# NEED FOR ENVIRONMENT AND SOCIAL SAFEGUARD POLICY FOR INDIAN FINANCIAL INSTITUTIONS

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# Need for Environment and Social Safeguard Policy for Indian Financial Institutions

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# Table of Contents



## Boxes

## Introduction

Large scale Developmental projects are seen as inevitable for development, economic and social growth by most countries. The Indian context is not much different. Large infrastructure and development projects have been a part of the development paradigm in fact since colonial times. Large Dams, mining projects for coal and other minerals and heavy industries have all played a crucial part in the growth narrative of the country. In our development paradigm, there has been a sharper turn towards large infrastructure rather than social infrastructure, since the 1990s. Increasingly, the scale and the connectedness of the various mega infrastructure, energy and other projects continue to expand covering every region, terrain and natural resource of the country. In the development discourse what gets eminence is the contribution of these projects to the economy and growth. What has been overshadowed is the impacts that these projects have caused to the ecology and the people living in the regions whose lives and livelihood are linked to the natural resources of the place.

Just as the developmental projects grew, so has the mobilisations on the impacts of these projects. Over 11,000 people marched in the first satyagraha against the forced displacement in Pune in 1920 during the building of a dam in Mulshi Peta by Tata. This was only the beginning. With the construction of the first concrete dam in 1930 the number of major dams grew to 100 by 1950 and over 1000 by 1985. According to the Central Water Commission, India has 5,265 large dams as of 2022 and 437 more under construction. In that context the study by CWC of 54 large dams becomes significant as it points out that the average number of people displaced by a large dam is 44,182! While the number of dams have grown exponentially, mechanisms to address issues of displacement have not. Down to Earth, reports that only twenty five percent of people displaced during the first three decades of planned development have been resettled! Only 750 out of the 2108 families displaced in Una and Bilaspur districts during the Bhakra - Nangal project (1960) were resettled till now. The story is similar in other projects as well. The Sardar Sarovar Project is one widely known. It consists of 3,000 small, 135 medium and 30 major dam-and-canal projects planned for construction along the 1,312-km long Narmada valley. Envisioned by the first prime minister Jawarlal Nehru, construction started in the 1980s. The Sardar Sarovar Dam, the largest among them all, was opened by Prime Minister Narendra Modi in 2017. For three decades since the constructions started the people of Narmada have fought against displacement and yet close to 200 villages have been submerged in the valley. Thousands of people are still waiting for compensation and rehabilitation!

Displacements due to development projects have exponentially increased but are yet to be addressed. The worst affected are the adivasis of the country. As per the 2016 Annual Report of the Ministry of Tribal Affairs, 87 lakh adivasis were displaced between 1950 and 1990. Adivasis constitute 40 percent of all displaced people. States like Chhattisgarh, Jharkhand and Odisha, for example, account for 70% of India's coal reserves, 80% of its high-grade iron ore, 60% of its bauxite and almost 100% of its chromite reserves and hence have become the centre for

extractive industries and mining projects. Unless we assess our development paradigm, the human costs can be appalling. According to Internally Displaced Monitoring Centre (IDMC), the 21.3 million development-induced IDPs include those displaced by dams (16.4 million), mines (2.55 million), industrial development (1.25 million) and wildlife sanctuaries & national parks (0.6 million) (IDMC, 2007).

But displacement is just one of the facets of the tragedy. Environmental and ecological impacts of the projects is another serious concern that does not gain the importance that it deserves. According to the Global Climate Risk Index (2020), India ranks 5th among countries that are severely impacted due to climate change. The Intergovernmental Panel on Climate Change (IPCC, 2021), states that most of the climate crisis impacts in India are irreversible and cannot be remediated even if greenhouse gas emissions decline drastically. And yet, according to reports, as of last year, financial institutions from India were the third-largest investors out of six countries financing 80% of the world's coal investments. Sagarmala, a port-led developmental project envisioned to change maritime economy, has 574 projects (Cost: Rs. 6.01 Lacs Cr.) of which 121 are completed and 201 under implementation. Out of the 7,78,080 Cr investment, less than 1 percent is accounted for community development and none for prevention or preparing for potential ecological damage! Indian coasts are densely populated with an estimated population of 40 lakh people from fishing communities. The impacts of climate change have increased cyclones, storms, tidal surges in recent times, a major intervention of this scale that would only expedite the coastal erosion and other climate impacts. Shangumugham and Kovalam beaches in Kerala are examples of the erratic coastal erosion that appears to be caused by the breakwater of the Vizhinjam sea port.

In the current development paradigm, projects are not anymore isolated but are interlinked and expansive. Since the introduction of Special Economic Zones (SEZ) in the 2000s that sparked large scale land acquisitions, the model of development has become an interlocked system that would connect with each other. Hence its not projects, but a cluster of projects - smart cities, sagar mala, bharat mala, industrial corridors, road and rail corridors, solar parks, thermal power clusters etc. These come with huge financial costs along with the ecological and social costs.

Currently, the National Infrastructure Pipeline alone has 7,400 projects in total out of which 217 projects worth Rs. 1.10 lakh crore (US$ 15.09 billion) were completed as of 2020. The Gati Shakti Master Plan includes contracts for 4 multimodal logistics parks, 100 cargo terminals, 11 industrial corridors, a turnover of Rs 1.7 lakh crore in defence production, and 38 electronics manufacturing clusters and 109 pharmaceutical clusters and allocation of Rs 1 lakh crore to states. This plan alone covers 5,590 km of road, 17,000 km of gas pipeline.

# Pavagada Solar Park

Location: **Tumkur, Karnataka**

Capacity: **2000 MW**

Sector: **Renewable Solar**

Financier Institutions

- National Finance Institutions: Kotak Mahindra Bank, Axis Bank, HDFC Bank.
- International Finance Institutions: Rabobank, Mitsubishi UFJ Financial Group, BNP Paribas, DBS Bank, Mizuho Corporate Bank, Sumitomo Mitsui Banking Corporation.

