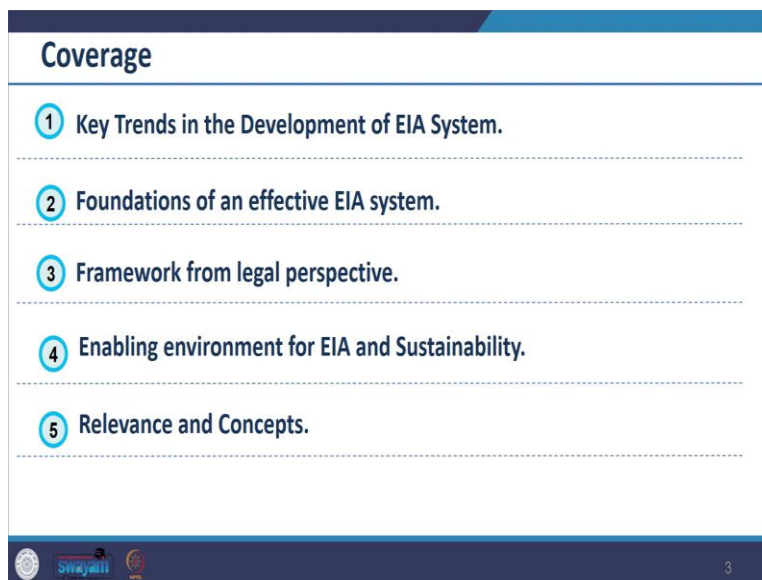**Environmental Impact Assessment**
Professor Harshit Sosan Lakra
Department of Architecture and Planning
Indian Institute of Technology, Roorkee
Lecture -13
EIA-Law, Policy and Institutional Arrangements for EIA Systems (Part- 1)

Welcome to the course- Environmental Impact Assessments. For the past weeks, we saw the environmental status and then looked into the need, the purpose of EIA, and the evolution of EIA, particularly in the USA and in India. Then we also looked at the Global timeline to understand what kind of law policy and institutional arrangements are there and how they align with the larger objective. So now, we will start looking at law policy and institutional arrangements for the EIA system at the global level. So, the key reference is the UN Training Manual Chapter 2, the link is provided in the reference section for you.
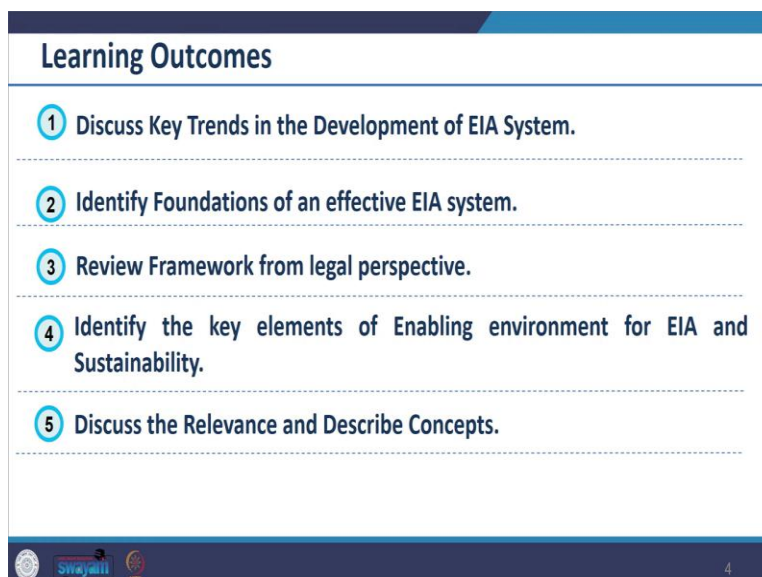
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So, the coverage for today would include that we will be looking into the key trends in the development of EIA systems, and we will look into the foundations of an effective EIA system like what are the characteristics of the context that makes EIA effective. Further, we will look into the framework of EIA. And we will look at, from the legal perspective, from the law perspective how we apply that. Further, we will also look at the enabling environment for EIA and like what are the context support that EIA needs for it to be implemented and reach the sustainability goal.

Lastly, we will look at, the relevance of why we need to know about the legal aspect of all these institutional aspects, and then we will also look at certain concepts, just for clarification purposes. So, the learning outcome, what is expected a few after completion of this particular session is that you should be able to discuss the key trends in the development of EIA systems and you may note that this is not evolving systems. So, you need to take everything in perspective.

And then you need to identify the foundations of an effective EIA system. What are those and then review the framework for EIA from the legal perspective. Then you should be able to identify the key elements of enabling environment for EIA and sustainability and then discuss the relevance and describe various concepts. You should be able to differentiate between the Legal Policy and the institutional setup which will do in due course of time.

So, recapturing the key trends in the development of the EIA system in our week 2 lectures if you may recollect, while looking at the EIA impacts, we saw that EIA systems have become progressively more broad. So, there were a lot of things that we talked about how EIA is taking new or newer topics and wider topics here. So, it covers wider a range of impacts, and there are multiple levels of decision from the local level to the international level.

