CORPORATE RESPONSIBILITY AND ENVIRONMENT IMPACT ASSESSMENT

Introduction

THE SUPPORTERS of Milton Friedman school of thought[1] may find it difficult to accept that there could be any social responsibility of a corporate organization, which has been formed, with the motive of maximizing profits and doing business.

Similarly, it is also presumed that state is the strongest potential human right violator and accordingly article 13 of the Indian Constitution has been interpreted in the judicial pronouncements. But since recent times such presumptions and thoughts have been made subject to scrutiny especially in wake of expansion and growth of private sector. Such a rethinking is desirable because today expansion of private organizations is a reality and, therefore, their functioning in the society cannot be overlooked. Also, corporate citizenship is now understood as no longer discretionary.[2]

In this respect one crucial kind of responsibility, which can be studied separately from other human rights responsibilities is that related to environment. In pursuance of business the corporate bodies tend to disregard the effect of their activities on the immediate environment and this disregard itself becomes the reason responsible for several other problems related to both humans and the environment in general.

The *raison de etre* of most business organizations is to make money, perhaps as much of it as possible. This is not an immoral objective in itself, but neither is it necessarily a moral one.[3] However, there is a growing discourse, of much wider concept of corporate responsibility and

1. In his book *Capitalism and Freedom* (1962), Milton Friedman advocated for minimizing the role of government in a free market as a means of creating political and social freedom and said that there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.

2. In his *Corporate Citizenship* (1998) Malcolm McIntosh argued that for many people responsible corporate citizenship is only an ethical issue, but actually there are also compelling arguments for adopting a responsible approach.

3. Tom Campell, "Moral Dimensions of Human Rights" in Tom Campbell and Seumas Miller (Eds), *Human Rights and the Moral Responsibilities of Corporate and Public Sector Organizations* 11-30 (2004).

accountability, not just among philosophers or social critics but also in the business community itself.[4] Under the present discourse on human rights, business is seen as accountable to not just the shareholders but also the 'stakeholders'.

Ethics and business

There is the emergence of a whole new ethics industry, which can be seen as both a product and a constituent part of the new 'accountability'. [5] Broader ethical approach ensures financial benefits in the long run and actually ethical conduct is in fact a good business strategy.

The new accountability, which comes under the nomenclature of corporate responsibility, is being converted into a new market opportunity by being seen as a source of competitive advantage over the rest in the market. Social conscience is a key part of corporate public relations and advertising campaigns.

Often, such an amalgamation of ethics with business has taken place as a response to crisis situations relating to environmental and human rights issues which the companies had to face in the past.

Reputation risk management

Managing risk is a central part of many corporate strategies. Reputations that take decades to build up can be ruined in hours through incidents such as corruption scandals or environmental accidents. These events can also draw unwanted attention from regulators, courts, governments and media. Building a genuine culture of 'doing the right thing' within a corporation can offset these risks. [6] In Nigeria, the Shell Company's operations came under serious criticism for its oil extraction exercise and it was seen as a public relations disaster which was followed by Shell's plan to dump its Brent Spar Oil Rig at sea.

In this context the new philosophy of corporate responsibility adopted by the company[7] can be seen as a response to a very old way of crisis management. Importance of reputation has been implicit in factors such as

4. Doreen McBarnet, "Human rights, Corporate Responsibility and the New Accountability", in *id.* at 63.

5. *Ibid.*

6. *Available at* http://www.ksg.harvard.edu/m-rcbg/CSRI/publications/workingpaper_10_kytle_ruggie.pdf

7. As is evident from the language used in its First Annual Social Report, which reads as, "…how we, the people companies and businesses that make up the Royal Dutch/Shell Group are striving to live-up to our responsibilities - *financial, social* and *environmental*."

public relations crisis management.[8]

Thus, corporate responsibility is a part of process of managing the costs and benefits of business activity to both internal and external stakeholders. Setting the boundaries for how those costs and benefits are managed is partly a question of business policy and strategy and partly a question of public governance.[9]

