Clause 22 of EIA Draft

Why in news?

The Clause 22 of the Environmental Impact Assessment (EIA) 2020 draft notification is one of its central issues.

What is EIA?

- EIA is the process or study which predicts the effect of a proposed industrial/infrastructural project on the environment.
- It prevents the proposed activity/project from being approved without proper oversight or taking adverse consequences into account
- EIA regulation is one of the few tools that we have to ensure that we are the true trustees of our natural environment.

What is the Clause 22?

- The Ministry of Environment, Forests, and Climate Change released this 2020 draft notification.
- Clause 22 of the draft sets out a process for **post-hoc legalisation** of projects that start construction and/or operation prior to receiving an environmental clearance.

What are the EIA regulatory violations?

- **History** - The EIA regulation was first introduced in 1994 through a notification under the Environmental Protection Act, 1986.
- It was significantly amended in 2006, superseding the 1994 notification.
- The draft EIA 2020 notification is an attempt to remake many provisions of the 2006 notification.
- **Violation** - Dealing with projects that fail to obtain prior clearance has been a difficult issue for the regulator.
- This because the project proponents could cite sunk investments if the penalty for violation involves shutting down the project.
- On the other hand, post-hoc legalisation of such violations could lead to perverse incentives for the industry.
- This proposal would render the entire regulation redundant.

What is the proposed legalisation process?

- The draft has laid out a process that violators should follow in order to continue their operations legally.
- The Appraisal Committee would assess whether the project can be run sustainably under compliance of environmental norms with adequate environmental safeguards.
- If the answer is no, it can recommend closure of the project.
- If the answer is yes, it will require the project proponent to assess the ecological damage and prepare a remediation plan.
- It will want the project proponent to prepare a 'natural and community resource augmentation plan', along with an EIA report.
- The project proponent is needed to submit a bank guarantee, equivalent to the cost of the remediation plan, prior to receiving an environmental clearance.
- In addition, there are monetary penalties specified for each day the violation occurs.

What is the concern?

- According to Clause 22, only the violators themselves or a regulatory or governmental authority can bring the violation to notice.
- It is not clear from the notification if any other stakeholders, like interested individuals, have a legal basis to report violations.

What could be done?

- The Ministry could constitute an official Committee.
- This Committee could conduct meetings with various stakeholder groups like individuals, civil society organisations, etc.
- It could made recommendations to the Ministry on the appropriateness of various amendments.
- Based on these recommendations, the Ministry could finalise the new notification.
- Such participatory processes would generate greater legitimacy for the regulations, potentially reducing conflict during implementation.

Source: Business Line



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