Social and Environmental Impact:

- Pastoralists have nothing left in the region for their animals.
- Migration in search of labour to many means leaving behind families with young and old members.
- A total of 13,000 acres spanning five villages has been stripped of its vegetation, fenced and levelled.
- The process of fencing and levelling has disrupted much of the drainage system disturbing the small bunds, rajakaluves, loose boulder structures and other structures that had been thoughtfully placed in the past to ensure water retention in the area.
- Water to wash the panels to keep it dust free is extracted from the ground by each of the Surge Protection Devices (SPDs) in each of the blocks and is softened before using it as the water has high TDS (Total Dissolved Solids).

Content Source: Bhargavi Rao, Independent Researcher and Consultant, at Energy Finance Conference - India, August 16-17, 2019, IIT Madras. Cenfa.org
Data Source: Commercial Online Databases, Annual Reports

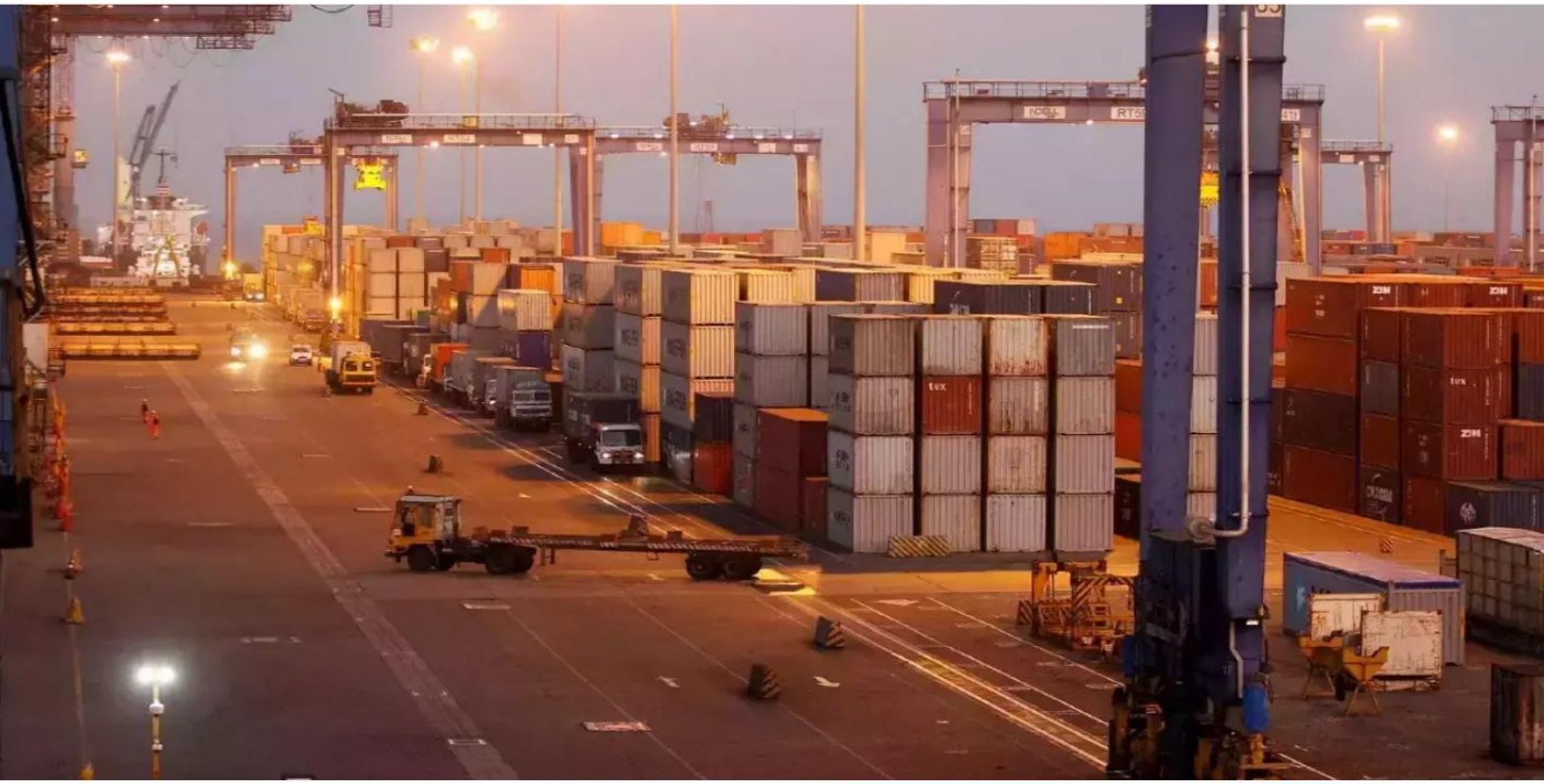
Image Source: **https://edition.cnn.com/2019/04/24/middleeast/gallery/global-solar-megaprojects/**

The Gati Shakti plan could look like a vast mission, but this is only one of the many infrastructure projects. There are at least 20 other mega projects including; the bullet train; hyper loop project; metro rails in at least 25 cities; Kalpasar Dam Project; Bharatmala project for goods and freight corridor (26000km of economic corridors estimated at Rs. 6,92,324 crore) that will connect 550 districts; at least seven ultra-mega power projects (est. 15000 crore each); the target of 25 solar parks (ultra-mega solar projects) that was increased to 50 in 2017 many of which are completed or under construction. The question is who is financing these projects?

Indian financial institutions, especially commercial banks have become one of the primary lenders for such projects. From 2000s commercial banks operations have expanded beyond small scale deposits and lending and have made forays into big ticket lending for large scale development projects. The Centre for Financial Accountability in its 2022 report titled *Coal Trail* found that the total number of projects commissioned or secured Environment Clearance or Terms of Reference between 2005-2022, with a capacity of 1000 MW or above, are 140. Out of these 140 projects, we were able to find lender specific information of 132 plants. The total loan amounts to ₹ 76,21,087.9 million. The national financial institutions account for 93% of these sanctioned loans equalling ₹ 71,17,418.9 million. This includes commercial banks which run on public money. OilChange International in its report on 'How Central Banks Are Funding Climate Crisis' in 2021 found that Indian banks were the fourth biggest financiers of coal based projects globally. The State Bank of India was found to have invested 21.5 billion USD in financing fossil fuel projects. It is the Indian public whose money continues to fund ports, airports, power and mining projects, through banks, mutual funds, LIC policies – through people's savings, deposits and investments!