It is interesting to note that Bhopal, which can be called a gross instance of corporate environment "irresponsibility", has influenced corporate behavior on health, safety and environmental issues and has pushed back the frontiers of the law on corporate responsibility.[10]

"Corporate environment responsibility' and EIA

Environment protection constitutes a precondition for the effective enjoyment of human rights protection. The two concepts have become interlinked and interdependent now. Synergies have developed between these previously distinct fields.[11] In fact, some hold it strongly that there is the obvious relationship among environment, economic development and human rights that occurs with global problems involving the shared concerns of health, safety and individual well-being.[12] It is certainly reasonable to claim that development is about improving the quality of life and, therefore, inappropriate development is development inconsistent with basic human rights.[13] It is further reasonable to claim that development at the expense of environmental quality is detrimental to human condition.[14]

In this context, fixing of environment problems has gone beyond the scope of any national government. Corporate responsibility is a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis and from this has emerged the concept of corporate environment responsibility (hereinafter, CER). CER signifies the

8. Doreen McBarnet, "Human rights, Corporate Responsibility and the New Accountability", in *supra* note 3 at 74.

9. Ramesh Chandra and Ritu Aneja, *Corporate Governance for Sustainable Environment* 132 (2004).

10. See remarks by Ved P. Nanda, 79 *American Society of International Law Proceedings* 303, Apr 25-27 (1985).

11. G.S. Karkara, *Human Rights, Development and Environmental Law: An Anthology* 52 (2006).

12. Robert E. Lutz, Ibrahim Shihata, David Wirth, Philip Alston, Stephen C. McCaffffrey, John Porter and John Warren Kindt : "Environment, Economic Development And Human Rights: A Triangular Relationship?" 82 *American Society of International Law Proceedings* 40 (Apr 20-23, 1988).

13. *Id.* at 41.

14. *Id.* at 41.

environmental commitments of the companies through material and energy management and a transparent working within ecological limits.

An environmentally responsible company aligns its business with ecological principles and can be expected to abide by the following:[15]

- Embraces sustainability and the 'precautionary principle';
- Adheres to government regulations;
- Uses the earth resources efficiently;
- Internalizes environmental costs and benefits and
- Measures and regularly reports the results and impact of its activities on the environment and so on.

Out of these, the CER assessment tools of measuring, auditing and reporting are important and indispensable from the point of view of obtaining information on the status of environmental policy of companies. The phrase 'Environmental Impact Assessment' comes from section 102 (2) of the National Environmental Policy Act (NEPA), 1969, USA. EIA is an effort to anticipate, measure and weigh the biophysical changes that may result from a proposed project. It assists decision-makers in considering the proposed project's environmental costs and benefits. Where the benefits sufficiently exceed the costs, the project can be viewed as environmentally justified.[16]

Environmental impact assessment (EIA) is an important management tool for ensuring optimal use of natural resources for sustainable development. It is a formal study process used to predict the environmental consequences of any development project. EIA thus ensures that the potential problems are foreseen and addressed at an early stage in project planning and design.

EIA as a tool and version of precaution

At its core, the precautionary principle of the environment law is a risk management theory that elaborates on the simple command "show me." It decides whether the regulator or the regulated must be "shown." It decides whether "show" means proof to a scientific certainty or scientific consensus, a scintilla of evidence, a wild hunch, or some other standard.[17] It decides when the showing is to start, when it must be completed, what the consequences of not showing are, what roles the regulators and the

15. "Defining Corporate Environment Responsibility"; *available at* http://www.pollutionprobe.org/Reports/cerreport.pdf

16. Shyam Divan and Amin Rosencranz, *Environmental Law and Policy in India* 417 (2001).

17. Phillip M. Kannan, "The Precautionary Principle: More Than A Cameo Appearance in United States Environmental Law?" 31 *William and Mary Environmental Law and Policy Review* 409 (Winter, 2007).

regulated have in the process of showing, and whether showing should protect the public interest primarily under a liability model or a preventive model.[18]

