While reviewing the Environmental Impact Assessment programme for over a decade, the Ministry of Environment and Forests decided to introduce major changes in the system to subserve the interests of the Nation. The result was the current “Draft Notification” Environmental Impact Assessment, and the process of revision was termed as ‘reengineering of Environmental Impact Assessment in India’. The said ‘Draft Notification’ is published in the ministry’s website, inviting comments from the public for suitable modifications before it can be published (in the gazette) and brought into force.

There are no clear documents, which indicate the beginning of the reform process of Environmental Impact Assessment in India, although there was a long standing demand from the environmental activist groups that there was a need for the change. It is reliably given to understand that, the real pushing points for the Ministry of Environment and Forest to review/revamp its environmental clearance policy are (i) the Govindrajan Committee report on foreign investment; and (ii) the technical assistance from the World Bank for assessment and reengineering of the current environmental impact assessment programme.
The Report of the Planning Commission, Government of India\textsuperscript{3} - which is popularly referred to as 'Govindrajan Committee Report' is first among the prime reasons for the revamp of Environmental Clearance process. The main mandate of the committee was to (i) examine the exact procedures for investment approvals and implementation of projects; and (ii) to suggest measures to simplify and expedite the process of both public and private projects in India.

The Committee pointed out that, the Environmental Clearance (or Environmental Impact Assessment) takes the longest time and causes maximum delay in commencement of projects. Cumbersome procedures for Environmental Clearance and public hearing, submission of incomplete information, poor quality of Environmental Impact Assessment/Environmental Management Plans, disproportionate details required for application, delays in the meetings of Expert Committees and site visits are other major reasons behind the delays in project clearance.\textsuperscript{4} To ensure speedy environmental clearance as per the environmental regulations in India, the Govindrajan Committee recommended that, Ministry of Environment and Forest should reconsider its clearance process and revamp the same. This suggestion was in fact, in addition to revamping the entire regulatory set up, by eliminating all outdated laws and regulations in India. The Committee recommended
further that, the Ministry of Environment and Forest should consider setting up a central data centre, which could serve as one stop source for obtaining reliable and validated environmental data for preparing Environmental Impact Assessment statements. It was opinion of the Committee that, such data base will help project screening and scoping for Environmental Impact Assessment study, in addition to expediting the process of environmental clearance.

The report of the Govindrajan Committee was accepted by the Cabinet and then the Ministry of Environment and Forest was mandated (by Cabinet decision) to revamp the current Environmental Impact Assessment (system) Notification, as part of revamping regulatory approval procedures of the Government of India at all levels. This in fact, pushed the Ministry to the mandatory point of reengineering its environmental clearance programme.

In addition to the above mandate, the Ministry of Environment and Forest was given a ‘technical assistance’ by the World Bank for its reengineering of environmental clearance programme. This is a second force generating Ministry's proposal for revamping the law. This financial and technical assistance further put the ministry to act quickly upon the project of revamp. The ministry took the assistance of several technical experts in the field. But the official announcement of the Ministry of Environment and Forest states that, the reengineered proposal is totally ‘in-house’. The matter of fact is
that, as given to understand (to the Researcher during his consultations with technical experts) the main work was done by a Delhi based Environmental Resource Management (ERM) consultants in this regard. The Energy Research Institute (TERI) was another institution whose assistance was taken in the process of developing the new model.

The Ministry of Environment and Forest, claims in its press reports and others that, there were wide consultations held with the Central Government Ministries (on November 5, 2004), State Governments (on September 8, 2004 and November 3, 2004) and others (on November 30, 2004). Whether these four days consultations, can be considered as wide consultation is for any body's guess. There is good number of representations against the draft notifications being published in every possible media by the NGOs. Their major bone of contention was that this draft notification is completely driven by the Govindrajan committee and not to improve protective mechanisms towards environment. The reports of the industry was also very much cold to the reforms suggested in the environmental clearance strategy.7

The document of draft was circulated among all the Members of Parliament for their information. The Press release of the Ministry of Environment and Forests indicate that, even a presentation to the Prime Minister was being made in this regard. The Draft Notification
was hosted on to the Ministry's web-site on August 16, 2004 – asking the members of the public to make their comments, suggestions etc. There were apparently (according to the MoEF's sources) more than 500 responses the ministry has received in this regard. The process of considering all the recommendations is on. The Ministry says that, the proposed draft will be suitably amended in line of constructive suggestions received before it is being brought into force.