These credits are not without their impact on the institutions themselves. Since the Asset Quality Review (AQR) in 2015, the Indian banks have struggled to keep their Non-Performing Assets (NPA) from large scale lending. Even after seven years, the only way that Indian banks have effectively reduced their NPAs has been through write offs. Replying to an RTI filed by The Indian Express, RBI stated that in the last five years alone Indian banks have written off Rs. 10 Lakh crore to reduce NPA. In the same time period they have only recovered Rs. 1.32 Lakh crore till March 2022 which is 13 percent of the total NPA. According to the reports from bank unions, the number of willful defaulters have grown from 5349 in 2014 -15 to 8582 in 2018 – 19. Apart from write-offs the banks have also lost money through haircuts, in their attempt to resolve NPAs through National Company Law Tribunal (NCLT). In 2021 which was five years after the Bankruptcy Code was introduced, reports pointed out that in 11 cases resolved alone, lenders had to take 90 percent haircuts. With 12 – 36 months on an average to resolve a case, it is estimated that the NCLT has over six years of backlog to resolve the 12,438 cases in IBC alone.

# Mundra Port Terminal



Location: **Gujarat**

Sector: **Port**

Capacity:

Financier Institutions: State Bank of India, Allahabad Bank, Canara Bank, Punjab National Bank, Bank of India, Corporation Bank.

Social and Environmental Impact:
There has been widespread destruction of mangroves; 75 hectares of mangroves have been lost on Bocha Island, which was declared a conservation zone under environmental clearance conditions.
The company has not taken precautions to guard against the blocking of creeks because of construction activities; satellite imagery shows signs of deterioration and loss of creeks near the proposed North Port.
The project impacts the lives and livelihoods of fisherfolk.

Source: Sunita Narain Committee Report
Source: Commercial Online Databases

**Image Source: PTI photo in Indian Express**

The numbers are only more worrying when the delays in the large projects are taken into consideration. As per Ministry of Statistics and Programme Implementation, 384 projects, out of a total of 1,529 costing 150 crore or above, had over running costs and 662 were delayed. "Total original cost of implementation of the 1529 projects was Rs 21,25,851.67 crore and their anticipated completion cost is likely to be Rs 25,78,197.18 crore, which reflects overall cost overruns of Rs 4,52,345.51crore (21.28% of original cost). Further, according to the report, the expenditure incurred on these projects till September 2022 was Rs 13,78,142.29 crore, or 53.45 per cent of the anticipated cost of the projects. However, the number of delayed projects decreases to 531 if delay is calculated on the basis of the latest schedule of completion. Further, it showed that for 603 projects, neither the year of commissioning nor the tentative gestation period has been reported. Out of the 662 delayed projects, 133 have overall delays in the range of 1-12 months, 124 have been delayed for 13-24 months, 276 projects for 25-60 months and 129 projects have been delayed for 61 months and above. The average time overrun in these 662 delayed projects is 42.08 months. Reasons specified in the report for time overruns by various project implementing agencies include delay in land acquisition, delay in obtaining forest and environment clearances, and lack of infrastructure support and linkages."

The problem is clearly multifaceted, and unravelling each of the strings demands that we look at each of these impacts and its connectedness in detail, which is attempted in the subsequent sections of the booklet. The simple point is that the current trajectory of development focusing on large scale projects is unsustainable from every perspective – ecological, environmental, social or financial.

While there have been movements that have and continue to raise issues on the environmental and social impacts of the projects from the human rights perspective, the financial institutions that fund these projects have long been out of scrutiny.

There are hardly any effective mechanisms to hold financial institutions accountable. There are hardly any questions on the impacts of such lending to project finance on the institutions themselves, on the customers, or the people who would be impacted by the project!

Here we compile the need for environmental and social safeguard policies for financial institutions in India from the perspective of various stakeholders involved. It would detail why there is a need for demanding environmental and social safeguard policies for Financial Institutions.

**What are safeguard policies?**

Environmental and Social Safeguard policies (referred henceforth as safeguard policies) are mostly associated with Multilateral Development Banks (MDBs) and other International Financial Institutions. These are a set of policies captured under a framework called the Environmental and Social Framework (ESF) and are also known as ESF policies. They come into play to identify, avoid and minimise harm to people and the environment from negative effects of a development project, say a dam, road, coal project etc. These are mechanisms for addressing environmental and social issues in project design, implementation and operation, and they provide a framework for consultation with communities and for public disclosure. The communities which are impacted have a right to know and prior informed consent is a key principle when indigenous communities are involved.

## 1. India and Environmental and Social Safeguards

There have been efforts to hold businesses and financial institutions accountable for the non-financial impacts of their activities. United Nations Principles of Investment attempted to do this in 2006 by making its signatories adhere to six principles. In 2011, The UN published its guiding principles on Business and Human Rights, stressing the responsibility of businesses including the financial sector to Human Rights. In 2019, The principles of Responsible Banking specifically came in to ensure banks can no longer be immune to impacts of their lending and investments. Indian Financial Institutions, barring one or two are still not signatories to any of these initiatives.

The Reserve Bank of India (RBI), has taken initiative since 2007 by occasionally stressing on Environment, Social and Governance, always falling considerably short of mandating concrete mechanisms of accountability. The RBI joined the Central Banks and Supervisors Network for Greening the Financial System (NGFS) as a Member on April 23, 2021, to benefit from the membership of NGFS by learning from and contributing to global efforts on Green Finance. In this regard, on the occasion of the 2021 United Nations Climate Change Conference (COP26), NGFS has reiterated its willingness to contribute to the global response required to meet the objectives of the Paris Agreement, and, to that end, NGFS will expand and strengthen the collective efforts towards greening the financial system. Accordingly, the Reserve Bank of India, has published on 3rd November, 2021 its 'Statement of Commitment to Support Greening India's Financial System – NGFS'.

