I: must be emphasized at the very outset that, the process of reengineering Environmental Impact Assessment process, although raised tremendous hope among all, did not come up to the expectations, as the entire net effect of the process was mere window dressing and nothing more. The attempt of the present chapter is to verify critically, how the present draft notification addresses all the concerns – the earlier Environmental Impact Assessment programme was riddled with. During the so called 'wide consultations' which the ministry of Environment and Forests, conducted to understand the bottlenecks and collect suggestions for improving the system form the stakeholders, reveled many issues required to be addressed in the present system.¹ Broadly these issues can be enlisted into the following four broad categories:

1. The criterion of screening the projects/activities and the relevant standardized procedure for conducting Environmental Impact Assessment;

2. The role of institutions – i.e., what role the institutions' (like Ministry of Environment and Forest, Central Pollution Control Board, the State Pollution Control Board and other local level agencies) shall play in the process of Environmental Impact
Assessment. This issue also involved the point as to - how much 'centralized' or 'decentralized' the system should be?

3. The issue of mainstreaming 'Social Impact Assessment' and 'Resettlement and Rehabilitation' was highlighted generally by everyone, and especially by the participating non-government organizations; and

4. The representatives from the industry felt that the process should be quicker and cheaper one. They also felt that, the project proponent should be given the end result (as to whether s/he can start the project activity or not at the earliest, instead of keeping him guessing with hope) as quickly as possible, but felt overhauling of the environmental clearance programme is need of the hour.

Unfortunately all these major issues are not dealt comprehensively in the reengineering process. In few areas some half-hearted attempt to address the issues was made but, without sufficient scientific study of the system. A careful examination of the draft document exhibits that, more than installing an effective Environmental Impact Assessment system, what is being attempted (also in great haste) is to reduce the delays in the approval of developmental projects. There are two major underpinning points to the reform – (i) the Govindarajan Committee's report; and (ii) the Environmental Management Capacity Building Technical Assistance...
Project, approved by the World Bank in 1996.² But lot of emphasis was given to Govindrajan Committee, which categorically stated that to attract fair investment in the needed sectors; all hurdles of clearances have to be eased. The Environmental Clearance process was viewed as one of the ‘major hurdle’. It is to be noted that, the Committee was established for completely different purpose, and was asked to look into developing strategies for attracting direct foreign investment in to the country. While making comment upon the Environmental Clearance, it must be always borne in mind that, the Committee did not study the entire process of Environmental Impact Assessment. Therefore, the second component (i.e. World Bank’s Environmental Management Technical Capacity Building Project) becomes very important.³

The technical assistance project was intended to re-look into the entire process of Environmental Impact Assessment and find out how suitable changes can be brought into the programme, so as to sub serve the interests of everyone. This was an ideal attempt to bring an effective system of decision making to achieve the target of sustainable development. But the ministry’s very little documentation (if they exist in real sense!) does not clearly mark this. This brings to the fore the intention behind the revamping process of environmental clearance.⁴ There are not much of documents available about the process of the entire drafting exercise. The
power point presentations by the Ministry (the presentation made in the first meeting of the ministry) are the only available documents in this regard.\(^5\) It was further learnt that, an international environmental consulting firm The Environmental Resources Management (ERM) Consultants were hired to conduct the study of effectiveness of the Environmental Impact Assessment programme – and also to suggest suitable reforms in this regard. The ERM consultants apparently submitted their report in 2003. Few consultations with various stakeholders were called by the Ministry of Environment and Forests (not wide consultations as claimed by Ministry sources) before releasing the draft environmental clearance regulations.

Finally, before proceeding to evaluate the substantial issues with regard to the proposed draft, it is vital to make some observations upon the procedural issues. The 'draft notification' is very poorly drafted one. The sources of the Ministry claim that, the preparation of draft is entirely an in-house activity, but it is doubted whether the ministry ever bothered to consult any legal experts in the field, or at least a lawyer to find out the correctness of the draft. The draft in many areas read like a mere policy document, with ample general usage of words. Even numbering of the provisions is bad. There are many provisions of the draft which can not be quoted accurately by using the numbers of the draft. There are technical words being used all through the draft, but no where they
are defined. This makes the vigor of the draft to come down heavily. This also makes the meaning of many provisions ambiguous. It would have been ideal that, the draftsman should have added a small chapter of definitions to clarify. By any liberal standards one can conclude, without any hesitation, that drafting of the regulations are extremely poor hence need quicker attention, before it is put into practice.