The precautionary principle has been adopted in such a widespread fashion that it is now difficult to find in either the international environmental arena or countries with advanced environmental protection frameworks an environmental policy document, a new environmental law, or even a political statement about environmental management that does not include a reference to the principle or reflect some of the core ideas of the precautionary concept.[19]

The precautionary principle/approach is a common place internationally (and, in fact, is considered by many to have crystallized into a norm of customary international law) and in domestic jurisdictions, is a testament to the soundness of the concept and the usefulness of considering precaution when devising environmental management and protection strategies.[20]

The precautionary principle or approach is generally understood to include three elements: "fully assessing possible impacts of an action, shifting the burden of proof to those whose activities pose a threat to the environment, and not acting if there is significant uncertainty or risk of irreversible harm."[21] The first two elements are procedural, and the third is substantive.[22] And EIA is the most rational vehicle of the precautionary principle because it is a practice, which is appropriate for considering precaution; namely, whether to proceed with development proposals in situations where uncertainty exists about future environmental effects.

Judicial pronouncements and EIA

In India, while examining the issue whether mining activity in an area up to 5km. from Delhi-Haryana border on the Haryana side of the ridge and also in the Aravali hills causes environment degradation, the apex court in a PIL in *M.C. Mehta* v. *Union of India*,[23] held that the precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be

18. *Ibid.*

19. Warwick Gullett, "The Precautionary Principle In Australia: Policy, Law & Potential Precautionary EIAs" 11 *Risk: Health, Safety and Environment* 93 (Spring, 2000).

20. *Id.* at 94.

21. See Charmian Barton, "The Status of the Precautionary Principle in Australia: Its Emergence in Legislation and as a Common Law Doctrine" 22 *Harvard Environmental Law Review* 509-515 (1998) ; also see *supra* note 17.

22. *Supra* note 17.

23. AIR 2004 SC 4016.

prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment.

The precautionary principle has been again affirmed and well explained by the Supreme Court in *Andhra Pradesh Pollution Control Board* v. *M.V. Nayadu*.[24] The apex court held:[25]

> [T]he principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on the scientific uncertainty. Environment protection should not only aim at protecting health, property and economic interests but also protect the environment for its own sake. The precautionary duties must not only be triggered by the suspicion of concrete danger but also by way of (justified) concern or risk potential. The principle suggests that where there is identifiable risk or serious irreversible harm, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment.

Bharucha J dissenting opinion in the *Narmada Bachao Andolan* v. *Union of India*[26] case highlighted the importance of EIA of the Narmada Sagar Project in absence of which he judged that the construction work on the dam should cease. Perhaps, this is one of the first explicit and elaborate judicial recognition of EIA wherein it conveys that EIA should not be run on the discretion of the administrative branches of the government because it derives its strength from the law itself.

Politics of EIA notifications in India: Dilution of law

A beginning was made in the country with the impact assessment of river valley projects in 1978-79 and the scope was subsequently enhanced to cover other developmental sectors such as industries, thermal power projects, mining schemes etc. Prior to January 1994, EIA in India was carried out under administrative guidelines, which required the project proponents of major irrigation projects, river valley projects, power stations, ports and harbours, etc. to secure a clearance from the Union Ministry of Environment and Forests.

On 27th January 1994, the ministry notified mandatory EIA under rule 5 of the Environment (Protection) Rules of 1986 for 29 designated projects. The notification made it obligatory to prepare and submit an EIA, an

24. AIR 1999 SC 812.
25. *Id.* at 820-21.
26. AIR 2000 SC 3751.

environment management plan (hereinafter, EMP) and a project report to an impact assessment agency for clearance. The Ministry of Environment and Forest was designated as the impact assessment agency and was required to consult a multi-disciplinary committee of experts.

Under the January 1994 notification any member of the public was to have access to a summary of the project report and the detailed EMPs. Public hearing was mandatory. This requirement was India's first attempt at a comprehensive EIA scheme.

