

FAT PROMISES AND LEAN PERFORMANCES: WHY IS ENVIRONMENTAL IMPACT ASSESSMENT UNDERPERFORMING IN INDIA?

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ABSTRACT

The United Nations Environment Program (“UNEP”) published the ‘Environmental Rule of Law: First Global Report’ in 2019. This report clearly identified the lack of compliance of environmental laws as the leading cause for environmental threats not being curtailed in practice. The aim of this article is to reflect on this ‘implementation deficit’ in India using the lens of Environmental Impact Assessment (“EIA”). The paper identifies eight key reasons which have led to the non-compliance of environmental laws in India. These include: a) lack of internal motivation within the country for complying; b) standard approach applied generically to all; c) copy paste culture amongst the stakeholders; d) lack of capacity and power imbalance; e) weakening of the EIA legislation; f) compartmentalizing EIA within technical disciplines; g) lack of coordinated effort amongst stakeholders; h) and finally, unwillingness to learn from experience. Accordingly, three specific recommendations have been put forward for India, especially within the context of EIA. First, a neutral committee should be set up who can play more of a supporting role, rather than a policing role to offer advice with regards to EIA. Secondly, EIA procedures need to be integrated with proactive management practices to facilitate an iterative process. Finally, the education system in the country needs to adopt a holistic and interdisciplinary approach in providing knowledge capacity within the subject area and thereby, influence practice.

I. INTRODUCTION

With environmental challenges increasing at an alarming rate, enactment of environmental laws has seen a dramatic increase of thirty-eight-fold

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since 1972.¹ Even then, environmental threats such as high level of pollution, declining biodiversity, and climate change continue to persist and pose severe threats.² The UNEP published the ‘Environmental Rule of Law: First Global Report’ in 2019 (“**UNEP Report**”). This report clearly identified the lack of compliance of environmental laws as the leading cause for environmental threats not being curtailed in practice. The report has furthermore cited several reasons for this ‘implementation deficit’. Examples of these reasons provided include, lack of clarity of the environmental laws, weak political will, lack of resources, and imported laws, which have not been tailored to the domestic country’s context. The UNEP Report urges countries to research on appropriate approaches in enhancing environmental compliance.³ However, in order to do so there is a need to establish the main causes which are diluting environmental compliance. Accordingly, the aim of this article is to reflect on this ‘implementation deficit’ in India using the lens of EIA.

The rationale for using the lens of EIA is manifold. *Firstly*, 187 countries as of 2019 had legal instruments requiring the enforcement of EIA.⁴ This makes EIA act as a common denominator for comparing environmental considerations within the decision-making process across nations, worldwide. *Secondly*, EIA has been around as a mandatory requirement for more than two decades in most countries, including India.⁵ As a result, there is substantial experience with the EIA practice, both in the developing and the developed world. Furthermore, the EIA regime is

¹ *Environmental Rule of Law: First Global Report*, U.N. Environment Programme, (2019) available at <https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report#:~:text=NAIROBI%E2%80%942024%20January%202019%20%E2%80%93%20The,over%20the%20last%20four%20decades>, last seen on 15/02/2021.

² *9 Out of 10 People Worldwide Breathe Polluted Air, but More Countries are Taking Action*, World Health Organization (02/05/2018), available at <https://www.who.int/news/item/02-05-2018-9-out-of-10-people-worldwide-breathe-polluted-air-but-more-countries-are-taking-action>, last seen on 15/02/2021.

³ *Supra* 1.

⁴ *Ibid*.

⁵ U. J. Thakur & F. Khosravi, *Beyond 25 Years of EIA in India: Retrospection and Way Forward*, 87 *Environmental Impact Assessment Review* (2021); U. J. Thakur & T. B. Fischer, *25 Years of the UK EIA System: Strengths, Weaknesses, Opportunities and Threats*, 61 *Environmental Impact Assessment Review*, 19-26 (2016); J. Arts et al., *The Effectiveness of EI as an Instrument for Environmental Governance: Reflecting on 25 Years of EIA Practice in the Netherlands and the UK*, 14 *Journal of Environmental Assessment Policy and Management* (2012).

currently undergoing reformations in India through the EIA Draft Notification of 2020 (“**Draft Notification, 2020**”).⁶ This has raised pertinent questions with regards to its effectiveness, which makes it an ideal candidate for exploring the causes behind the lean performances of environmental laws in India.

