CHAPTER IV
ENIRONMENTAL IMPACT ASSESSMENT PROCESS IN INDIA

India has a history of various legislations protecting environment even before the Stockholm Conference, the time line often taken as the starting point of global developments in environment, both legally and otherwise.\(^1\) The Indian Penal Code, penalizes causing defilement of water of a public spring or reservoir with imprisonment or fine. The Easements Act, 1882 refers to riparian owners’ right and unreasonable pollution of water by upstream users. The Fisheries Act, 1897 - penalizes killing of fish by water poisoning and by using explosives. There are many other legislations like – The Bengal Smoke Nuisance Act, 1905; The Indian Motor Vehicle Act; The Factories Act, 1948, The River Boards Act, The Indian Forests Act, 1927, The Forest (Conservation) Act, 1980 and Wildlife protection Act, 1972.\(^2\)

The concern for clean environment increased during 1970s i.e. after the earth summit, in consonance with rest of the world. New specialized legal paradigms to regulate water pollution, air pollution, radioactive wastes etc, were brought into force. Most important of all these developments is, bringing into force the Environment (Protection) Act, 1986, termed as ‘umbrella’ legislation, conferring broad powers on the Central Government to conduct research and
investigate pollution sources and violations. The said legislation, delegates the powers to executive to make rules, to establish and enforce regulatory standards for control of environmental pollution, and also to regulate handling of hazardous substances. The Environmental Impact Assessment regulations are part of this legislation starting from 1994 onwards, as subordinate (or delegated) legislation. The 1994 Notification has seen number of amendments in the recent past.

Prof. William Lockhart remarks "for almost a decade, the government of India has, somewhat erratically created, expanded, revised, cut back and implemented a program of environmental impact assessment review and clearance of projects for industrial and resource development. The program was logical extension of India's enactment of many of the central features of latter – 20th century programs for environmental protection that were adopted in response to world-wide concerns about increasing environmental degradation generated by the 1972 Stockholm Conference on the Human Environment".

HISTORY OF EIA PROCESS IN INDIA

The Environmental Impact Assessment in its rudimentary form existed since 1970s in the form of informal administrative practices. This was for certain government funded mega projects like, river valley projects popularly known as irrigation and power projects,
thermal power projects, mines, atomic power plants and other highly polluting industries. This was prompted as per the guidelines of National Planning Commission and was implemented by the central government’s Department of Science and Technology. The following two important points are to be borne in mind in this regard that – (1) this impact assessment was applicable only to a very few specific projects in which government was to fund and not to private enterprise projects (2) there was no legislative provisions regarding this till 1994.

In the period preceding 1994, most of the economic (or industrial) activities were concentrated in and around ‘state’, the practice was sufficient to protect the environment to a great extent. The state agency acting as ‘impact assessor’ and ‘project developer’ as well is somewhat a peculiar situation to appreciate, but because of two important reasons this position was never seriously thought over. The first being the grand assumption that, ‘state’ is true representative agency of ‘people’; it is a custodian of public good, and works only for the public good. Second, during that period there was not much of concern, towards environment, conservation etc.

The situation did not last longer as state started gradually rolling back, giving space to private enterprises. During 1970s and 1980s, India’s economic policies remained largely guided by Industrial Policy Resolution of 1956 which involved massive
investments. This was because at that time a public sector had a commanding role in the national economy. For the first time in 1991, the Indian government issued a "statement on Industrial policy" which contemplated expanding the industrial sectors open to private investment, rehabilitating or disinvesting in sectors burdening straining the budgetary sources. This reduced the managerial control over public sector industries and diminished their dependence on the public finance, while retaining a "commanding presence" in strategic sectors of industry. Hence for the protection of environment in the changed scenario several legislations were brought into existence. And also the Environmental Impact Assessment regulations for the project proponents, which were to be complied before seeking grant from the concerned regulatory agency for their respective projects.

The Supreme Court of India played a substantial role in emphasizing the need to protect the environment. In its effort the Apex Court has devised many principles, which to a great extent form part of the impact assessment law which will be examined in detail. The important principles relevant here are:

1. The 'polluter pays' principle, which is part of the basic environmental law of the country. Which also states that the polluter has to bear the cost of all remedial or clean up cost and also the amounts to be payable as compensation to the victims of pollution. This principle in effect will not make much sense if an activity has to be situated in an environmentally sensitive zone. To mitigate such critical problems of the future, Environmental Impact Assessment...
stands as a tool of environmental decision-making, by which the project proponent may understand the environmental consequences of the project in advance.

2. The ‘precautionary principle’ developed by the judiciary, requires government authorities to anticipate, prevent and address the causes of environmental pollution. This principle also imposes the onus of proof on the developer or industrialist to show that, their actions are environmentally benign. Therefore, it is not only prudent but also mandatory to have some studies conducted in order to understand and predict what is going to be the environmental impact of the proposed economic activity. If the environmental damage is considerable then the project proponent may think in terms of alternatives, or change the technology/process etc.

In consonance with most other contemporary world systems, India’s regulations also do require Project Proponents of specified categories of new or revamped industrial and developmental projects to submit an Environmental Impact Assessment Report and other necessary environmental documentation, providing detailed information regarding the project, their environmental context and the potential environmental impacts. The Government clearance for such project is based on informed analysis and assessment of the impacts and the adequacy or feasibility of possible mitigation.

ENVIRONMENTAL IMPACT ASSESSMENT – LEGAL FRAMEWORK IN INDIA

This part is being discussed in two parts. The first part deals with the current Environmental Impact Assessment and the legal frame-work as it exists; and the second part verifies the proposed change which the ministry is planning to bring about. The notified
amendment is expected to be brought into effect any time. Otherwise also, the study of Environmental Impact Assessment from the first level is ideal as the Environmental Impact Assessment programme, in India is in its infancy and hopefully will grow to the required extent in the near future.

THE EXISTING POSITION OF EIA LAW

The Indian Environmental Impact Assessment law is not enshrined in a specialized and dedicated legislation. It exists in severa Notifications brought out under the Environment (Protection) Act, 1986, which is the umbrella legislation to protect the environment of our country. This simple frame-work, however, is embodied in a set of frequently-revised regulations whose potential effectiveness is compromised by its confined reach, by crippling exemptions and exclusions, by confusing and inexact drafting by lack of ready public access to any reliable compilation that systematically incorporates amendments or highlights important changes, and by promulgation of a number of administrative interpretations of uncertain authority which significantly narrow important aspects of the regulations. The process of entire EIA is in the form of subordinate legislation. To comprehensively understand these Notifications, a little effort is needed. There are also a series of amendments to the Notification changing the
complexities of the very Environmental Impact Assessment process itself.13

The amendment process could be an indication of positive progress in law. It can also be viewed as an indication that, things are not well also. Hence, prior to analyzing the efficiency of working of Environmental Impact Assessment programme in India it is worthwhile to understand in detail, the legal frame-work encompassing the programme.

As stated above, it is the Environment (Protection) Act,14 and the Rules 15 made there under validate the Notification of Environmental Impact Assessment16. The parent legislation17 amply empowers the Central Government to “take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution”18. Further, the legislation empowers the Central Government to have some protection measures like ‘restriction of the areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards.19 Typically these are the provisions which are quoted in the Notification, under whose authority the Central Government has setup the entire Environmental Impact Assessment programme.
Rules under the statue are worded very broadly to encompass any such activity of the Central Government, which may be taken up to conserve or promote the environment. Rules categorically state that, the Central Government may “wherever it appears....expedient” be able to “impose prohibition or restrictions on the locations of an industry or the carrying on of processes and operations in any area by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time...”. Hence, the Environment (Protection) Act, 1986 and Environment (Protection) Rules, 1986 are the foundation upon which the Environmental Impact Assessment process is built in India.

It is interesting to note that, there is no specific provision in the Environment (Protection) Act or Environment (Protection) Rules exactly specifying and empowering the Central Government to have regulation regarding Environmental Impact Assessment before granting environmental clearance to any project. This has led to some skepticism among the legal community as to the constitutional validity of the Environmental Impact Assessment Notification. There were opinions that, without specific provision in this regard the Central Government can not implement the Environmental Impact Assessment Notification. However since eleven years of Environmental Impact Assessment notification’s existence, its constitutionality has not been questioned. Therefore, the debate
about constitutional validity of Environmental Impact Assessment Notification is only academic. Hence it is possible to presume that the Central Government has virus under Environment (Protection) Act to have these regulations in place.