SCREENING

The major concerns of the existing system are viz. (i) complex method of screening, with multiple categorization (on the basis of investment, sitting, zones etc.,); and (ii) heavily 'centralized' system of clearance. Hence these were to be addressed by the current draft environmental clearance regulations. It must be added at the outset, that the draft has to a great extent addressed both these issued in its reformed version. The current proposed system simplifies the screening of projects to some extent. The proposed system categorizes the project activities into three categories viz. 'A', 'B' and 'B1'. The category 'A' projects are those having ample environmental impacts, hence require clearance from the Central Government (by the Ministry of Environment and Forests to be specific). Category 'B' projects are those having little impacts upon the environment, hence are charge of the state governments at a local level to grant clearance. Finally category 'B1' projects are
those which cause insignificant or no environmental impacts hence requiring clearance at the state level, but without conducting detailed Environmental Impact Assessment study. There are two General Conditions added in to the draft, and it is stated that, if any of the category 'B' projects satisfy these General Conditions, then they have to be re-designated by the Central Government as either Category 'A' or 'B' project, and it will be dealt accordingly. The same prescription applies even to modernization of projects and those projects which are planning to change their product mix etc. Hence, there is no doubt that the present draft regulations eliminate the complexity of the exiting screening system to a large extent.

There is some effort to decentralize the process of environmental clearance through this draft. There was in fact, long standing demand by many to have decentralized administration here. The idea of decentralizing the process of environmental clearance is ideal from the long term stand point of view, but this was done without proper scientific study in the present draft. Experts are divided in their opinions about the issue of 'decentralizing' the system of environmental clearance. Some subscribed to the general ideology of decentralization – as environment can be very effectively protected through local actions. On the other hand, there are good chunk of experts who were doubtful about the process, as most of
environmental clearance. But it envisages constitution of a new state level agency by name 'State/Union Territory Environment Impact Assessment Authority'. It is fact that the current environmental institutions at the state level are already crying for resources and better infra-structure to perform their jobs. In this situation, whether the state agencies will be able to create one more institution for the purpose of environmental clearance. The proposed draft also envisages that, till the State Governments can establish the SEIAA the Central Governmental agency will take care of the environmental clearance itself. This will lead to (i) either the state government will not create the new agency and the central government continuing to act as presently; and (ii) in haste the state government constituting the agency, with no proper ideal environment for it to work. In both these situations the basic purpose gets defeated.

In fact it is hard reality that mere regulatory measures will not bring the desired change in the situation. Many of our regulatory reform exercises are evident for this statement. Ideally the Ministry of Environment and Forest, should have taken the numerous studies conducted (by many agencies) to evaluate the capacity of state environmental agencies (primarily state Pollution Control Boards) and might have even conducted an independent study to verify the capacity at the local level to handle the responsibility which it was
envisaging to hand over. Unfortunately there appears to be no such scientific study conducted in this regard. This raises serious concerns for all the environmental observers in days to come.

**SCOPING**

This is undoubtedly a very positive segment inserted by the proposed draft into our Environmental Impact Assessment programme. It was uniformly opined by all the experts that, absence of proper ‘scoping’ procedure in the current Environmental Impact Assessment process, is one among the major causes for failure of the effectiveness of the Environmental Impact Assessment systems in India. Except few sector based Environmental Impact Assessment Manuals there was absolutely no mandates (or regulations) in the existing system regarding scoping, while preparing Environmental Impact Assessment statements. Even our existing regulations are so weak that, there was no stipulation to even mandate project ‘alternative’ while assessing the environmental impact of the project. It is welcome that, the present proposed reengineered programme has inserted a good component of scoping into the programme.

In the existing system it is obviously (with no mandate in the regulation) the project proponent (realistically his environmental consultant) who will decide as to what shall be the scoping parameters, and what shall be the significant components of
Environmental Impact Assessment and so on. This was indeed a weak link of the Environmental Impact Assessment chain, as there is greater scope of manipulation and window dressing. The experts consulted by the researcher, could able to narrate many instances, where the environmental studies have not touched upon some of the major envisaged environmental impacts while reporting through Environmental Impact Statements. Most of the times the environmental impact statements are bulky documents covering all insignificant issues, leaving vital information. This mercy situation was greatly encouraged by lack of clear scoping parameters in the regulations.

