> <li>- Draft EIA;</li> <li>- Public Consultation;</li> <li>- Final EIA;</li> <li>- Appraisal;</li> <li>- Grant/Rejection of EC;</li> </ul> <p>For category B2 projects-</p> <ul style="list-style-type: none"> <li>- Preparation of EMP;</li> <li>- Appraisal/ Checking documents completed or not;</li> <li>- EC/Environment Permission</li> </ul>
<p><b>Possible Implications of the changes:</b></p> <ul style="list-style-type: none"> <li>● The screening stage of the EC process has been removed from the draft notification. Presently, as per the 2006 notification, the screening process is used to determine categorisation of Category B projects into B1 and B2 projects by the SEIAA/UTEIAA. The MOEFCC through an OM dated 24.12.2013<sup>79</sup> gave guidelines for the screening of Category B projects. The OM provides guidelines for categorising projects into B1 and B2 and mentions that the category B projects which are not included in the guidelines are to be treated as B1 projects. In addition to this the guidelines also give power to the SEAC to appraise a B2 project as B1 if they feel the need for the same as per the information provided about the project by the proponent. This power does not exist with the SEAC as per the draft notification. This eliminates any scope of including B2 projects having significant environmental impacts owing to their specific location, in the appraisal process. For example- River valley projects up to 25 MW power generation have been categorized as B2 in the draft notification. These small hydropower projects (SHPs) and Micro hydropower projects (&gt;5MW) can contribute to a large portion of India's hydroelectric power potential, however they do pose significant environmental</li> </ul>		

<sup>79</sup> Office Memorandum dated Dec, 24, 2013, available at: <http://moef.gov.in/wp-content/uploads/2017/09/ia-24122013.pdf>

<p>challenges like loss of biodiversity due to stream diversion, deforestation, effects of blasting and construction activities etc.<sup>80</sup> The intensity of such impacts (cumulative) would be more if there are other SHP in the same area. The screening process allowed the SEAC to determine site specific implications of a project and accordingly decide upon its appraisal. This critical space would not be available anymore in the absence of a screening process.</p>		
Scoping	<ul style="list-style-type: none"> <li>- All projects listed under B2 category would not need scoping</li> <li>- Issuance of standard ToRs for the following projects within 7 days of application without reference to EAC/SEAC:             <ol style="list-style-type: none"> <li>1. All highways projects in border states</li> <li>2. All projects located in industrial estates/parks</li> <li>3. All expansion proposals of existing projects with Prior EC.</li> </ol> </li> <li>- In case, the Regulatory Authority does not refer the matter to the Appraisal Committee within 30 days of date of application in Form-I, sector specific Standard ToR shall be issued</li> <li>- Validity of ToR for River valley projects will be 5 years. For all other projects it will be 4 years.</li> </ul> <p>(All the above provisions have been included in the 2006 notification through an amendment on 17<sup>th</sup> February 2020)</p>	<p>Issuance of standard ToRs without reference to Appraisal Committee for the following projects-</p> <ol style="list-style-type: none"> <li>1 All Highway projects in Border Areas;</li> <li>2 All projects, proposed to be located in notified industrial estates;</li> <li>3 All expansion proposals of existing projects having Prior EC;</li> <li>4 All Building construction and Area development projects covered under entries of column (4) against item 42 and 43 of the Schedule.</li> </ol> <ul style="list-style-type: none"> <li>- In case, the Regulatory Authority does not refer the matter to the Appraisal Committee within 30 days of date of application in Form-I, sector specific Standard ToR shall be issued;</li> <li>- Validity of ToR for River valley projects will be 5 years. For all other projects it will be 4 years.</li> </ul>

<sup>80</sup> Darwin Werthessen, [Environmental Considerations of Small-Scale Hydroelectric Power Plants in Himachal Pradesh, India](#), 10 Bridgewater State University Undergraduate Review 178 (2014).

### **Possible implications of the changes:**

The draft notification in order to expedite the clearance process, has laid much emphasis on standardisation of Terms of Reference (ToR). On 14th December 2012 the MoEFCC came out with an office memorandum regarding standardisation of ToRs of the projects which require an EC.<sup>81</sup> The ministry also came up with a manual of standard ToRs for different sectors in April 2015.<sup>82</sup> The draft notification has formalized this provision. ToRs give the framework or scope on the basis of which an EIA report is prepared. The standardisation of ToRs dilutes the scoping process as these ToRs would fail to look into site specific issues. Even though appraisal committees have been given the power to add specific conditions to ToRs within 30 days of issuing standard ToRs, there is a clear push towards the practice of issuing standard ToRs in the interest of expediting the clearance process.

- Highway projects which are to be given standardised ToRs have significant impacts on the environment during their construction.<sup>83</sup> However, highways being constructed along coastal regions, in the plains or in the mountainous/ hilly terrain cannot be said to have the same environmental/social impacts owing to the vast difference in these ecologies. Issuing a standard ToR for all such projects would result in EIA reports which fail to take into account the site specific impacts leading to inadequate and weaker environmental and social safeguards in place. For Example- the ToR for widening and strengthening of the NH- 17 from Goa/Karnataka border to Kundapur through Western Ghats was issued in March 2012. The draft EIA report for the proposed project made on the basis of the ToR failed to talk about the turtle-nesting grounds in some regions, no information was there on some of the common property resources to be taken over by the project, and it did not identify the locations which are prone to landslides. The EIA report also did not provide adequate mitigation measures in many instances. The ToR for the project was issued before the standardisation OM in December 2012, and yet there were such glaring lacunae in the EIA report made on the basis of the ToR. With the standardisation of ToR there is a higher chance of such site specific details which are vital to the region and the effect of the project on the same, not being recorded in the EIA report.

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<sup>81</sup> Office Memorandum dated Dec, 24, 2013, available at:

<http://moef.gov.in/wp-content/uploads/2019/10/ia-tor-standardization.pdf>

<sup>82</sup> Ministry of Environment, Forest and Climate Change, *Standard Terms of Reference [TOR] for EIA / EMP report for projects / activities requiring Environment Clearance under EIA Notification 2006*, Apr, 2015.

<sup>83</sup>Centre for Policy Research (CPR)-Namati Environmental Justice Program, *Closing the enforcement gap: A community-led groundtruthing of the expansion of a National Highway in Uttara Kannada*: CPR-Namati Environmental Justice Program, Dec 2019.