THE LEGAL PARAMETERS OF ENVIRONMENTAL IMPACT ASSESSMENT

The Environmental Impact Assessment in India is built on legal parameters provided in the EIA Notifications. These parameters may be summarized as follows:

1. **Scheduled Projects** – These are projects which are listed in the Schedule appended to the Environmental Impact Assessment Notification. According to the general mandate, all these projects have to conduct proper Environmental Impact Assessment and apply to the Central Government for prior clearance. The project will be given clearance, once the Central Government (Ministry of Environment and Forest) verifies the environmental impact assessment statement and related mitigation measures to be taken by the project proponent.

2. **Projects to be established in Costal Regulation Zone** – These are second set of projects requiring detailed Environmental Impact Assessment prior to their commencement. The Costal Regulation Zone regulations mandate that, all the activities to be established in the CRZ area have to take prior clearance from the Central Government (Ministry of Environment and Forest), as any
economic activity in the CRZ area is considered to be environmentally impacting. Accordingly to seek sanction the project proponent has to conduct environmental impact assessment study before applying for the project clearance.

3. **Projects to be located in certain ecologically sensitive/fragile areas** – There are Notifications, issued the Ministry of Environment and Forests, declaring certain areas to be ‘ecologically sensitive/fragile’. Any project activity to be started in these notified areas require prior assent from the Ministry of Environment and Forest. Naturally for getting an assent from the ministry the project proponent has to conduct Environmental Impact Assessment study.

4. **Projects to handle Hazardous Wastes** – All the projects to handle hazardous wastes in accordance with Hazardous Wastes (Management and Handling) Rules, 2000 require submission of an environmental impact assessment statement followed by Public Hearing prior to the designing and development of any landfill facility. This mandate is considering the hazardous character of the project, especially in disposing off the hazardous materials.

In the entire categories mentioned above, the law mandates conducting of Environmental Impact Assessment study by the project proponent while acquiring clearance from the Ministry of Environment and Forest. Other than the basic mandate, there are
no details pertaining to impact assessment requirements. Both the Costal Zone Regulation Management and Hazardous Waste Management regulations are worth independent research, and dwelling into these will take out the focus of the study. Hence the research is concentrated upon the ‘scheduled industries’ Environmental Impact Assessment law and not upon the Costal Zone Regulation Management and Hazardous Waste Management regulations hereinafter.

THE PRIMARY NOTIFICATION

The first notification regarding EIA was brought into effect (referred as Primary Notification hereinafter) in 1994 [this Notification is promulgated under sec. 5(3)(a) of Environment (Protection) Rules, 1986]. This Notification introduced the following changes –

1. If, the project proponent wants to start any new industry, listed in the Schedule I of the Notification, has to seek environmental clearance from the Central Government. The Notification is applicable to the entire Indian continent;

2. If, the existing establishment is desirous of expanding or modernizing, then it has to first assess, whether it is going to increase the pollution load from its existing level. If the answer is in 'yes', then it has to seek accord from the Central Government. There is no need to seek ‘environmental clearance’ if there is no increase in its existing pollution load. Experts do wonder why the
stipulation about 'increase in pollution loads'? For the simple reason that, when you expand your establishment naturally your pollution load is also going to be increased. But it appears from the law that the legislators are aiming at those technological processes by which pollution load could come down. For example usage of cleaner fuel, or technologies, although there is modernizing or expanding of the project the pollution load (due to sophisticated technology) may come down. On the other hand, exempting industries from the process of 'environmental clearance' the industries are encouraged to adopt cleaner/greener technologies;23

3. The project proponent is required to formally apply24 to the Secretary, Ministry of Environment and Forest, New Delhi. The application shall be accompanied with the following documents for the consideration of the Ministry – (a) the Environment Impact Assessment (EIA) Report; (b) the Environmental Management Plant (EMP); and (c) Details of public hearing;25

4. The Notification created exceptions in case of small scale industries with regard to the requirement of 'public hearing' provided the same is located in any of the – (i) notified industrial areas; (ii) areas earmarked for industries under the jurisdiction of industrial development authorities. In cases of widening and strengthening of highways, mining projects with lease areas up to 25 hectors, industrial units located in special economic zones (SEZs) and
modernization of existing irrigation projects, also the requirement of public hearing was dropped.

It is hard to reason out as to why the requirement of 'public hearing' is being left out for these projects in the Notification. There is neither clarification nor any justification officially available from the Ministry's sources. May be the initial interest of the Notification was to put these activities on to the 'fast track' so that substantial time is not lost out by conducting public hearing while seeking 'environmental clearance' to these projects.

5. There is yet another exception created in the Notification26 with regard to 'pipe-line projects'. The Notification states that in case of pipeline project, there is no need to submit Environmental Impact Assessment report while seeking environmental clearance. But the public hearing is made mandatory before taking up such projects.27

It is stipulated that the public hearings shall be conducted in each of the districts, through which the pipeline passes through.

6. The Notification28 also specified that, in building of Highway project the public hearing shall be conducted in as in the case of pipe line projects each of the districts through which the highway passes through.29

7. There is ample space created in the Notification for seeking more information/data from the project proponent. Whenever the regulatory agency (at the Central Government) deems necessary.30
The regulatory agency has the power to keep the project clearance in abeyance till such information or data is provided to it by the project proponent. Furnishing of wrong or insufficient information at the second instance will be a sufficient ground for the agency to reject clearance to the project itself.

8. The Notification created a special category of projects, popularly known as 'site specific projects'. These are projects being considered to be extremely sensitive from the stand point of environment, hence project proponent is asked to inform the site in which the proposed project is going to be started to the Central Government in advance. After due verification, the Central Government will permit the project proponent to go ahead with further formalities and detailed impact assessment etc. The project proponent is not to take any actions including assessment, survey, construction etc., till such permission to the site is taken. There is a mandate of thirty days within which the Government Agency (i.e. Ministry of Environment and Forest) has to give its permission. If nothing is heard from the Governmental Agency, within thirty days after furnishing all necessary details, it is deemed that, the Central Government has given permission to proceed further. The following are site specific projects – (i) mining; (ii) pit-head thermal power stations; (iii) hydro-power, major irrigation projects/or their combinations including flood control systems; (iv) ports and harbors
(excluding minor ports); and (v) prospecting and exploration of major minerals in areas above 500 hectares.

9. The Notification establishes an Impact Assessment Agency (IAA) created by the Central Government in the Ministry of Environment and Forest to evaluate the application by the project proponent. The Impact Assessment Agency may seek the assistance of 'experts' in the field during evaluation of the application. Wherever necessary the Impact Assessment Agency, has the right to visit the site or a factory, during or after the commencement of the operations relating to the project. This right of visit gives the Impact Assessment Agency a closer look at the realities that exist on ground before grant of assent to the project and even to assess the viability of the project technically.

10. After receipt of details the Impact Assessment Agency, has to prepare a set of recommendations about the project stating whether it is fit for clearance or not, if found being fit for clearance, then under what stipulations subject to which the permission is to be granted. This is to be done by taking into account the following information available with the Impact Assessment Agency – (i) the data/information provided by the project proponent; (ii) the information the Impact Assessment Agency has collected first hand by site inspection (if any); and (iii) the public consultations conducted in this regard.
11. The Notification specifies time limit to the Impact Assessment Agency to do this exercise. The time line mentioned is of ninety days for evaluation and preparing recommendations; and thirty days for conveying the information to the project proponent. This adds up to 120 days to the Impact Assessment Agency to evaluate any application for environmental clearance.

12. In order to have the ‘post project monitoring’ - the project proponent will submit once in six months a compliance report to the Impact Assessment Agency. This report will help the Impact Assessment Agency to take stock of the situation. Wherever deemed necessary the Impact Assessment Agency may also put this information of compliance to the public domain to inform people about the compliance to monitor the satisfactory compliance of conditions imposed.