This commentary draws on the experience of the author conducting EIA related research for nearly two decades. This involves several field visits, interviews with stakeholders, desktop surveys, literature reviews and more recently, participation in debates and discussions with regards to the latest Draft Notification, 2020⁷, on various platforms. In the course of exploring the ‘implementation deficit’ of EIA in India, the paper is divided into three sections. First, an overview of EIA as a process is presented, followed by a section which explores the causes of implementation deficit within the context of EIA in India. In the third section, a wider discussion is presented alongside possible solutions and finally, conclusions are drawn.

II. ENVIRONMENTAL IMPACT ASSESSMENT: AN OVERVIEW

EIA is a globally accepted tool, which supports decision-making by incorporation of environmental considerations and values within the planning process of proposed projects.⁸ EIA was made mandatory in India through the enactment of the EIA Notification in 1994 (“**1994 Notification**”), which was an amendment to the existing environmental legislation (Environmental Protection Act, 1986). Based on the 1994 Notification, all projects listed in its Schedule I, are required to seek permission for development on the basis of an EIA. This process is known as Environmental Clearance (“**EC**”) in India⁹ and it defines the role of the Ministry of Environment, Forest and Climate Change (“**MoEFCC**”) within the EIA process. The notification has undergone several changes

⁶ Ministry of Environment, Forest and Climate Change, *Notification*, available at http://parivesh.nic.in/writereaddata/Draft_EIA_2020.pdf, last seen on 15/02/2021.

⁷ Ibid.

⁸ R.K. Morgan, *Environmental Impact Assessment: The State Of The Art*, 30(1) Impact Assessment and Project Appraisal, 5-14 (2012); Arts et al., supra 5.

⁹ U. J. Thakur & A. Rajvanshi, *Strategic Environmental Assessment In India: Trends and Prospects*, Chapter 25, in *International Handbook of Strategic Environmental Assessment* (Edward Elgar, 2020).

and currently, the EIA Notification, 2006¹⁰ (“**2006 Notification**”) is operational. EIA consists of several stages which involve preparing the EIA report; considering the public consultation procedure; reviewing the EIA documentation and decision-making; and finally, conducting the EIA follow-up or post-project monitoring.¹¹ It should be noted that the EIA Notification is further supported by other environmental legislations which existed prior to its enactment. Examples include, the Water (Prevention and Control of Pollution) Act 1974, the Water (Prevention and Control) Cess Act 1977, and the Air (Prevention and Control of Pollution) Act 1981.¹² The Central Pollution Control Board (“**CPCB**”) along with its subsidiary State Pollution Control Boards (“**SPCBs**”) is responsible for the compliance of these laws, which complements the MoEFCC’s efforts in delivering environmental protection.

Over the years, the EIA process in India has been reviewed and criticized for suffering from various weaknesses which have diluted its overall effectiveness.¹³ However, the purpose of this commentary is not to review the EIA process but to focus on the implementation or lack of compliance of the measures within this umbrella framework and tease out the reasons for such non-compliance.

III. EXPLORING THE FACTORS LEADING TO ‘IMPLEMENTATION DEFICIT’ WITHIN EIA IN INDIA

The persistence of weak compliance for environmental laws in India has already been established in literature.¹⁴ Furthermore, lack of compliance has been identified as an essential impediment, which has diluted the

¹⁰ Ministry of Environment and Forests, Government of India, *Notification 2006*, available at <https://parivesh.nic.in/writereaddata/ENV/EnvironmentalClearance-General/18.pdf>, last seen on 15/02/2021.