Now, according the draft proposed plan there are two stages at scoping - the first being filling up of Form 1 by the project proponent. This is a fairly detailed form comprising of all details about the project activity and its impact upon various components of environment. To fill in the form completely the project proponent is required to spend substantial amount of time in collecting environmental details/data. Once s/he completes his part of the job by filling in the application, the same will be verified by the Expert Appraisal Committee or the State/Union Territory Expert Appraisal Committee to determine those sensitive issues, which are required to be concentrated while detail environmental impact assessment study is being conducted by the project proponent. Technically
speaking the Expert Appraisal Committee or the State/Union Territory Expert Appraisal Committee will prepare Terms of Reference (TOR) for the project proponent.

This exercise will reduce the length of the Environmental Impact Assessment study considerably and also the environmental impact statement. The project proponent will also be spared from conducting a lengthy study incurring substantial expenditure (both in terms of money and time). There is a provision for the exhibition of the TOR in the website of the concerned agency for the consideration of entire community. There is also a possibility that, the agency might reject the project at the scoping stage itself. In a way this will spare the project proponent to wait till he concludes his entire Environmental Impact Assessment study and then loose valuable time in implementing his project.

Having stated the positive part of this component of the draft notification, we must also point out the slip sides. During the ministry consultations there was greater emphasis upon consulting public (especially the members from the local community) while determining the scope of the environmental impact study. The good environmental clearance systems world wide has public consultations at the very initial part of the project planning and Environmental Impact Assessment studies. Even the World Bank and Asian Development Bank policies also underline the importance
of consultation of public at the initial stages. This will take the public into confidence and will go long way for the project proponent to have faithful relation established among the locality in which he is proposing to operate. This will, no doubt, enhances the credibility of the Environmental Impact Assessment study, but also the acceptability of the project by the community. This is cautiously being left out in the draft programme. Revealing the information of TOR on the website is not going to help, unless there is some role given to the communities while taking decisions upon determining the terms of impact assessment study.

This might be due to greater apprehension (expressed by many representatives of industry) that, the process may take lot of time, if consultations are allowed in this stage. But hurrying things in passion will also not going to pace up the things. This was one of the major points on which many non governmental organizations are agitating. The communications sent to the Ministry of Environment and Forest, in response of the draft notification, this point of lackcity was highlighted by many. Further this component will be discussed in greater detail below, in the segment of 'public consultations'.

ROLE OF INSTITUTIONS

The new draft regulations, envisage the establishment of new institutional set up for granting environmental clearance, both at central and state levels. At the central level the Ministry of
Environment and Forests and at the State level State Environment Impact Assessment Authority are the institutions involved in according environmental clearances to the projects. The State Environment Impact Assessment Authority is to be constituted by the states pursuant to the new notification coming into effect. Both Ministry of Environment and Forest and State Environment Impact Assessment Authority, will base their decisions upon the recommendations of Expert Appraisal Committee and State Expert Appraisal Committee respectively. Both these expert appraisal committees (at central and state level) are to be constituted afresh. There is yet another institution involved in the process of environmental clearance – that is the State Pollution Control Board. Except causing the public hearing concerned, there is no specific role assigned to this institution.6

It is believed that the effectiveness of Environmental Impact Assessment process to a great extent depends upon the desired competency and qualifications of the institutions involved in the process. If the institutions lack basic competency then, the process will be rendered meaningless. As the new draft notification envisages constitution of few newer institutions it is desirable to note - what will be the level of competency that is being envisaged in this regard.
The new draft holds in its ambit few general qualifications for members to man the Expert Appraisal Committee to be constituted by Central Government. These are very broad guidelines explaining some bare minimum qualifications for any one to man the above said committees. Unfortunately, despite greater demand by majority of comments during the consultations, the draft notification did not insert any qualifications for State Expert Appraisal Committees. This tends to politicize the appointments and will further dilute the standard of decisions taken by these committees. Whether the committee shall be given some infrastructural support or logical backing for its effective working? – is the guess of any one. It is to be noted that, the committees, both at central and state level, are mere recommendatory bodies having no 'veto power'. The relevant provisions of the draft state that, if there is some disagreement (by the Ministry of Environment and Forest or the concerned State regulatory authority) with the recommendations of the expert appraisal committee, then the points leading to disagreement are to be forwarded once again, to the expert committee for its reconsideration. Then the final decision will be taken with or without the concurrence of the expert appraisal committee. The entire strategy places the expert appraisal committee into very vulnerable position. There is a possibility of greater pressure being brought upon the expert appraisal committee.
while it is considering the project proposal for its recommendations. There is no specific provision which grants specific tenure and protection to the members of the committee to act free and fearlessly. It is always desirable, while creating systems, to provide ample safeguards so that any one who will man the system can work freely and efficiently. Unfortunately, the new provisions lag behind in this regard.