13. The Notification creates yet another category of exemption with regard to projects from the requirement of Environmental Impact Assessment (or environmental clearance). These projects are:

   a. ( ) Ports, Harbours, Airports (except minor ports and harbours); (i) All tourism projects between 200 to 500 Meters of high water line and at locations with an elevation of more than 1000 meters with investment of more than 5 crores; and (ii) mining projects (major minerals) with lease more than five hectares.

   b. On the basis of the investment criteria there is another category created. In case sixteen out of 30 industries mentioned in the Schedule I of the Notification, the requirement of Environmental Impact Assessment (and environmental clearance from agency) was left out, provided the investment in case of new project is less than 100 crores.
and in case of 'expansion or modernization projects' are less than 50 crores;

c. Any items which are reserved for Small Scale Industrial Sector and having investment less than one crore;

d. Defence related road construction projects in border areas. This was facilitating quick action by building roads for mobilization of armed forces to safe-guard the security of the Nation;

e. In case of bulk drugs and pharmaceuticals, if the product is covered by the Notification G. S. R. 1037 (E) dated 5th December 1989; and

f. Modernization projects in irrigation sector provided the additional command area is less than 10,000 hectares or project cost is less than Rs.100 crores.

14. Furnishing false data or concealment of factual data in any manner would render the project application to be outrightly rejected and the Notification has further elaborated as to what shall be considered as providing false data or concealment of factual data. They are as follows – (i) false information; (ii) false data; (iii) engineered reports; (iv) concealing of factual data; and (v) false recommendations or decisions.

15. There are four Schedules appended to the Notification describing procedural details for the project proponent to consider and observe.

There are 31 projects listed in the Schedule I of the Notification, which require (subject to the details mentioned above) environmental clearance before commencement of work. In case of
Thermal Power Plants authority for clearance is delegated to the concerned State Government. In case of thermal power plant and pit head thermal power plants, the project proponent is required to approach the concerned State Government i.e. the department which is endowed with work relating to environment and ecology with all the necessary details specified there in.

The Schedule III of the Notification details out composition of the Expert Committee for Environmental Impact Assessment. The Committee consists of experts drawn from multiple expertises like – (i) eco-system management; (ii) air/water pollution control; (iii) water resource management; (iv) flora/fauna conservation and management; (v) land use planning; (vi) social sciences/rehabilitation; (vii) project appraisal; (viii) ecology; (ix) environmental health; (x) subject area specialists; and (xi) representatives of NGOs/persons concerned with environmental issues. This Expert Committee helps the Impact Assessment Agency of Ministry to assess/evaluate applications for Environmental Clearance. A member of the Impact Assessment Agency acts as Member-Secretary of the expert committee. The outstanding and experienced ecologist or environmentalist or technical professional with wide managerial experience in the relevant developmental sector would act as the Chairman of the Expert Committee.
PUBLIC HEARINGS

Yet another hallmark of this Notification is the mandate of ‘public hearing’ before accord of clearance to any project. This is a process of inviting opinions from public regarding the project to be taken up. This is the third segment of the Environmental Impact Assessment Process [as building a partnership between three major segments viz. (i) The state agency; (ii) the project proponent; and (iii) the community]. Although not very effective and serious reservations are being expressed by members of the civil society, the process has helped the cause to some extent and is in its nascent stage. The critical analysis of this component will be addressed in the later part of this thesis.

To start with the responsibility is, upon the project proponent to supply all the necessary documents to the concerned State Pollution Control Board to facilitate it to cause the ‘public hearing’ being conducted. The documentation required to be furnished in this regard are - (i) an executive summary of the project, which explains salient features of the project both in English and local language. This facilitates the members of the community who are not aware of reading English to understand details about the project; (ii) details under Air and Water Act in the prescribed format; and (iii) any such other information or document/s which the Board feels necessary for final disposal of the application.
Once all these details are furnished, the Board will fix up a particular date/s for conducting the public hearing. The Board also gives publicity about this public hearing in the community inviting the public attention to the proposed project. Spirit of the Notification indicates that, the concerned State Pollution Control Board shall take necessary measures to spread the notice of public hearing among the community, which is likely to be affected by the project. There are certain common minimum standards prescribed in the Notification. The Notice of the Public Hearing shall be published in at least two news papers having wide circulation in the region/locality around the project. One of such newspaper must be in the vernacular language of the locality concerned. The notice shall clearly specify the date, time and place of the public hearing. It shall also invite the public view, suggestions, comments and objections in writing within thirty days from the date of publication of the notification.

Although there are few details in the notification, any person interested, may participate in the public hearing. It is possible to make both oral as well as written submissions during the public hearing. If desirous any participating member may make oral submissions and also submit written comments for the consideration of the public hearing panel.
To hear comments of the public a panel is being constituted comprising of: (i) a representative of the State Pollution Control Board; (ii) the District Collector or his nominee; (iii) a Representative of the State Government dealing with the subject; (iv) a Representative of Department of the State Government dealing with environment; (v) not more than three representatives of the local bodies such as Municipalities or Panchayats; and (vi) not more than three senior citizens of the area nominated by the District Collector.

To make the members of community come prepared to the public hearing there is an arrangement to make available the executive summary of the project to them. The detailed enabling provision in this regard, mandates that, in the 'executive summary' of the project shall be made available in (i) district collector's office; (ii) district industry centre; (iii) the office of the Chief Executive of Zilla Parishad or Commissioner of the Municipal Corporation/local body as the case may be; (iv) head office of the concerned State Pollution Control Board and its concerned regional office; and (v) the concerned department of the state government dealing with the subject of environment. Finally, there is a specification that public hearing shall be completed within 60 days from the date of receipt of complete documents/information as required under this Notification from the project proponent.
AMENDMENTS TO THE EIA NOTIFICATION

The primary Notification of Environmental Impact Assessment\(^{52}\) has been amended twelve times as of now.\(^{53}\) This is clear indication of dynamism of law and even the politics behind the issue of Environmental Impact Assessment programme. This itself indicates that, how the Environmental Impact Assessment process is diluted over a period of time. Had these amendments were brought into effect to further consolidate or strengthen, would have made some sense, but unfortunately things did not work that way at all. It is worth while to go through all these amendments in a nutshell, before the research analyzes the underpinning issues and pressures for these amendments and how they have systematically diluted the Environmental Impact Assessment process in India.

*The First Amendment*\(^{54}\)

The Central Government took its decision to amend the Environmental Impact Assessment Notification in the 'public interest'.\(^{55}\) The following were some of the salient features of the amendment:

1. **The word 'detailed' was dropped from the clause** – as per the original Notification the project proponent is required to submit a detailed project report for seeking environmental clearance for his or her projects. Now through the revised version the project proponent was liberated from furnishing the detailed project proposal by...
dropping the word 'detailed' from the main Notification. This has made the job of the project proponent very much easy.

2. **Restriction of application to major minerals only** - It was through this amendment that, site clearance requiring for the prospecting and exploration of major minerals in areas about 500 hectares was restricted only to 'major minerals' and not to all minerals as contained in the principal notification.

3. **Insertion of 'if deemed necessary' clause** – According to the original Notification summary feasibility reports by the project proponent were to be evaluated by the Impact Assessment Agency. Also the evaluation and assessment of the documents submitted with the application form was to be done, mandatorily in consultation with the committee of experts. By the insertion of 'if deemed necessary', the mandate was eliminated. The Committee has to consult the expert committee when it deems fit, otherwise it can evaluate the entire application itself and grant environmental clearance to the project. This is clear deviation from the norm without any sufficient justification. How the bureaucratic decision making in such specialized areas can happen without seeking expert technical advice? This is another way available for the administrative authorities to circumvent the 'expert panel', when they feel there is possibility of opposition from them to the project.
4. **Making site visit optional** - According to the original Notification, it was mandatory for the Impact Assessment Agency to visit the site or factory as the case may be before granting the environmental clearance to the project. This was an excellent opportunity available for the members of Environmental Impact Assessment agency to get first hand knowledge of the ground realities. In its entirety, it was good idea to have at least one field visit to the project site. Through this amending notification, this compulsion was eliminated by insertion of a clause ‘if necessary’. Now if the Impact Assessment Agency thinks site visit is necessary it can; otherwise there is no need to visit the site.