There is stiff resistance from the NGOs and other public interest/environmental activists to the proposed draft of Environmental Impact Assessment, as it does not incorporate all desired changes. They also opine that, this draft deals with some cosmetic changes in the programme, rather than taking into account holistic view about the impact assessment programme. On November 14, 2005 a number of environmental activists staged protest in the premises of the Ministry of Environment and Forest against the proposed draft of environmental clearance. They were apparently asked by the Ministry of Environment and Forest to submit a memorandum for consideration. But the activists denied submission of any memorandum, but insisted for another round of fresh public consultations. There was also a letter written to the Prime Minister (said letter was issued to press on June 29, 2005) by the Environmental Clearance Watch Campaign, signed by 63
members asking the intervention of the Prime Minister in stalling the Notification coming into force. These resentments have attracted lot of press attention. Finally, amidst all these developments the new regulations are yet to be put into force.

THE ENVISAGED CHANGES UNDER THE PROPOSED PROGRAMME

At the outset the draft notification makes it clear that, the central government intends to bring this after (i) review of the existing restrictions imposed on undertaking projects or activities and the procedures and practices of environmental clearance; and (ii) due consultations with various stakeholders (not all) including Central Ministries, State Governments or the Union Territory Administrations, Industry Associations, Institutions and Voluntary Organizations. It is also specified that the new draft notification is being brought in to picture to sub serve public interest and by the power vested in the central government vide sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986. The following are the details about the new proposed Environmental Impact Assessment/environmental clearance programme:

**Mandate of Environmental Clearance**

It is proposed that all (i) new projects or activities; (ii) expansion and modernization of existing projects; and (iii) any project with change in product mix in an existing manufacturing unit
included - require environmental clearance from the Central Government or The State Government as the case may be. Unlike the current notification,\textsuperscript{8} there is some power of environmental clearance being conferred to the state government as well. To clearly divide the power of environmental clearance between the centre and state – there are two schedules appended to the Notification viz. ‘A’ and ‘B’. It is envisaged that, all projects or activities in Category ‘A’, including expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government (in the Ministry of Environment and Forests). The Ministry of Environment and Forest will accord such clearance to the projects on the ‘recommendations of an Expert Appraisal Committee (EAC)’, which is to be constituted by the Central Government for this purpose.\textsuperscript{9} Generally all projects or activities included in Category ‘B’, including expansion and modernization of existing projects or activities as specified, will require prior environmental clearance from the State/Union Territory’s Environmental Impact Assessment Authority (SEIAA). Similar to the Ministry of Environment and Forest, the State Authority will also base its decision of clearance upon the recommendation of State/Union Territory Expert Appraisal Committee (SEAC). Again these SEACs are to be constituted by the concerned State governments or Union Territory administrations.
Screening of Projects

The existing system of screening is changed to some extent by the new proposed draft notification. Simplifying the present system, which was alleged to be very complex one, was the important mandate to bring the current change. There are two broad categories of activities that are stipulated under the new scheme on the basis of which the screening of the projects is proposed to be done. They are briefly explained below:

I. All such projects/activities that are categorized as ‘A’ category – requires to be sanctioned by the Central Government from the Ministry of Environment and Forest; and

II. All such projects/activities that are categorized as ‘B’ category – are made to further undergo the test to verify whether they satisfy the ‘General Conditions’ specified in the Notification or not. If the project activity does not satisfy the General Conditions then it is to be considered as “pure category B” project requiring an accord or clearance from the State Government [i.e. State Level Appraisal Committee (SEAC)]. If, on the other hand, the project satisfies all the General Conditions, then it has to be submitted for ‘re-categorization’ to the Expert Appraisal Committee in the Central Government (i.e. MoEF). Then the Expert Appraisal Committee will verify the project for its potential adverse ‘third party environmental impacts’ and assign final categorization,
either as 'A' or 'B'. Then the project will get sanction accordingly, either by central or state government respectively;

The General Conditions\(^{10}\) are - those projects or activities (i) which are proposed to be located in whole or in part within 10 km from the boundary of (a) Notified Protected Areas;\(^{11}\) (b) Critically Polluted areas as identified by the Central Pollution Control Board from time to time; (c) notified Eco-sensitive areas; and (d) inter-state boundaries; and (ii) for construction of residential and not residential and new towns, townships and settlement colonies, if located in whole or in part in the cities, with population greater than three million. The following flow chart assists in understanding comprehensively the proposed screening of activities for necessary Environmental
Clearance.

