

## **Cautionary Signals**

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### **GREEN TAPISM: ENVIRONMENTAL IMPACT ASSESSMENT NOTIFICATION, 2006**

**By Leo F.Saldanha, Abhayraj Naik, Arpita Joshi, Subramanya Sastry  
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*This book is a 'must read' for policy makers, engineers, scientists, contractors, independent thinkers and even investors who should be sensitive to India's environment. The passionate plea at the end of the book for scrapping this notification and reinstating the 1994 notification minus its deficiencies does not seem to have been heard so far amidst the din and noise of the need for growth and investment, but a heavy price will be paid by future generations of Indians if such cautionary signals emanating from publications such as this are ignored.*

It is unusual for a book which is itself a 'Review' to be reviewed by a person with an evident bias in the subject, it is better therefore that the bias is brought up front before readers draw their own conclusions. The reviewer was connected with the formulation of the first notification in 1994 under the Environment Protection Act 1986 dealing with Environmental Impact Assessment (EIA) which has been superseded (or at least apparently so) by the EIA notification of 2006. The reviewer is also mentioned in page 103 of the book as one who left the task force set up by the Planning Commission in March 2006 to review the EIA laws, politics, procedures etc as wide consultations were not encouraged. It is a piece of irony or more that the EIA Notification itself was issued in September 2006 before the reconstitution task force had even submitted its report in December 2006! The reviewer has also joined about 159 others to suggest amendments to the notification of September 2006 on which the jury appears to be still out. But there should be no hesitation with even parties with some bias entering a debate concerning the natural resources of this country, the social order and the impact that follows the failure to look at alternatives that cause less or no damage to the environment or that results from the pursuit of wrong developmental projects and processes. The authors of the book argue at length that the notification of 2006 is flawed, not well understood and does not 'provide a framework for appreciating and minimizing their adverse impacts on environment and society'. If so, there is nothing wrong in the reviewer trying to look at what the book says and its implications.

The book begins with an introduction that mention the international treaties and Indian environmental legislation. This list is not exhaustive and would have done well to include other revenue laws for protection of water bodies, the Indian panel code provisions, Factories Act etc. It is not as though the country did not have any laws or self regulation before the British as there were several rulers who were concerned with protecting the natural wealth of the country. Even the village governing institutions like Panchayats ensured the sanctity of pasture lands, cleanliness of the local wells, ponds etc. Environmental jurisprudence does not only rely on the written codes relating to the subject of environment alone but also on cultural practices having social sanctions etc., which are also ingrained in the Supreme Court directions based on the doctrine of 'Public Trust'. Yes indeed, safeguarding our environment for the present and future generations is not simply a constitutional imperative but an obligation of the state and citizenry of this country. The authors have based their finding on testing the provisions of the EIA notification of 2006

in this perspective. They have expressed concerns about two other measures that are said to be on the anvil for the self certification of environmental clearances and exploitation of natural resources on the recommendations of a national commission. They have also dealt at length with the process leading to this notification that was based on the premise that 'environmental conservation priorities were to be tolerated only so long as they did not affect the promotion of investment'. They have pointed out the notification was issued without full transparency as well as the participation of groups likely to be affected. Somewhat sarcastically at times they have mentioned the full participation of industrial interests in this exercise. They have quoted from the Govindarajan Committee report on reforming investment approvals and implementation procedures in support, also pointing out that the ministry of environment and forests did mention to the confederation of Indian industry that the reforms of the EIA process had to be consistent with the Govindarajan committee recommendations. One of the recommendations of that committee quoted by the authors shows that in the speeding up of the process of approvals by expert committee on environment, such approvals should be presumed if not given within specified time periods. It is interesting to note that neither the Committee nor the authors of this book highlighted the need for those who wish to take up such project to spare a thought for environmental issues even as initial technical and financial issues were being sorted out. Invariably, the projects come up for environmental scrutiny after the project formalities have been sewn up, as it were, and then the gun is held at the heads of those who have to gauge the impact. The 1994 notification that provided for prior clearance for site-specific projects has also been diluted in the current notification.