The MoEFCC through its notification dated 17th February 2020<sup>84</sup> amended the 2006 Notification to change the validity of ToR for river valley and hydro-electric projects to 5 years and other projects to 4 years. The draft notification has inculcated this amendment for validity of ToRs. The 2006 Notification, as was originally issued, does not talk about the validity of ToRs. However the ministry through office memorandums gave specifications for the same from time to time. Before the February 2020 amendment, the OM dated 29th August 2017<sup>85</sup> specified the validity of ToRs for river valley and hydro-electric projects to be 4 years and other projects to be 3 years with a maximum possible extension of 1 year.

Preparation of EIA	<p>It says EIA shall be prepared by a consultant agency accredited for a particular sector &amp; category of project for that sector. It also talks about preparation of a panel of national level reputed educational and research institutions to work as environmental consultant organisations by the ministry. (Included in the 2006 notification through an amendment in 2016).<sup>86</sup></p> <p>Through an office memorandum dated 5th October 2011<sup>87</sup> the project proponent was made accountable for the contents of the EIA report and they have to submit an undertaking owning the contents.</p>	<ol style="list-style-type: none"> <li>1. It gives details about collection of baseline data for the EIA report.</li> <li>2. The EIA report is to be prepared by an Accredited EIA Consultant Organisation (ACO) which is accredited for a particular sector. The ACO is accountable for the contents of the EIA in addition to the project proponent.</li> <li>3. Category B2 projects shall require only an EMP and not EIA.</li> </ol>
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**Possible Implications of the changes:**

The draft notification mandates the requirement of an organisation accredited by National Accreditation Board of Education and Training (NABET) of Quality Council of India (QCI) or any other agency notified by the ministry for preparing an EIA report. Though this requirement

<sup>84</sup> Gazette Notification, S.O 751(E), dated Feb 17,2020, available at:

<http://moef.gov.in/wp-content/uploads/2020/03/grant.pdf>

<sup>85</sup> Office Memorandum dated Aug, 29, 2017, available at:

[http://environmentclearance.nic.in/writereaddata/public\\_display/orders/481015880\\$OM%2029082017.PDF](http://environmentclearance.nic.in/writereaddata/public_display/orders/481015880$OM%2029082017.PDF)

<sup>86</sup> Gazette Notification, S.O. 648(E), dated Mar 03, 2016, available at:

[http://environmentclearance.nic.in/View\\_order.aspx?rid=40](http://environmentclearance.nic.in/View_order.aspx?rid=40)

<sup>87</sup> Office Memorandum dated Oct 05, 2011, available at:

[http://moef.gov.in/wp-content/uploads/2017/09/OM\\_IA\\_ownershipEIA.pdf](http://moef.gov.in/wp-content/uploads/2017/09/OM_IA_ownershipEIA.pdf)

is similar to the one present in the 2006 Notification but it does not take into account the inherent issues in the accreditation process itself.

Firstly, the process of accreditation of EIA consultants by QCI was introduced in 2007. However it is important to note that the accreditation body QCI was jointly set up by the Government of India and three industrial associations- Associated Chamber of Commerce and Industry of India (ASSOCHAM), Confederation of Indian Industry (CII) and Federation of Indian Chambers of Commerce and Industry (FICCI). This means that the process of accreditation is being held by the associations whose members are the industries that pay for the EIA report being prepared. This process has been a matter of concern for NGOs and activists.<sup>88</sup>

Secondly, there are several instances where QCI accredited EIA consultants have prepared poor and incorrect EIA reports with data plagiarised from other EIA reports or studies. Despite having a history of preparing faulty EIA reports, these consultants have not been delisted. They have been issued warnings but many of these consultants continue to be accredited.<sup>89</sup> As discussed in detail in Section I of the paper, NEERI, despite being alleged of preparing faulty EIA for two different projects continue to be an accredited EIA consultant with NABET as of May 2020. The draft notification does not address any of these issues that have frequently occurred with the accreditation process and the accountability of accredited consultants in the past.

Appraisal	The 2006 Notification provides that the EAC/SEAC have 60 days from the receipt of the final EIA to complete the process of appraisal.	1. The draft notification provides that the application of the project proponent needs to be scrutinized for ToRs by the regulatory authority within 15 days of receiving it. Once the application is accepted and placed before an appraisal committee, the process shall be completed within 45 days of the acceptance of the application by the appraisal committee.  Additional conditions under this clause are as follows:
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<sup>88</sup> Kanchi Kohli, [Can accreditation ensure accountability?](#), India Together, September 25, 2013.

<sup>89</sup> (Jun 16, 2020, 01:20 PM) Kanchi Kohli, [EIAs are slipshod](#), Civil Society.

		<p>2. Category B2 projects would be issued an online EP within 15 days of application.</p> <p>3. The project proponent needs to be informed at least 10 days prior to the consideration of their proposal by the appraisal committee through an online system.</p> <p>4. The appraisal committee cannot ask for additional studies at the time of appraisal unless new facts come to the notice of the committee.</p> <p>5. Building and construction projects under B1 category which have a provisional certificate of green building shall be considered on priority.</p>
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**Possible implications of the changes:**

- The draft notification has codified the Office Memorandum (OM) issued by the MoEFCC regarding seeking additional studies by the EAC/SEAC during appraisal process.<sup>90</sup> The OM barred the EAC/SEAC from seeking additional studies unless some new fact about the project has come to their notice which warrants a study. The reason, as mentioned in the OM, behind this was the presence of a comprehensive scoping process where the EAC/SEAC is supposed to envisage all required studies while finalising the site specific ToR. However with this draft prescribing standardised ToRs for a greater number of projects and barring EAC from asking for additional studies which they feel are required; there is possibility of site specific impacts being unaddressed in the EIA and further in the EC. Also while this was an executive instruction through an OM earlier, the draft notification attempts to codify the same i.e. the EAC will have very little scope to ask for additional studies even if it feels a requirement for the same.
- The EAC while appraising the Parsa Open Cast Coal Mining Project in Chhattisgarh asked the project to furnish additional study from the State water resource/irrigation

<sup>90</sup> Circular dated Oct 07, 2014, available at:  
[http://moef.gov.in/wp-content/uploads/2017/09/OM\\_EAC\\_SEAC\\_07\\_10\\_2014.pdf](http://moef.gov.in/wp-content/uploads/2017/09/OM_EAC_SEAC_07_10_2014.pdf)