It is also possible, as is being witnessed in many such committees working for the government that the concerned government may not provide suitable ideal environment to the expert appraisal committees to evaluate effectively the proposals put before them. ‘Ideal environment’ means support staff, ministerial staff, and other basic facilities which the committee might require for its functioning. It appears from the draft that, the present system of expert committees will continue. That is the meeting of the expert committee will be convened by the Ministry of Environment and Forest, and during that meeting the expert committee will be asked to speak for the proposed application for clearance. Only the nomenclature from ‘expert committee’ to ‘Expert Appraisal Committee’ is being changed. This makes the existence of the committee completely rely upon the bureaucracy of the regulatory agencies, and makes the decisions of the expert committee heavily influenced by the civil servants. Especially at the state levels there
is greater vulnerability for high politicization of committees functioning.

On the other hand, it is quiet unfortunate that, even after twelve years of working the system of Environmental Impact Assessment, the programme is made to confine to the project level itself. The project proponent does all the work, of collecting baseline environmental data, interpretation of collected data, and finally preparing the environmental impact statement etc. Once all the things are put in place the same is provided to the state agency for decision making. Hardly there is any independent source for the state agencies to verify, whether the data collected by the project proponent is correct or not. This situation makes the activity of assessment of environmental impact an ad-hoc business. There are ample instances where the project proponent’s have relied upon false data to arrive at positive decisions, even in some instances they have doctored the data which in fact did not exist. The state agency in these situations stand helplessly in despair, as there is no proper, official and standard data base available for their access. In most of the world systems a greater emphasis given for building independent data base about the status of environment. This was one of the vital comments made to the ministry not only during its consultations (while reengineering exercise) but also earlier.
This is the stage where strategic environmental assessment or regional impact assessment comes in handy. In this the state agency will carry out complete generic environmental assessment of the entire region or zone falling under its jurisdiction and collects all vital environmental information/data. This data will also be regularly updated, and can be consulted by any one including the project proponent as well. Due to this the scope for the project proponent to falsify his data and evidence for arriving to positive conclusions are reduced to great extent. This will help the project proponent also, as this ready made availability of data will reduce the cost of impact assessment substantially. It is generally approximated that about 2/3rd of the entire cost will go for collection of relevant environmental data by the project proponent. There is not even a single step taken to develop the strategy of strategic Environmental Impact Assessment or regional environmental impact assessment, in this draft.

The role assigned to the State Pollution Control Board is limited to causing the 'public hearing' conducted prior to the environmental clearance. This is similar to the existing position of law. The reasoning of limiting the State Pollution Control Board's working to mere organizer of public hearing is not understood. It is no doubt most of the State Pollution Control Boards are understaffed and ill-infrastructure to carry out significant burden of environmental
clearance, but they are existing institutions having some experience in environmental management. Ignoring them completely and creating new institutions will not resolve the crises and improve the system. It was suggested that, the existing (environmental) management set up must be used effectively, but the draft does not give heed to this practical suggestion. There is all likelihood that, the state Governments may constitute the State Environmental Impact Assessment Agency, with some representative from the Pollution Control Board, or they may designate the State Pollution Control Board as the SEIAA. In both the cases, the net result will be zero, unless there is some structural strengthening of the capacity of the Boards. Any way this entire reengineering both at Central and State level requires greater debate from the stand point of administration of the environmental clearance process. The better way to start this will be assessing the existing capacity of all the existing environmental institutions at both the central and state level.

Yet again, there is no role envisaged to another huge environmental management institution viz. Central Pollution Control Board. In final terms, the new draft continues to change cosmetically the nomenclature of the institutions, without thinking practically about the capabilities of these institutions. At the central level the same Ministry of Environment and Forest with its all limited
capacities will be working to grant clearances. And at the state level the picture is to emerge yet.

The existing system of post project monitoring will, probably, continue. At the central level the six regional centers of Ministry of Environment and Forest will take care of the mammoth task of post project monitoring. And at the state level the situation is very much unclear from the draft legislation. The draft legislation certainly fails in this segment as to assign some clear and important role to the institutions involved.