5. The position earlier was that, the principle documents like, Summery feasibility reports, environmental management plans, the recommendations and the conditions subject to which environmental clearance is given shall be made available to the concerned parties and also to the environmental groups on request. This was a good measure of maintaining transparency in the whole process. This used to act as a check upon the possible arbitrary administrative action. But by the amendment the words ‘summary feasibility reports, environmental management plans’ were deleted to substitute ‘summary of the report’ only. This means over a period of time what was otherwise expected to be more transparent process, became confidential.
6. Another impact of the amendment was the clause about availability of the compliance reports/half-yearly reports of the Impact Assessment Agency, subject to public interest only. What is 'public interest' would be decided by the Impact Assessment Agency and then accordingly may share the information.

7. The Notification added that nothing in the notification would apply to Ports\textsuperscript{56}, Harbours\textsuperscript{57}, Airports (except minor ports and harbours)\textsuperscript{58}. But added to the list all tourism projects between 200-500mts of high-tide line or at the locations with an elevation of more than 1000 meters with investment of more than 5 crores and Mining Projects with leases of more than 5 hectors if they fall in areas covered by S. O. No. 416 (E) dated 20\textsuperscript{th} June 1991.

8. The amendment also added that for highway projects\textsuperscript{59} with investment less than 50 crores need not have to apply for environmental clearance. This is yet another point of dilution. The Ministry might have had in its mind quick infrastructural development, but when the acquisition of agricultural land or other fertile lands for construction of road takes place, although the total project cost may be less than 50 crores, it might well have severe ecological impact. The existence of such provision may be used to divide a bigger project in to several phases or segments so that each phase's total out lay will not exceed 50 crores. This avoids going through the
process of environmental clearance. Hence this is considered to be
strong blow to the process of Environmental Impact Assessment.

9. Prior to this amendment mining projects with a lease of more than
5 hectares were listed in Schedule I – requiring them to seek
environmental clearance. Through the amendment this was limited
to only the major minerals. This is part of everybody's common
knowledge that, mining is a very hazardous activity and has
tremendous impact upon environment. This does not depend upon
the substance for which you are mining. The concept of major
minerals and minor minerals is a logical concept for administrative
purpose only. This dilutes even further the concept and goes
tangently against the objective of environmental impact assessment.

The Second Amendment

This amendment was also termed as - in the 'public interest'
only. The salient features of this amendment brought down the
environmental clearance processes further, which are briefed here
under:

1. This Notification granted little power to the State Government in
case of few projects to grant environmental clearance. The
Notification also stated that the following category of projects are to
be granted clearance by the state government concerned viz:

   a. All cogeneration plants, irrespective of installed capacity;
b. Captive power plants up to 250 MW (both coal and gas/naphtha based) coming up separately and not along the main industry and;

c. Utility projects like; (i) coal based plants up to 500 MW using fluidized bed technology subject to sensitive areas restrictions; (ii) coal based power plants up to 250 MW using conventional technologies; and (iii) gas/naphtha based plants up to 500 MW.  

2. The Schedule I of the notification (the entry for highway projects) was clarified as being those excepting projects relating to improvement work including widening and strengthening of roads with marginalized land acquisition along the existing alignments, provided it does not pass through ecologically sensitive areas such as National Parks, Sanctuaries, Tiger Reserves, Reserve forests.

**The Third Amendment**

This is a relatively minor amendment having the following two points added to the environmental impact assessment process viz.:

1. The original Environmental Impact Assessment Notification had a clause stating that, if insufficient or inadequate data and action plans etc., will be rejected back to the project proponent. This amendment clarified the issue that “submission of incomplete data or plans for the second time would itself be a sufficient reason for the Impact
Assessment Agency to reject the case summarily”. This is an ideal addition to the Notification.

2. This amendment exempted some projects from the process of public hearing. They were (i) Small Scale Industrial Units (as defined in the Industrial Policy from time to time); (ii) widening and strengthening of highways, mining projects (major minerals) with lease area up to twenty-five hectares; and (iii) modernization of existing irrigation projects. Unfortunately the documents preceding or otherwise to the amendment did not spell out why these projects were dropped out from the requirement of public hearing.

The Fourth Amendment\textsuperscript{65}

This amendment (termed by some experts as critical and others as not so!) brought about one more exclusion to the already existing three exclusions. That was defense related road construction in border areas, from the purview of Environmental Impact Assessment. This was obviously done in furtherance of interest of national security. But according to several studies there is good number of constructions done by destroying pristine natural environment under this heading. As per them at least, after the construction is over these projects must be subjected to impact assessment.
The Fifth Amendment

This is another minor amendment, and has the following points of modification to the Environmental Impact Assessment notification:

1. According to this, nothing in the original notification would be applicable to any item falling under bulk drugs and pharmaceuticals of Schedule I. 

2. The amendment also added the time frame to cause public hearings done. The following clause to the schedule IV in this regard was added - “Time period for completion of public hearing: The public hearing shall be competed within a period of sixty days from the date of receipt of complete documents as required under paragraph 1”.

The Sixth Amendment

This amendment was issued using the ‘public interest’ clause (a) of sub-rule (e) of Rule 5 of the Environment (Protection) Rules. According this amendment, nothing in the EIA notification would now be applicable to any item falling under entry No. 8 regarding bulk drugs and pharmaceuticals. This amendment also added the following clause to the Schedule IV on public hearing that “time period for completion of public hearing: the public hearing shall be completed within a period of 60 days from the date of receipt of complete documents as required under paragraph 1”.

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The Seventh Amendment

Through this amendment the Central Government responded to the long standing demand with regard to 'Environmental Impact Assessment Report'. As observed earlier, only an executive summary of the Environment Impact Assessment was to be made available in some specified places for the consideration of those members who are interested in attending the Public Hearings. Through this amendment the Environmental Impact Assessment report itself would be made available at the designated places thirty days prior to the public hearing. In other words this makes the Environmental Impact Assessment report available as soon as the notice of the public hearing is issued. This is welcome change being brought into the system. This also enables the participator in the process to get some time to understand the intricacies and suggest more meaningful ways to mitigate environmental damage in public hearings.

This amendment also made it necessary to conduct public hearings, in pipe-line project and highway project, in all the districts in which the pipe-line or highway passes through. This is another important and welcome change being brought through the amendment.

Continuing the earlier trend, this notification exempted few more projects from the net of Environmental Impact Assessment.
Sixteen set of projects, including nuclear power projects; river valley projects; ports, harbors, airports, petroleum refineries, storage batteries, thermal power plant, pulp paper and newsprint etc., were kept out of the requirement of environmental clearance, provided the investment is less than Rs.100 crores in case of new projects and Rs.50 crores in case of modernization/expansion projects. The amendment further added to the list of exclusions - requiring environmental clearance from the central government. The new entry to this list was ‘modernization projects in irrigation sector if additional command area is less than 10,000 hectares or project cost is less than Rs.100 crores’.

The earlier amendment had excluded bulk drugs and pharmaceuticals from the environmental impact assessment notification. This amendment clarified that they are to be excluded only if the product is covered by G. S. R. 1037 (E) dated 5th December 1989.

The Eighth Amendment

Prior to this amendment all ‘mining projects involving major minerals with lease more than 5 hectares’ were exempt from Environmental Impact Assessment notification if they were being taken up under certain specified areas. With this amendment this exemption was removed.
The Ninth Amendment

The Entry No. 2 of Schedule I of the original Notification read “River Valley projects including hydel power, major irrigation and their combination including flood control” was changed by this amendment. Now the changed version was to read it as “River valley projects including Hydel Power Projects, Major Irrigation Projects and their combination including flood control project except projects relating to improvement work including widening and strengthening of existing canals with land acquisition up to a maximum 20 meters, on both sides put together along the existing alignments provided such canals do not pass through ecologically sensitive areas such as national parks, sanctuaries, tiger reserves and reserve forests”.