The authors have refuted the claim that the notification is based on principles of decentralization and devolution. Thus while categorizing projects in two categories A and B, for clearance by the centre and the states respectively, the MoEF retains powers to clear inter-states and most high impact projects on the other hand the powers of the states to accord clearances is excessive and the local body institutions have been ignored in spite of the devolution of powers under constitutional Amendment Acts 73 and 74.

The provision for decisions by the environmental authorities to be unanimous has been challenged by the authors as this may result in silencing healthy debate. The constitution of the Expert Committees in the notification has also come under the scanner for leaving out the NGO sector and social scientists. The authors could have dramatised this by pointing out that to day a Salim Ali or M. Krishnan could not serve on such committees! The worry is also expressed that replacing several committees with different expertise by one expert committee

would result in cursory environmental clearances. Making site visits optional dilutes the provision in the 1994 notification that mandated it. There are no safeguards in the screening process to ensure projects getting categorized as B2 projects requiring no EIA report. No guidelines for the preparation of the 'pre-feasibility reports' or conceptual plans have been laid down even though it is known that in the past several reports were found to be fraudulent or comprising irrelevant information. The notification has diluted the principle of 'scoping' whereby relevant EIAs come about, as it has made it an exercise to develop mere 'terms of reference' based primarily on inputs from the investor. The MoEF has completely copied the checklist prepared for project characteristics from the European Union formats ignoring the diversity of natural resources and people of tropical India!

One of the most serious objections of the authors to this notification is its jettisoning the provision in the 1994 notification that sought to make public hearing mandatory before securing environmental clearances and instead making the proviso that the regulatory authority can do without public hearing if 'it is not possible to conduct the public hearing in a manner which will enable the views of the concerned local persons to be freely expressed'. Another issue considered vexatious is that any person or group who is not

a 'local affected person' cannot raise concern about a proposed investment in a public hearing. Use of the phrase 'persons with a plausible stake' could also give rise to misuse to exclude wider participation. Exclusion of several important projects like expansion of highways and building activities from the public consultation process has also come in for severe criticism. The reduction of the time given for public hearing process, engaging of another public agency to conduct hearing when the State Pollution Control Board does not undertake or completes the hearing without clarity on the selection or guiding principles for such body, lack of clarity of the venues for public hearing –all these issues dilute the process according to the authors. They are also critical of the lack of guarantee in public access to the EIA report.

Many instances of unwarranted exemptions, such as railways, manufacture of automobiles, urban projects, metro projects and manufacture of lead acid batteries, etc, from the EIA process have been pointed out as being deleterious. The provision to exclude individual units in an industrial state itself is cleared and those to exclude SEZs and biotech parks by implication have been challenged. It would be difficult, in the limited scope of this review to point out all the flaws and deficiencies so well brought out in the book. It is repetitive at times and a bit prolix too but when the audience is not tuned to the concept of 'sustainable development' it becomes necessary perhaps to be both repetitive and prolix!

This book is a 'must read' for policy makers engineers, scientists, contractors, independent thinkers and even investors who should be sensitive to India's environment. The passionate plea at the end of the book for scrapping this notification and reinstating the 1994 notification minus its deficiencies does not seem to have been heard so far amidst the din and noise of the need for growth and investment, but a heavy price will be paid by future generations of Indians if such cautionary signals emanating from publications such as this are ignored.

*(R.Rajamani was formerly Secretary, Environment & Forests, Government of India, NewDelhi.)*

[Copies of Green Tapism may be ordered at a special discounted price of Rs. 200/- (for Indian orders only) from Environment Support Group, 105, East End B Main Road, Jayanagar 9<sup>th</sup> Block East, Bangalore 560069. Tel: 91-80-22441977/26531339 Voice/ Fax: 91-80-26534364. Please make Cheque/DD in favour of Environment Support Group (payable at Bangalore). The Introduction chapter of the book may be browsed at [www.esgindia.org](http://www.esgindia.org)]