Environmental assessment is to be taken up in this exercise as a rapid assessment technique for determining the current status of the environment and identifying impact of critical activities on environmental parameters. Based on this analysis the ministry can draw up an environmental management plan that would ensure impact monitoring and mitigation planning.[27]

But most unfortunately these attempts to create a successful strategy for commercial environmental compliance (through EIAs, in case of India) have been unsuccessful due to the voluntary nature of existing guidelines and at the end of the day they remain mere "soft law" recommendations.[28]

EIA process: "Just another regulatory hurdle" after the changes in 1994 notification?

On 4th May 1994 the ministry issued an amending notification substantially diluting the January 27th notification.

- The amendment was introduced furtively, without pre-publication of the draft. With these changes, the project proponent was no longer required to submit 'a detailed' project report (presumably, a summary report would do so) and the previous requirement of preparing both an EIA and EMP, was diluted to now require either of these documents to be submitted.
- In the earlier notification the impact assessment agency (IAA) was enjoined to prepare its recommendation after technical assessment of the documents and data furnished by the project authorities as supplemented by data collected during visits to sites or factories and in interaction with affected population and environment group. The later notification states the need to supplement data in purely optional terms.

27. *Available at* http://envfor.nic.in/divisions/iass/iass.html Environmental Impact Assessment Division, Ministry of Environment & Forests, Government of India. (Visited on: 07/11/07).

28. See, Sophie Hsia, "Foreign Direct Investment and The Environment: Are Voluntary Codes of Conduct and Self-Imposed Standards Enough?" 9 *Environmental Lawyer* 673 (June 2003).

- In the earlier notification, the concerned parties and environment groups were assured of receiving on request a copy of the summary feasibility report along with the detailed environment management plans and the conditions of which the environment clearance is given. The later notification made supply of these documents subject to public interest.
- Perhaps more invidious than the formal amendment to the parent notification, was an administrative guideline styled as an 'Explanatory Note' which was issued simultaneously by the Ministry of Environment and Forests. The 'Explanatory Note' restricted the public access to an 'Executive Summary' of the environment impact documents and further narrowed access to 'bonafide residents located at or around the projects site or sites of displacement or alleged adverse environmental impact'.
- Moreover, the note diluted the comprehensive EIA Report requirement (covering one year) to a single season report, termed as a rapid EIA Report.

The main EIA notification has been amended seven times in the past eight years. All these amendments instead of strengthening the process have diluted it to an extent that it is now merely viewed by industries as a formality in the environmental clearance procedures.[29]

Section 3 of the Environment Protection Act, 1986 (EPA) under which the EIA notification has been issued, authorizes the Central Government to take measures for, "protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution." Thus when the Environment (Protection) Rules, 1986 refers to the public interest it is obviously in that context. If that is the case, one fails to see how these recent amendments serve the public interest.[30]

Right to development vis-à-vis the right to clean environment.

Though there is no legally recognized right to development, this right limits the application of the right to environment.[31]

Probably, more than any other jurisdiction, India has fostered an extensive and innovative jurisprudence on environmental rights.[32] But EIA

29. Sunita Dubey, "Disarming the Law" (Dec. 2002) *available at* http://www.indiatogether.org/environment/articles/eia1202.html (Visited 30/10/2007).

30. *Ibid.*

31. M.R. Anderson, *Human rights Approaches to Environmental Protection: An Overview* 19-20 (1996).

32. *Ibid*.

process has been seen as anti-development and, therefore, not being implemented properly. And there have been both practices and arguments either to counter the establishment of EIA procedures or to avoid/evade them.

The dramatic surge of private investment capital into emerging foreign markets, while assisting developing countries in the struggle for sustainable development, has created greater pressures on the environment.[33] The intense competition for international capital contributes to the lack of adequate environmental regulation because of the fear of pricing out of international investments, resulting in pollution havens and environmental malfeasance.[34]

Enron project, corporate responsibility and EIA

Enron confirms the political implications of the onset of foreign involvement in a country that has fiercely prided itself on self-sufficiency and a break from its colonial past. [35]

The project gauges whether India's legal mechanisms for environmental assessment, project approval, and dispute resolution can protect the country's natural resources from being overrun by industrial development.[36]

The project confirms the open economic policy for India and greater role of corporate in economic setup of India.