All projects/activities in an Environmental Assessment Form or Schedule appended to new Draft Notification

- Screening at State level [by State Expert Appraisal Committee (SEAC)]
  [with respect to a list of major developmental activities and those with inter-state issues]

- Screening at state level [with respect to exclusion from Category 'A']
  Classification of remaining projects into categories B1 and B2 on the basis of impacts perceived from the EA form

- B1 - Scoping at state-level based on EA form
  - Screened as Category 'A'
    - Apply to MoEF and Scoping by MoEF based on the EA form
    - Project Proponent to undertake comprehensive EIA studies as per the scoping done by MoEF for further appraisal

- B2 - Clearance (subject to minor impacts for which mitigation measures can be agreed upon) without detailed EIA studies
  - Project Proponent to undertake Rapid EIA studies as per the scoping done for further appraisal

There is a 'federal' approach followed in the draft notification. The accusation, that the entire impact assessment programme is highly centralized is given a go by and some role is assigned to the state governments as well. This will not only give significant role to
the state governments in granting environmental clearances, but also to bring uniformity of approach among all the states. In case there are projects which are considered to be 'extra sensitive' from the stand point of environment, then irrespective of the categorization it becomes the prerogative of the centre to clear the project. These norms make the programme title heavily towards centre in case of borderline cases.

There is a proposal for creation of new institutions to assess the screening requirements (also to assess scoping, public consultation and appraisal of impact assessment statements) viz. (i) Expert Appraisal Committee at the Central Government Level; and (ii) State Environment Impact Assessment Authority at the state or union territory level. These two institutions will recommend clearance after due verification or appraisal as mentioned in the draft notification. There will be more discussion about these institutions below in the study. Finally the hallmark of screening stage in draft is the simplicity of approach, compared to the existing situation, and vast coverage of project activities. There is also decentralization of approach, by assigning greater role to the concerned State Governments/Union Territories. This devolution of power will bring lot of changes in the environmental management scenario of the country.
**Scooping of Projects**

Scoping is an important aspect of Environmental Impact Assessment which determines the range of issues to be addressed in the Environment Impact Statement (or report) and identifies the significant issues related to the proposed activity/project. It also plays a significant role in developing and selecting alternatives to the proposed action and in identifying the issues to be considered in an Environmental Impact Assessment process. Given the resource (in terms of time and money) constraints of the project proponent, it makes sense for him to concentrate only upon the significant environmental impacts of his project, while eliminating those which are insignificant and remote; a good scooping helps the proponent to scale down his assessment strategies to highly vital aspects of impacts. Therefore, scoping helps in setting the environmental priorities and the battery limits of the study, thereby helping in defining the Terms of Reference (ToR) of the Environmental Impact Assessment.¹³

Environmental Impact Assessment Programme in India currently has no formal procedure for 'scoping', except for certain (non-mandatory) broad guidelines prepared by Ministry of Environment and Forest in the form of an EIA Manual. There are also highly insufficient sector-specific guidelines prepared by the Ministry which are seldom followed by the Environmental Impact
Assessment consultants. It is important to note that, one of the vital pre-requisite of scoping is collecting information on the nature of project, including preparation of a preliminary list of potential environmental impacts and practical alternatives, accompanied by maps, drawings and other aids for a holistic understanding of environmental settings of the site and surroundings. Hence it is ideal that there is some mandate that the project proponent consults some one (ideally one who is not concerned to the project or few independent agencies) who can list out the elements to be concentrated during the preparation Environmental Impact Statement. But, in India the current system complexly leaves scoping to the discretion of the project proponent and his environmental consultant alone. Although, there is an option for the proponent to take advice from the officials of Ministry, there is no mandate (hence lacks legal mandate). The practical experience indicates that, the ministry is seldom consulted during the scoping stage. There is no stipulation, further, about consideration of ‘alternative’ to the proposed project activity.