<p>departments and the state wildlife board<sup>91</sup> as the EIA had not covered these important aspects before. This observation from the EAC then led to site visits being conducted and site specific issues being recorded for relevant safeguards to be mandated in the EC letter.</p>		
Exception of projects	<p>The 2006 notification did not have a separate clause listing down all the projects exempted from obtaining a prior EC.</p>	<p>The clause gives a list of 40 instances which are exempted from requiring a prior EC or prior EP. Some of these instances are:</p> <ul style="list-style-type: none"> <li>- Extraction of clay or sand for pottery, tiles, community work in villages etc.</li> <li>- Dredging and de-silting of dams, barrages, rivers and canals for their upkeep and maintenance dredging.</li> <li>- Solar power projects and development of solar parks.</li> <li>- Coal and non-coal mineral prospecting. Seismic surveys for offshore and onshore oil and gas exploration.</li> <li>- Minor irrigation projects (culturable command area up to 2000 Ha)</li> <li>- Extraction of alkaloid from opium.</li> <li>- Manufacturing of paper or paper board from waste paper without bleaching or decolorising.</li> <li>- Manufacturing of explosives, detonators, fuses under the Ministry of Defence.</li> </ul>

<sup>91</sup>26th Coal Mining Expert Appraisal Committee Minutes, Agenda No. 26.1 ( Feb, 15-16, 2018), available at: <http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/260220184SGDFHLFApprovedMOMof26thEAC15-16Feb2018.pdf>

		<p>- Micro enterprises involved in mineral beneficiation, chemical processing of ores, secondary non-toxic metallurgical industry manufacturing of pellets, cement, acid, carbon black &amp; electrode grade graphite, organic chemicals, paints and varnish. Small enterprises involved in secondary non-toxic metallurgical industry, manufacture of carbon black &amp; electrode grade graphite and paints &amp; varnish.</p>
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**Possible implications of the changes:**

Among the activities exempted from prior EC or prior EP, there are many which have recorded adverse serious environmental impacts in the past:

- Seismic surveys as part of onshore and offshore oil and gas exploration projects are exempted from obtaining EC/EP if the concession areas already have a prior EC/EP for physical survey. These methods used for such exploration like seismic surveys, drilling, and airgun blasts underwater; both on and off the shore have conclusive devastating impacts on groundwater, marine ecology, fish population, fisher folk etc.<sup>92</sup>
- Manufacturing of paper or paper board from waste paper without bleaching or decolorising is exempted from EC/EP and so is the manufacture of explosives, detonators, fuses by the Ministry of Defense. However, the document on ‘Revised Classification of Industrial Sectors’ published by the Central Pollution Control Board (CPCB) in February 2016, classifies both of these manufacturing industries into the red category.<sup>93</sup> As per this revised CPCB document the industries are scored as per the quality of emissions, effluents and hazardous waste generated by them and their Pollution Index is determined. If an industry has a Pollution Index of 60 and above, they are classified as a ‘red category’ and are considered highly polluting industries. The CPCB believes that manufacture of explosives produces several toxic byproducts as well as dust & particulate matter and the manufacture of paper also contributes to water

<sup>92</sup> Nityanand Jayaraman, [Environmentally, India's Hydrocarbon Sector Enjoys a Regulatory Free-for-all](#), The Wire, Apr 26, 2019.

<sup>93</sup> Central Pollution Control Board, [Final Document on Revised Classification of Industrial Sectors Under Red, Orange, Green and White Categories](#), Feb 29, 2016.

and air pollution. Despite this, the draft notification gives them exemption from any kind of environmental scrutiny.

- The micro and small enterprises have also been given exemptions from obtaining prior-EC/EP for many industrial activities listed in the schedule of draft notification 2020. Firstly, many of these industrial activities like cement, acid, organic chemical, carbon black & graphite rods, paints & varnishes have been classified as red category industries by the CPCB. Secondly, the recent change in definition of Medium, Small and Micro enterprises declared by the Ministry of Finance on 13th May 2020<sup>94</sup>, has expanded the scope of which industries can be termed as MSMEs for providing wider financial support to industries amid COVID-19 distress. With this change, many more units will be brought under this exemption, which were earlier appraised under EIA. These industries have been documented to cause air & water pollution and generate hazardous wastes according to the CPCB and yet the draft notification exempts them exposing the environment and communities to greater risks.

<b>Environmental Clearance</b>		
<b>Relevant Provision</b>	<b>EIA Notification 2006</b>	<b>Draft EIA Notification 2020</b>
Requirement of prior Environmental Clearance (EC)/ Environmental Permission (EP)	All new projects, modernisations and expansions of existing projects were divided into Category A and B, as listed under the Schedule to the Notification. All of these projects, unless specified were required to get an EC.	The draft notification mentions requiring an EC or an EP for new projects, modernisations and expansions depending on its category.  For category A, B1 and B2: If the project is required to be placed before an Appraisal Committee, the project will require an EC.

<sup>94</sup> ET Online, [Finance Minister announces revised MSME definitions: no difference between manufacturing and service enterprises](#), Economic Times, May 26, 2020.

		For category B2: If the project is not required to be placed before an appraisal committee then it will require an EP.
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**Possible implications of the changes:**

- EP is a new concept under the draft notification, which has resulted in the creation of a large group of projects under category B2 which have been exempted from the appraisal process and will be directly issued an online EP with standard conditions. Given these projects will not be appraised; the EPs are less likely to have strong and site-specific conditions which mandates environmental and social safeguards to contain the impacts. However, some of the projects which have been either newly notified or retained (as there in the 2006 Notification) in this category under the draft notification, have significant environmental impacts, e.g.:
  - All small and medium enterprises involved in cement production and clinker grinding cause emission of toxic elements like sulphur dioxide, nitrogen dioxide, carbon dioxide as well as particulate emissions which are known to cause various health and environmental issues and worsens the Air Quality Index (AQI).<sup>95</sup>
  - Projects with proposed zero discharge units within industrial estates and small and medium enterprises producing bulk drugs pose many serious environmental challenges like dispersion of the active pharmaceutical ingredient (the raw material used for making a drug) into water bodies and soils through various carriers as well as emissions through manufacturing industries into the surrounding environment<sup>96</sup>.
  - The draft notification has inculcated an amendment<sup>97</sup> made to the 2006 Notification in January 2020 to categorize all onshore and offshore oil and gas exploration projects as B2. The methods used for such exploration like seismic surveys, drilling, and airgun blasts underwater; both on and off the shore have

<sup>95</sup> Shraddha Mishra and Dr. Nehal Anwar Siddiqui, *A Review On Environmental and Health Impacts Of Cement Manufacturing Emissions*, 2 International Journal of Geology, Agriculture and Environmental Sciences 26 (Jun 2014).