So, there are a lot of changes that have happened in EIA. So, we see that it is more systematic procedures have been followed for EIA implementation, and there are improved quality controls how they were like how the standards have to be followed, how compliance has to be there, and how EIA would be enforced. Further, we see that there is a lot of consideration for an integrated approach and like not only taking the biophysical but as well as taking looking into the social, risk, health, and other impacts.

Further, we see that, in EIA, now, we have an extended framework where we look into temporal as well as spatial impacts. And like for the temporal, you can see that, we have started talking about the cumulative impact assessment for the spatial we are not just talking at the national level, but we are talking at the transboundary level. And then we are also talking at the ecosystem level and then looking at also looking at the global change.
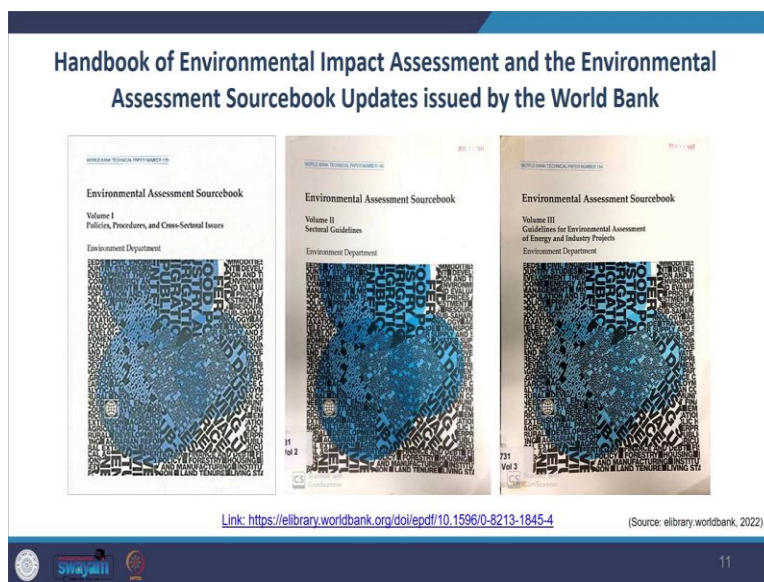
So, now there is also increasing concern for making provisions in the framework for Strategic environmental assessment which is also said as called SEA Strategic Environmental Assessment, which appears at an early

stage. So, you know about the IEA. So, SEA appears at an early stage of project design, and it facilitates the decision on the design and the location from policy, plan, and program proposal. So, compared to EIA, it comes at an early stage and it allows a lot of flexibility in how you approach your project design.

We will look at SEA, more in detail in the later part of our lectures and we will also differentiate it from EIA. So, we see that there is also increasing or emerging from the concept of sustainability and then these sustainability perspectives and principles have been incorporated a lot in EIA as well as in SEA processes. And then, we also see that now, we are starting to have greater linkages of EIA systems with the other planning like urban planning and then also sectoral planning so, that all integration is happening and then also with the regulatory system as well as the management regime.

And EIA has also become much more institutionalized now. So, you may also refer to, to have a review of the context, you can also see international studies of environmental assessment effectiveness, and how these systems are effective.

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Slide 13

Foundations of an effective EIA system

- **Clear basis in law and regulation;**

- Clear statement of objective(s) and requirement(s);

- Mandatory compliance and enforcement;

- Comprehensive scope of application to proposals with potentially significant impacts;

- Prescribed process of steps and activities;

- Provision for public consultation and access to information; and

- Linkage to project authorisation, permitting and condition setting.

Source: EIA Training Resource Manual, UNEP, 2002; Pg - 143

Slide 15

The Environment (Protection) Act, 1986

No. 29 OF 1986

[23rd May, 1986]

An Act to Provide for the Protection and Improvement of Environment and for Matters Connected therewith.

Whereas decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment;

And whereas it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property;

Be it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Environment (Protection) Act, 86.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and for different areas.

Short title, extent and commencement.

https://moef.gov.in/wp-content/uploads/2017/06/eprotect_act_1986.pdf

Ministry of Environment, Forest and Climate Change
Government of India

The power conferred by the Environment Protection Act are followed under the following heads:

S.No	Title
1.	Amendments to Principal Rules
2.	Coastal Regulation Zone
3.	Delegation of Powers
4.	Eco-Marks Scheme
5.	Eco-Sensitive Zone
6.	Environmental Clearance – General
7.	Environmental Labs
8.	Environmental Standards
9.	Hazardous Substances Management
10.	Loss Of Ecology
11.	Noise Pollution
12.	Ozone Layer Depletion
13.	Water Pollution
14.	2-T Oil
15.	Wetlands

https://moef.gov.in/en/rules-and-regulations/environment-protection/

EIA Notification, 2006 and CRZ Notification, 2011 have been amended from time to time to further streamline the clearance process.