¹¹ A.K.A. Rathi, *Evaluation Of Project-Level Environmental Impact Assessment and SWOT Analysis Of EIA Process In India*, 67 *Environmental Impact Assessment Review*, 31-39 (2017), available at <https://doi.org/10.1016/j.eiar.2017.08.004>, last seen on 15/02/2021; R. Paliwal, *EIA Practice In India and Its Evaluation Using SWOT Analysis*, 26 *Environmental Impact Assessment Review*, 492-510 (2006), available at <https://doi.org/10.1016/j.eiar.2006.01.004>, last seen on 15/02/2021; Supra 10.

¹² W. Banham & D. Brew, *Environmental Assessment: A Review of The Development of Environmental Impact Assessment In India*, 11 (3) *Project Appraisal*, 195–202 (1996).

¹³ Thakur & Khosravi, supra 5; Rathi, supra 11; Paliwal, supra 11.

¹⁴ K. Priyadarshini & O. K. Gupta, *Compliance to Environmental Regulations: The Indian Context*, 2(1) *International Journal of Business and Economics*, 9-26 (2003).

overall effectiveness of EIA in India and has been detrimental to EIA's role in delivering environmental protection.¹⁵ The recent Vizag gas leak bears testimony to the blatant non-compliance of EIA requirements.¹⁶ The following paragraphs explore and tease out the reasons for weak environmental compliance in India, especially in the context of EIA.

1. Lack of motivation to comply:

EIA in India was introduced largely owing to the requirements of foreign donor agencies. EIA, since its early years had been perceived to be a facilitation tool, which was seen as a means to get funding.¹⁷ This perception shaped the attitude of developers profoundly whereby even now, EIA is seen as a means to an end rather than a tool for protecting the environment. In more recent times, legal compliance is what is mainly initiating EIAs. Environmental laws which act as the 'stick' in ensuring compliance have an intrinsic impediment as they are based on coercion rather than motivation. However, the 'command and control' method is not receiving the required effects as the penalties for non-compliance is perceived to be insignificant. Furthermore, due to lack of capacity of regulators to monitor, non-compliance is not easy to detect.¹⁸ Overall, EIA is based on regulations which can neither be monitored nor effectively penalize in cases of violation, making the legal requirements toothless. This setting implies that the motivation for conducting EIAs is externally implied on the developers and that too is not backed up effectively, for implementation.

¹⁵ U. J. Thakur, T.B. Fischer and A. Rajvanshi, *Reviewing Design Stage Of Environmental Impact Assessment Follow-Up: Looking At The Open Cast Coal Mines In India*, 27 (1) Impact Assessment and Project Appraisal, 33–44 (2009); R. Paliwal and L. Srivastava, *Adequacy of the follow-up process in India and barriers to its effective implementation*, 55 (2) Journal of Environmental Planning and Management, 191–210 (2012).

¹⁶ *Vizag Gas Leak: LG Polymers Operated Without Appropriate Environmental Clearance*, The WIRE (08/05/2020), available at <https://thewire.in/government/vizag-styrene-gas-leak-lg-polymers-environmental-clearance>, last seen on 17/04/2021.

¹⁷ I. N. Sinha, *A Framework of EIA for Environmental Sustainability*, ENVIS Monographs No. 8, Dhanbad, India: ENVIS Centre on Mining Environment, Indian School of Mines, (2001).

¹⁸ Thakur & Khosravi, supra 5; Supra 14.

2. One size fits all approach:

India is a land of diversity and yet, the environmental standards and approaches adopted seem to be standardized to fit all sizes and shapes. For example, when an EC letter is accorded by the MoEFCC, it mandates conditions that become legally binding on the proponent. In investigating compliance conditions for open cast coal mines, it was observed by Jha-Thakur, that the requirement of maintaining over burden dumps was specified to be 28 degrees for all open cast coal mines.¹⁹ However, during field visits, it was observed that in one of the mines, which were located in hilly terrain, the dumps were constructed steeper. These dumps were also engaging with better technology of using toe-walls to maintain dump stability. The reason for not meeting the stipulated requirement was due to the hilly terrain, which did not provide the proponent enough space to have flatter dumps. Interestingly the compliance officers from the regional offices of the MoEFCC were aware of this non-compliance. Nevertheless, both parties, rather than following the procedure for requesting to change the condition in the clearance letter, continued business as usual. The regional representatives of the Ministry informally agreed on the change which technically implied that the proponent did not comply with the conditions specified. This was because the parties (both proponent and the regional regulators), felt that this would procedurally be complicated and cost time.²⁰ Hence, the procedural rigidity of the system itself facilitated non-compliance.