<sup>96</sup> (Jun 16, 2020, 01:40 PM) <https://eeb.org/the-problem-of-pharmaceutical-pollution/>

<sup>97</sup>Gazette Notification, S.O. 236 (E), dated Jan 16, 2020, available at: <https://cdn.thewire.in/wp-content/uploads/2020/01/19150836/Amendment-Notification-Hydrocarbon-exploration-exemption-2020.pdf>

conclusive devastating impacts on groundwater, marine ecology, fish population, fisher folk etc.<sup>98</sup>

- River valley projects generating up to 25 MW, which were not included in the 2006 Notification have also been added to the list of B2 projects. The generation of hydroelectric energy poses significant environmental challenges like loss of biodiversity due to stream diversion, deforestation, effects of blasting and construction activities etc.<sup>99</sup>

Relevant Provision	EIA Notification 2006	Draft EIA Notification 2020
Leveling of land	The construction work which could be undertaken prior to EC just included securing of land and setting up of temporary sheds and fencing.	The construction work which can be undertaken prior to EC herein includes leveling of the land, in addition to the earlier exclusions.

**Possible implications of the changes:**

The draft notification allows for the leveling of land as a permissible activity before the grant of an EC/EP. The National Green Tribunal (NGT) in *Manoj Misra v. Delhi Development Authority* dealing with a temporary construction in the Art of Living case had observed how the leveling of the floodplains in Yamuna without having conducted any studies or taken any permission had led to environmental degradation.<sup>100</sup> The leveling of the floodplains had led to massive changes in the topography of the region which in turn had affected the drainage patterns.<sup>101</sup> Thus, leveling of land is an activity which has the potential to cause environmental degradation especially in eco-sensitive zones. If such activity is carried out before an appraisal process, it could create a *fait accompli* situation, before the project gets a formal approval or rejection.

<sup>98</sup>Gazette Notification, S.O. 236 (E), dated Jan 16, 2020, available at:

<https://cdn.thewire.in/wp-content/uploads/2020/01/19150836/Amendment-Notification-Hydrocarbon-exploration-exemption-2020.pdf>

<sup>99</sup> Darwin Werthessen, *Environmental Considerations of Small-Scale Hydroelectric Power Plants in Himachal Pradesh, India*, 10 Bridgewater State University Undergraduate Review 178 (2014).

<sup>100</sup> Manoj Misra v. Delhi Development Authority, Original Application No. 65/2016

<http://www.indiaenvironmentportal.org.in/files/Yamuna%20flood%20plain%20Art%20of%20Festival%20Judgement.pdf>

<sup>101</sup> Manoj Misra v. Delhi Development Authority, Original Application No. 65/2016

<http://www.indiaenvironmentportal.org.in/files/Yamuna%20flood%20plain%20Art%20of%20Festival%20Judgement.pdf>

<p>EC for modernisation</p>	<p>- In case of increase in production capacity, increase in lease area or production capacity in case of mining projects, modernisation existing unit with increase in the total production capacity though change in process/technology and any change in product mix; requires the project proponent to apply for an environmental clearance through form 1 and the same would be appraised by the EAC/SEAC within 60 days.</p> <p>- Any change in configuration of the plant after the EC is granted and the project is executed with detailed engineering, will be exempt from the requirement of EC if there is no increase in production capacity and pollution load. The project proponent has to inform the MoEFCC and the SPCB.</p> <p>- If there is change in the raw material mix or the product mix or change in quantities within products or number of products in the same category then it is</p>	<p>- The definition of 'Modernisation' has been changed. As per the new definition modernisation is any change in the process or technology or change in the raw material mix or product mix or de-bottlenecking or increase in the number of working days or increase in the capacity utilisation of plant and machinery in the project including increase in the rate of excavation in the existing mine lease area etc. for which prior EC or prior EP, as the case maybe, granted by the regulatory authority. In addition to that, an entirely new section on legal requirements for modernisation/expansions has been included in the draft notification.</p> <p>- Requirements for application for capacity enhancement:</p> <p>10%: Revised EMP, no appraisal  10%- 25%: Revised EMP, with appraisal  25%-50%: Revised EMP and EIA, with appraisal  Above 50%: Full EIA process</p>
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	<p>exempt from requirement of an EC if there is no increase in pollution load and the increase in production capacity is not more than 50% of the production capacity permitted in the earlier EC issued to them. The project proponent has to obtain a “No Increase in Pollution Load” certificate from the SPCB/PCC as per the provisions given in Appendix XIII.</p>	<ul style="list-style-type: none"> <li>- These requirements listed above will apply to the cumulative increase in production capacity of the projects in reference to the previous EC, which will be calculated based on a method specified in the draft notification. However this is not applicable to: <ul style="list-style-type: none"> <li>a. projects falling in B2 which are converting to B1 or A category through modernisation.</li> <li>b. projects which have not conducted a public hearing throughout their lifetime where PH was applicable as per the 2006 Notification.</li> </ul> </li> <li>- All applications with no increase in production capacity or increase only up to 10% shall be issued the EC online in case the application is accepted.</li> <li>- All applications with increase in production capacity from 10% to 50% the appraisal for EC shall be completed within 45 working days.</li> <li>- ‘No increase in pollution load certificate’ is to be issued by the SPCB/PCC on recommendation of the</li> </ul>
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		<p>Technical Committee and the same can be considered in place of revised EIA and EMP while consideration of EC application or appraisal.</p>
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**Possible implications of the changes:**

- The list of requirements for modernisation projects which allows for piecemeal capacity enhancements at various production capacities has been made on the basis of an unfounded assumption that such expansions have no significant impact on the environment. Smaller percentages of increase in capacity also have the potential to cause environmental impacts, as illustrated through various examples in Section I of this paper. This gives a window to the projects to take multiple numbers of expansions within limited capacity to surpass stricter regulatory requirements. The cumulative impact of multiple expansions on the environment might be quite serious. In case of Thermal Power Plants, increase in capacity would mean that more coal will be burned as a result of which emissions will increase, transportation of more coal will be required and it will also lead to the production of larger quantities of fly ash. For coal mining projects, for which such an exemption has been in place since 2017, it has been used unsparingly.<sup>102</sup> As a result, places like Korba a district in Chhattisgarh, a critically polluted area,<sup>103</sup> which already houses three large coal mines, have been increasingly getting more polluted<sup>104</sup> due to cumulative impacts from such expansions, leaving people living there more susceptible to the on-going public health crisis.<sup>105</sup>
- The draft notification also provides for the no pollution load certificate to be used instead of the revised EIA, EMP and appraisal which were required as per the 2006 Notification which raises serious questions. Such certificates would be issued by a Technical Expert Committee (TEC) which makes assessment of ground reality more difficult as TEC is centrally located. The process of making an EIA and EMP report is quite exhaustive, intensive and there is no rationale given as to how a no increase in pollution load certificate can replace them.

<sup>102</sup>15th Coal Mining Expert Appraisal Committee Minutes, Agenda No.15.3 (Jul, 25, 2017), available at: <http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/010820176ABWO9WXAApprovedMOM15thEACheldon25July2017Coal.pdf>

<sup>103</sup> Staff Reporter, *Korba is ranks third in new critically polluted areas*, The Pioneer, Aug 15, 2015.