This venture became a controversial one, and began to be criticized for no one outside the key negotiators of the deal knew how, or why, Enron was selected for this power generation project.

EIA had been introduced in 1994 with the environmental clearance notification and thus, Ministry's clearance to Enron without evaluation of the project under the scope of the review (risk analysis and public hearing) required by the notification was challenged in the Bombay High court.

When the court ordered to re-evaluate the action it became India's first foray into the implementation of the environmental clearance notification. But in the process principles of the clearance were not properly followed. The scope and substance of India's environmental impact assessment procedures and their application to the Enron project both falls short in many areas. Nevertheless, applying this evaluation to a development project could be called a great leap forward for India. However, beyond delay, the

33. Sophie Hsia, "Foreign Direct Investment and The Environment: Are Voluntary Codes of Conduct and Self-Imposed Standards Enough?" 9 *Environmental Lawyer* 673 (June 2003).

34. *Ibid.*

35. Sanjay Jose Mullick, "Power Game in India: Environmental Clearance and The Enron Project" 16 *Stanford Environmental Law Journal* 256 (May 1997).

36. *Id.* at 260.

environmental suit was ultimately unable to substantially modify the project.

Sethusamudram (Ram Setu) project and EIA: Religion, not the only issue.

There is a proposed project of ship canal by the name of Sethusamudram Shipping Canal Project, which claims to cut short the distance between east and west coast. The area covered by the project has a delicate environment:[37]

> The Gulf of Manna and the Palk Bay are considered to be among the world's richest marine biological resources. The region has a distinctive socio-economic and cultural profile shaped by its geography. It has 3, 600 species of plants and animals (including the endangered mammals like Dugongs and five species of sea turtles), which make it India's biologically richest coastal regions. It is of course known for its corals, which there are 117 species belonging to 37 genera.

It is believed that rushing through with the project without analyzing issues related to sedimentation and meteorological regimes might cause a great economic disaster in wake of tsunami that hit the region recently.[38] The Sethusamudram project faced opposition for religious reasons recently but it actually fails a more logical test *i.e.* of environmental clearance. Again, disputed public hearing and an inadequate and incomplete environmental impact assessment report make it an irresponsible initiative.[39]

EIA Notification 2006: Doubtful attempts of decentralization

On September 14, 2006, the Ministry for Environment and Forests (MEF) issued a notification replacing the earlier EIA law, despite furious lobbying and campaigns by environmental organisations and some Parliamentarians in the weeks preceding this notification.[40]

In 2005 the Ministry of Environment and Forest published a note that the environment clearance process shall be "re-engineered' and this was

37. See, http://www.cseindia.org/programme/industry/eia/sunderam.pdf (Visited on 20/11/2007).

38. R. Ramesh, "Is the Sethusamudram Shipping Canal Project Technically Feasible?" *Economic and Political Weekly* 271-274, (Jan 2005).

39. *Id.* at 274.

40. Bharath Jairaj, "EIA 2006 leaves much to be desired" *The Hindu* (Sept 23, 2006). *Available at* http://www.hindu.com/pp/2006/09/23/stories/2006092300020100.htm

being thought as a step towards bringing the improvements needed in the EIA process also. But when the notification was issued in 2006,[41] the law got further weakened. The major difference in the new EIA Notification 2006 from the earlier one (1994) is its attempt to decentralise power to the state government.[42]

The new EIA law categorises projects as A and B, for the purpose of clearance by the centre or state respectively. While 'decentralisation' effort is appreciated, the handing over of the EIA evaluation responsibility to the state governments without any system of checks and balances is unacceptable. In several projects, for example, thermal power plants up to 500MW, state governments directly promote the project and in fact, compete with each other to seek more investments.[43]