Source: MEFCC, 2022

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The Environment (Protection) Act, 1986

No. 29 OF 1986

[23rd May, 1986]

An Act to Provide for the Protection and Improvement of Environment and for Matters Connected therewith.

Whereas decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment;
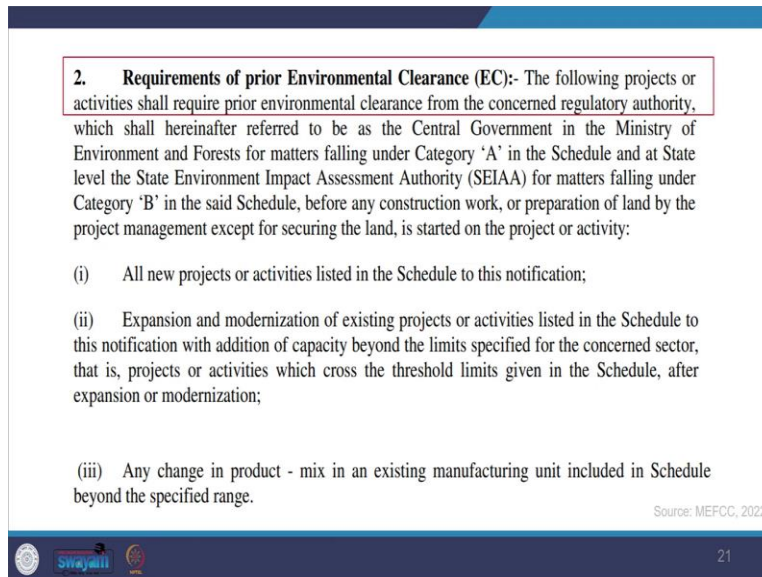
And whereas it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property;

Be it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:

Source: MEFCC, 2022

2. **Requirements of prior Environmental Clearance (EC):-** The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(i)   All new projects or activities listed in the Schedule to this notification;

(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range.

Source: MEFCC, 2022

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We can look at the Handbook of Environmental Impact Assessment and the Environmental Assessment sourcebook, you can look at the updated issued by the World Bank. So, let us first look into the foundations of an effective EIA system. So, like, what makes the EIA effective? What are the key characteristics, which one as a reviewer, when you are working on it, looking at a system reviewing a system, what aspects you should look at? So, that wherever the EIA is applied or where you are reviewing for the improvement purpose, you can see what makes the system workable.

And it reached its goal and here we mean to say Sustainable Development Goals. So, EIA systems should have one that it should have clear foundation and laws and regulations. So, it should have a distinct basis in law and regulation. And then it can be translated into any nation's system here. For example, we see in India, that the EIA system is well-established within the legal system. So, on the left-hand side of the image here you can see the Environmental Protection Act.

Which was enacted in 1986, to provide for the protection and improvement of the environment. So, that is how we have the act in place to facilitate the EIA system. On the right top, you can see that this ministry is conferred power, and the power which you can see the list of powers that include environmental clearance. And this I have taken from the Ministry site. On the right bottom, you can see a notification that specifically addresses and guides the clearance process, in our country.

So, in any EIA system, the framework should provide a clear statement of objectives and requirements. So, that clarity is very important because it might lead to a lot of interpretation. So, the EIA statement, and the purpose should be very clear. And the record as required has to be clear here. So, the Environmental Protection Act 1986 clearly states the purpose. So, the purpose, is you see the protection and improvement of the environment and for matters connected with it.

So, it is broader, and it tells that it is concerned with the environment for protection and improvement. So, I have taken a snip from the Environmental Protection Act 1986 here for your reference. So, here, we can see in the EIA notification stating which development activities will require environmental clearance. So, you have an entire list which has been provided here. It should have like you also see that, the EIA should have mandatory compliance and enforcement.

So, the act is formulated and bodies are set up with the power at the central regional, and state levels. So, wherever the system is, one needs to ensure that, it is mandatory and it can be enforced. So, the other aspect that we see is that the EIA system should be comprehensive in scope. So, it should allow coverage of all the environmental aspects for the application to proposals with potentially significant impact. So, whatever proposal can have a significant impact, should be included in the process. So, your system needs to be comprehensive in terms of scope.

(Refer Slide Time: 10:48)

US National Environmental Policy Act (NEPA, 1969)
Section 102- Procedural Requirement

Sec. 102 [42 USC § 4332]. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall --

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

https://www.fsa.usda.gov/Internet/FSA_File/nepa_statute.pdf

Source: NEPA, 1969

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Foundations of an effective EIA system

- Clear basis in law and regulation;
- Clear statement of objective(s) and requirement(s);
- Mandatory compliance and enforcement;
- Comprehensive scope of application to proposals with potentially significant impacts;
- **Prescribed process of steps and activities;**
- Provision for public consultation and access to information; and
- Linkage to project authorisation, permitting and condition setting.