<sup>104</sup>Jayashree Nandi, *Dipka mine gets green clearance for another 30 years*, Hindustan Times, Feb 11, 2020.

<sup>105</sup> (Jun 16, 2020, 01:45 PM) [https://shsrc.in/wp-content/uploads/2020/04/SHRC-Korba-Health\\_-PR\\_Final.pdf](https://shsrc.in/wp-content/uploads/2020/04/SHRC-Korba-Health_-PR_Final.pdf)

Grant/ Rejection of EC	The regulatory authority shall consider the recommendations of the EAC/SEAC and convey the decision to the applicant within 45 days of the receipt of the recommendations.	- The regulatory authority shall consider the recommendations of the EAC/SEAC and convey the decision to the applicant within 30 days of the receipt of the recommendations.
<p><b>Note:</b></p> <ul style="list-style-type: none"> <li>- There has been a 15-day reduction in the timeline within which the regulatory authority must convey the decision regarding grant/rejection of EC to the project proponent. This reduction when seen in light with the other reductions in timelines will expedite the clearance procedure but visibly leaves far less time for the EAC/SEACs to carefully and critically evaluate the potential impacts of the projects before granting approvals.</li> </ul>		
Validity of an EC	<p>The validity for various projects is as follows:</p> <ul style="list-style-type: none"> <li>- Mining: 30 years</li> <li>- River Valley and Hydroelectric Projects: 10 years</li> <li>- Other projects: 7 years</li> </ul>	<p>The validity is divided into two phases:</p> <ol style="list-style-type: none"> <li>1. Construction</li> <li>2. Operational</li> </ol> <p>In the construction phase, the prior EC or the prior EP, as the case may be will be valid for:</p> <ul style="list-style-type: none"> <li>- Mining: 50 years, subject to commencement of mining within the first 10 years.</li> <li>- River Valley, irrigation, Nuclear Power Projects: 15 years</li> </ul>

		<p>- Other projects: 10 years.</p> <p>For the operational phase, if in case the construction is completed within the time period specified above, then the EC is perpetually valid for the remaining life of the project. If in case only a part of the project is completed, then the partially implemented project will be considered to have a perpetually valid EC.</p> <p>Special Provision for Mining projects: In case the project has not been able to extract the reserves within the project life estimated by the EAC, the EC for the same capacity and lease area may be granted upon recommendation by the EAC. The extension can just not go beyond the period of the mining lease.</p>
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**Possible Implications of the changes:**

- A 20 year increase in the validity of EC for mining projects, 5 years for river valley, 8 years for irrigation and nuclear projects and 3 years for all other projects is a significant revision. More so, since only in September 2016 an amendment to the 2006 Notification had increased the validity periods to 30 years for mining, 10 years for river valley and 7 years for all other projects.<sup>106</sup> The length of the validity period has been criticized in the past, with some contending that even 30 years validity is too long for mining projects. Critics say 5 years of any mining operations is enough to alter the ecology of an area, ideally necessitating a fresh appraisal of the project's impacts on the environment to

<sup>106</sup> Office Memorandum dated Apr 12, 2016, available at: [http://kspcb.gov.in/OM\\_22-27.pdf](http://kspcb.gov.in/OM_22-27.pdf)

<p>design better safeguards.<sup>107</sup></p> <ul style="list-style-type: none"> <li>• The validity of an EC is important since there have been several instances in which project proponents have managed to get an EC but have been unable to achieve any substantial physical progress in setting up the projects as a result of poor planning. Herein extensions used to be granted by the EAC which would deliberate on whether the delay in setting up the project was justified or not. Such extensions have also been criticized since they allow the project proponents an indefinite period of setting up projects at the cost of altering the lives and livelihoods of the communities dependent on the land on which the project is supposed to come up.<sup>108</sup> However, with the proposed time periods for validity, the possibility of an EC expiring seems quite unlikely.</li> <li>• For mining projects, even if they are unable to operate at full capacity and are not able to exhaust the reserves for whatever reason, their permissions/EC will get extended.</li> </ul>		
<p>Transferability of EC</p>	<p>1. It allowed for the transfer of an EC within its validity period upon obtaining a No Objection Certificate from the transferor. No reference to EAC/SEAC required.</p> <p>2. If the allocation of a coal block is cancelled through legal proceeding/by government, then the EC granted to the coal block will be transferred with the same validity period to the new legal person to whom the block is allocated. No need for ‘no objection certificate’ or reference to EAC/SEAC.</p> <p>3. Whoever is the successful bidder of a mining lease expiring under the MMDR Act 1957, will acquire the</p>	<p>Along with the transferability to a legal person within the validity period as was present earlier, two new situations have been added:</p> <ul style="list-style-type: none"> <li>- A prior EC granted can be split between two or more legal persons upon application to the Regulatory Authority. The recommendation of the EAC will however be required.</li> <li>- The prior EC which is granted to two or more people may be combined and transferred to another legal person. These projects however have</li> </ul>

<sup>107</sup> Akash Vashishtha, [Environment ministry relaxes mining procedure](#), India Today, Apr 6, 2015.

<sup>108</sup> Mayank Aggarwal, [Thermal Power Plants Get Environment Clearance Extension Sans Substantial Progress](#), The Wire, Nov 20, 2019.

	<p>prior EC of that mine for a period of two years from the date of beginning of the new lease. The new lessee will have to apply and obtain an EC within this two year time from the regulatory authority.</p>	<p>to be located on contiguous land. Even in this case the EAC's recommendation will be required.</p>
<p><b>Possible implications of the changes:</b></p> <p>The draft notification allows for EC to be split up or combined as per the discretion of the regulatory authority. However such modification in the EC leaves the critical question of liability of the past violations by the original EC holder, unaddressed. These norms of transferability of EC, must also lay down clear cut guidelines on the accountability of past violations of EC by the original holder and its remediation, when such transfers take place.</p>		

<b>Violation Projects</b>		
<b>Relevant Provisions</b>	<b>EIA Notification 2006</b>	<b>Draft EIA Notification 2020</b>
<p>Violation Projects</p>	<p>On March 14<sup>th</sup> 2017<sup>109</sup>, the MoEFCC came out with a notification which allowed a six month time period to any project that was operating without a valid EC, as stipulated under EIA 2006 notification. The notification provided that all such violation projects were to be appraised at the central level by the EAC. The EAC was given the power to decide the sustainability of such</p>	<p>The draft notification paves way for violation projects to apply for an EC at any given time.</p> <p>According to it, a violation case can be reported in four different ways. It can be reported;</p> <ul style="list-style-type: none"> <li>● by the project proponent themselves,</li> <li>● by a government authority,</li> <li>● by an appraising committee or</li> </ul>