3. Copy paste culture:

The stipulated conditions categorized as ‘general’ and ‘specific’ based on which EC is accorded by the MoEFCC have been often cited to be copy pasted by the regulating authority rather than adjusted to reflect the bespoke requirements of the project.²¹ In 2008, an EIA report was found

¹⁹ U. J. Thakur, Environmental, *Impact Assessment Follow-Up in India: Exploring Regional Variation*, 13 (3) *Journal of Environmental Assessment Policy and Management*, 435–458 (2011).

²⁰ *Ibid.*

²¹ Thakur & Khosravi, *supra* 5; Rathi, *supra* 11; Paliwal & Srivastava, *supra* 15.

to be plagiarizing from an EIA report of a bauxite mine in Russia.²² This point was further raised on discussion platforms recently, while exploring the relevance of the Draft Notification, 2020, whereby highway expressway projects were found to be copy pasting materials in their EIA report.²³ This problem is further enhanced owing to the lack of good quality baseline data.²⁴ If the fundamentals are plagiarized, then environmental legislation and its compliance cannot deliver environmental protection. This copy paste practice reflects apathy and shoddy work culture, which unfortunately has been exhibited by both, the regulating agencies as well as the proponents, and defies the very purpose of the legal requirements.

4. Lack of capacity and power imbalance:

This is perhaps one of the most critical weaknesses of the legal system, which undermines its compliance. Based on the 2006 Notification, the regulating agencies are required to visit the company sites to check compliance. However, the regional offices of the MoEFCC are severely understaffed.²⁵ Compliance officers from the regional offices are hence compelled to set targets with regards to the number of industries they can check per year. Following this approach, the officers can visit the same company for compliance checking once in 3 to 4 years.²⁶ The situation has remained the same over the years and is further curtailed owing to the fact that the power imbalance between the regulating agency and the proponents is huge, making external compliance checking tokenistic. More disturbingly, there is threat for environmental professionals from powerful lobbying.²⁷ As a matter of fact, the alarming state of security for environmental supporters is reflected across the world as the UNEP

²² A. Majumder, S. Balwani and S. Parik, *New Notice Latest in 20-Year Dilution to Green Law*, Article 14, available at <https://www.article-14.com/post/new-notification-latest-in-20-year-dilution-to-environmental-protection>, last seen on 14/02/2021.

²³ *Environmental Regulation in India: EIA and Beyond*, Observer Research Foundation, available at <https://www.orfonline.org/research/environmental-regulation-india-cia-beyond/>, last seen on 15/02/2021.

²⁴ Rathi, supra 11.

²⁵ Supra 19; Rathi, supra 11.

²⁶ Supra 19.

²⁷ *Environmental Lawyer Who's Fought Over 350 Cases: Ritwick Dutta*, Mint (01/09/2014), available at <https://www.livemint.com/Multimedia/7KZz4d9LDeSjW0ZjWbLA5O/Environment-al-lawyer-whos-fought-over-350-cases-Ritwick-Du.html>, last seen on 14/02/2021.

Report states: “Between 2002 and 2013, 908 people were killed in 35 countries defending the environment and land, and the pace of killing is increasing”.²⁸ The recent instances of attack on environmental activists in India further bear testimony to this fact.²⁹ Hence, capacity and power imbalances are intrinsically intertwined issues, which contribute to the weakening of compliance measures.