Absence of scoping, according to majority of experts, is the most significant factor affecting efficiency of the Environmental Clearance Process today. Absence of ‘consideration of alternatives’ is again one of the most significant factors impacting the effectiveness of the Environmental Clearance Process using
Environmental Impact Assessment system. Hence there are some interesting efforts in the draft legislation to introduce a clear phase for scoping.\textsuperscript{14}

The draft attempts to introduce scoping for the first time, by mandating the project proponent to consult the state agencies during impact assessment studies. Concurrently, the present system also leads to the quick clearance of the projects with lesser significant adverse impacts, thus saving enormous amount of time leading to clearance of most projects on the fast-track basis. Now it is clearly stated that "the Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the TOR (terms of reference) on the basis of Form I".\textsuperscript{15}

The project proponent has to fill in the Form 1\textsuperscript{16} at the first instance; on his way to procure Environmental Clearance from the designated state agency (the Central or State Government). This is a detailed form, which consists of many relevant information regarding the proposed project.\textsuperscript{17} The From No. I will be submitted to the scrutiny of the concerned state agency (either EAC or SEAC as the case may be), which will appraise the project activities and prepares the detailed Terms of Reference (ToR). This ToR will assist the project proponent to understand the significant elements to be studied in detail during preparation of the detailed environmental impact assessment report. It is not just the Form 1
submitted by the proponent, if there is need, the project appraisal committee may also visit the site and also ask other relevant information or details before finalizing the terms of reference.\textsuperscript{18}

The draft notification specifies that, the finalized Terms of Reference shall be conveyed to the applicant by the EAC or SEAC within sixty days of the receipt of Form 1. There is scope for the concerned state agency to reject the project at this stage itself. If, there is such decision of rejection, that shall also be conveyed to the project proponent within sixty days. The finalized Terms of Reference shall also be displayed on the website of the Ministry of Environment and Forests and the concerned SEIAA.\textsuperscript{19}

Finally, the draft notification is hopeful of correcting the earlier mistake of leaving scoping to the discretion of the project proponent and to improve the overall quality of the Environmental Impact Assessment programme. There is now need to create a comprehensive database which provides necessary data for these decision making institutions to take apt and proper decision in preparation of Terms of Reference.

\textit{Public Consultation' in the Process of Environmental Clearance}

The effective mode of public consultation is primarily to promote public understanding and acceptance of developmental activity or a project by minimizing potential perceived environmental impacts through education and open discussion. In return, public
feedback can be used as constructive input into improving the project design. There is complete consensus worldwide that effective, timely and broad-based stakeholder involvement is a vital ingredient of an effective Environmental Clearance Process. Such public participation, preferably from the early stage of the project, tends to improve the project design and social acceptability of the project. This also helps in improving the predictive quality of Environmental Impact Assessment reporting. An ideal component of 'public consultation' would:

1. assist the Environmental Impact Assessment study to address relevant issues, including those perceived as being important by other sectoral agencies, public bodies (like panchayats or municipalities) local communities, affected groups and others;

2. help in harnessing traditional knowledge which conventional Environmental Impact Assessment methodologies often overlook;

3. help to improve information flow between proponents and different stakeholder groups, improving the understanding and 'ownership' of the project;

4. help in identifying important environmental characteristics and mitigation opportunities that might have been overlooked; and

5. improve the acceptability and quality of mitigation and overall monitoring process.
Till recently, in India, there was no effective regulatory framework to involve public, while taking environmental decisions. Although there are good number of references to consult the public, in National Environmental and Strategy and Policy Statement of 1992, there was no proactive effort by our decision makers to involve public while making decisions. With the inception of Environmental Impact Assessment as a formal and mandatory process for getting environmental clearance for projects, it paved the way for involvement of interested stakeholders in the specified decision-making process with regard to the planning of a project and the development process as a whole. Though the initial Environmental Impact Assessment notification\textsuperscript{20} did not have provisions for involving the public in the decision-making process (through a process of consultation). The need for incorporating such a practice was realized soon and the concept of Public Hearing was introduced in the EC process with the first amendment to the Notification.\textsuperscript{21} However, in some cases later the requirement of public hearing was exempted. There is no clear reasoning for such exemptions though. It is given to believe that, those projects having minimal impact on the people's lives and socio-economic status – the requirement of public hearing was dropped. This has raised lot of resentment among the citizen groups and environmental activists.
In those projects where Public Hearing was required – the system was not practiced effectively keeping in mind the basic objective. Inadequate and misleading information provided to the stakeholders, unstructured consultation glossing over significant environmental and social issues, lack of guidance on reporting format and action plan to resolve issues, timing of the public hearings, venue of the hearings, and importance and sanctity attached to the process of public hearings were the major causes of concerns. All these aspects were taken into consideration by the Gujarat High Court to categorically rule that the present public hearing system is being reduced to mere procedural requirement only. The Hon’ble High Court also issued certain guidelines to improve the public hearing system.