<sup>109</sup> Gazette Notification, S.O. 804(E) dated Mar 14, 2017, available at: [http://environmentclearance.nic.in/View\\_order.aspx?rid=71](http://environmentclearance.nic.in/View_order.aspx?rid=71)

	<p>projects under the environmental norms. The EAC could either recommend the project for closure or prescribe ToR for undertaking the EIA and preparation of EMP. However, the process did not include public consultation as a part.</p> <p>The notification was further amended on 8<sup>th</sup> March and 2018. To expedite the clearance process for the violation projects, the amendment allowed for appraisal of category B projects by the State Appraisal Committees.<sup>110</sup></p>	<ul style="list-style-type: none"> <li>● by a regulatory authority processing the application.</li> </ul> <p>The appraisal committee will decide on the sustainability of the project. If the project is deemed to be sustainable, the appraisal committee will prescribe specific ToR for assessment of ecological damage, remediation plan and natural and community resource augmentation plan in addition to the standard ToR applicable to the project. If the appraisal committee decides that the project is not sustainable, it will order closure of the project.</p> <p>Once such ToR has been prescribed, the project has to prepare an EIA and also undergo public consultation and appraisal process.</p> <p>An application fee on a daily basis has been added based on the category of project. In case of self-disclosure, the fee shall be Rs. 1000 for B1, Rs. 2000 for B2 and Rs. 5000 for A. In any other case of violation discovery, the fee charged will be Rs. 2000 for B2, Rs. 4000 for B1 and Rs. 10000 for A. The Date of violation for each such application shall be deemed to be April 14<sup>th</sup> 2018. Also, there is inclusion of implementation of EMP with enhanced cost as a condition to EC and submission of bank guarantee equivalent to a remediation plan.</p>
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<sup>110</sup> Office Memorandum dated Mar 15, 2018, available at: <http://moef.gov.in/wp-content/uploads/2018/04/1030.pdf>

### **Possible implications of the changes:**

The Ministry has over the years, through different notifications, tried to bring the violation projects under EIA regulation by granting post facto clearances.<sup>111</sup> However, this push by the Ministry to provide amnesty to projects has been met with severe criticism<sup>112</sup> and judicial interventions.<sup>113</sup> Similarly, the inclusion of amnesty for violation projects in draft notification is at loggerheads with different judicial pronouncements including a recent pronouncement by the Supreme Court on 01 April 2020 as has been discussed in Section I.<sup>114</sup>

The draft notification has institutionalised this one time amnesty process with the option to bring violation projects under regulation at any given time. The draft notification mentions that this has been in ‘interest of the environment’. However, the very rationale of granting post facto clearances has been seen as against the basic principles of EIA<sup>115</sup> and mockery of law.<sup>116</sup> The Ministry has put reliance on the ‘polluter pays principle’ as one of the justifications for bringing violation projects under regulation. This principle in addition to other things talks about remedying the damage done by the one causing the pollution. However, such post facto approvals have also been considered as antithesis to ‘polluters pay principle’ as these propagate and legitimise pollute and pay principle.<sup>117</sup>

Post facto approvals don’t allow for public participation before a project is scrutinised for its sustainability by the violations committee. Therefore, a post facto public hearing, if at all it is conducted, does not have the same effect as there might be numerous impacts (lived by the communities) that would have already occurred from the impugned violation. The purpose of EIA is to ascertain environmental and social costs that could result from a project before it starts working. However, if a project is given post facto clearance, the impacts borne by the environment and people before such clearance is given often becomes irreversible.<sup>118</sup> A detailed

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<sup>111</sup> Krithika Dinesh and Kanchi Kohli, *From Prior to Post: Legalising environmental violations?*, Centre for Policy research, Jul 1, 2017.

<sup>112</sup> Ritwick Dutta, *Recall notification on environment*, Deccan Herald, Jun 30, 2016.

<sup>113</sup> Rohit Prajapati & Anr. v Union of India & Ors. Original Application No. 66(THC)/2015(WZ) <http://www.indiaenvironmentportal.org.in/files/environment%20clearance%20United%20Phosphorous%20NGT%20order.pdf>

<sup>114</sup> Alembic Pharmaceuticals Ltd. v Rohit Prajapati & Ors., Civil Appeal No. 1526 of 2016 [https://main.sci.gov.in/supremecourt/2016/2562/2562\\_2016\\_0\\_1501\\_21582\\_Judgement\\_01-Apr-2020.pdf](https://main.sci.gov.in/supremecourt/2016/2562/2562_2016_0_1501_21582_Judgement_01-Apr-2020.pdf)

<sup>115</sup> Manju Menon and Kanchi Kohli, *Letting them off easy*, The Hindu, Jun 20, 2016.

<sup>116</sup> Mayank Aggarwal, *India’s proposed overhaul of environment clearance rules could dilute existing regulations*, Mongabay, Mar 18, 2020.

<sup>117</sup> Mayank Aggarwal, *Government pushes for post facto environment clearances while apex court disapproves*, Mongabay, Apr 06, 2020; Shibani Ghosh, *Is the MoEFCC Encouraging Environmental Violations?*, Centre for Policy research, Aug, 2016.

<sup>118</sup> Shibani Ghosh, *Is the MoEFCC Encouraging Environmental Violations?*, Centre for Policy research, Aug, 2016.

analysis in Section I shows the probable issues that can come along by institutionalising this practice.

### Post Approval Compliance and Monitoring Mechanisms

Relevant Provisions	EIA Notification 2006	Draft EIA Notification 2020
Post Environmental Clearance Compliance	Every project proponent is mandated to submit half yearly post-EC compliance reports on the 1st of June and the 1st of December, respectively.	This frequency has been reduced in the draft notification. Project proponents are mandated to submit yearly post-EC compliance reports on the 30th of June. The Regulatory Authority may ask for compliance reports at a more frequent interval if deemed necessary.  A daily fine of Rs 500 for B2, Rs 1000 for B1 and Rs 2500 for Category A projects has been imposed for non-compliance based on the categorisation of projects.  Another provision for suspension of EC is added if the non-compliance with respect to submission of post-EC/EP compliance reports continues for 3 years consecutively.