5. Weakening of the EIA Legislation:

EIA was made mandatory in India via the 1994 Notification, which was introduced under the Environment Protection Act of 1994. As mentioned earlier, it is the 2006 Notification which is currently operationalized and a Draft EIA Notification has been proposed in 2020. However, it is worth noting that the notification status does not enjoy full power like a statutory law and is not discussed in the legislature.³⁰ In order to truly translate EIA within the Indian context, it needs to be discussed democratically and not merely be kept as a ‘Notification’, which has been said to be “*an indicator of the cavalier position of EIA in environmental governance in India.*”³¹ Furthermore, the 1994 Notification was amended 11 times in 12 years while the 2006 Notification has faced 40 interventions in the last 14 years.³² Subsequent amendments have been reported to be diluting the essence of EIA while the currently proposed Draft Notification, 2020 has been fiercely criticized and has been said to be ‘designed to fail’.³³ Hence, if legislation is expected to be complied with, its creation needs to be embedded with credibility, commitment and trust of the public.

²⁸ Supra 1, at 186.

²⁹ Disha Ravi: India activist arrest decried as 'attack on democracy', BBC, available at <https://www.bbc.com/news/world-asia-india-56066478>, last seen on 07/03/2021.

³⁰ Supra 23.

³¹ S. James & N. Udayashankar, *From 2006 to 2020: The Ongoing Problems of the EIA*, Socio-Legal Review, available at <https://www.sociolegalreview.com/post/from-2006-to-2020-the-ongoing-problems-of-the-eia>, last seen on 15/02/2021.

³² Supra 9.

³³ S. Bhatiya, *IIFM Organizes Discussion on The Implications of Draft EIA Notification, 2020*, Let Me Breathe, available at <https://letmebreathe.in/2020/08/01/iifm-organizes-discussion-on-the-implications-of-draft-eia-notification-2020/>, last seen on 15/02/2021.

6. Compartmentalized within disciplines:

EIA in India is dominantly technical in nature and is circumscribed with technical education such as, natural sciences and engineering.³⁴ However, EIA is essentially multi-disciplinary in nature, which is not necessarily reflected within the EIA system in India.³⁵ In recent discussions on Draft Notification, 2020, EIA has been criticized for being ‘bad science’.³⁶ This is alarming as EIA internationally is considered as ‘science and an art’.³⁷ Considering that EIA is essentially part of environmental governance and is just a ‘piece in the puzzle’³⁸, isolating EIA to be ‘bad’ and rejecting it is like throwing away the baby with the bath water! Lack of holistic understanding of the subject and treating it with a parochial view can be stripping off the tool of its potential. This lack of understanding, perhaps, is also the reason for apathy towards environmental legislation. In order for environmental legislation to be developed and tailored for the Indian context, it is important to have a multidisciplinary take on the subject area. This is further expected to facilitate understanding amongst the different disciplines, including legal studies to better cater to the requirements of the Indian context. The challenges for EIA seem to be cultural and political rather than technical and hence, EIA related education and knowledge related capacity-building is imperative if changes in attitudes and behaviors are to be introduced.³⁹

³⁴ U. J. Thakur, *Environmental assessment in South Asia: underrepresented in the international academic literature?*, 18 (2) *Journal of Environmental Assessment Policy and Management*, 1601002 (2016).

³⁵ T.B. Fischer & U. J. Thakur, *Environmental assessment and management related higher education master level degree programmes in the EU—an analysis*, 15(4) *Journal of Environmental Assessment Policy and Management*, 1350020 (2013).

³⁶ *Supra* 23.

³⁷ A. M. Saunders & S. Sadler, *The art and science of impact assessment: results of a survey of LAIA members*, 28 (1) *Impact Assessment and Project Appraisal*, 77-82 (2010).

³⁸ T.B. Fischer, S. Kidd, U. J. Thakur, P. Gazzola & D. Peel, *Learning through EC directive-based SEA in spatial planning? Evidence from the Brunswick Region in Germany*, 29(6) *Environmental Impact Assessment Review*, 421–428 (2009).