The area where there could have been major improvements in environment clearance process, *i.e.* public consultation, the new EIA notification is a major disappointment. The public consultation as was earlier done will still be conducted at the end of the environment clearance process where there is very little scope for the public to play any active role.[44]

The new EIA law also exempts several projects from the EIA process. Construction projects less than 20,000 square metres and new townships less than 50 hectares, for instance, are exempted from going through the EIA process. In its zeal to implement the Govindarajan Committee recommendations to expedite the entry of FDI into the country, the ministry has committed a serious mistake in prioritising time limits over the "precautionary principle."[45]

The focus of the new notification has been to reduce the time required for the entire environment clearance process. There seems to be no justification for this and may result in compromising on the efficiency and transparency of the clearance process, which was quite evident from the

41. *Available at* http://envfor.nic.in/legis/eia/so1533.pdf

42. The terms of reference (ToR) of the project will now be decided by the State Environment Appraisal Committee (SEAC) at the state-level and by Environment Appraisal Committees (EAC) at the central level. The will be decided on the basis of the information provided by the proponent. If needed the SEACs and EACs would visit the site, hold public consultation and meet experts to decide the ToR. The final ToR has to be posted in the website for public viewing. Though this seems good on paper, however, the proponent itself is providing the information for finalisation of ToR and moreover there is no compulsory provision for public consultation. Further, if the EAC does not decide the ToR within the stipulated time, the project proponents can go ahead with their own ToR. See, http://www.cseindia.org/programme/industry/eia/existing_notification.htm

43. *Supra* note 40.

44. See, http://www.cseindia.org/programme/industry/eia/existing_notification.htm

45. *Supra* note 40.

earlier notification even though the process had more time.[46]

Importance of public participation in EIA

An ideal environment clearance process requires that there are "frequent public involvement provisions, full access to information, the right of appeal to an independent third party, the full involvement of interested and affected parties and an explicit decision making role for the public." Public participation deserves attention because the degree of participation affects the quality of the environmental impact analysis process, which, in turn, affects the quality of the decision about a project.[47]

Broader participation creates more information and alternatives to be presented to decision makers, enhancing the opportunity to mesh public values and government policy.[48]

EIA is effective in providing local people with an opportunity to be heard and to participate in decision-making that affects their environment. EIA facilitates democratic decision-making and consensus building regarding new development.[49]

The public needs to be aware of the procedures for participation in environmental decision-making, have free access to them and know how to use them. But the environmental public hearing (EPHs) process that began from 1997 in India fails to make any necessary changes in the project. This is because industries violate the legal provisions and go for hearing only after their projects have become functional and not prior to it, as is mandatory.[50]

Years after they were first introduced, public hearings continue to be organized with an extremely casual and token approach. In a public hearing for opencast mining proposed in Bandurang (Jharkhand) on 25th February 2004, the EIA and environment management plan were not made available

46. The earlier process took around 14-19 months for rapid EIA and 21-28 months for comprehensive EIA. As per the new notification, the category A project will be completed only in 10.5 to 12 months. See, http://www.cseindia.org/programme/industry/eia/existing_notification.htm

47. William A. Tilleman, "Public Participation In The Environmental Impact Assessment Process: A Comparative Study Of Impact Assessment In Canada, The United States And The European Community" 33 *Columbia Journal of Transnational Law Association* 337 (1995).

48. *Ibid.*

49. Nicholas A. Robinson, "International Trends In Environmental Impact Assessment" 19 *Boston College Environmental Affairs Law Review* 591 (Spring 1992).

50. "How Public Are 'Public' Hearings?" *The Times of India*, Ahmedabad (Jan 30, 2002).

prior to the hearing, clearly violating what law otherwise mandates.[51]

EIA ensures good CER practice and is so far the most powerful and well-known regulatory measure in India. But unfortunately EIA procedure in India remains half-hearted. The principal flaw is that ministry has an inadequate machinery to monitor whether or not the conditions are met. Due to the weak incorporation of it in the legislation, there is little or no jurisprudence on the principle.