THRUST FOR SOCIAL IMPACT ASSESSMENT AND R&R MECHANISMS

Since 1970 there is a greater stress upon the component of social impact assessment, while assessing the project for environmental impacts. The simple basis of this analogy is two fold. The first – that there will be significant social impact the project will have, meaning the society in which the project is going to be introduced, will affect the culture, attitude and health of the people. This takes the assessors responsibility beyond the realms of physical environment (like land, air, water and bio-diversity etc.). Hence the activity of Environmental Impact Assessment is no longer viewed as pure scientific activity. The second reason for this thrust is based upon, what is considered to be one of the major objectives, of the Environmental Impact Assessment programme itself. Developing mutual understanding between the community and the
project proponent is the objective referred above. Good environmental impact study will convince the community to accept the developmental project; otherwise there will be substantial friction between the project and the community all through the existence of the project life. More often this tension between the project and community is also due to perceived notions of sharing the 'fruits' of the project. The friction will rise further if the project intervention affects the local culture. Hence, in short, the social impact assessment is also required to be done before clearing the project. Effective social impact assessment will ensure that, there will be least impact upon the local culture and if there is some, some preventive measures could be taken.

There is no mention in the new proposed draft about 'social impact assessment' at all. All world environmental impact assessment systems are now galloping to adopt this component in their systems, where as the new developments in India, are unfortunately, lag behind. This is tremendous set back to the development process in this regard. The American system, as it was documented by the Ministry of Environment and Forests, was studied closely before this reengineering process. Not only American but other world systems were studied before revamping the system. The draftsman should have learnt from these world orders. The US system, uses creative phrases, and mandates that
all impacts (both direct and indirect) affecting the ‘human environment’ has to be studied. The least, the draftsman could have done was using such creative vocabulary. There were good numbers of suggestions, during public consultations, made to the Ministry to insert provisions regarding Social Impact Assessment. Unfortunately this valuable suggestion is being overlooked.

The draft includes certain parameters to the assessor to consider while impact assessment study and preparation of report. Two segments are worth considering here, the first one is the list of parameters pertaining to ‘land environment’. Here the project proponent is asked to furnish information regarding (i) the way land use pattern is going to be changed; (ii) total land requirement, build up area, water consumption, power requirement, connectivity, community facilities, parking needs etc., (iii) any significant land disturbance resulting from erosion, subsidence and instability; (iv) any alteration in the natural drainage systems of the region; (v) the quantities of earthwork involved; (vi) water supply, waste handling during construction; (vii) any alteration occurring to low lying areas and wetlands; (viii) any health hazards likely to be caused due to debris and waste due to construction.

And the second one, the parameters on ‘Socio-Economic Aspects’ will require the project proponent to mention details about (i) the changes to the demographic structure of local population; (ii)
existing social infrastructure around the proposed project; and (iii) any adverse effects on local communities, disturbance to sacred sites or other cultural values.

The close scrutiny will suggest that the requirement for effective social impact assessment is given a go-by in the reengineered effort of the Ministry. This also signifies that, the old practice of mentioning the population of the place in which project is going to be established, according to last census and few details about schools, hospitals, temples etc., will continue now also. This is certainly not a progressive step. Instead of moving forward the policy framers in India have taken backward steps.

Another substantial issue which this draft completely ignores is that of Resettlement and Rehabilitation. The existing regulations mention that when there is substantial displacement due to project implementation, then it is mandatory of the project proponent to prepare comprehensive resettlement and rehabilitation plan. But in the new proposed draft there is not even a mention about the resettlement and rehabilitation. This is probably a great mistake on the part of the draftsmen.

Although there are few legislative attempts to have resettlement and rehabilitation done for the project affected people, but that is very sketchy and requires thorough modification. In that light, it would have been rather ideal that the new environmental
clearance draft should have emphasized some things about resettlement and rehabilitation.

PUBLIC CONSULTATION/PARTICIPATION

It is constantly maintained all through the research that, the process of Environmental Impact Assessment/environmental clearance is an attempt to take appropriate environmental decision by involving three sectors viz. the state regulator, project proponent and the general community. In other words this is also an attempt to build a tri-sector partnership for the overall success of the decision taken regarding the economic activity. Such decision (taken in right spirit) will decide the quotient of public acceptability of the project and its successful working all through its life cycle. Therefore it is needless to say that 'general public' constitutes very significant constituency in the process of environmental clearance. During the initial stages of EIA (in 1994) there was no component of public consultation, but was introduced later in 1997. However, this was criticized by every one as most unsatisfactory component in the entire Environmental Impact Assessment process. During the ministerial consultations, this point of strengthening the component of public consultation was brought to the fore by many experts and members of Non Government Organizations.