³⁹ F. Khosravi, U. J. Thakur & T. Fischer, *Enhancing EIA systems in developing countries: A focus on capacity development in the case of Iran*, 670 *Science of the Total Environment*, 425-432 (2019); U.J. Thakur, P. Gazzola, D. Peel, T.B. Fischer & S. Kidd, *Effectiveness of strategic environmental assessment—the significance of learning*, 27 (2) *Impact Assessment and Project Appraisal*, 133–144 (2009); Rathi, *supra* 11.

7. Lack of co-ordination:

Environmental legislations (such as the Water Act, 1974)⁴⁰ and EIA related legislations (such as the 2006 Notification)⁴¹ do not work in isolation; their implementation and success depends on the co-ordination with other related departments and legislations. A holistic understanding of these interrelationships is essential in order to deliver the required protection. Lack of co-ordination has already been pointed out as a weakness of the EIA legislation in India.⁴² An example that can reflect this complex relationship is from the closure of coal mines. The land for mining is usually acquired by the mining company from the State Government as lease. On completion of mining, based on the conditions provided in the EC letter by the MoEFCC, the company needs to restore the land and hand it over back to the state government. On further investigation, it was realized that state governments seldom take back the possession of the land. The mining company spends substantial number of resources on tree planting and post-planting care of saplings on the land. It is common to plant fruit trees and medicinal trees to enhance value of the produce for the local population. After taking care of the saplings for 5 years, the mining company cannot technically sell the produce from these trees. However, the state government is also reluctant to take the land back as they don't have resources to maintain the plantations and ultimately it becomes a no-man's land with a risk of losing all that had been invested in restoring it.⁴³ This example reflects the need for coordinated efforts, and holistic understanding of legal implications, if environmental protection is to be achieved sustainably in the long run.

8. Learning from experience:

The lack of flexibility of environmental legislation, as explained earlier, has deterred stakeholders' interaction. EIA essentially is an iterative process but due to procedural bottlenecks, the system has not been receiving

⁴⁰ The Water (Prevention and Control of Pollution) Act, 1974.

⁴¹ Supra 10.

⁴² Thakur & Khosravi, supra 5; Paliwal, supra 11.

⁴³ Supra 19.

feedback, which further prevents the dissemination of any best practices that might be there. This impedes translation of the EIA to the national context to suit the requirements of the country.⁴⁴ With weak enforcement and monitoring, environmental legislation works in a linear manner. However, the lack of will to learn from experience is further noted with regards to how EIA Notification has been changed over the years. The Draft Notification, 2020 does not pay any heed to the weaknesses of the EIA system rather; it dilutes it further.⁴⁵ For example, the Draft Notification has exempted projects associated with offshore and onshore exploration of Oil and Gas while we have just witnessed the 'Baghjan blast tragedy' in Assam.⁴⁶ This exemplifies that there is a lack of willingness to learn from experience not just within each EIA process, but also within the EIA system, which has now been in practice for more than 25 years in India.

IV. DISCUSSION AND THE WAY FORWARD

The key points discussed in the above sections are not exhaustive but can be said to be major factors that have diluted compliance of environmental legislations especially, within the context of EIA in India. Further, these factors are not mutually exclusive of each other. However, it should also be noted that the lack of compliance of environmental legislations despite an increase of new legislations is not unique to India, but has been a worldwide experience.⁴⁷ As a matter of fact, the factors that have been identified in this paper are also amongst the common factors within the UNEP Report. This paper simply puts forward the need to investigate the underlying problems associated with lack of compliance in order to develop approaches to enhance the credibility of our legislative system. In doing so, the case of EIA has been explored. However, further research

⁴⁴ Khosravi et al., *supra* 39.

⁴⁵ P.S Bindra & V. Rawat, *EIA 2020 legitimises environmental damage*, Sanctuary Nature Foundation, available at <https://sanctuarynaturefoundation.org/article/cia-2020-legitimises-environmental-damage>, last seen on 14/02/2021.

⁴⁶ *Assam: Draft EIA mocks Baghjan blast tragedy by exempting Oil and gas exploration*, INSIDENE (03/08/2020), available at <https://www.insidene.com/assam-draft-cia-mocks-baghjan-blast-tragedy-by-exempting-oil-and-gas-exploration/>, last seen on 17/04/2021.