The Tenth Amendment

Earlier all thermal power projects located within 25kms. of a boundary of reserved forests, ecologically sensitive areas including National Parks, Sanctuaries, Biosphere Reserves, critically polluted area and within 50kms. of an inter-state boundary would require environmental clearance from the Central Government. The said provision is amended to read as;

“every project proposed to be located in:
(a) A critically polluted area; or
(b) Within a radius of fifteen kilometers of the boundary of –
   (i). Reserved forests,
(ii). Ecologically sensitive areas which include national parks, sanctuaries, biosphere reserves; and

(iii). Any state, Shall require environmental clearance from the Central Government”.

The Eleventh Amendment

The following are few of the salient features of the amendment brought on board for the environmental clearance notification

1. The requirement of public hearing was done away with for “off shore exploration activities, beyond 10 kilometers from the nearest habituated village boundary, gaonthans and ecologically sensitive areas such as, mangroves (with minimum area of 1000 sq.m.), corals, coral reefs, national parks, marine parks, sanctuaries, reserve forests and breeding and spawning grounds of fish and other marine life”.

2. In case of Greenfield Airport projects, petrochemical complexes and refineries the project site clearance was made mandatory. Due to this change the project proponents are required to intimate the exact location of the project to the Ministry of Environment and Forest prior to any activity, so that the Ministry can give clearance to the site first.

3. Isolated petroleum product storages was added to Item 4 of schedule 1 of the notification which was petroleum refineries including crude and product pipelines.
The Twelfth Amendment

Keeping in view the orders of Supreme Court and High Court, this amendment was brought into picture. By this amendment two more categories were added to the Schedule I of the Notification viz. new construction project; and new industrial estates. However any (i) construction project (including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes) intended for usage of 1,000 persons or below or (ii) those discharging up to 50,000 liters of sewage per day or (iii) with an investment up to fifty crores; were exempted from the requirement of environmental clearance. In addition to this, any industrial estate (including industrial estates accommodating industrial units) to be established in an area of 50 hectares or below, but excluding the industrial estates irrespective of area if their pollution potential is high, were also exempted from the requirement of environmental clearance.

GRIEVANCE REDRESSAL MECHANISMS

The National Environment Appellate Authority is the redressal institution created for the grievances with reference to Environmental Clearance in India. The Appellate Authority is constituted under the National Environment Appellate Authority Act, 1997. The objective of the enactment and constitution of the Authority is well encapsulated as “an Act to provide for the establishment of National
Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto.\textsuperscript{79}

Any person aggrieved by an order of granting environmental clearance by the concerned state agency may within thirty days, prefer an appeal to the Authority.\textsuperscript{80} If there exists sufficient and reasonable cause, the Authority might even entertain any appeal after the expiry of thirty days, but not after ninety days from the date of grant of clearance.\textsuperscript{81} Including the project proponent, the appeal to the Appellate Authority can be preferred by, any other individual who feels aggrieved by the decision of the environmental clearance, and any association of persons whether incorporated or not, which feels aggrieved.\textsuperscript{82} This provides ample scope for the civil society to take action against the environmental clearance granted by the Ministry of Environment and Forests. Under the statute there is a provision which facilitates the State Government to prefer an appeal when the environmental clearance is granted by the Central Government and the Central Government to prefer an appeal against the order of clearance from any state Government, provided the clearance is granted by the State Government.\textsuperscript{83} Finally the
appeal can also be preferred by any local authority in whose local limits or the neighborhoods the project has been granted environmental clearance.84

The Appellate Authority shall comprise of a Chairperson, a Vice-Chairperson and other maximum of three members. The Central Government will decide as to, how many members the Authority shall have at a given point of time.85 The Chairperson shall be competent to be a Judge of Supreme Court or the Chief Justice of a High Court. The Vice Chairperson of the Authority will be of the rank of Secretary to the Government of India or any other post under the Central or State Government carrying the scale of pay equivalent to that of Secretary to the Government of India. In addition the Vice Chairperson shall also possess desirable expertise or experience in administrative, legal, managerial or technical aspects of problems relating to the environment. The Member of the Authority shall possess sufficient professional knowledge or practical experience in the areas pertaining to conservation, environmental management, law or planning and development. All these members are appointed to the Authority by the President of India.86 Since the constitution of the said Authority the civil courts or other 87 authorities' jurisdiction have been barred from accepting any grievances pertaining to the environmental clearance.
It is believed that the National Environmental Appellate Authority is underperforming itself since its inception. It is difficult to identify the reasons for the same. The verification of records of the Authority demonstrates this point. Till mid 2005 the Authority received only 15 grievances for its verification. Out of these, many have been rejected on grounds of lack of jurisdiction, presentation of the case in wrong format and so on. As stated earlier, it is very difficult to ascertain the reason for underperformance of the National Environment Appellate Authority. One simple assumption could be that the grant of environmental clearance programme is running so effectively that, there is seldom need felt for appealing to the Appellate Authority. But the growing resentment and agitation against the entire environmental clearance process disproves the point. Even there are not very many litigations directly focusing upon the aspect of environmental impact assessment statements and grant of environmental clearances. Indian experience is undoubtedly, a pioneer in the field of judicial activism. Especially the judicial activism our courts have demonstrated in the filed of environment is unparallel. But strangely the litigation churned out of environmental clearance process is very much negligible. Single largest reason for this phenomenon could be lack of awareness among the masses regarding the activity of environmental impact assessment.
Many experts interviewed for the study, were also unable to give any reasoning as to the underperformance of the Appellate Authority. It is unfortunate that since 2000 the Authority is awaiting the appointment of judicial member i.e. the Chairperson. It was recommended by many experts to abolish such a defunct institution. The Law Commission in its report has strongly observed that, "...we may also state that the National Environmental Appellate Authority constituted under the National Environmental Appellate Authority Act, 1997, for the limited purpose of providing a forum to review the administrative decisions on Environment Impact Assessment, had very little work. It appears that since the year 2000, no Judicial Member has been appointed. So far as the National Environmental Tribunal Act, 1995 is concerned, the legislation has yet to be notified despite the expiry of eight years. Since it was enacted by Parliament, the Tribunal under the Act is yet to be constituted. Thus, these two Tribunals are non-functional and remain only on paper".89

There is no doubt that, if constituted and made functional, a good system of appeal/redressal can improve the significance of environmental impact assessment as a tool of decision making. The Andhra Pradesh Pollution Control Board's experience might be taken as an individual case study to demonstrate the point.90 In this case, M/s Surana Oils and Derivatives (India) Limited, a public limited company applied to Andhra Pradesh Pollution Control Board
for a No-Objection Certificate (NOC) for setting up an industry for the production of Castor Oil derivates. The pollution control board rejected the application on the grounds of it being a polluting industry and further stated that it is dangerous to locate the industry on the banks of Himayat Sagar Lake catchments. The Company preferred an appeal to Appellate Authority.\textsuperscript{91} Allowing the appeal, Appellate Authority directed the Pollution Control Board to give its consent subject to any conditions it chose to impose. In this backdrop the company filed a writ petition in the High Court asking for the direction to the Pollution Control Board to implement the order of the Appellate Authority. The High Court allowed the plea, and against this, the Pollution Control Board appealed to Supreme Court.

The question before the Supreme Court was – whether the industry was a hazardous one and in case it becomes operational, the chemical ingredients produced would sooner or later percolate into the substratum of the earth, get mixed up with the underground water which flows into huge lakes which are the main source of drinking water to two metro cities (Hyderabad and Sikandarbad). Both the Appellate Authority and High Court's findings were based on the expert report being submitted by the industry, which was accepted by these bodies. The Supreme Court felt that the opinion of the scientists was not tested or scrutinized by any expert body.
and required it to be examined thoroughly. Further, the Supreme Court sought expert advice from the National Environmental Appellate Authority (NEAA). The NEAA was also permitted to take evidence and obtain technical help from other scientific institutions in this regard. Accordingly the NEAA visited the site, took oral evidence, examined various technical aspects and gave an elaborate report, containing vast scientific data, as to why the industry should not be permitted to operate. It also consulted the Central Ground Water Board. The final report of the NEAA went against the industry.