Source: EIA Training Resource Manual, UNEP, 2002; Pg - 143

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So, in our case, as we had seen, while introducing EIA in India, that we follow a list system based on category and define threshold levels. I have just provided a snip of it here. A link is also provided to you for downloading the list here. So, you can see how those categories are defined here and which one will go to which level for scrutiny or will not be applicable for EIA. So, that is how we do it, undertake it.

So, when we compare this with NEPA, we saw that NEPA had a broad statement, which is subject to interpretation and is supported with guidelines as already seen before we have reviewed that. So, you see that, compared to them, ours is very specific, we follow a list whereas they have a system of reviewing it and then considering it for the EIA purpose. So, the EIA system should also prescribe the process of steps and activities that will be taken. So, there should, there needs to be clarity on how it will be done.

Here you can see EIA notification 2006 provides a clearance process you can see here the stages mentioned. So, you can see the stages like screening scoping, public consultation and how the appraisal has to be taken care of, we also saw in NEPA section 102, which defines the procedural requirement for the preparation of an

environmental impact statement. I have just taken a snip of it for your reference NEPA document link is also provided to you and we have already discussed that.

So, you can see here how within the NEPA, NEPA 1969, section 102 provides the procedural requirements. So, an entire page few pages are there, which gives you what should be considered and how it should be considered. So, those are mentioned in the act here. So, the EIA system should also prescribe the procedure and steps and activities which have to be followed.

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Foundations of an effective EIA system

- Clear basis in law and regulation;
- Clear statement of objective(s) and requirement(s);
- Mandatory compliance and enforcement;
- Comprehensive scope of application to proposals with potentially significant impacts;
- Prescribed process of steps and activities;
- Provision for public consultation and access to information; and
- **Linkage to project authorisation, permitting and condition setting**.

Source: EIA Training Resource Manual, UNEP, 2002; Pg - 143

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So, here, we see that EIA notification is an extra procedure for conducting public hearings. So, you see how a public hearing can be done here. So, the entire procedure has been given here. Further, the EIA system should have linkages to project authorization, permitting, and conditioning the setting. So, all this is like who will authorize it, where the permission will happen, and then the institutional setup. So, if you recollect that we saw in NEPA the setup of the organization.

Here in India, we see that there, are various sectors that integrate with the process. And then you see CPCB provides support and guidance. And then there is also CPCB providing technical services to the ministry here. So, you can see the snip from the website. So, that was about the foundational element that makes EIA effective in any system. So, you saw like range of things that should be there from the legal aspect to the process aspects, to the linkages aspect, public hearing aspects. So, all those make it possible for EIA to be translated on the ground.

(Refer Slide Time: 14:43)

Framework from legal perspective

- Broad definition of the environment and 'effects';
- Duty to avoid, mitigate or remedy adverse effects arising from an activity;
- Requirement for an EIA report to specify mitigation measures the proponent intends to apply;
- Procedural guidance on compliance and good practice in applying EIA arrangements; and
- Giving reasons for decisions on proposals subject to EIA.

Source: EIA Training Resource Manual, UNEP, 2002; Pg - 143

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Broad definition of the environment and 'effects';

2   THE ENVIRONMENT (PROTECTION) ACT, I   6

Defini-
tions.

2. In this Act, unless the context otherwise requires: —

(a) "environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property;

(b) "environmental pollutant" means any solid, liquid or ga-seous substance present in such concentration as may be, or tend to be, injurious to environment;

(c) "environmental pollution" means the presence in the en-vironment of any environmental pollutant;

(d) "handling", in relation to any substance, means the manufac-ture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of such substance;

(e) "hazardous substance" means any substance or preparation which, by reason of its chemical or physico-chemical proper-ties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organism, property or the environment;

(f) "occupier", in relation to any factory or premises, means a person who has control over the affairs of the factory or the premises and includes, in relation to any substance, the person in possession of the substance;

(g) "prescribed" means prescribed by rules made under this Act.

Source: EIA Training Resource Manual, UNEP, 2002; Pg - 143

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Duty to avoid, mitigate or remedy adverse effects arising from an activity;

The power conferred by the Environment Protection Act are followed under the following heads:

S.No	Title
1.	Amendments to Principal Rules
2.	Coastal Regulation Zone
3.	Delegation of Powers
4.	Eco-Marks Scheme
5.	Eco-Sensitive Zone
6.	Environmental Clearance – General
7.	Environmental Labs
8.	Environmental Standards
9.	Hazardous Substances Management
10.	Loss Of Ecology
11.	Noise Pollution
12.	Ozone Layer Depletion
13.	Water Pollution
14.	2-T Oil
15.	Wetlands

https://moef.gov.in/en/rules-and-regulations/environment-protection/

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Provides the outline of the EIA document;