On the other hand the industry was not in favor of further strengthening this component. It is obvious that since the beginning,
the industry has seen public consultation as a time consuming component of the environmental clearance, and always advocated against the same. In the light of conflicting viewpoints the ministry has attempted to bring the changed regulations in its current draft. Unfortunately the draft regulations pertaining to public consultations take the effort of reform backwards. Hence demands greater criticism. The suggestion of public involvement at the initial stage of environmental clearance is completely ignored. Ideally the consultation shall commence at the beginning stages of the project. But there is no change from the existing process, of consulting people when the decision is almost taken on behalf of the state regulatory agency and the project proponent. This is one of the paramount reason why, public do not take interest in the process of consultation. Moreover they also doubt the genuineness of the efforts during the public hearing. That is exactly the reason why, they perceive it as mere 'hearing' and not 'listening' to their genuine reservations.

The new draft uses a positive terminology 'public consultation' than 'public hearing'. It was stated that the current process of 'public hearing' is mere 'hearing' of public but not 'listening' by many experts – and right from the beginning they were demanding change of this nomenclature. Except the positive terminology, probably, the new draft does not attempt to raise the avenues of public
consultation. Closer look of this draft makes one get a feeling (in the light of consultation debates) that, had there not been much of stress by the NGO organizations, the draftsman should have even eliminated the process of public consultation all together. The bare evidence to this statement is that, there is absolutely no change in the process, except some cosmetic changes. Somehow, the authorities have failed again to understand the spirit behind the process of public consultation, while taking vital decisions. All the world systems of today, take public consultation as one of the important segments. World Bank guidelines, Asian Development Bank guidelines, US system of Environmental Impact Assessment, and other systems categorically stress the need for greater public participation during decision making, but unfortunately, the Indian system is not taking off from its prejudice that people seldom understand these complex issues.

Even in this draft the emphasis to consultation doest not move from mere 'tokenism'. Hence, all the earlier criticism leveled against the existing 'public hearing' process will stand now also. There are, to add to the list, some more eye brow raising attempts in the draft, whose legal sanctity is highly doubtful.

There is an artificial classification in the draft dividing the process of public consultation in to two components. They are (i) 'Public hearing' which is to be conducted in the 'close proximity' of
the project site, and this public hearing is open only to 'the local persons who have a plausible material stake in the environmental impacts of the project'; and (ii) public consultation for 'other concerned persons', who are required to submit their responses in writing only. Further ‘other concerned persons’ are explained as those ‘having plausible stake in the environmental aspects of the project activity. Although not very clear from the draft Notification, the intent appears\textsuperscript{9} to keep the public hearing, in close proximity to the project site, only to those who are termed in the Notification as ‘local persons who have a plausible material stake in the environmental impacts of the project’ and not to others. A person who does not qualify as ‘local’ (in the above sense) but interested in making his comments heard, then s/he is required to write down his comments and forward the same to concerned ‘regulatory authority’. Is such classification tenable under the present legal regime?

With out taking the debate to constitutional discourse (as this will dilute the focus of present study), it may be summarized that, the law generally disallows any discrimination between people who are equally situated, but at the same time allows classification based on some ‘scientific rational’, and wherever there is a clear purpose to be attained. In the present context the classification does not appear to have any justification. Denying a chance to members of non-local community is somewhat unclear from the draft notification. Upon
discrete enquiry with some of the experts the researcher was given to understand the main idea of this classification is to keep the NGOs out of the public hearings, as they tend to hijack the proceedings of public hearing by their participations. The Notification intends to give greater chance to the local community to express their grievances and comments, which otherwise they would not be able to make due to blazing presence of the NGOs. It is also observed that during many of the public hearings NGOs from different parts of India participate, and their agenda is to oppose the project and take publicity to themselves.

Although no where this is being made out to be the case by Ministry while bringing this draft; if taken to be true, is it tenable justification for such classification? Moreover, even if it is presumed, that such classification is constitutionally valid, then how do we decide whether a person is ‘local’ or ‘other concerned person’? The draft simply uses these terms without defining the locals or other concerned persons. Local person is one who has a plausible material stake in the environmental impacts of the project, and other concerned person is one having a plausible stake in the environmental aspect of the project activity, is not sufficient to consider as ‘rational’ explanation for making this classification stand.