The RBI from 2007 has 'advised' banks to take note of the non-financial issues, pertaining to social and environmental impacts, raised and consider using the same to put in place a suitable and appropriate plan of action towards helping the cause of sustainable development, with the approval of their Boards. In this context, particular reference is drawn to the IFC Principles on project finance (the Equator Principles) and carbon trading. Further, it will be advisable for the Banks/Financial Institutions to keep themselves abreast of the developments on an ongoing basis and dovetail/modify their strategies/plans, etc. in the light of such developments. With India assuming the presidency of the G 20, the RBI has reiterated these advisories.

Even when there were significant transformations in the lending portfolios of banks, RBI has refrained from ensuring mandatory environmental and social safeguard policies for the banks. While it is true that the state has been seen as the central arbiter of climate governance and laws regarding impact on human populations, the global understanding that has evolved on financial institutions over the years stipulates that robust safeguard measures need to be implemented at the level of such institutions, in addition to domestic laws covering relevant domains.

# Teesta Hydropower Project

Location: **Sikkim**

Sector: **HydroPower**

Financier Institutions: **ICICI Bank**

Social and Environmental Impacts

For a long time, the Teesta III project has been one of the most destructive and unsustainable projects in Sikkim. The non-recognition of Lepcha peoples' rights over their land and their exclusion in decision-making processes for dams on their sacred Teesta River remain key issues. The Lepcha peoples' relationship with their sacred Teesta River and their last reserve, the Dzongu have been completely dishonoured.

The blasting for the construction of the project and the boring of tunnels led to massive landslides in hills and the destruction of houses near the dam site. A holistic impact assessment on the fragile Himalayan ecology, seismic impacts, transmission lines, impact of reduced flow and other impacts on Lepcha People such as blasting, is absent from its Environmental Impact Assessment (EIA).

The environmental clearance granted to the project in August 2006 violates

MoEF's own stipulation while clearing the Teesta Stage V hydroelectric project in May 1999, stated that: "No other project in Sikkim will be considered for environmental clearance till the carrying capacity study is completed."

**Content and Image Source: e-pao.net**

What exists in terms of disclosures so far is the BRSR report which banks file every year. Yet the BRSR report pigeonholes crucial information regarding environmental and social impact under the 'voluntary' criteria. The Circular issued by SEBI on May 10th 2021 released the format for the Business Responsibility & Sustainability Report (BRSR). The circular states that while ESG (Environmental, Social and Governance) disclosures were introduced back in 2012, but with the adoption of the Paris Agreement on Climate Change and UN Sustainable Development Goals, a range of concerns had to be factored in for a more comprehensive reporting format. As per the consultation paper on the format for BRS Reporting (August 2020), these concerns range from growing awareness about climate change, environmental risks, and growing inequality.

In October 2017, the Report of the Committee on Corporate Governance proposed that the board of directors shall meet at least once a year to specifically discuss strategy, budgets, board evaluation, risk management, ESG and succession planning. The existing reporting and directives focus on increasing renewable and 'green investments', reducing carbon footprint of the banks etc. But none of them specifically focus on instituting an environment and social safeguard policy, like the ones adopted by MDBs. In the last couple of years a few banks have adopted ESG policies that also include impact and risk assessments with regard to lending but these are marred with gross inadequacies and lack of intent.

**How did the safeguard policies get adopted and evolved**

The safeguards framework is an evolution of policies which were adopted in the early 1980s in response to harmful impacts of development projects financed by the World Bank and later got adopted by other international financial institutions and private sector lending. The original safeguards were created largely as a collective call from communities and organised pressure from CSOs. In the 1980s and 90s, in response to strong public criticism of its involvement in controversial projects such as the Narmada Dam in India, which displaced over 200,000 people, the World Bank developed safeguards to help identify and minimise harms to people and the environment. The safeguards framework currently includes 11 operational policies including Involuntary resettlement, Indigenous people, Environmental Action Plans, Forests, Natural Habitats etc.

The evolution of these policies has not come in a vacuum, they had to be incorporated as the policies and investment of the financial institutions got challenged along with their structural adjustment programs across the world particularly the developing countries.

## 1.1 Lack of Policies

Developmental finance in India and lending institutions never imbibed any of these protections for the people or the environment. Even though there have been numerous struggles over the decades against the destructive model of development, there has not been any significant influence on the financial institutions to have safeguard policies. It has to be noted that it was the movement against the Sardar Sarovar Dam projects that led to the drafting of safeguard policies and accountability mechanisms by the World Bank. But the struggles which gave rise to the deepening of safeguards policies and independent accountability mechanisms however did not echo in the national scenario and the Indian financial institutions till recently did not move to create mechanisms and institutions of their own.

In India, when Development Finance Institutions (DFIs) themselves were systematically transformed by the late 1990s, the burden of long term finance was shifted to the commercial banks, particularly the Public Sector Banks (PSBs). The PSBs till then had only been focusing on small scale / retail loans hence did not need safeguard policies. When the banks had moved to lending to large projects in the early 2000s, they did not adopt any environment or social safeguard policy.

The fallouts of not instituting safeguards could be witnessed, across projects. For instance, in the construction of the Sardar Sarovar Dam Project that was initially funded by the World Bank. The project displaced almost 41,000 families (approximately over 200,000 people) across 245 villages in the three states.

Similarly, the power project run by TATA at Mundra, Gujarat, has had a devastating effect on marine life, coastal flora and source of livelihood of fisherfolk. It has been the most marginalised such as adivasis, coastal people, landless farmers, small farmers, dalits, Muslims, women and children who get affected the most. But the long term impact on climate, biodiversity, and environment affects everyone. Moreover, the World Bank which was initially funding the project had to eventually withdraw its funding leading to economic and reputational consequences for the institution.

