

Independent Regulator

Environment

March 18, 2021

Recently, the Supreme Court (SC) asked the government to explain the reasons for not setting up an “Independent Environment Regulator” to oversee green clearances under the Environment (Protection) Act, 1986. In 2011, the court had asked the Centre to appoint an independent national regulator for appraising projects, enforcing environmental conditions for approvals and to impose penalties on polluters.

In news: Supreme Court asks Centre why environment regulator has not been set up

Placing it in syllabus: Environment

Dimensions

- SC ruling on Lafarge Umiam Case
- What is the Present Arrangement?
- Need for an Independent Regulator

Content:

SC ruling on Lafarge Mining Case

The Supreme court had ordered the setting up of a national environment regulatory body to ensure independent oversight of green clearances way back in **July 2011** in **Lafarge Umiam Mining Private Limited v. Union of India**, commonly known as the ‘**Lafarge mining case**’.

SC had ordered the setting up of a national environment regulatory body under the **Environment (Protection) Act, 1986** with offices in as many states as possible.

The court had made it clear that till such mechanism was put in place, the Environment Ministry (MoEF) “should prepare a

panel of accredited institutions from which alone the project proponent should obtain the Rapid Environmental Impact Assessment (EIA) and, that too, on the Terms of Reference to be formulated by the MoEF”.

Envisaged Functions of the Regulator :

- The regulator will carry out independent, objective, and transparent appraisal and approval of projects for environmental clearances.
- It will also monitor the implementation of the conditions laid down in the clearances and impose penalties on polluters.
- While exercising such powers, the regulator will ensure the National Forest Policy, 1988 is duly implemented.

What is the Present Arrangement?

- There are several **Expert Appraisal Committee (EAC)** constituted by the Ministry of Environment, Forests and Climate Change under **EIA Notification 2006**.
- These conduct **Environmental Appraisal** of the projects related to Industry, Mining, Thermal Power, River Valley Hydroelectric Power, Nuclear Power, Infrastructure and Miscellaneous, New Construction and Industrial Estates including Additional Expert Committees for New Construction Projects and Mining Projects.
- The environmental clearance at the national level is overseen by an Expert Appraisal Committee (EAC), which **functions on an ad-hoc basis**, without much regulatory capacity.
- The state-level appraisal committees overseeing the clearance also function without much regulatory support.
- The committees function as per the Environment Impact Assessment (EIA) Notification 2006.

Need for an Independent Regulator

- In Lafarge Mining Case order, the court had explained the need for an independent regulatory mechanism, saying the “identification of an area as forest area is solely based on the declaration to be filed by the user agency [project proponent]. The project proponent under the existing dispensation is required to undertake EIA by an expert body/institution”.
- The green bench of the Supreme Court has been dealing with forest-related issues for almost two decades.
- The bench has experienced major problems with the way environment and forest clearances are granted.
- It has had to deal with **poor Environment Impact Assessment (EIA) reports** and bad decisions of the Forest Advisory Committee which recommends diversion of forestland for developmental projects.
- It has found conflict of interest in the way an EIA report is prepared and forest area is identified, demarcated and finally diverted for non-forest uses.
- the lack of credibility of the EIA process, leading to reports that are often produced with the help of dubious expertise and manipulated data.
- In most cases, the proponents also ignore the views of communities that would be displaced, and are ill-equipped to assess the loss of biodiversity and ecosystem services such as clean air, water and farm productivity.

Issues related to Environment Impact Assessment in India:

Lack of Capacity:

- EAC in India are constituted on ad-hoc basis with little regulatory capacity
- The state-level appraisal committees overseeing the clearance also function without much regulatory support.
- The committees function as per the Environment Impact

Assessment (EIA) Notification 2006.

Lack of Expertise:

- The EAC has been questioned on many occasions for lack of expertise of its members and chairpersons.

Lack of Proper Legislation:

- EAC and the state-level committees are toothless due to the lack of effective legislative power and supporting institutional capacity

Mould your thought: Does India need an independent Environmental Regulator? Discuss and justify your view in the context of the recent Supreme Court observations.

Approach to the answer:

- Introduction
- Discuss the present procedure related to Environment Clearances
- Discuss the recent SC views and Lafarge Mining Case Judgement
- Discuss the problems with this system
- Conclusion