The present draft makes public consultation mandatory for all Category ‘A’ and ‘B1’ projects, except in case of (i) modernization of irrigation projects; (ii) all such projects or activities located within industrial estates or parks approved by the concerned authorities; (iii) expansion of roads and highways which do not involve any further acquisition of land; (iv) construction projects with built up area less than 1,00,000 square meters; (v) all category ‘B2’ projects & activities; and (vi) projects or activities concerning national defence and security as determined by the Central Government.
The draft notification envisages two components of the public consultation. The first being, the consultation (or word used is Public Hearing in the notification) at the site in its close proximity to the project activity. This is to ascertain the concerns of the local persons who have a ‘plausible material stake’ in the environmental impacts of the project. The second one is collecting written responses from ‘other concerned persons’ having a ‘plausible stake’ in the environmental aspects of the project.

The Public Hearings to be conducted at the proximity of the project activity are to be generally conducted by the concerned State Pollution Control Board (SPCB) or the Union Territory Pollution Control Committee (UTPCC) as the case may be. If the project activity falls within the jurisdiction of two SPCBs – then there shall be Public Hearings conducted in both these jurisdictions by the concerned SPCBs. In the beginning the project proponent has to write a letter to the Secretary of the concerned SPCB or UTPCC, asking him/her to conduct the public hearing according to the statutory mandate. This letter is to be considered as formal application. Along with this application (or letter) the applicant shall enclose (i) at least ten hard copies and an equivalent number of soft copies of the draft EIA; and (ii) equivalent number of copies (both hard and soft copies) of summary EIA report in English and local language.
The applicant shall also simultaneously along with the above application, shall arrange to forward copies (one hard and one soft) of the draft EIA Report to the Ministry of Environment and Forests and also to the (i) The District Magistrate/s concerned; (ii) The Zila Parishad or Municipal Corporation; (iii) District Industries Office; and (iv) the Concerned Regional Office of the Ministry of Environment and Forests.

All the above authorities (except the Ministry of Environment and Forests) shall give wider possible publicity about the Environmental Impact Assessment and the proposed project in their respective jurisdictions. They shall also make available the draft Environmental Impact Assessment report for inspection, electronically or otherwise, to the public during normal office hours till the public consultations are over. On the other hand, the Ministry of Environment and Forests shall display the Summary of the Draft EIA report on its website. Along with this the MoEF, shall also send the Draft EIA to the Ministry’s Library at the New Delhi for reference.27 The concerned SPCB or UTPCC also make similar arrangements for giving publicity about the project within their jurisdiction.28

The finalization of the date and venue of the Public Hearing is the responsibility of the concerned SPCB or UTPCC. Once the date and venue is finalized, the Member-Secretary of the SPCB/UTPCC
advertises it in one major National Daily and one Regional vernacular daily. There is a stipulation of 30 days for the SPCB/UTPCC to take this decision. The notice of public hearing shall also give 30 days gap between its publication and the public hearing meeting. Along with date, time and venue of the Public Hearing, the notification shall also inform the public about the composition of the panel constituted for conducting the public hearing and the places or offices where the public could access the draft EIA report and the Summary EIA report. Except in case of untoward or emergency situations, the Public Hearing can not be postponed. If there is postponement of the Public Hearing then the same has to be by the recommendation of the District Magistrate, and the same shall be notified to the public through the same two daily papers, through which the first notice was given. The date, time and venue for the fresh Public Hearing shall be decided by the Secretary of the SPCB/UTPCC in consultation with the District Magistrate and again the same shall be notified to the public. Once the notice is served to the public in accordance with the prescribed procedure, the public hearing shall be conducted at the specified date, time and venue by the Panel constituted for the purpose. The meeting shall be initiated with a presentation on the project and the summary Environmental Impact Assessment report by the representative of the applicant (project proponent). Every person present at the
venue shall be granted the opportunity to seek information or clarifications on the project from the applicant and the panel members. The accurate summary of all the reflections expressed during the Public Hearing shall be recorded by the representative of the State Pollution Control Board or Union Territory Pollution control committee and read over to the audience at the end of the proceedings explaining the contents in the vernacular language. All the members of the panel present shall then sign the proceedings.