APPENDIX III

(See paragraph 7

GENERIC STRUCTURE OF ENVIRONMENTAL IMPACT ASSESSENT DOCUMENT

S.NO	EIA STRUCTURE	CONTENTS
1.	Introduction	• Purpose of the report
		• Identification of project & project proponent
		• Brief description of nature, size, location of the project and its importance to the country, region
		• Scope of the study – details of regulatory scoping carried out (As per Terms of Reference)
2.	Project Description	• Condensed description of those aspects of the project (based on project feasibility study), likely to cause environmental effects. Details should be provided to give clear picture of the following:
		• Type of project
		• Need for the project
		• Location (maps showing general location, specific location, project boundary & project site layout)
		• Size or magnitude of operation (incl. Associated activities required by or for the project
		• Proposed schedule for approval and implementation
		• Technology and process description
		• Project description. Including drawings showing project layout, components of project etc. Schematic representations of the feasibility drawings which give information important for EIA purpose
		• Description of mitigation measures incorporated into the project to meet environmental standards, environmental operating conditions, or other EIA requirements (as required by the scope)
		• Assessment of New & untested technology for the risk of technological failure

https://moef.gov.in/wp-content/uploads/2017/08/so1533.pdf

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So, now looking further like looking at EIA, from the legal perspective, what should be there? So, that not lot many litigations would happen with it. So, it should cover a broad definition of the Environment and its Effects. So, you are at the statement, you have, should have a broader definition of environmental effect and it should identify the duty particularly to avoid, mitigate, or remedy adverse effects arising from any activity.

So, it should allow you to have those kinds of range of duties like there should be no conflict of duty, and you should be able to have powers to mitigate or take actions to control the adverse effects. So, usually, the statement the system should also provide details for like what the EIA report should have and then it should make provision for mitigation measures, and what mitigation measures that proponents intend to apply. Furthermore, you will see that procedural guidance should also be given on compliance and good practice and applying EIA arrangements.

And wherever, whatever, decisions are made, those reasons should be given for their decision why that particular rejection or improvement or acceptance was done. So, those reasons have to be clearly stated. So, such kinds of things when they are clearly explained. Then, it safeguards the system from the legal concerns. So, you can see, here from the snip given here, from the Environmental Protection Act. So, you will see, look at the definition here a range of definitions of the environment provided to you.

So, you see, how it clearly states what all things would be covered here. And then in terms of all the duties which would be there so, it also lists all the duties here. So, the amendments to the rules, coastal regulation zone, delegation of powers, and then how they have the right to have equal marks, schemes zones, and environmental clearance, all these things. You can see, that all these duties are clearly stated. And it also provides, the act also provides the outline of the EIA document.

So, this I have taken from the 2006 notification. So, all the acts are regularly amended to make them flexible to accommodate all the changes that are going on. Further, we see that now moving on. So, that was about how we have an EIA system that can be legally protected, then to a certain extent.

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Enabling Environment

- A functional legal regime.
- Sound administration and flexible policy-making stakeholder understanding of the aims of the process and its potential benefits;
- Political commitment;
- Institutional capacity for implementation;
- Adequate technical capacity, data and information;
- Public involvement; and
- Financial capacity.

Source: EIA Training Resource Manual, UNEP, 2002; Pg - 144

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Relevance –
Legal, Policy and Institutional Arrangements and Directions of different EIA systems.

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And then now, looking at the enabling environments, so what kind of support is needed for EIA? So, we see that there needs to be a functional legal regime. So, there should be things that allow functional working and we need to have sound administration so that, it can be applied and then flexible policymaking. So, flexibility is very important here because constant changes take place in terms of technology, in terms of relationships, in terms of policy, and context as well.

So, it needs to have flexible policymaking and then also stakeholders' understanding of the aim of the process and its potential benefits should like stakeholders understanding which also influences how the EIA is implemented. Further, we see that political commitment is also very important, and there should be a

willingness to implement EIA. Apart from that, in addition to the political commitment, one also needs to have institutional capacity for implementation.

You need to have institutions, you need to have people, the technical capacity, and then you also need to have data and information so that, all the work can be executed in a quality, quality manner. And then there is also a need for public involvement as well as you need financial capacity to undertake it you would need money, resources, time, people all of these. So, when you are resource channeled, this creates an enabling environment where the EIA can be implemented to its potential.

So, now, coming to our last segment here looking at the relevance of understanding the legal policy, and institutional arrangements. So, why really as learners we need to understand that and like what direction what EIA system different directions it takes? So, looking enacts how EIA is applied in any country. How it meets the goals of sustainable development can and can the EIA be improved through a better understanding of like, what kind of arrangements are there every country can have different kinds of arrangements somewhere it can be mandatory and somewhere it might not be mandatory.

So, it would largely depend on context to context. So, therefore, you need to understand what different arrangements are there in a country at different levels, which we are going to see in sequences now. So, in any country provisions are made in terms of law. So, mostly you will see that EIA provisions or any of the provisions are made in terms of law, which is a rule. So, and then you also see that provisions are made concerning policy.