⁴⁷ *Supra* 1.

and collaborative partnerships are required involving academics, regulators and practitioners to underline the causes of weak enforcements and develop innovative approaches of enhancing the credibility of the legislative system for environmental laws.

As discussed earlier, in the Indian scenario, especially within the context of EIA, the system is largely framed around a ‘command and control’ approach, even though the regulators are facing a resource crunch and the compliance monitoring mechanisms are weak, and not well coordinated. EIA Notification itself should not be kept as a subordinate law and if there is any expectation of better compliance, then empowerment of regulators is essential. However, the role of regulators shouldn’t be circumscribed as policing agents, rather their role can be extended to providing advice and suggestion. The role of Environment Agency in the UK and the Netherlands Commission of Environmental Assessment can be explored, for inspiration.⁴⁸ In India, what we need is a neutral committee, which neither appraises the environmental process nor writes the EIA report. The committee can provide training, engage with best practice dissemination, and enhance coordination amongst the relevant stakeholders, thereby adding a certain level of objectivity to the process.⁴⁹

Additionally, depending only on compliance related mechanisms can deliver limited success and this was realized way back in the 1990s. This is the time when for businesses, the introduction of a proactive approach like the introduction of Environmental Management Systems (“EMSs”) has brought about a paradigm shift.⁵⁰ In India too, EMSs are in practice but are not mandated as legislative requirements. EIA follow-up for example, can bridge the connection between legislative requirements and proactive EMSs.⁵¹ The foundation for this is already present in India whereby proponents have Environmental Management Plans. However, these too are treated like static documents. A more integrated approach of legislation

⁴⁸ Thakur & Khosravi, *supra* 5.

⁴⁹ *Ibid.*

⁵⁰ S. Tinsley & I. Pillai, *Understanding Organizational Drivers and Barriers*, (1st ed., 2006).

⁵¹ R. Marshall, J. Arts & A. M. Saunders, *International Principles for Best Practice EIA Follow-Up*, 23(3) *Impact Assessment and Project Appraisal*, 175-181 (2005).

and proactive management can be developed to complement the 'command and control' approach.

Finally, environmental education in India needs to be encouraged to encompass a multi-disciplinary perspective.⁵² It should not be taught only as cause-effect relation within natural science and engineering disciplines, but also as a social science. Governance mechanisms to consider the complexities and wider participation, is needed in order to deliver to its fullest potential. Educational provision along with capacity building amongst stakeholders, including administrative candidates, is essential in enhancing and empowering the stakeholders who participate within the system.⁵³

V. CONCLUSION

The UNEP Report on Environmental Rule of Law, 2019⁵⁴ has highlighted the issue of increasing environmental legislation but decreasing compliance worldwide, thereby rendering the legislations ineffective in protecting the rapidly deteriorating environment. This paper looks into the factors that have inhibited compliance of environmental legislation in India and in doing so, has used the lens of EIA. A total of eight factors have been highlighted, which are not mutually exclusive of each other. These include lack of motivation offered within the legal system to comply; lack of bespoke adjustments and a one size fit all approach; low quality work resorting to a copy paste culture; power imbalance and lack of capacity of regulators; need for adjusting legislation to suit the national context; lack of multi-disciplinary approach, lack of coordination and holistic understanding of issues and finally, the lack of will to learn from experience. Further research is needed to comprehensively study the factors and look for innovative approaches in collaboration with regulators, academics and practitioners. As a way forward, three initial recommendations have been provided which include: a) enhancing capacity of regulators and developing a neutral committee for

⁵² Supra 34.

⁵³ Khosravi et al., supra 39.

⁵⁴ Supra 1.

disseminating of best practices and providing guidance; b) complementing the command-and-control approach with more proactive measures and finally; c) enhancing the role of education in taking a multidisciplinary approach to environmental problem solving. The recommendations provided should help in shifting the focus from compliance-oriented system to more proactive performance enhancements, which should lead the way for delivering leadership in environmental sustainability in India.