A statement of the issues raised by the public and the comments of the applicant shall also be prepared in the local language and in English and annexed to the proceedings. The proceedings of the public hearing shall then be displayed at designate places for general information of the public. The details of the proceedings shall also be sent to the concerned regulatory authorities and applicant concerned.

There is a stipulation that the Public Hearing shall be conducted within 60 days from the receipt of application from the project proponent. The proceedings of the Public Hearing shall be conveyed to all the concerned within an additional period of 30 days. The applicant may also directly forward a copy of the approved public hearing proceedings to the regulatory authority concerned along with the final Environmental Impact Assessment Report.
For any reasons if the concerned SPCB/UTPCC does not undertake the public hearing with the specified period and/or does not convey the proceedings of the public hearing within the prescribed period directly to the applicant, the EAC or SEAC concerned, shall engage another public agency or authority, to complete the process within a further period of forty five days, including communication of the proceedings of the public hearing, directly to the applicant, the EAC or SEAC concerned, and the regulatory authority concerned. After completion of the public consultation, the applicant shall address all the material environmental concerns expressed in the process of public consultation, and make appropriate changes in the draft EIA and EMP.

On the other hand, the concerned regulatory authority, shall also invite responses by concerned persons in writing. While doing so the Regulatory Authority shall host on their website the (i) summary EIA report; and (ii) the Draft EIA report, within seven days of the receipt of a written request to the effect from the applicant. The Regulatory Authority may also consider other creative methods to canvass about the project and EIA report submitted to itself. The draft EIA report shall be made available by the regulatory authority concerned promptly to the persons who request the same in writing within the period of 60 days. This will facilitate the Regulatory
Authority to receive written comments from the concerned public. Once the comments are received the same shall be sent to the applicant within seven days of expiry and the applicant shall give his responses to the comments.

After considering all the public comments the final Environmental Impact Assessment report, is prepared, and the same shall be submitted by the applicant to the concerned regulatory authority for appraisal.

Project Appraisal

Appraisal means the detailed scrutiny of the application and the Environmental Impact Assessment Report submitted by the applicant to the regulatory authority concerned. In the current system the appraisal of projects, for which Environmental Impact Assessment is mandatory, (as per the EIA Notification 1994) is carried out at the central government level only. This is done by the Impact Assessment Division of Ministry of Environment and Forests. Once the required papers and the detailed Environmental Impact Assessment report is submitted for environmental clearance, the technical committee of the Impact Assessment Agency, will examine the report based on the data furnished by the proponent and if necessary can also make a site visits to have a practical understanding of environmental aspects and envisaged impacts of the project. The recommendation of the Impact Assessment Agency
will proceed to the Ministry for final decision of accord or otherwise. On the other hand, in case of site specific projects a two stage clearance process is adopted whereby the project proponent has to obtain the site clearance at the beginning, before applying for environmental clearance of the project, and then later for the clearance as specified above generally.

The first requirement for the appraisal is submission of all relevant documents by the project proponent. Under the new scheme, the project proponent is required to apply in writing (stated as ‘simple communication’) along with (i) twenty copies of final Environmental Impact Assessment Report and one soft copy of the same; (ii) a copy of the video tape or CD of the public hearing proceedings; (iii) twenty copies of final lay out plan; and (iv) a copy of the project feasibility report.

If there are some initial comments, after due scrutinizing of the above documents, the Regulatory Authority, with reference to the Terms of Reference, may note those comments and forward electronically to the concerned technical Expert Appraisal Committee. The same comments shall also be forwarded to the project proponent for his information. This action of the Regulatory Authority can take maximum of thirty days from the formal application by the project proponent. Then the ball is shifted in to the court of concerned Expert Appraisal committee (either at central
or state level). The regulation stipulates 60 days as the period to place all the documents to the perusal of the expert committee. Then the applicant is informed of the EAC/SEAC meeting for considering his project well in advance (i.e. fifteen days in advance).