The first step should be to amend the project screening criteria to ensure that EIAs are not limited to activities, which will affect the environment 'to a significant extent' as is the common practice.

The EIA process must also be triggered where there is uncertainty regarding the possibility of serious environmental impact. Although the parameters of environmental uncertainty are elusive, particularly at the larger scale, guidelines could be prepared to render this threshold operable. This is where more work on risk assessment and uncertainty analysis needs to be undertaken.[52]

To be sure, the EIA process can be contentious when countervailing interests use EIA studies to emphasize their various positions. In a democracy, however, it is better to have the reasoned examination of these contending views in the factually informed context of EIA than to ignore them or treat them exclusively as political views.[53]

Conclusion

Environmental assessment enables us in carrying out environmental cost-benefit analysis of projects at an initial stage. It is thus a precursor to detailed analysis of environmental impacts, which are taken up only if a need for the same is established. It gives a view of the actors involved in the 'development-environment linkages. This is required in view of the fact that the community at large is always at a loss in terms of deterioration of living environment that accompanies industrial development. Based on environmental assessment, the regulatory measures can be identified and the roles of concerned agencies defined for achieving more efficient environmental management.

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51. Kanchi Kohli "An impacted assessment process" (Apr 2004). *Available at* www.indiatogether.org http://www.indiatogether.org/2004/apr/env-eiarules.htm (Visited on 11/11/2007).

52. Warwick Gullett, "The Precautionary Principle In Australia: Policy, Law & Potential Precautionary EIAs" 11 *Risk: Health, Safety and Environment* 93 (Spring 2000).

53. Nicholas A. Robinson, "International Trends In Environmental Impact Assessment" 19 *Boston College Environmental Affairs Law Review* 591 (Spring 1992).

In view of the fact that development is an ever-growing process, its impact on the environment is also ever increasing, leading to rapid deterioration in environmental conditions. As such environmental assessment provides a rational approach to sustainable development and, therefore, should be made more effective.

India's current emphasis on economic development seems to eclipse its environmental protection efforts. But the combination of strong legislative mandates, an activist judiciary, aggressive public interest litigators, and a proliferation of highly committed environmental NGOs means that India is no longer the haven it once was for industries indifferent to environmental values.[54] Thus, one may hope that the history of environmental degradation that has characterized investment in India's power and industrial sectors has begun to slow.[55]

The biggest problem facing India's environment is not a lack of environmental laws. Nor is it a lack of precedent to protect our environment. The single biggest issue facing India's beleaguered, yet resilient environment today is the failure of the Indian government to adequately enforce existing environmental laws.[56] There is no excuse good enough, no obstacle obtrusive enough, and no circumstance restrictive enough to exonerate the government from failing to perform its statutory duty to arrest environmental decline.[57]

Therefore, EIA requires to be made an effective mechanism for making the corporate responsible to its environment obligations.

Amartya Sen, writes:[58]

> The ends and means of development require examination and scrutiny for a fuller understanding of the development process; it is simply not adequate to take as our basic objective just the maximization of income or wealth, which is, as Aristotle noted, 'merely useful and for the sake of something else.' For the same reason, economic growth cannot sensibly be treated as an end in itself. Development has to be more concerned with enhancing the lives we lead and the freedoms we enjoy.

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54. Armin Rosencranz and Kathleen D. Yurchak, "Progress On The Environmental Front: The Regulation Of Industry And Development In India" 19 *Hastings International and Comparative Law Review* 489 (Spring 1996).

55. *Id.* at 527.

56. Book Excerpts from M.C. Mehta's "The Accountability Principle: Legal Solutions to Break Corruption's Impact on India's Environment" 21 *Journal of Environmental Law and Litigation* 141 (2006).

57. *Ibid.*

58. Amartya Sen, *Development as Freedom* 14 (1999).

There is a contentious mix of competing values: environmental, economic, developmental, religious, and political in India over rights and development but priorities of environment protection should not be compromised thoughtlessly if we are to survive.

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