And what is the policy? The policy is like a set of guidelines. You also require institutions, institutions which facilitate the activities needed under the goal. So, whatever goal you want to achieve. So, you would need a law in place, you would need a policy in place and you will need its institutions in place. So, further, you would also need procedures, and usually, procedures are set like how it will be undertaken, and what procedure would be followed so, that all of these factors can contribute to the success of EIA. So, you need to see these strengths and weaknesses.

So, whenever you review it, you see what strengths and weaknesses, particularly existing arrangements in your country are there. And for whichever region you are looking at, and how EIA can improve as a tool to achieve sustainable development goals. And each system is contextual. So, it is very, very difficult or when you adopt, like an EIA system, there will be a lot of significant adaptation required because you cannot transfer EIA from one system to another.

So, keep in mind that every EIA system is typically unique to a certain extent. So, EIA in one country would not be applicable in another. So, every EIA system reflects the political system of its country or what kind of system they have and one cannot import one EIA framework to another context. So, one needs to look at the

same time, we need to at the international level global level that is a lot of integration is required because we might be working at the international level at the global level to meet the larger objectives.

So, there would be contextualization as well as some kind of standardization. So, why do you look at any EIA system? What do you look at? So, like you, you look at who is the authority responsible for seeking the implementation of the EIA procedure. So, who is going to do that, who will have the power to do that? So, check and review the requirements for public participation. So, you should see, how the public is participating, how aware they are, and how informed they are.

Whether it is a mandatory or optional procedure in your country, it could be a mandatory or optional procedure as well like in India besides by the law. And like how it has been taken care of, where how the overall procedure is, and where all the quality control is being done. So, that is all you should review while you look at any system. So, while you see one of the key elements of public participation, participation may vary from country to country reflecting different traditions and styles of governance.

So, it will depend on whether some countries have established separate EIA authorities, in other EIA processes administered by the environmental department or the planning authority. So, looking at, the authority aspect, you might have independence as well as like it could be part of a bigger thing. So, no single EIA model is appropriate for all the countries. So, not only within the country but there is a need to be coherence between EIA requirements, various governments, or agencies.

So, you need to have coherence to avoid uncertainty and confusion and like expense added expense for the proponent the people who propose a project. So, for example, countries receive aid from several donors each having its own prescribed assessment process. So, all the donors would have different formats. So, and then the proposal could be also at the transboundary level and it would require compliance with EIA procedure for more than two or even more countries or states or levels.

So, that way we need to have coherence and for example, like you have already seen Espoo convention. So, there you see how different states and different countries would work. So, there is some coherence which is needed.

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Conceptual understanding of Law and Policy

- EIA takes place within the legal and/or policy frameworks established by individual countries and international agencies.
- Law is a formal document and administered by judiciary.
- Policy is a reference for the working of the government and administered by the government.
- Laws are established in order to bring justice to society and equality to society on the other hand policy is made for achieving specific goals by the government.
- Non-adherence of law is punishable whereas non-adherence to policy does not lead to severe punishment.

Source: EIA Training Resource Manual, UNEP, 2002; Pg - 133

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International environmental law and policy of relevance to EIA

- Non-binding instruments- **Rio Declaration**

- Binding instruments- **Espoo Convention**

Source: EIA Training Resource Manual, UNEP, 2002; Pg - 140

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So, looking at the legal aspect policy aspect, which we will be looking at series of lectures now. So, building on some conceptual understanding. So, EIA takes place within the legal and or policy framework. So, it will be through the legal setup or the policy setup or it can be both. It is mostly established by individual countries and international agencies. So, if you quickly want to understand the difference between the two, like what is the difference between the legal and the policy.

Law is a formal document administered by the judiciary. So, that is like one has to follow various policies as a reference for the working of the government. So, it is a reference, like how they would go about it, and it is administered by the government. So, laws are established to bring justice to society and equality. Whereas policies are made to achieve certain objectives by the government. And the key element is here key element here is that non-adherence to the law is punishable.

Whereas nonadherence to policy does not lead to severe punishment. So, you need to understand here the difference between the law and policy. So, looking at the international environmental law and policy of relevance to EIA. So, significant developments have taken place in international environmental law and policy which are relevant to or applicable to EIA systems of all countries as you see here. So, they can be like can be divided into non-binding and binding.

So, you can have instruments that can be non-binding instruments. For example, we have seen the Rio Declaration, which is non-binding. So, there was a common concern that people wanted to achieve the nations wanted to achieve it but it was non-binding in the region. So, it established important principles for sustainable development, including those which needed to be reflected in the EIA arrangement. And then we also see that it also was guided by the precautionary principle.

And then there are binding instruments, these instruments are the legal conventions and treaties related to environmental protection at the global or the regional level. So, they are non-binding and then the binding. So, they carry obligations. So, when they are binding instruments they carry obligations for signatory countries. So, if we are the signatory, then we are bound by that, and that may be met through like that can be taken care through the EIA arrangement.