Then on the stipulated date the committee meets to evaluate all the technical and other details about the project to recommend to the Regulatory Authority about its decision. As stated above, the project proponent or his authorized representative is entitled to be present and observe during the appraisal meeting. The minutes of the EAC/SEAC meetings shall be finalized within five working days of the meeting and displayed on the website of the concerned regulatory authority. In case the project or activity is recommended for grant of EC, then the minutes shall clearly list out the specific environmental safeguards and conditions. On the other hand, if the recommendation is for rejection of the project or activity, then the reasons for the same shall also be explicitly stated therein.

In other words, there is much of simplification envisaged in the new appraisal system. The appraisal is done at both central and state level now, and this shall be made by Expert Appraisal Committee or State Expert Appraisal Committee concerned as the case may be. There is opportunity granted to the representative of the application (project proponent) to be present, in which the EAC/SEAC is discussed for the matter of appraisal. This is to
ensure greater transparency in the clearance process. After due appraisal and necessary proceedings, the EAC or SEAC concerned shall make categorical recommendations to the regulatory authority concerned either for grant of prior environmental clearance or reject the application for prior environmental clearance, together with reasons for the same. While granting clearance to the project the committee may also stipulate terms and conditions subject to which the clearance is granted as well.\textsuperscript{42} It is also mentioned in the draft regulation that, the appraisal shall be strictly in terms of the terms of reference finalized at the scoping stage and the concerns expressed during public consultation, and shall be completed within sixty days of the receipt of the Environmental Impact Assessment report where required, and otherwise the application in Form 1 or 1A.

If there is difference of opinion, or reservation by the Regulatory Authority, to the recommendations of the EAC or SEAC – then the same must be clearly recorded and again forwarded to the EAC or SEAC for reconsideration. During such reconsideration the EAC or SEAC may look into the project in the light of reservations or opinions expressed by the Regulatory Authority. Then the EAC or SEAC will forward its reconsidered recommendations to the Regulatory Authority, and then the decisional will be taken by the Regulatory Authority, which shall be final and binding in this regard. Totally sixty days are granted for this exercise in the regulations.\textsuperscript{43}
Once the final decision is taken, the same is to be conveyed to the project proponent within 120 days (to be calculated from the date of receipt of final EIA report by the applicant or where there is no EIA is required, form the date of receipt of complete application with relevant specified documents). This is except when the expert committee is asked to reconsider the project once again as specified above. If there is no communication to the project proponent within the stipulated period, then the project is deemed to be cleared by default. Once the final decision is taken all the documents concerned will become public documents for the verification and reference by the general public. Deliberate concealment or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on this basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, may be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice.

Once the Environmental Clearance is granted it will be valid for a period of five years in case of all projects except the River Valley Projects. Considering the complexity of matters in River Valley Projects, this validity period is being extended to ten years.
from the date of grant. However, in case of application by the project proponent, the Regulatory Authority may extend the validity period for another five years. While granting such extension, the Regulatory Authority may consult the EAC or SEAC as the case may be. But there is final stipulation that, in no case extension shall be extended beyond ten years for general projects and fifteen years for River Valley Projects. 46 There is possibility to transfer the environmental clearance by one project proponent to another. 47

Post Project Monitoring 48

The object of having the Post-Project Monitoring system is to ensure that an action has been implemented in accordance with the conditions specified in Environmental Clearance Conditions, that appropriate mitigation measures correspond with those required and the conditions imposed on the action have been adequately met. In the process, post project monitoring is supposed to provide essential feedback about the actual environmental impacts of the projects and also check if the implementation of the Environmental Management Plan is having the desired mitigative effects. They are also used to measure compliance with environmental standards, and to facilitate any needed project design or operational changes.

However, many Environmental Impact Assessment laws simply require mitigation measures to be discussed in the Environmental Impact Assessment documentation, without clear
provisions for monitoring and evaluation of the implementation of such measures. This area, till date, has been recognized to be one of the weak links of the Environmental Impact Assessment systems in most of the world systems today, including India. Finally, although late, mechanisms are being worked out to integrate the post project monitoring into the mainstream of the process.