There are plenty more examples.

# Sasan Ultra Mega Power Project

Location: **Singrauli, Madhya Pradesh**

Sector: **Thermal Power Plant**

Capacity: **3960 MW**

Financier Institutions:
National Finance Institutions - Andhra Bank, Axis Bank, Bank of Baroda, Corporation Bank, Life Insurance Corporation of India, Power Finance Corporation India, Punjab National Bank, Rural Electrification Corporation, State Bank of India, Union Bank of India, United Bank India, India Infrastructure Finance Company, Industrial Development Bank of India (IDBI)
International Finance Institutions - Bank of China, China Exim bank, Export Import Bank of the United States, Standard Chartered, Mizuho, Japan

Social and Environmental Impacts
On April 10, 2020, the fly ash dam for the Sasan coal plant in Singrauli Madhya Pradesh burst, causing a flood of toxic waste which ran through adjacent villages, washing through thousands of acres of land and destroying agricultural crops and killing six people, including two children.
In the 2015 Report by the OIG, 19 fatalities at the plant were confirmed. Monitoring reports submitted to EXIM revealed that at least another eight deaths have occurred subsequently.

In July 2014, local group Srijan Lokhit Samiti along with other civil Society organizations wrote to the office of Inspector General (OIG) of the US Exim Bank pointing towards the human rights violations and environmental and social violations that marred the project.

**Content Source: cenfa.org**
**Image Source: reliancepower.co.in**

## 1.2 Commitments and reporting are aspirational and not enforceable

Financial Institutions have as mentioned earlier, negated their role in the impacts of their lending. Despite evidence of serious and in many cases irreversible impacts to the ecology and human lives or international guidelines or regulatory notifications, financial institutions have not by their own will adopted non financial safeguard policies. But, there is a visible shift in recent years, specifically since 2019.

This is a result of multiple factors. One of which is definitely the ascendance of debates on climate risks in the mainstream. The visible and severe weather events have forced the world to take the climate threat seriously and this includes global finance and financial institutions. There was a slow change towards more non-financial accountability and disclosure policies. The pandemic and lockdown expedited this process! But they chose to do so on their own terms. Instead of the long pending demand of Environmental and Social Safeguards (ESS); companies, financial institutions and regulators alike adopted a much more loose and voluntary Environmental, Social and Governance (ESG) Framework.

Hence the Paris agreements, COP 2022, increased number of Indian Financial institutions becoming financial intermediaries for Multilateral Development institutions, International Financial institutions's equity investments in some banks (IFC's green equity venture in Federal Bank for Rs. 916 Crore) - all of these created the climate for many Indian banks to embrace environment and social policies under the Environment Social and Governance (ESG) Framework.

While this is a start for the banks to begin to take accountability, many of these policies are only aspirational in nature and do not put in place mandatory measures of impact assessment, and grievance redressal. There is hardly any mechanism to hold them accountable in case of violations! State Bank of India, the biggest public sector bank, for instance, has no precautions either before lending, during the life cycle of the project or any accountability mechanisms clearly spelled out that could be considered as a safeguard policy or procedures followed by the bank. The SBI chairperson in fact recently said that they will continue to lend even to companies with poor ESG scores. Even HDFC Bank, that is better off in its policy guidelines, has directions that are largely of an aspirational nature. While there is a promise to redress any issues, there is no mention of actions that would be taken in the case of non-compliance. There is no mechanism for the people who would be directly impacted by the projects to reach out in case of any violations. Again, when we look at ICICI, we find that they have a Social and Environmental Management Framework. But there is no mention of how and who in SEMF will be responsible for implementing the due diligence it speaks of. It is not even clear as to what the due diligence process entails. The bank however admits that it is still in the process of incorporating these concerns into its policy. Goes without saying that safeguard policies without any accountability mechanisms are toothless. Further, the financial institutions rely on the existing laws and regulations for clearances. This is reflected in the ESG policies as

well. The Indian government, in its ambitious run to scale up the ease of doing business ranks, boasts to have amended 2000 laws and regulations by 2022 deeming them to be "obsolete". The EIA notification of 2020 gives the government discretionary powers to declare "economically sensitive areas" where environmental clearances would be given without public hearings, it can also deem any project as "Strategic" which absolves EIA obligations. With regard to public consultations the time for submission of response by communities is reduced from 40 days to 20 days. Post facto project clearances, increasing the number of years for validity of clearance, relaxing norms on baseline data collection etc are other problems in the changed rules. Similarly the proposed changes to the labour laws criminalise strikes and make it difficult to form unions among others.

These make for a weak foundation for any robust safeguard mechanism.

## 2. The need for safeguard policy from different perspectives

The environmental and social impact of large infrastructure and development projects affect sections of population and stakeholders differently. For instance, for the local community the urgent concern could be destruction of the local environment and associated forms of livelihood. For investors of a company the concern could be worsening of climate crisis, while for the bankers the overriding issue can well be the financial viability of such investments. An Environmental and Social Safeguard policy thus addresses all these issues. Let us look at some of these concerns in a bit more detail.

### *2.1 Need for safeguards from the people's point of view*

The coastal communities have been protesting against the much touted Sagar Mala project. Recently thousands of people marched against the Vadhavan port project. For months the fishing communities in Kerala have camped near the Vizhinjam port project by Adani braving police intervention. In Hasdeo adivasis are protecting the feeling of their forests for the Parsa East Kete Basin coal mines project operated by Adani Enterprises. The people of Dinkiya had been arrested and brutalised to fight against the JSW steel plant. All of these are just months apart from each other and yet these do not give the picture of the magnitude of protests happening across the country to protect natural resources and livelihood from the impacts of these projects.

We have seen that in many places the people's struggles have been able to stop harmful projects. They have also been able to delay them long enough to make them financially unviable. Some have even gone to court to fight long legal battles to win. Most of these struggles have faced arrests, false charges, violent crackdown and even deaths for raising just concerns! But in most cases, the companies have been able to push through resistance and establish the projects.