#### Possible Implications of the changes:

The draft notification reduces the frequency of compliance reporting from six monthly to a yearly requirement. As discussed in Section I, multiple studies and research have indicated the poor state of post EC compliance by the majority of projects as per EIA regulation. The pervasiveness of the issue of non-compliance and its associated environmental and social cost could also be corroborated by the growing amount of fines and penalties being imposed on the violating units by the courts for non-compliance.<sup>119</sup> Comptroller and Auditor General (CAG), in its performance audit on post-EC compliance monitoring noted that the percentage of non-compliance by

<sup>119</sup> Kiran Pandey and Susan Chacko, [NGT makes polluters pay nearly double so far this year than whole of 2018](#), DownToEarth, Apr 10, 2019.

sampled projects to specific conditions ranged from 5% to 57%.<sup>120</sup> The report also highlighted that there was a shortfall of 43% to 78% by the sampled projects in submission of their half yearly compliance reports on time. In this scenario, reducing the frequency of these reports will further weaken the legal compliance framework which is meant to protect the environment and project affected communities.

These compliance reports form a strong basis for the regulatory authorities and the project affected communities, to closely cross check the project proponent's claims about compliance. In the past, project affected communities have used these reports to highlight the instances of non-compliance by the project affected communities before the administrative bodies.<sup>121</sup> The compliance reports submitted by the project proponent are used by the communities and regulatory authorities to evaluate the past-track record of the project in complying with prescribed EC conditions before granting EC for renewals or expansions.

Another problematic angle to the proposed compliance framework in the draft notification is the fine and penalty imposed on non-compliant units. Such fines are often challenged in the court of law by the project proponent, which drags the actual payment of these fines for years; while the impacts from non-compliance stays or worsens on the ground.<sup>122</sup>

E.g: A proceeding was initiated in the National Green Tribunal in 2018 against Common Effluent Treatment Plant in Vapi, Gujarat, which caters to the need of Gujarat Industrial Development Corporation Vapi, for failing to meet the prescribed norms and critically polluting Daman Ganga river in the vicinity over the last few years. The NGT vide its order dated 11.01.2019<sup>123</sup>, ordered for interim compensation to be paid by the CETP and member industries which have flouted the laid norms. This interim compensation recovered was to be used for environmental restoration. By the same order, NGT constituted a committee to assess the cost of environmental restoration. However, this order was challenged before the Supreme Court. The supreme court refused to stay interim compensation but noted that the compensation recovered will have to be according to the findings of the committee.<sup>124</sup> The replies dated 09.10.2019 and 15.10.2019 to an RTI application

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<sup>120</sup> *Report of the Comptroller and Auditor General of India on Environmental Clearance and Post Clearance Monitoring*, Report No. 39 of 2016, available at:

[https://cag.gov.in/sites/default/files/audit\\_report\\_files/Union\\_Government\\_Report\\_39\\_of\\_2016\\_PA.pdf](https://cag.gov.in/sites/default/files/audit_report_files/Union_Government_Report_39_of_2016_PA.pdf)

<sup>121</sup> Closing the Enforcement Gap: Groundtruthing of Environmental Violations in Surguja, Chhattisgarh; Closing the Enforcement Gap: Community-led Groundtruthing of Environmental Violations in Sundargarh, Odisha; Around the landfill sites: A Groundtruthing of Solid Waste Management law across landfill sites in Uttara Kannada, Karnataka.

<sup>122</sup> PTI, [HC rejects TN government's plea challenging Rs 100 crore NGT penalty](#), Eco Times, Jul 12, 2019; Sharmistha Mukherjee, [VW to challenge NGT fine of Rs 500 crore](#), Eco Times, Mar 07, 2019.

<sup>123</sup> *Aryavart Foundation v M/S Vapi Green Enviro Ltd and Ors.*, Original Application No. 95/2018 <https://greentribunal.gov.in/caseDetails/delhi/0701105003242018?page=order>

<sup>124</sup> *Aryavart Foundation v M/S Vapi Green Enviro Ltd and Ors.*, Original Application No. 95/2018 <https://indiankanoon.org/doc/102321359/>

<sup>125</sup> stated that a total of around 25 crores were collected as interim compensation but the amount was yet to be utilized. While in a recent joint inspection by the CPCB and GPCB in Jan 2020, the CETP was noted to be still non-compliant with the prescribed norms continuing to pollute the river and its ecology.<sup>126</sup>

Lastly, the provision on revocation of EC if projects are found to be non-compliant in submitting the compliance reports for three continuous years is a step in the right direction but falls short in terms of enforcing the precautionary principle of the environmental law. The regularity in submission of these reports is of significant importance, as it could give a timely window to both regulatory bodies and project affected communities to continuously monitor these projects. However a revocation of EC after three years of continuous non-compliance would be an intervention a little too late in the process of environmental protection E.g. CPR-Namati EJ program conducted a 2-year study to understand the impacts on coastal communities from environmental non-compliance by an ongoing national highway expansion project in Karnataka.

<sup>127</sup> During the study, the project was found to be non-compliant to many EC conditions along with the requirement to submit compliance reports every six months. The study revealed massive loss of livelihoods for communities because of environmental impacts from instances of non-compliance within these two years; it also reported a significant loss in terms of property (both public and private) and life. Hence unaddressed non-compliance even within a short time-frame could actually cause irrevocable ecological damages.

Third-party Monitoring of Compliance Mechanism	The requirement for monitoring of post approval compliance was specified as a condition in the EC letter. The monitoring was carried out by the Regional Office of the Ministry and SPCB. <sup>128</sup>	To supplement the efforts of the Ministry for monitoring through Regional office of the Ministry, Regional Directorate of CPCB, SPCB or UTPCC, under the draft notification, the Ministry may empanel government institutions of national repute for carrying out compliance monitoring of conditions of prior-EC or prior-EP, as the case may be, of projects in a random manner
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<sup>125</sup> An RTI application was filed by Sampada Nayak with the CPCB on 27.09.2019 to enquire about the interim compensation collected and its utilisation.

<sup>126</sup> *Report of Joint Inspection-cum-Monitoring of Common Effluent Treatment Plant (CETP) Vapi Industrial Area, Gujarat*, available at: <https://cpcb.nic.in/NGT/4-REP-JOINTINSPECT-CETP-VAPI.pdf>

<sup>127</sup> Centre for Policy Research (CPR)-Namati Environmental Justice Program, *Closing the enforcement gap: A community-led groundtruthing of the expansion of a National Highway in Uttara Kannada*: CPR-Namati Environmental Justice Program, Dec 2019.

<sup>128</sup> Regulatory bodies responsible for periodical monitoring of projects are mentioned in the EC letter for each project.