Relying upon few technical formalities, the industry sought a further opportunity on limited conditions. The Supreme Court again referred the matter to the University Department of Chemical Technology, Bombay to be assisted by the National Geophysical Research Institute, Hyderabad (NGRI). The reports of these institutions contained an exhaustive detailed discussion of the scientific data which they freshly procured. The NGRI's conclusion in the matter was that, 'from results of multi-parameter investigations (i.e. field investigations, hydro geological studies, geophysical investigations, electric resistivity investigation, magnetic survey and tracer studies) carried out in the areas, is that hydraulic connectivity exists across the dolerite dyke located between 'Choudergudi' and 'Sirsilmukhi' facilitating the groundwater movement... In the post-
monsoon scenario, the groundwater table will go up and thereby may result in more groundwater flow across the dyke.\textsuperscript{92} The finding of the research effort was clear and loud that, there was sufficient scope for poisonous residual substitutes like nickel percolating underground and reaching the drinking water sources. On the basis of this the Supreme Court set aside the judgment of the High Court and the order of the Authority given. It is an ideal example where if not taken keenly by the court, the life of millions of citizens in the twin cities could have been endangered.

Some reference (for comprehensive treatment to the area under exploration) is to be drawn to yet another stillborn legislation viz. The National Environment Tribunal Act, 1995.\textsuperscript{93} Although, it has no direct implication upon the present topic of environmental clearance, has some relevance in its remote form. The above stated legislation is an ‘act to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to person, property and the environment and for matter connected therewith or incidental thereto’.\textsuperscript{94} Unfortunately the legislation is yet to see the light of day, as it is still awaiting official notification by the Central Government. Hence in the present context
the environmental victim is subjected to the long drawn delay of civil courts to seek compensation for personal injuries or damage to property occurred due to industrial accidents.

DECISIONAL LAW

The Public Interest Litigation or Social Action Litigation is very high in volume and quality, the decisional legal development with specific focus upon the Environmental Impact Assessment is very much limited. In vast majority of cases, where the developmental activities are challenged as posing danger to the environment by the members of civil society, the courts have taken note of the Environmental Impact Assessment Statements, but have not gone in to the qualitative aspects of the same. Hence the decisional law on the point of impact assessment is very meager. By and large the courts' observation in these matters was - whether the concerned state agency had applied its mind, while granting clearance to the project or not? While examining the aspect of 'application of mind' the courts have invariably taken the 'environmental impact assessment statement' as the prime evidence. As happened in the case of M. V. Naydu, there are good numbers of cases where the courts have moved further proactively to appoint their own expert committees to find out scientific varsities of the proposed project under contention. But pure examination of findings in the Environmental Impact Assessment reports or commenting upon the
findings of the EIA study conducted by the courts is yet to occur in the India scenario.

During the agitation of Mangalore Airport Expansion, both the High Court of Karnataka and Supreme Court have declined to allow the petition from the public interest groups. When the Airports Authority of India proposed to expand the Mangalore Airport to accommodate landing of Airbus 320 category of flights into the airport, the agitation started. For the sake of expansion land area of 190 acres adjoining the existing Mangalore Airport was identified to build a second runway. In such expansion plan no study for environmental impact was done, nor public hearing was held. Two writ petitions filed in this regard were dismissed by the High Court, stating that, the petitioners have not been able to show that, how the construction of second runway and terminal tower in Mangalore Airport will be against the public interest. Subsequent to this Environment Support Group (a Non Government Organization) had filed a Special Leave Petition challenging the High Court order. This was also not admitted by the Supreme Court stating that there is no need felt by it to interfere. The lone positive point was that, the Supreme Court commented while dismissing the petition that, the government shall comply with all the applicable laws and regulations. It is reported, by the Environment Support Group campaigns that the Government has continued with the project without seeking
environmental clearance from the Ministry as per the norms. This is very serious issue which the court did not take into account. Certain developmental activities (like Airport project in the present instance) are inevitable, but there is no justification the such development, without assessing for environmental implications.  

The following are the few judgments, enumerated here, having far reaching implications from the point of view of Environmental Impact Assessment. The instance of Tehri Dam stands as good illustration on the point. This was the second round of legal actions connected with the environmental aspects of Tehri Dam. The issue of construction of the said dam was challenged on the following grounds viz. (i) the proper study regarding the 'safety aspects' of the dam was not done; (ii) concerned authorities have not complied with the conditions subject to which the Environmental Clearance was granted to the project; and (iii) the work of rehabilitation and resettlement is not planned out properly. The court after considering the view points presented to it by both the parties came to the conclusion that - it will not intervene into the proposed developmental activity. Supreme Court also up-held it's several of earlier decisions while doing so, and remarked that, “the effect of grant of clearance subject to pari-pasu conditions has also been examined by the court in Saradar Sarovar Project's case. It has been noticed therein that, there are three stages with regard to
the undertaking of an infrastructural project – the first of which is conception or planning, second is decision making to undertake the project, and the third is execution of the project. The conception and the decision to undertake a project has to be regarded as policy decision".\textsuperscript{101} Regarding the issue of alternatives to both project and technology etc., the court further relied upon its earlier the Sardar Sarovar decision and remarked "in Sardar Sarovar case it was also held that, when two or more options are possible and the government takes a policy decision it is not the function of the court to re-examine the matter by way of appeal. Necessary analogy could also be drawn from \textit{BALCO Employer's Union (Regd.) v Union of India}\textsuperscript{102} These observations clearly identify the viewpoint of the judiciary on technical matters and the environmental impact assessment of any project. The Supreme Court also felt that, "it is too late in the day to think as to why the decision was taken to construct the project or decisions have been taken to continue the project through at one stage it was thought it would not be appropriate to continue the same".\textsuperscript{103} Like earlier cases\textsuperscript{104} the Supreme Court once again expressed its inability to verify the scientific facts and stated that "this court can not sit in judgment over the cutting edge of scientific analysis relating to the safety of any project" and continued further to mention that, "when the government and the concerned authorities after due consideration of
all view points and full application of mind take decisions then it is not appropriate to the court to interfere.”

In *Donthi Naasimha Reddy v District Collector and Another*, petitioners were seeking the writ of mandamus to the Respondents (i.e. the state of Andhra Pradesh) to forthwith stop the execution of Musi River Belt Project (also very popularly known as ‘Nandanavanam Project’) undertaken by the respondents for cleaning and de-polluting the Musi River. Interestingly none of the Petitioners were against the project of cleaning up the Musi River, but their objection was in regard to the manner in which the entire project was being executed. Their major grounds of contention were (i) the proposed project would include laying of roads, linking of highway roads, construction of parks, shopping complex and other recreational facilities abutting the river bed leading to likely displacement of hundreds of families living for decades on the banks of river Musi; (ii) In the years of normal rainfall the proposed project, if implemented, would affect the availability of irrigation water and ground water in the down streams of the city in about 40 villages in Rangareddy and Nalgonda districts, where the farmers have completely rely upon the water from river Musi; and (iii) No environmental clearance was sought, in compliance with the regulations, nor any public hearings were conducted for the said project. In other words, the petition sought to highlight the possible
environmental consequence of the project, which is otherwise considered to be an environmentally benign one along with the concern for not complying with the existing environmental regulations. The petitioner further, relied upon Item No. 2 of Schedule I of the EIA Notification, which mentions – “River Valley Projects including Hydel Power, Major Irrigation and their combination including flood control” and Item No. 21 dealing with “Highway Projects”. In case of both these listed projects seeking environmental clearance is necessary, which the present project has failed to obtain. On equal terms the said contention was opposed by the Respondents. Finally, the court gave its verdict against the Petition and ruled that, the project undertaken by the state government is neither a ‘River Valley Project’ nor a ‘Highway Project’ as categorized in Schedule I of the Notification; hence it was of the opinion that requirement of applying for Environmental Clearance from the Central Government does not arise. The striking point of the decision is that, the court is very much influenced by the fact that the present project is to do environmental good for the community and will bring down the pollution level of the Musi River. It is also interesting to note that, although there is multiple complex activities of road building etc were to be done, the court ignored them. Ideally before proceeding to undertake any such project, the environmental impact assessment must have been done.
The Kerala High Court in its judgment of far reaching consequence has quashed the Environmental Clearance granted to a project already, as there was no public hearing conducted. In *Ravi S. P & S. Unnikrishnan v State of Kerala*, few petitions were clubbed together for hearing, which were opposing the Athirapally Hydro Electricity Project by the Kerala State Electricity Board (ESEB). Along with challenging the Environmental Clearance granted to the project, many issues of far reaching environmental consequences were also raised through these petitions. These include impacts on drinking water; lose of flora and fauna, and displacement of Tribals. On the other hand the Respondents, Comprising of KSEB and the Consortium which was awarded the project (i.e. HCC-BHEL) stated that the Petitioners had no locus standi to question the contract, environmental clearance, technical feasibility or the financial viability of the project. The sum and substance of their contention was that, the present Petitions are not in genuine public interest. Regarding, the point of Environment Clearance, it was admitted that the same was sought without conducting Public Hearing. There were lot of materials also been produced for the perusal of the court to support the argument that, there was no proper investigation or assessment at the stage of planning or at the stage of taking a final decision to go ahead with the Hydro Electric Project at Athirmppilly. While deciding the case
the court finally directed the KSEB and the Central Government "to specifically consider the question whether the Board was justified in dropping the financial package while accepting the bid of the Consortium and whether it would be advisable in the circumstances and practicable to take up the project as now proposed by the Board"; further both the Respondents were directed "to comply with the requirements of Environmental Impact Assessment Notification, 1994 as amended by the Notification of 1997...to send up to the Authority concerned the report of public hearing also as mandated by the amended notification.." and finally "to reconsider the question of grant of environmental clearance in terms of the Environment Impact Assessment Notification, 1994 as amended by the Notification dated 10-4-1997 on the basis of all the materials including the report of public hearing... till fresh decisions are taken on these two aspects, the finalization of the contract and the starting of the work will stand suspended or stayed and the finalization, construction and commissioning will abide by the result of the reconsideration ordered."