In the majority of instances the concerns of the people are not addressed because there are not adequate structures available for them to hold either the company or the financial institutions accountable. The existence of safeguard policies and accountability mechanisms for financial institutions could act as one more tool in the hands of the people to prevent harmful projects and also hold them accountable for the violations.

Hence, the policy needs to evolve with consultation of the communities who will be impacted by the projects. It should include clauses pertaining to pre-project evaluations, impact assessments, free and prior informed consent, compensations and resettlements, mechanisms to have periodical evaluation and monitoring, post - project monitoring and accountability mechanisms to address any grievances. Because the choice is simple, either to precipitate human rights and climate crisis, or to allow for ease of business.

## 2.2 Accountability of Public Institutions and Public Money:

The social contract that emerged from the anti-colonial struggle, directed the politics and policy direction of newly independent India. These laid the foundation of a welfare state, state control over industries and economic institutions driving the economy, and a redistributive direction. The formation of Development Finance Institutions (DFIs), planning commision, bringing in of labour laws etc flows from the understanding that the state has a role and responsibility to act in favour of its people. The nationalisation of commercial banks (1969) in its stated objectives mentions the need to ensure prompt operations of the bank ing system for a larger social purpose and subject it to close public regulation and to instruct the banks to provide banking facilities to the hitherto neglected and backward areas in different parts of the country.

Article 12 of the Indian constitution in its definition of state includes public institutions when it comes to protection of fundamental rights (part III) and directive principles of state policy (part IV). it goes on to state:

*38. 1 [(1)] The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.*

*2 [(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.]*

*39. The State shall, in particular, direct its policy towards securing—*

*(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;*

*(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;*

*(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;*

*(d) that there is equal pay for equal work for both men and women;*

*46. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.*

*1 [48A. The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.]*

The accountability of public institutions comes from the fact that they are bound by the

directive principles and are to act for the welfare of the people, especially the historically oppressed communities, the poor and marginalised and also protect the natural resources of the country.

In this booklet the definition of public institutions are not just limited to institutions that are public - as in owned by the government but also those that operate with public money.

The structural reforms pushed since the 1990s, deregulation and amendments to the existing laws to favour business, corporate tax cuts and other subsidies given during the projects to a company, the model of risk free business and Public Private Partnerships (PPP) are all in their own ways institutions in favour of capital and corporates than people. From diluting of labour rights to "easing" of clearances, such moves have heightened exploitation of the working people and have led to indiscriminate loot of resources. The suicidal drive of privatising public institutions including banks and LIC is yet another means of removing the public accountability of institutions.

Safeguard policies are to ensure that the public institutions that operate with public money are held accountable for their actions.

## 2.3 Need for safeguards from the point of view of financial institutions

There is a difference between what we mean by "risk" in terms of investment or profitability and again "risk" in terms of social and environmental impact. Like we have argued. We need safeguards for investment risk mitigation as well as for impact risk mitigation.

The fact that such developments that are funded by banks makes the latter directly, legally and ethically responsible for the non-financial (environmental and social) impacts of such activity is a notion that is now well established at the global level. This responsibility means that banks must assess, reduce, compensate and avoid harmful impacts of the projects they fund. From the point of view of fiscal responsibility it is important that banks take cautious investment paths.

If banks invest in a project which is harmful to the environment and local populations, and runs counter to the existing laws and regulations on the environment, then their investments are likely to run into complexities because of legal hurdles. In addition, if local populations protest and the project gets stalled then too banks suffer losses.

While both kinds of risks have several overlaps the crucial difference between them is that of perspective. The first looks at the question of risks from the lens of financial benefit while the second prioritises impact as the central criteria through which projects need to be judged and decided upon. For instance, if there is a project which involves adverse impact on a protected forest area in violation of domestic laws, the financial risk perspective will advise against investing in such projects. On the other hand if there is a project with high adverse impact on a forest area, but which does not involve any legal violation, the impact risk approach

would still advise against investing in it. For instance, in our analysis, the HDFC bank, to its credit, is one of the few Indian Banks that comply with the Global Reporting Initiative and also included the Environment Social and Governance (ESG) framework into its policies. It contains a section on Environment and Social Risk Management in Lending. But it still fails to define what it means by risk. Whether it is just financial risks in the limited sense or also losses for the environment and the people.

### 2.3.1 What weighs in on banks.

The risks can be further subdivided into four broad categories.

a) **Financial Risk**

Pertaining to investment and financial returns for the banks. Banks must be assured that the money they spend on projects is likely to yield assured returns for its stakeholders.

The Non-Performing assets (NPAs) has reached an alarming level due to lack of Supervision, lack of transparency in the operations and lack of democratic atmosphere in the banking industry and certain indiscriminate lendings added fuel to the fire. Compounded Annualised growth (CAGR) of gross NPAs in the past five years is around 30%. It is also observed during the past 5 years that NPAs increased by 25% on an average basis as detailed in the report.

b) **Compliance to national and international laws and regulations**

Banks do not want to run the risk of their investments running into complications owing to non-compliance to domestic and international regulations or obligations by the project developer and thus have an additional incentive to ensure compliance.

c) **Environmental impact risks, climate justice, SDG goals and green investments**

d) It is true that for banks, say for the SBI, both climate justice and sustainability are only looked at from an opportunity of investment. There are commitments to reducing carbon footprint and also increasing lending to renewable energy projects as a part of the bank's commitment to responsible banking and sustainable development. But there are no efforts in ensuring that these investments will do no harm. Similarly, even the reference of climate risks and carbon transition in the policy documents on ICICI bank are limited to promises and repeated commitments instead of any concrete action plans.

The world, however, is increasingly embracing the ideal of responsible investments and stakeholders demand that their investments do not lead to adverse environmental impact. In this regard the bank has to carefully assess these risks as part of its

accountability towards stakeholders, and its own commitments towards climate related SDGs. While it pointed out from several quarters that a large part of such investments amount merely to greenwashing. But given the discourse around the climate crisis, there is probably an awareness and more reasons to hold the banks to account.