Legal conventions and protocols that apply specifically to EIA arrangement of which Espoo conventions if we are signatory to Espoo convention, then we are bound by that convention. So, EIA is specified as a mechanism for implementing certain aspects of both agreements. So, in EIA also you have certain non-binding and certain binding elements. So, more generally it can ensure that the proposed action of the signatory act countries is in compliance with these and other international environmental agreements.

So, we have seen all of the series of those agreements, you may also find that agreements are also classified as green agenda, green lists brown agenda, or brown lists. So, just for your information, the green list covers natural elements, and the brown list is associated with human activities.

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Agreements related to the Conservation of Nature and Biological Diversity (the Green List)

Green List

- Convention on Biological Diversity (Rio de Janeiro 1992, entered into force in 1993) promotes conservation of biological diversity and sustainable use of its components.
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington 1973, entered into force in 1975) prohibits or regulates commercial trade of listed species.
- Convention on Wetlands of International Importance Especially in Waterfowl Habitat (Ramsar 1971, entered into force 1973) aims to prevent loss and encourage wise use of wetlands. Signatory countries are required to designate at least one site to the Ramsar list.

Agreements related to the Control and Prevention of Pollution (the Brown List)

Brown List

- Framework Convention on Climate Change (New York 1992, entered into force 1994) aims to stabilise greenhouse gas concentrations in the atmosphere at a level that would prevent 'dangerous interference with climate'.
- Convention for the Protection of the Ozone Layer (Vienna 1985, entered into force 1998) including the Protocol on Substances that Deplete the ozone layer (Montreal 1995) aims to reduce and eliminate emissions of specified ozone-depleting substances and control other harmful activities.
- Convention on Control of Transbounday Movements of Hazardous Wastes and Their Disposal (Basel 1989, entered into force in 1992) aims to control and reduce transboundary movements of hazardous wastes, and assist developing countries in environmentally sound management of the hazardous and other wastes they generate.

(Source: World Bank,1996; UNTraining,2002;151)

Types and examples of EIA Legal Provision

- General environmental law (e.g. NEPA, Environmental Protection Act-1986, India).
- Comprehensive resource management and planning law (e.g. New Zealand RMA).
- Enabling or framework EIA law (e.g. European Directive).
- Comprehensive or prescriptive EIA law (e.g. CAEE).

Source: EIA Training Resource Manual, UNEP, 2002; Pg - 141

New Zealand Resource Management Act (RMA, 1991)

Version as at 21 December 2021

Resource Management Act 1991
Public Act 1991 No 69
Date of assent 22 July 1991
Commencement see section 1(2)

Note
The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.
Note 4 at the end of this version provides a list of the amendments included in it.
This Act is administered by the Ministry for the Environment.

https://www.legislation.govt.nz/act/public/1991/0069/latest/DLM230265.html

- Omnibus law .
- Purpose of 'promoting the sustainable management of natural and physical resources'.
- Section 5 -Sustainable Management.
- Does not define an EIA process.

Source: EIA Training Resource Manual, UNEP, 2002; Pg - 139

Canadian Environmental Assessment Act

- Public participation.
- Responsibilities (the law list).
- Requirements.
- Procedure for undertaking different levels of EIA (initial screening report, comprehensive study and public review by either an independent panel or a mediator).
- The Act applies only to projects.
- Separate SEA process (Policy and plans) established 1990; amended 1999.

Source: EIA Training Resource Manual, UNEP, 2002; Pg - 139

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You can see the examples here. So, you can see how the Convention on Biological Diversity, and Convention on International Trade in endangered species. We had seen all of that before the Convention on Wetlands. So, these are all green agendas, whereas you see the brown agendas for example, like Control and Prevention of Pollution, the Framework Convention on Climate Change, which targets on greenhouse gas emissions, and then the project detection of the ozone layer.

Then control of transboundary movement of hazardous waste. So, they all become brown agendas. So, these examples are given to you just for review purposes. So, then we also see that within the legal provisions, there are like you have general environmental law. So, you also find these kinds of categories and also environmental protection like general environmental law, for example, we saw NEPA have, which is an umbrella law.

So, within that, everything else comes. Also, the Environmental Protection Act 1986 is a general environmental law. And these incorporate the EIA requirements and procedures as you saw in the set of duties which were there. And then comprehensive resource management and planning laws are also there, like you have New Zealand Resource Management Act.

Which provides how the overall resource should be planned and managed, then you have specific enabling or framework EIA law. So, that is like European directives. So, then you have comprehensive perspective law like CAEE which is from Canada you see here. So, we have already seen the NEPA and Environmental Protection Act, we can just look at the New Zealand Resource Management Act, which is internationally the RMA significant as a sustainability benchmark.

So, this was formed following years of the process of law and government so, RMA is like an umbrella law meaning a collection of laws. Omnibus law which is like, it canceled all other laws and then came as one umbrella law and within the single rule to promote the sustainable management of natural and physical resources, so, not just by the element of EIA. But with all the other management aspects, this is taken care of.