It is fact that NGOs are very much organized and eager to participate in the public hearings and their involvement reduces the
local communities' chances of airing their reservations or opinions. If such dominance is felt, then the public hearing panel has the authority and power (although not explicitly written in the norms, but implicitly) to regulate the proceedings of the meeting. Unfortunately the panel acts as moot spectator in the public hearing process. This is where some capacity building exercise will help the organizers of the public hearing meetings to control the proceedings, than barring the entry of few from taking part in to the proceedings. This is considered opinion of the researcher that this sham classification is not tenable and if challenged (in constitutional courts) will not pass the judicial test. Hence, this is one area where, reformulation of regulations is needed urgently.

Six categories of projects are exempted from the requirement of public consultation. This is continuation of existing position without proper justification. This exclusion was criticized many times, despite this the game of exclusion continues. The State Pollution Control Board, as in the existing regulations, is the agency vested with the power to conduct the public hearing for the local community members. Except receiving the summary draft and publishing the same in some manner, there is absolutely no role being specified to the SPCB. There is a mandate to the State Pollution Control Board to conduct the public hearing within sixty days from the receipt of formal request from the project proponent in
this regard. If for any reasons the concerned State Pollution Control Board is not in a position to conduct the public hearing, then the regulations provide for alternate arrangement. In such case the Regulatory agency may ask such other public agency or authority, which is not subordinate to the regulatory authority, to complete the process with a further period of forty five days. This poses greater difficulty in practical terms according many experts. It is well known fact that, none of the public agencies like to conduct public hearing as they find it difficult to face public. Hence, there is a simpler route provided by the regulations to escape from their responsibility – if they do not conduct the public hearing within mandated sixty days then some other agency is asked to shoulder this ‘dirty job’ of ‘public hearing’ on their behalf. This clause is introduced to pace up the entire process of environmental clearance, as many state pollution control boards take substantial time in conducting public hearings.

Hypothetically if the alternate agency also expresses its inability to conduct public hearing, then what is going to be the situation? The regulations do not answer about this. And why the other agency shall be conducting public hearing on behalf of some one else? These are few questions which will bother the administration in near future.

There is one ‘dynamite’ provision inserted in the new draft regulations, which may completely swallow rest of the provisions and
the effort of mainstreaming public consultation during environmental clearance process itself. Clause III(iv) of the new draft regulation state that, “if the public agency or authority nominated under the sub-paragraphs (ii) and (iii) above reports to the regulatory authority concerned that, owing to the local situation, it is not possible to conduct the public hearing in a manner which will enable the views of the concerned local persons to be freely expressed, it shall report the facts in detail to the concerned regulatory authority, which may, after due consideration of the report and other reliable information that it may have, decide that the public consultation in the case need not include the public hearing”. This clause may create an escape route to the agency to deviate from the norm, especially in case of controversial projects. The regulation also does not make it clear as what are considered to be the constraining points on the basis of which public hearings might be dropped out. This is yet another clause in the Notification, which is very delicate, and needs further examination before putting the draft into force.

The Member-Secretary of the concerned State Pollution Control Board shall finalize the date, time and venue of the public hearing within 30 days from the receipt of draft Environmental Impact Assessment report from the project proponent. He is further required to advertise the same in one major National Daily and one Regional vernacular daily. While doing this he shall provide a period
of 30 days to the public. The status quo is being continued in this regard as well. There are provisions in the new draft regulation to host the details in the website of the regulatory agencies, but considering the penetration of web accessing facilities, especially to the rural masses the avenues for advertising about the public hearing are highly insufficient. The judicial mandate in Center for Social Justice (Janvikas) v Union of India is completely overlooked. There was greater stress applied to canvassing the public hearing details in the judgment. As regards the newspapers in which the public notice of public hearings is to be published, the court ruled that such newspapers should be having a wide circulation in the area concerned. The court also ordered that, the concerned State Pollution Control Board to send a notice to the concerned Gram Panchayat to advantage the people who are semi-literate and may not be in the habit of reading newspapers. There is not much being done in this regard.

The applicant (i.e. project proponent) while submitting application to the concerned State Pollution Control Board, is required to forward copies (one hard and one soft) of the Environmental Impact Assessment Report to the Ministry of Environment and Forest and also to (i) District Magistrate; (ii) concerned Zilla Parishad or Municipal Corporation; (iii) District Industries Office; and (iv) concerned Regional Office of the Ministry
of Environment and Forests. This is with a view to advertise at the local levels about public hearing meeting. But consciously the Gram Panchayats have been eliminated from the list. Once the advertisement is put on the web site it is easily reachable to all the members of urban and literate community. Further effort is desired to make the information trickle down to rural masses and to illiterates and semi-literates. Practically it is the need for the project proponent to simultaneously forward the copies (as specified above) to all the other agencies. But the Notification is not clear as to who is going to supervise this forward.