### e) Social Risks

It is unfortunate that even the biggest public sector bank does not have mechanisms to ensure that their lending will not negatively impact vulnerable communities. But as in the case of environmental risks, there is increasing acknowledgement that development projects should not lead to destruction of lives and livelihoods of vulnerable communities, and should ensure fair employment conditions for labour. These are also part of some of the SDGs that certain banks are committed to. There is not a lot to show in terms of real adherence to these goals, but each of these are benchmarks for enforcing accountability.

### f) Reputational Risks

Due to increased awareness people expect their institutions to behave in an appropriate way and are willing to take their business elsewhere if not. Also many organisations grade and rate FIs on their ESG commitments etc, which influences people's decisions to do business with a particular institution.

### g) International Developments

As mentioned earlier, as a result of the pressure around Paris agreements, Sustainable Development Goals, Conference of Parties (COP) 2022 and RBI becoming part of the Network of Greening of Financial Systems (NGFS), RBI has prioritised including climate related risks into financial monitoring and to also create climate related awareness among Financial Institutions. Further, this policy drive comes from the push from International Finance Corporation (IFC) which has invested in some Indian banks for strengthening their green portfolio. While this is a start for the banks to begin to t ake accountability, mere reporting and setting credit appraisal criteria is not enough.

## 3. Risk Handling Mechanisms in Indian Banks

With no centralised process, a handful of banks have their own ESG guidelines. They all aim in understanding and mitigating environmental and social risks to their lending portfolio for large scale or corporate loans. Some of these guidelines talk about a framework that would be prepared after evaluation of the project while some detail the process and the existing laws, guidelines and performance standards that the bank will follow, without adequately defining what they mean by risk and risk assessment. Very few define the terminologies, categories of the impacts and the required processes.

These policies seem to be in a very early stage, with some of the terms and processes lacking clarity. In addition, the risk that they refer to is risk for investment rather than risk for environment and people. In addition, some banks have 'exclusion lists' which enumerate sensitive areas where they do not invest such as wildlife products, radioactive materials, drift net fishing etc. Without standardisation, even those who have such lists are rather arbitrary. The exclusion list of HDFC for instance is limited only to those projects that cause ozone depletion. There are many other highly polluting or potentially polluting sectors that are not included in the list. As stated earlier, the policies are aspirational and open ended, but do not define concrete action to be taken in case of violations or complaints. Safeguard policies without any accountability mechanisms are hardly ever effective. Furthermore, neither the communities for whom the policies claim to help, nor the banking community seems to be aware of the existence of such policies. While the policies and the reports (however limited) are accessible, none of the banks provide publicly accessible Environment Impact Assessment or action taken reports on particular loans to corporate companies. The monitoring process and reporting through the life cycle of projects are still opaque.

### 3.1 Role of Regulators in framing and implementing safeguards

The Reserve Bank of India, has made the right noises since 2007 by occasionally stressing on Environment, Social and Governance, always falling considerably short of ensuring concrete mechanisms of accountability mechanisms. While it is true that the state has been seen as the central arbiter of climate governance and laws regarding impact on human populations, the global understanding that has evolved on finance institutions over the years stipulates that robust safeguard measures need to be implemented at the level of such institutions, in addition to domestic laws covering relevant domains.

The Reserve Bank of India (RBI) survey on 'Climate Risk and Sustainable Finance' conducted in 2022 points to the long distance that commercial banks in India need to traverse in order to make their lending portfolio instrumental in the global response to the climate crisis. The survey points out hardly any banks incorporate Environment, Social and Governance (ESG) criteria related performance indicators in evaluation of their top management. Majority

of banks do not have a separate vertical in their administrative structure to look at ESG related initiatives and sustainable finance, nor were they able to present a clear strategy towards amplification of their sustainable finance portfolio or responding to climate risk. The survey, conducted by Sustainable Finance Group (SFG) of the Department of Regulation at the RBI, saw participation of 16 private commercial banks, 12 public sector banks and six foreign banks. Based on the survey the SFG recommends capacity building and incorporation of climate risk assessment as part of the bank's governance framework, and advocates larger shares of the lending portfolio towards 'green financing.'

**This survey assumes added significance as it comes at a time when the Indian government has made ambitious commitments at the global level, encapsulated in the Prime Minister's *panchamrit* agenda announced at Conference of Parties 26 (COP26) in Glasgow, last year.** The country has pledged to reduce emissions by 45% till 2030, and achieve net-zero emissions by 2070. While all this points to the fact that as regulator of monetary policy and banking the RBI does envisage a climate where banks adopt internationally prevalent mechanisms of reporting, transparency and even impact assessment it still has not gone as far as to say that commercial banks adopts the safeguard mechanisms that have increasingly become part of international lenders.

### 3.2 Customers

For millions of customers of the banks safeguard policies are desirable for both financial and ethical reasons. Indian commercial banks' large-scale investment in big infrastructure, energy projects has exposed the Indian people's savings and personal investments to financial risk as well as has made almost every common person with a savings account party to projects that worsen the climate crisis, displace people and destroy livelihoods. Beyond the obvious reason of financial risk, customers have a right to know where their money is being invested by banks. Increasingly, as climate change becomes a general concern the banks need to implement disclosure policies where the customers are made fully aware of investment choices of their banks. And to further strengthen disclosure mechanisms, so that they do not remain mere reporting, safeguards need to be put in place.

### 3.3 Stakeholder Impact

There is increasing acknowledgement and recognition of impact related risks which development projects pose and the accountability of financial institutions which fund such projects. The heightened stakeholder awareness and proactiveness on issues related to climate change, environmental impact, and effect on vulnerable populations means that banks have to be more transparent about their policies, lending and impact assessments of the projects they fund. Increasingly stakeholders do not want their money to be invested in projects that pose clear climate and social risks, and want green financing in a genuine sense.