The existing procedure adopted for post-project monitoring can be logically broken down into the following stages –

1. The project authorities are required to report every six months on the progress of implementation of the conditions/safeguards stipulated and the Environmental Management Plan delineated in the EIA with a priority of specific conditions related to the project issues raised in the public hearing;

2. Field visits of officers and exert teams from the Ministry of Environment and Forest or any of its six regional offices are undertaken to collect information on the progress of implementation of the Environmental Management Plan. In this process, the difficulties encountered in the implementation, if any are discussed with the project authorities with the view to finding solutions;

3. In the case that major deviations come to light, the matter is taken up with the respective state government authorities;
4. Accordingly, changes in the scope of the project are identified and proposed, if called for; and
5. Additionally, the State Pollution Control Boards also play a role in ensuring that the conditions put in the industries in the EC are complied with by incorporating them in the Consent to Operate issued annually/after regular intervals.

All these things are continued in the current draft regulation with a clause stating that "it shall be mandatory for the project management to submit half-yearly compliance reports in respect to the stipulated prior environmental clearance terms and conditions in hard and soft copies to the regulatory authority concerned, on 1 June and 1st December of each calendar year" and also "all such compliance reports submitted by the project management shall be public documents. Copies of the same shall be given to any person on application to the concerned regulatory authority. The latest such compliance report shall also be displayed on the web site of the concerned regulatory authority."
Notes and References

1 Dated September 15, 2005 – to be published in the Gazette of India, Part-II, Section 3, sub-section (ii).


3 Published in August 2002.

4 See generally the report.

5 “Environmental Management Capacity Building Technical Assistance Project” approved by the World Bank in 1996. Strengthening Ministry of Environment and Forest’s role in environment protection was one of the primary goals of the project – a goal barely mentioned in ministry’s recent announcements. The announcement of the Capacity Building Project was initially based on a review of drastically worsening environmental conditions in India.


8 Notification No. S. O. 60 (E) dated 27th January 1994.

9 *Supra*; n. 1 at p.1 (Clause 30).

10 Specified in the Note to the draft Notification.


12 As per the latest census.

13 In many good Environmental Impact Assessment systems, it is a requirement that the public participate in scoping so that the proponents and decision-makers are made aware of the public concerns early in the Environmental Impact Assessment process. Consultation of environmental authorities can also reveal useful insights and, further, may ensure that coordination between them is more likely.

14 The draft legislation is very much encouraged by the Dutch and US systems in this regard.
The information details required to be filled up by the project proponent are:

a. Basic information about the project (name, location, site alternatives under consideration, size of the project, expected cost, screening category etc.);

b. Details about the activity which will include:

   i. During construction, operation or decommissioning of the project which will have bearing upon the physical environment (like topography, land use, change in water bodies etc.,);

   ii. Use of natural resources for construction or operation of the project (water, land, materials, energy – especially any resources which are non-renewable or in short supply);

   iii. Use, storage, transport, handling or production or substances or materials, which could be harmful to human health or the environment or raise concerns about actual perceived risks to human health;

   iv. Production of solid wastes during construction or operation or decommissioning;

   v. Release of pollutants or any hazardous, toxic or noxious substances to air;

   vi. Generation of noise and vibration, and emissions of light and heat;

   vii. Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea;

   viii. Risk of accidents during construction or operation of the project, which could affect human health or the environment;

    ix. Factors which should be considered (such as consequential development) which could lead to environmental effects or the potential for cumulative impacts with other existing or planned activities in the locality; and

   c. Details about ‘environmental sensitivity’ of the project activity.

Supra; n. 1, Clause 6(II)(i).

Id. at Clause 6(II)(ii).
Draft Notification envisages a committee with the District Magistrate as the Chairperson and other members of the panel are as follows:

i. Local Member of Legislative Assembly;

ii. Three representatives of the local bodies such as Municipalities or Panchayats nominated by the State or Union Territory Environment Department with at least one woman and one member from the SC/ST;

iii. Three prominent citizens of the area nominated by the District Magistrate with at least one woman and one person belonging to the SC/ST;

iv. Representative of State Pollution Control Board or Union Territory Pollution Control Committee; and

v. Three sectoral experts nominated by the State Pollution Control Board or Union Territory Pollution Committee.
Ibid. Clause 6.4.

Ibid.

Id. at Clause 6.5.

Id. at Clause 6.6.

Id. at Clause 7.0.

Supra; n. 1, Clause III(ii)(b)(iii).

Mining, river valley and ports etc.

Supra; n. 1, Clause 6 IV(i).

Id. at Clause 7(ii).

Id. at Clause 7(iv).

Ibid.

Id. at Clause 8.

Id. at Clause 10.

Id. at Clause 9(i).

Id. at Clause 9(ii).