And Section 5 of this Act defines sustainable management among other things, as what all things need to be avoided, what needs to be remodified, and those things. It also imposes biophysical tests of sustainability on acts, and sustainability on activities. We see that RMA does not define an EIA process. So, like how different EIA systems can vary. Here, you see that RMA does not define the EIA process. However, they have a detailed guide for good practice issued by the Ministry of Environment.

So, looking at Canada in the Environmental Act CEAA. So, this is an example of a comprehensive EIA-specific law passed in response to the series of legal challenges and a ruling on the previous 1984 guidelines order. So, there are certain key aspects to it like, it has the principle of public participation, it designates responsibilities, it prescribes requirements, like what fundamentals we had seen before. Then act applies only to the projects. There is also a provision for the SEA process here.

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European Commission (EC) Directive on EIA (1985, amended 1997).

- EIA Directive is a framework law -binding upon member states.
- Principles and procedural requirements for EIA within the European Union,
- Discretion is among member states for translation to national legislation.
- With regular amendments process is improved.
- SEA is also provided through formal provision.

Source: EIA Training Resource Manual, UNEP, 2002; Pg - 139

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EIA Directive (85/337/EEC)
https://ec.europa.eu/environment/eia/eia-legalcontext.html

Review of EIA Directives
https://ec.europa.eu/environment/eia/review.html

Source: EIA Training Resource Manual, UNEP, 2002; Pg - 139

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Provisions of the European Directive on EIA

Key provisions include:

- Broad definition of the effects to be considered.
- Mandatory application for specified projects.
- Requirement to submit an EIA report.
- Types of information to be provided by developer.
- Outline of alternatives studied and reasons.
- Submission to be made available for public comment.
- Results of consultations and information must be taken into consideration in decision-making.
- Content and reasons for decisions made public detailed arrangements for public consultation to be drawn up by member states.

Source: EIA Training Resource Manual, UNEP, 2002; Pg - 140

So, looking at the format or the layout of the European Commission this directive on EIA, we see that the director is a framework law. This law is binding upon member states. And the law sets are the principles and procedures. So, it is also giving principles and procedures. And it also leaves certain discretion to the member states that they can create their national legislation. With regular amendments to directives, the processes are refined like screening, consideration for alternatives, public consultation, and decision making. So, all these are strengthened.

It also has a provision for SEA, for like reviewing the plans and programs, that, they have a formal system for this. So, EIA directives have been enforced since 1985 and apply to a wide range of defined public and private projects. And then the link is provided to you for detailed understanding here. So, how is the review also it is given to you for further study. And then looking at the key provisions, like what European directives have so, it gives you like, remember the fundamentals.

So, it gives the broad definition it has mandatory application, and then it gives the requirement to submit what kind of submissions have to be done, what kind of information has to be given, and how the alternatives have to be studied, and justified. And how the submissions have to be made available for public comments, what results the consultants get, and the content and reason for the decision. So, all these aspects are there in this directive which is fundamental to the EIA system. So, we see that it contains all of it. So, this was what we covered today. And we will be looking more into this or the legal aspects of it.

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Summary

1. Key Trends in the Development of EIA Systems.

2. Foundations of an effective EIA system.

3. Framework from legal perspective.

4. Enabling environment for EIA and Sustainability.

5. Relevance and Concepts.

References

1. EIA Training Resource Manual, UNEP, 2002;
https://wedocs.unep.org/bitstream/handle/20.500.11822/26503/EIA_Training_Resource_Manual.pdf?sequence=1&isAllowed=y

2. EIA Directive (85/337/EEC);
https://ec.europa.eu/environment/eia/eia-legalcontext.html

3. Review of EIA directives;
https://ec.europa.eu/environment/eia/review.html

4. UN Convention on Climate Change and Biological Diversity (1992), EIA as a implementing mechanism;
https://www.cbd.int/doc/legal/cbd-en.pdf

5. Rio Declaration on Environment and Development; June, 1992;
https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

Suggested Watch and Read

https://www.youtube.com/watch?v=Uxh3MxOyDls&ab_channel=TheHindu

https://www.youtube.com/watch?v=7FIbelaChQM&ab_channel=WYG

https://www.youtube.com/watch?v=C3i8e3_Saxo&ab_channel=UNECE

https://www.youtube.com/watch?v=68WECTt_DfU&ab_channel=GreenTV

So, just to summarize what we covered today. So, we looked at the key trends in the development of the EIA system, we looked at what are the key elements of an effective EIA system, and then we looked at it from the legal perspective and also looked at the enabling environment. And then the relevance and the concepts of it. So, that was for today.

So, these were the references that we used for this particular session. And these are the suggested watch and read for you. Please feel free to ask questions. Let us know about any concerns you have. Do share your opinions, experiences, and suggestions. Looking forward to interacting and co-learning with you while exploring EIA. Thank you.