



Does India need an Independent Regulator to Improve Environmental Governance?

A serious debate on environmental regulation in India has been underway emphasising on institutional restructuring to improve environmental governance and sustainable use of natural resources. In that backdrop, this issue note examines the current debate and emergent need for an independent environmental regulator.

The debate over environmental policy has never been as controversial as it is today. Environmental regulation several times stands accused of causing undesirable economic consequences. It is said that more environmental regulation could be expensive and not business friendly and it could reduce economic growth of the country. Several multinational companies do not want to invest their capital in countries with rigid environmental regulation and fleeing to more accommodating countries.¹ India is seen to have an onerous yet fragile environmental regulatory system. A section of the intelligentsia views that environmental regulation seriously harms India's economy and regulations need to be more business friendly. Consequently, there has been a long-standing debate around the establishment of an independent regulator, which is supposed to work autonomously from other government institutions and industries for better management of the natural resources. In this context, this issue note examines the present debate around environment regulation in India and the emergent need for an independent regulator for sustainable use and protection of natural resources.

The environmental regulations evolve and change with the development of a state. In first phase, the regulations are developed as resource control mechanisms. In the second phase, the

environmental policies and regulations are mostly developed in response to the risks and hazards. Further these regulations were strongly institutionalised nationally and internationally through different national and international legislations. India has already reached a stage where environmental risks and hazards are evident and inevitable, scarce natural resources need to be distributed judiciously and conserved, and the country needs to comply with many domestic and international obligations. In that context, would an independent environmental regulator be a right step towards consolidating and institutionalising environmental governance in the country?

The Current Debate

The present debate over strong environmental regulation has brought environmental governance back into policy focus and emphasises on establishment of an independent environmental regulator for better allocation and conservation of natural resources and protection of the environment. Groups and corporations in favour of the environmental deregulation argue that the risks were not as serious as everyone has assumed. Thus government interventions were not necessary and more regulation has a detrimental effect by misdirecting resources.

In recent years continued presence of risks and series of hazards, time and again reminds us that the threats are real and serious. In addition to the economic growth and business opportunities, environmental policies and regulations also required to check the overuse of the natural resources as well as for the protection of the ecological rights. In past couple of decades India witnessed several conflicts

¹ See Frank. S. Arnold (1999) *Environmental Protection: Is it bad for the economy*, Environmental Law Institute, NW, Washington; D.C. Michael Howes (2004) Environmental Policy & Regulation-is it necessary? Paper presented at Australasian Political Studies Association Conference, University of Adelaide; Jane. S. Shaw and Richard L. Stroup (2000) Do Environmental Regulations Increase Economic Efficiency? *Regulation*, 23 (1): 13-14.

over natural resources like land, forest and water.² There are few land mark judgments of judiciary in the sphere of environmental decision making have tried to protect the environment as well as rights of the local people over the natural resources.³

Need for Institutional Restructuring

For an effective regulated market there is a need of environmental policy integration across all the sectors. And to make these things workable there is also a need of restructuring our political, legal, social and economic institutions. Scholars like Ulrich Beck⁴ suggests that the institutions of governance designed in the past did not have the capacity to deal with the present risks. Therefore we need to create new institutions to tackle the present problems. In this context, presently there is need of institutional restructuring for effective environmental governance as past institutions of governance are ineffective in dealing with the present problems. In this way of environmental governance and institutional restructuring the setting up an independent environmental regulator could be one important step ahead.⁵

Several environmentalists working in the policy domain have been criticising the present model of Environmental Impact Assessment (EIA) in environmental decision-making.⁶ They have argued that EIA was supposed to be critical tool in the environmental decision making but it has been severely reduced its usefulness as an instrument. They raised major concerns over inadequate impact

assessment, poor public consultation, lack of transparency and credibility, insufficient independent appraisal and lack of post-clearance monitoring. It has also been criticised of slowing down clearance of the projects that affects people's livelihood and environment.⁷ In addition, the present structure of EIA, where expert appraisal committee relies on data provided by the project proponent, has been also severely criticised by the Supreme Court of India as well as several civil society organisations. The government has already acknowledged deficiencies in the process of environmental governance and introduced some peripheral changes. However, the institutional structure of the EIA has remained same.⁸

In this domain, the proposed independent regulator could be a hope to improve environmental governance. Even after the Supreme Court's repeated directions in July 2011 and January 2014⁹ to set up a national environmental regulator, there has not been much progress. Even the new government has not offered any indications of the plans to set up this new institution. This judicial pronouncement provides an opportunity for the government for a strategic intervention in environmental governance. Yet, it also comes as a challenge because the government has to respond to many questions and address varied interests in the process of setting up the environmental regulator. The challenge is to design a regulatory institution that is insulated from the political interference and pressure from the industry players

² Reports on illegal mining activity and forest law violation in Odisha and Haryana are most suitable example of this. See N, C, Saxena Committee report on Vedanta and CAG report on the afforestation programme in the mining areas of Odisha.