*The Centre for Social Justice [Javikas] v Union of India,*111 is yet another decision wherein the attention of the Gujarat High Court was drawn to the way Public Hearings are conducted. In this the petitioner challenged the manner in which the notification issued by the Government of India under the Environment (Protection) Act,
1986, in the matter of grant of environmental clearance was not being complied with letter and spirit. The petition also challenged the environmental clearance given by the state government to the Gujarat Electricity Board, Dhuvaran, Thermal Power Project, Anand on the ground that public hearing petition was ab initio void. The petitioner also prayed for certain directions to the respondent authorities on the manner in which the public hearing should be conducted the public hearing should be made effective and meaningful so as to achieve the objective of Environmental (Protection) Act, 1986. While deciding the present Petition the court observed few points regard to the conducting public hearings to fully redeem the spirit of public consultation. The following are few of the important points in this regard.

1. **Venue of Public Hearings** – the court ruled that, the Public Hearing be preferably carried out in a Taluka Headquarter rather than district headquarter so that it would be convenient for the local people to attend such public hearing;

2. **Publication and Intimation** – as regards the newspapers in which the public notice for such public hearings are to be published; the court ruled that such newspapers should be having a wide circulation in the area concerned. The Court also ordered the GPCB to send a public notice to concerned Gram Panchayat to bring the
Public Hearing to the notice of people who are semi-literate and therefore may not be reading the newspapers;

3. **Access to Documents** – in addition to the display of Executive Summary of Environmental Impact Assessment the project before a Public Hearing is held, in many cases it is not sufficient for the local people to have a complete picture of the environmental impacts of the proposed project. In such cases, a executive summary of the Environmental Impact Assessment report should be made available to interested parties in lieu of nominal charges;

4. **Quorum at the Public Hearings** – the minimum quorum for the public hearing panel should consist of at least one officer from the GPCB, one officer from the Department of Environment and Forest and at least one senior citizen nominated by the Collector. Otherwise the public hearing would be rendered invalid;

5. **Nomination of persons to the Panel** – another aspect, which according to the Courts is to be considered, is the nomination of three citizens on the Committee. The Collector should ensure that, at least one of the three senior citizens (not necessarily above the age of 65 years) has some credentials on the issues of environmental concerns;

6. **Minutes of the Public Hearing** – regarding the issuing of the minutes of the Public Hearing to interested parties, the Committee
must keep in mind the spirit of the notification for public hearing and the objective for which the public hearing is held; and

7. **Environmental Clearance Certificate** – to enable people aggrieved by the project related development to the file an appeal under the National Environmental Appellate Authority Act, 1997 the authorities should ensure that the public is intimated about the grant of environmental clearance certificate to a particular proponent.

The overall survey of decisional law on the point of Environmental Impact Assessment indicate that, the Indian courts are not very much inclined to take up the technical details envisaged under the impact assessment statements while hearing the cases. This is rather a correct stand taken by the courts as the judges lack the competency and expertise in the matter. To make the job of adjudgment, a meaningful aspect, there is an immediate need to establish the 'environmental courts', as indicated by the One Hundred Eighty Sixth Law Commission's Report.
Notes and References

1 The ENVIS website of Ministry of Environment and Forests.


4 This was in fact seen as one of the pre-condition for the government approval of the project and allocation of funds.


6 See the Five Year Plans (first four five year plans in particular) where the entire focus was upon uplifting the economy by industrializing. The policy practitioners during that period were thinking the industrialization is going to resolve the problem of poverty and other basic challenges which our country was facing during that time.

7 As the disinvestment policies evolved through 2001, larger portions of government holdings were to be offered for sale with the government retaining an increasingly smaller share of the holdings in all except the most important strategic public sector industries (relating to defense, atomic energy and railway transport). See Report of Disinvestment Commission, *Department of Disinvestment, Government of India*, (New Delhi: Government of India Publications, New Delhi May 2001).


11 The draft of EIA amendment of 1st August 2001 was issued on 3rd January 2001, which is yet to be brought into effect. By the time this research thesis is complete, may be these new provisions being brought into effect.


13 There are twelve amendments in about eleven years of its existence.

14 Act XXIX of 1986, which gives wide power to the Central Government to protect environment of our country.

15 Environment (Protection) Rules, 1986, which further vest broad power in the Central Government to adopt directives for protection of the environment. The underlying statutory authority for these Environment (Protection) Rules is found in broadly phrased contemporaneous legislation.


18 Sec. 3(1), The Environmental (Protection) Act, 1986.

19 Id, at Sec.3(2)(v).

20 Sec. 5(3)(a), Environment (Protection) Rules, 1986.

There is a Schedule appended to the Notification which had number of industries named in to it, which required ‘environmental clearance’ before they are established in any part of India.

Whether the pollution load increases or not is to be certified by the concerned State Pollution Control Board.

In a proforma specified in Schedule II of the EIA Notification.

As specified in Schedule IV of the EIA Notification, Supra n. 21.

Supra; n. 21 at Sec. 1(a).

Ibid.

Supra; n. 21.

Supra; n. 26.


In the Ministry of Environment and Forest.

If it is an application for clearance to expansion or modernization or in case of post project monitoring of the project.

Unless these projects are exempt from public hearing mandate.

Notification uses the term ‘half yearly’.

Provided these projects are proposed to be located in the areas covered by the Notifications S. O. No. 102(E) dated 1st February 1989, S. O. 114(E) dated 20th February 1991, S. O. No. 146(E) dated 20th June 1991 and S. O. No. 319(E) dated 7th May 1992.