Given India's commitments to reduce emissions in a time bound manner, encourage a shift to renewables and operationalise Sustainable Development Goals, it is important that safeguard mechanisms receive attention and implementation from the regulatory bodies like RBI and SEBI.

## Conclusion

### *Reimagining Accountability: From ESG to Safeguards*

Instead of a safeguard policy Indian banking institutions seem to be moving towards an Environment Social and Governance (ESG) framework which is limited in its scope. An ESG framework is a reporting system which attempts to quantify impact and investment risk, such as carbon emissions, incentivizes investing in sustainable development and tries to ensure accountability through disclosures by the borrowers and banks themselves. As a result of the pressure around Paris agreements, Sustainable Development Goals, Conference of Parties (COP) 2022 and RBI becoming part of the Network of Greening of Financial Systems (NGFS), RBI has prioritised including climate related risks into financial monitoring and to also create climate related awareness among Financial Institutions. Further, this policy drive comes from the push from International Finance Corporation (IFC) which has invested in some Indian banks for strengthening their green portfolio. While this is a start for the banks to begin to take accountability, mere reporting and setting credit appraisal criteria is not enough.

With no centralised process, a handful of banks have their own ESG guidelines. They all aim in *understanding and mitigating environmental and social risks to their lending portfolio for large scale or corporate loans*. Some of these guidelines talk about a framework that would be prepared after evaluation of the project (like HDFC bank) while some detail the process and the existing laws, guidelines and performance standards that the bank will follow (like the AXIS bank), without defining what they mean by risk and risk assessment. Very few (like the Federal Bank) define the terminologies, categories of the impacts and the required process.

These policies seem to be in a very early stage, with some of the terms and processes lacking clarity. In addition, the risk that they refer to is *risk for investment* rather than risk for environment and people. Some banks have 'exclusion lists' which enumerate sensitive areas where they do not invest such as wildlife products, radioactive materials, drift net fishing etc.

What is needed are safeguard policies that are set in the Indian context, taking into account the realities of the social, economic and environment into the policy itself! It has to be a policy that is put through consultations with the communities that have been and are likely to be affected by such projects. The demand for safeguard policy does not in any way mean that it is an acceptance of the developmental model that is being pushed, but it is only yet another tool in the hands of the people to fight against the financial institutions and companies that destroy lives, livelihood and ecology.

### How should a risk management and safeguard framework look like

As the world finds itself amidst an escalating climate crisis financial institutions the world over have to move towards policy frameworks which are sensitive to the environmental

impact of the projects they fund. The added benefit of prioritising environmental impact risk takes care of the financial risks as well. Here we list down the expectations on an Environmental and Social Safeguard policy. The list is made from studying some of the existing ESG policies of the banks, IFC's performance standards and some long pending demands of the communities.

1. **Mandatory Impact Assessment criteria**
   First and foremost ESS policy should be mandatory. Without this operational aspect of the policies, it becomes toothless and does not serve its intended purpose. It should be applicable on all projects financed by the institutions. Safeguard policies need to have mandatory periodical impact assessment provisions at pre-approval and post-approval stage. These provisions should include a component of investigation by the bank or by competent third parties, in addition to the one submitted by the project developer.

2. **Well defined thresholds and technical requirements**
   Safeguard policies need to incorporate well defined impact thresholds and technical requirements, in general, and also tailor-made for specific social and environmental concerns regarding individual projects.

3. **Independent Accountability Mechanism (IAM):** There has to be an independent mechanism that would be available for people to register complaints, grievances and demand inquiry into violations of the ESS. The IAM should have the power to make decisions which are independent of the Bank management.
4. **Impact Perspective:** The policy should in letter and spirit be to protect against the harmful impacts of the large scale projects on environment and people. This should be very clearly stated in the policy.

5. **Mandatory Public Consultation and Free Prior Informed Consent**
   No development project should receive a go ahead without mandatory consultation and consent from the potentially affected parties. The affected parties should be defined in the maximum possible scope of the term.

6. **Transparency**
   Since development projects involve people's wealth and impact large populations, Financial Institutions need to practise full transparency regarding all of the above: finances, assessment criteria and policy, contract agreement, etc, which should be publicly accessible.
7. **Grievance Redressal Mechanism**
   FI's need to institute effective, swift and responsive GRM which is easily accessible to all those affected by the projects they fund.

The policy must deal with all the following three phases: Pre lending, Life cycle of the project and Accountability and Transparency.

A. **Pre lending** phase covers all those procedures and due diligence required from the Financial Institutions and intermediaries before lending for a project.

- Check for Exclusionary list
- Check for required compliances:
- Information disclosure(EIA, SIA and resettlement/rehabilitation and other plans should be publically available)
- Free and Prior Informed Consent:
- Public Consultations with due time for information disclosure :
- Check for previous default

B. **Life Cycle of the Project:**

- Categorisation of the project based on environmental and social impacts
- Monitoring mechanisms based on the categories
- Clear definition of what will constitute environment and social categories.
    a. Assessment and Management of Environmental and Social Risks and Impacts
    b. Labour and Working Conditions
    c. Resource Efficiency and Pollution Prevention
    d. Community Health, Safety, and Security
    e. Land Acquisition and Involuntary Resettlement
    f. Biodiversity Conservation and Sustainable Management of Living Natural Resources
    g. Indigenous Peoples, Minorities and Marginalised Communities.
    h. Cultural Heritage
    i. Financial intermediaries
    j. Stakeholder Engagement and Information Disclosure

C. **Accountability and Transparency:**

- Public Disclosure of Lending / Investment:
- Disclosure of the ESG policies in the website in regional languages along with English.
- Information of grievance redressal mechanisms be available both at project and financiers level with the communities
- Reporting of monitoring procedures and action taken report every quarter

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We monitor the investments of national and international financial institutions, engage on policies that impact the banking sector and economy of the country, demystify the world of finance through workshops and short-term courses and help citizens make banks and government more transparent and accountable, for they use public money.

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