³ Recent Supreme Court judgment on the Niyamgiri for the protection of the culture and religion of *Dogria Kondas* is one of glaring examples of the judicial intervention in the sphere of the environmental decision-making.

⁴ Beck, U. 1992. *Risk Society: Towards a New Modernity*. London: Sage.

⁵ Shibani Ghosh (2011) The National Environment Assessment and Monitoring Agency: A Step Forward? *Economic and Political Weekly*, XLVI (38): 12- 16.

⁶ Manju Menon and Kanchi Kohli (2008) Re-engineering the Legal and Policy Regimes on Environment, *Economic and Political Weekly*, XLIII (23): 14-17.

⁷ See Manju Menon and Kanchi Kohli (2009) From Impact Assessment to Clearance Manufacture, *Economic & Political Weekly*, XLIV, (28): 20-23.

⁸ Shibani Ghosh (2014) Is There a Case for an Environmental Regulator? *Economic & Political Weekly*, XLIX (26 & 27): 19-22.

⁹ Earlier in July 2011, the Supreme Court in the *Lafarge Umiyam Mining Private Limited vs Union of India & Ors* had directed the then central government to set up an independent environmental regulator at the central and state levels for the project appraisal, enforcement of the environmental clearances and imposition of the penalties on violators etc. Keeping aside the Centre's opposition to a national regulator, a three judge bench on 6th January 2014 directed the Central government to setup an environmental regulator by 31st March 14 and said super regulator was the need of the hour because the present mechanism is deficient in many respects.

and also likely to be consistent with democratic ideas of accountability and make good decision reflecting the public interest.¹⁰ It has to address the issues around of preparation of the project appraisal, approval, post-project monitoring and issues of public involvement in the decision making process which is quite inadequate in the present system.¹¹ It also has to address the inter-institutional linkages separately because sometimes-functional overlap between other environmental bodies like State Pollution Boards, State Environmental Appraisal Committees etc. could create inter agency conflicts and stall the process.

The theories and best practices around the world suggest that a regulator should work for the benefit of the citizens, independent from industry interest and political interference. The environmental regulator as an independent agency can effectively address the above issues and could be work as an advocate for the long-term interest of the citizens of the country through bringing in transparency in decision making for allocation of the scarce resources. In addition, in the sphere of monitoring of the illegal use of the natural resources as well as protection of the marginal communities (especially those who depends on the natural resources), the regulator can also work as a mediating agency between state and the local people. Apart from this, the environmental regulator could set new technical standards in the environmental decision making.

¹⁰ Irene Wu (2008) Who Regulates Phones, Television, and the Internet? What Makes a Communications Regulator Independent and Why It Matters, *Perspectives on Politics*, 6 (4): 769-783.

¹¹ In the present system of EIA, the project proponent has the responsibility to conduct the survey and prepare the environmental assessment and there are no arrangements to check the validity and reliability of the data provided by the project proponents. In the time of approval sometimes it is observed that the decision of the ministry is political and approvals are given without proper cost-benefit analysis and finally it has been also observed several times that the projects were given approval without proper consultation with different stakeholder.

The national environmental regulator could be helpful for the state to show its commitment to reforms and reduce investor risk. This could also lead to market growth and innovation. It is well evident from the some of the sectors that the presence of transparent regulation and regulatory authorities have not stifled the growth of the industries rather they have complimented the industry's efforts to innovate and remain competitive.¹² Overall it could be said that, apart from the regulation, the role of the regulator is also important for the implementation of the policies and post-project environmental monitoring. In the long run this could help to achieve the goal of economic development with environmental sustainability.

Conclusion

From the above discussion it is clear that there is an urgent need to create and restructure our regulatory institutions for better environmental governance. In the way of institutional restructuring, proposed independent environmental regulator could contribute towards effective environmental governance. . This could help to stop the overuse and misuse of natural resources as well as protect the rights of the marginal communities. It could also help in the process of project appraisal and monitoring which has been criticised for their ineffectiveness. The institutional restructuring in environmental governance will also contribute towards the goals of sustainable development

¹² Pavel Chakraborty and Debashis Chakraborty (2007) Environmental Regulation and Indian Leather Industry, *Economic and Political Weekly*, XLII (19): 1669- 1671; Vinish Kathuria and Nisar A Khan (2002) Environmental Compliance versus Growth, *Economic and Political Weekly*, XXXVII (39): 3993-3999.

The Issue Note is prepared by Sarada Prasanna Das, Senior Research Associate, CIRC.
The views expressed herein are those of the authors and do not necessarily reflect
the views or position of CUTS Institute for Regulation & Competition (CIRC).

© CIRC, 2013. CUTS Institute for Regulation & Competition, R 75, 1st Floor, Greater Kailash I, New Delhi 110048, INDIA.
T: +91 11 26463021/22/23, F: +91 11 40535921, E: circ@circ.in, W: www.circ.in
Materials published by the CIRC may be reproduced free of charge in any format or medium provided it is reproduced faithfully, not used in a misleading context and properly attributed to the CIRC.