These are (1) Nuclear Power and related projects such as Heavy Water Plants, nuclear fuel complex, rare earths; (2) River Valley projects including hydel-power, major irrigation and their combination including flood control; (3) Ports, Harbors, Airports (except minor ports and harbors); (4) Petroleum Refineries including crude and product pipelines; (5) Chemical Fertilizers (Nitrogenous and Phosphatic other than single superphosphate); (6) Petrochemical complexes (both Olefins and Aromatic) and Petro-Chemical intermediates such as DMT. Caprolactam, LAB etc. and production of basic plastics such as LLDPE, HDPE, PP, PVC.; (7) Exploration for oil and gas and their production, transportation and storage; (8) Synthetic Rubber; (9) Primary metallurgical industries (such as production of Iron and Steel, Aluminum, Copper, Zinc, Lead and Ferro Alloys, and Electric arc furnaces (Mini Steel Plants); (10) Chlor alkai industry; (11) Viscose
Staple fibre and filament yarn; (12) Thermal Power Plants; (13) Highway projects except projects relating to improvement work including widening and strengthening of roads with marginal land acquisition along the existing alignments provided it does not pass through ecologically sensitive areas such as National Parks, Sanctuaries, Tiger Reserve Forests; (14) Pulp Paper and Newsprint; (15) Cement and Meta amino phenol.

37 Item No. 8 of the Schedule I to the Notification.

38 The Schedule I provides list of projects requiring environmental clearance from the Central Government; the Schedule II spells out some more procedural details for seeking environmental clearance of projects; Schedule III provides details about the composition of the expert committees for environmental impact assessment and finally Schedule IV details out the procedure for public hearing to be conducted with reference to environmental clearance.

39 In the original Notification there were only 30 listings and the last one was added through an amendment in the Year 2004.

40 Clause 2 of Schedule III of the Notification.


42 ‘Public Hearing’ is the technical nomenclature that is being used in the Notification. The researcher has also alternated the word ‘public consultation’ in non technical way in the research.

43 All these documents are to be furnished in twenty sets to the Pollution Control Boards.

44 For pipeline projects Environmental Impact Assessment report will not be required. It is necessary for pipeline project to furnish Environmental Management Plan (EMP) to the authorities.

45 Form I, under Air (Prevention and Control of Pollution) Rules, 1983 (where discharge of emissions are involved in any process, operation or industry).

46 Form XIII, under Water (Prevention and Control of Pollution) Rules, 1975 (where discharge of sewage, trade effluents, treatment of water in any form is required).

47 But this notification is very ambiguously worded in this regard. It is not clearly specified, whether the suggestions, views, comments and
objections can be with regard to the date, venue of the public hearing or it can also be regarding the very project itself.

Clause (ii) of (2) of the Schedule IV of the Notification reads as “all persons including bona fide residents, environmental groups and others located at the project site/sites of displacement/sites likely to be affected can participate in the public hearing. They can also make oral/written suggestions to the State Pollution Control Board.

Explanation – for the purpose of the paragraph person means:

a. Any person who is likely to be affected by the grant of environmental clearance;
b. Any person who owns or has control over the project with respect to which an application has been submitted for environmental clearance;
c. Any association of persons whether incorporated or not like to be affected by the project and/or functioning in the field of environment; and
d. Any local authority within any part of whose local limits is within the neighborhood wherein the project is proposed to be located.

Section (3) of the Schedule IV, of the Notification.

Sec. (4), Schedule IV, to the Notification.

Id. at Sec. (5).

Gazette of India, No. S. O. 60 (E) dated 27th January 1994.

These amending Notifications are:
1. Dated 4th May 1994
2. Dated 10th April 1997
3. Dated 27th January 2000
4. Dated 13th December 2000
5. Dated 1st August 2001
6. Dated 21st November 2001
7. Dated 13th June 2002
8. Dated 28th February 2003
9. Dated 7th May 2003
10. Dated 4th August 2003
11. Dated 22nd September 2003 and


Rule 5(3) was made as the basis of this Amendment which empowers the Central Government and states “Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the locations of an industry or the carrying on of
processes and operations in an area, it may by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so”, *Supra*; n. 20.

56 Entry 3, I Schedule, to the Notification.
57 *Id.* at Entry 18.
58 *Id.* at Entry 20.
59 *Id.* at Entry 21.
60 S. O. 73 (E) dated 10th April 1997.
61 It is always highly debated issue whether there shall be some powers be given to the state governments in environmental clearances or not? Further in this research there is discussion with reference to this issue in detail.
62 This delegation was inserted for quick clearance required for power generation projects. The urgency was felt due to the privatization of the power generation sector in order to offset the widening, demand-supply gap of power in India.
63 It further being added that “all projects proposed to be located within the radius of 25 km boundary of reserved forests, ecologically sensitive areas (including National Parks, Sanctuaries, Biosphere Reserves, critically polluted areas) and within 50 kms of an inter-state boundary would require environmental clearance from the Central Government”.
64 S. O. 1119 (E) dated 27th January 2000.
65 S. O. 1191 (E) dated 13th December 2000.
67 Exemption of bulk drugs and pharmaceuticals based on genetically engineered organisms from the purview of Environmental Impact Assessment Notification. The primary reason cited by the Ministry of Environment and Forest for the amendment is “since the activity attracts the provisions of Hazardous and/or Generally Modified Micro Organisms Rules 1989”.
68 *Supra*; n. 21, at Entry No. 18, I Schedule.
69 Covered by the notification G.S.R. 1037 (E) dated 5th December 1989.
70 S. O. 632 (E) dated 13th June 2002.
The areas covered by Notifications S.O. No. 102 (E) dated 1st February 1989; S.O. No. 114 (E) dated 20th February 1991; S.O. No. 416 (E) dated 7th May 1992 and S.O. No. 319 (E) dated 7th May 1992 [these notifications are related to declaring areas in different parts of the country as ecologically sensitive, including Murud-Janjira, Doon Valley, Dahanu Taluka, Aravalli Range etc.].

S. O. 506 (E) dated 7th May 2003.
S. O. 1087 (E) dated 22nd September 2003.
S. O. 801 (E) dated 7th July 2004.
Act No. 22 of 1997.


A.P. Pollution Control Board v Prof. M. V. Nayudu, 1999(2) SCC 718.


No. 27 of 1995.


W.P. No. 37681/97 and W.P. No. 20905/02.


In brief the earliest conception of the idea of constructing Tehri commenced as early as 1961. In 1972 the Planning Commission envisaged a cost estimation of 197.82 crores for the project. During 1976 the necessary administrative clearance was granted by the Government of Uttar Pradesh. The then Prime Minister intervened and demanded for fresh study of the entire project as there were substantial apprehensions regarding the benefits from the project. Hence it was decided to review the entire project in 1980 – and to cause the review done, an Expert Panel was constituted. The Expert Committee gave its interim report in May 1980 and the final Report in August 1986, wherein it recommended for abandonment of the project. Subsequently the USSR came in support of the project and undertook to provide necessary financial and technical support. This element of external support made the project to attain rebirth in January 1987. Finally on July 19, 1970 the project was given conditional clearance by the Ministry of Environment and Forest.

Environmental Clearance was granted by Ministry of Environment and Forest on July 19, 199C.

Supra; n. 98, Para 8.

Id. 2002(2) SCC 333 at Para 9.
103 Id. at Para 12.

104 Vincent v Union of India, AIR 1987 SC 990; Dr. Shivarao v Union of India, AIR 1998 SC 953; and Andhra Pradesh Pollution Control board v M. V. Nayudu, 1999 (2) SCC 718.

105 Supra; n. 98, at Para 19.

106 Decision of Andhra Pradesh High Court on October 26, 1999, viewed at www.nlsenlaw.org/environmental/eia/caselaw/eiacase5, visited on April 17, 2006.


108 The Hydro Power Generating Project across Chalakundy River was the idea of Kerala State Electricity Board. The State Government granted permission, specifically referring to the financial package and completion of the project on 'turnkey basis'. Subsequently the Board distributed tender invitation to 117 companies all over the globe. Only 8 of them submitted the pre-qualification bids. The Board found that only four of the tenders were pre-qualified the requirements and finally granted the award to the consortium of HCC-BHEL.

109 Once among the major contention of the Petition was that, the entire project is not economic viable.

110 The Environmental Clearance was sought for the first report submitted by the Board was rejected in 1989. Thereafter the Board again applied for the same and the same was granted permission in 1998. Meanwhile the 1994 Notification was issued along side the 1997 Notification (for Public Hearing). In fact the order of Clearance was granted to the present project without taking into account the amendment of 1997 to the EIA Notification. Hence there was no public hearing conducted for the project.

111 GJLR (3) 1997 2000.