Dealing with Non Compliance	This was not specifically mentioned in EIA 2006 notification rather was dealt with in EC letter and Environmental Protection Act, 1986 would apply	The draft notification has a specific clause for the same, which says- Identification of non-compliance is to be done either suo moto by the project proponent or by the reporting by any government authority. All such non-compliances will be heard at the State level for Category B and at the Central Level for Category A projects. A “transparent” hearing will be carried out in which the project proponent will be allowed to furnish necessary clarifications. Thereafter a time bound action plan will be prepared by the project proponent upon recommendation by the EAC, and a bank guarantee will have to be submitted. The bank guarantee shall be released once the action plan has successfully been implemented.
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**Possible implications of the changes:**

While the draft notification includes third party monitoring by the governmental institutions to supplement the monitoring efforts, the fallacies in the current framework such as lack of regularity and clear and uniform protocols for monitoring, still remain unaddressed. The inclusion of a third party monitoring also lacks clarity on its actual implementation under the law e.g. there is no information on what basis these institutions will be selected and empanelled, what will be their funding arrangement and what kind of monitoring framework they will follow.

The draft notification also fails to create any space for the public to participate in its enforcement. Despite growing evidence and compelling examples of communities stepping forward to monitor environmental impacts of projects<sup>129</sup>, it disregards the potential role that project affected communities could play in strengthening the monitoring mechanisms.

This draft notification ideally should have called for a greater integration of the project affected

<sup>129</sup> Centre for Policy Research (CPR)- Namati Environmental Justice Program, [Making the Law Count: Environment justice stories on community paralegal work in India \(Version 2\)](#), CPR-Namati Environmental Justice Program, 2019.

communities in the overall monitoring process. However, the draft notification only recognises project proponents and government institutions or agencies as stakeholders in strengthening the monitoring efforts to address the issue of non-compliance. It renders the draft notification a lost opportunity to truly democratise the environmental governance in our country.

<b>List Of Projects Or Activities Requiring Prior Environmental Clearance</b>		
<b>Relevant Provisions</b>	<b>EIA 2006 Notification</b>	<b>Draft EIA Notification 2020</b>
The Schedule Categorising Projects for the EIA process	<p>The schedule has 39 types of projects which were either categorized as A or B based on the spatial extent of potential impacts and potential impacts on human health and natural and man-made resources.</p> <p>The notification did not clearly bifurcate category B project into B1 and B2 categories as it was done through a screening process.</p>	<p>The schedule has brought 43 projects into the purview of EIA regulation. The projects are categorized into three categories; Category A, B1 and B2 based potential social and environmental impacts and spatial extent of these impacts.</p> <p>However, the new schedule has brought about many changes in these categorisation benchmarks. The push has been to get more and more projects to be appraised at State level.</p> <p>Most of the micro, small, medium enterprises like API drug manufacturing, cement plants, chemical units have been categorised as B2 which lays down an expedited process for EC/EP.</p>

### **Possible implications of the changes:**

Projects which are categorised as B2 are exempted from public consultation under the 2006 Notification and the draft notification. It also introduces the concept of Environmental Permission which exempts certain B2 category projects from an appraisal process altogether. Projects which are classified as B2 include inland waterways, various MSME units of different projects like API drug manufacturing, cement plants, chemical unit intermediaries. These projects are known to have large scale impacts on the environment and living conditions of communities around them.

<sup>130</sup> In 2019, many experts and activists had written to MoEFCC following an NGT order, urging to bring inland waterways projects under the purview of EIA owing to the grave impacts it has on the river ecology.<sup>131</sup> However, categorising it under B2 category these projects are now under the purview of the regulation but still outside the scope of appraisal by experts and public consultation.<sup>132</sup> The draft notification also categorises aerial ropeways in identified ecologically sensitive areas under B2 category. Such projects will be exempted from the appraisal process. The push for this has been on the backdrop for new modes of coal transport and aerial ropeways being a potential mode. But the probable environmental impacts of such a project like blocking of migratory corridors, soil erosion and contamination, generation of waste water etc. have been sidelined.<sup>133</sup>

Further, for almost 15 projects listed in the schedule the categorisation parameters have been heavily revised to bring more projects under category B (B1 and B2) and hence be listed at State level (SEAC and SEIAA). E.g. For non-coal mineral mining the threshold limit for projects to be considered category A has been almost doubled. As per the 2006 notification, mining lease area of  $\geq 50$  ha in respect of non-coal mine lease is project A but in the draft notification this threshold limit has been increased to  $>100$  hectare of mining lease area for minor minerals. This upward revision in categorisation parameters could be seen across projects including river valley, irrigation, coke oven plants, metallurgical industries, chemical units etc. Interestingly, the only project which sees a reduced threshold limit to include more projects under category A i.e. to be listed at Central level (EAC and MoEFCC) is the coal mining projects. As per 2006 notification, coal mining projects having  $> 150$  ha of mining lease area in respect of coal mine lease

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<sup>130</sup> Shraddha Mishra and Dr. Nehal Anwar Siddiqui, *A Review On Environmental and Health Impacts Of Cement Manufacturing Emissions*, 2 International Journal of Geology, Agriculture and Environmental Sciences 26 (Jun 2014); (Jun 16, 2020, 01:40 PM) <https://eeb.org/the-problem-of-pharmaceutical-pollution/>

<sup>131</sup> The Wire Staff, *Centre Urged to Make Prior Environment Clearance Mandatory for Waterway Projects*, The Wire, Jan 02, 2019; Jayashree Nandi, *Activists demand mandatory environmental clearance for inland waterway projects*, Hindustan Times, Jan 02, 2020.

<sup>132</sup> DTE Staff, *'Make green clearance mandatory for inland waterways'*, DownToEarth, Jan 01, 2019.

<sup>133</sup> Meenakshi Kapoor and Krithika A. Dinesh, *Cheaper coal transport through water and sky could come at the cost of the environment*, Mongabay, May 15, 2020.

are categorised as project A. This has been revised to >100 hectare of mining lease area under the draft notification.

The 2006 notification did not furnish the project specific rationale behind setting these parameters for categorisation, other than a generic thumb rule i.e. '*based on the spatial extent of potential impacts and potential impacts on human health and natural and man-made resources*',<sup>134</sup> The draft notification follows the same suit and further revises these parameters without providing any rational or logic behind these heavy revisions for each kind of project. These revisions not only need more clarity from the government but also a consensus from the affected community members and experts who are well-placed to understand and evaluate the actual implications of such changes in categorisations, on the people and environment.

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<sup>134</sup> No other criteria are prescribed in any other part of the notification which explain the basis on which projects are included or excluded from the requirement of prior environmental clearance, available at: [https://vidhilegalpolicy.in/wp-content/uploads/2019/05/141113\\_EnvironmentalCommitteeSubmissions\\_Vidhi-1-.pdf](https://vidhilegalpolicy.in/wp-content/uploads/2019/05/141113_EnvironmentalCommitteeSubmissions_Vidhi-1-.pdf)