Regarding the panel of public hearing there are some changes proposed. The new composition of the public hearing panel will be chaired by District Magistrate (or his representative not below the rank of an Additional District Magistrate) along with (i) local member of legislative assembly; (ii) three representatives from the local bodies; (iii) three prominent citizens of the area (nominated by the District Magistrate); (iv) representative of the State Pollution Control Board or Union Territory Pollution control Committee; and (v) three sectoral experts (nominated by the Pollution Control Board or Union Territory Pollution Control Committee).

This composition appears to be improved version from the existing panel. It was taken into account that in most of the public hearing meetings the District Collector use to appoint some lower
rank officers to represent him is remedied by mentioning that, the representative of the District Collector has to be an officer not below the rank of Additional District Magistrate. There are many districts in India where there is no post of Additional District Magistrate, or even the Head Quarter Assistant to the District Magistrate will be lower (than the Additional District Magistrate) rank officer. In such situations this responsibility apparently increases the burden upon the District Magistrate. Making the local Member of Legislative Assembly will certainly a positive step. In the existing system there is no scope for the participation of Sectoral Experts in the panel, now there is space for the Experts to participate and understand local concerns. They can further suggest remedying measures to these concerns using their expertise. There are other provisions for video-graphing the proceedings, and making note of the proceedings which were absent in the present process. But the regulations do not mention as to whose responsibility it is to make notes of the proceedings. It is presumed to be the responsibility of the representation of State Pollution Control Board or Union Territory Pollution Control Committee, as conduct of public hearing is the responsibility of the state pollution control board. This is not clearly specified. Usually the member secretary or secretary keeps the record of the meeting. The notification mentions about the chairmanship of the meeting but does not clarify about the member
secretary to the panel. Hence there is some need for reconsideration in this regard. The final statement of the issues raised by the public and the comments shall be read over; and displaying the public hearing proceedings is a welcome development. But at the cost of repletion it must be mentioned that the proposed yard sticks to consult public are highly insufficient and require through up-gradation in consonance with new emerging world order.

THE POST PROJECT MONITORING

The current system lacks formal post project monitoring mechanism. There was immediate need felt for developing a proper and effective post project monitoring component. The provisions in the draft mandate the project proponent to submit a half-yearly compliance report, to the regulatory authority (on 1st June and 1st December) of each calendar year. And such submitted documents are regarded as ‘public documents’ and the copies of the same shall be posted in the website of the concerned regulatory authority and also given to any interested public. Except this there is not much added by the draft regulation towards post project monitoring. Ideally the local institutions (preferably State Pollution Control Board) should have been included in carrying out annual inspections of the site to verify actual compliance. On the other hand some specific provision, empowering the public to call the attention of the
enforcement agency to any violations would have strengthened the concept of 'community monitoring'.

OTHER MATTERS

Definition and explanations – this is covered already, in brief above that the present Notification takes into its ambit many drafting errors. These drafting errors might prove fatal during the implementation stage. Hence it is highly recommended that the entire draft must be vetted for legislative drafting accuracy. A small segment of ‘definitions’ explaining all the vital vocabulary would be ideal.

The list of projects included – during the consultations some of the experts expressed their apprehension about the coverage of the projects in the new scheme. Although the new draft scheme covers more number of projects or industrial activities, the list is not comprehensive. Like the existing system, the proposal continues to rely on identifying specific types or categories of projects for environmental analysis, rather than requiring analysis of all projects that may have significant environmental impacts. The categories are just more than labels, leaving serious apprehension about the vastness of their coverage or many types of activities that may or may not be considered to be within a particular category. The proposal assigns greater responsibility to the states for impact assessment and project clearance. Yet the proposal offers no evidence that the
states are staffed or competent to make the required assessments. Nor does it propose any pan for ensuring the needed competence, or provide any assurance that the state will be able or willing to expand the funds necessary to establish competent programme.

The quality of EIA report and summary – in the present programme the quality of Environmental Impact Assessment reports prepared are in highly insufficient and often questioned by the experts about their correctness. There is no attempt in the new draft legislation to ensure the quality of the, environmental impact assessment reports' submitted. In general there are certain parameters given for the consideration of the development of Environmental Impact Assessment document. It comprises some generic categories like – (i) introduction; (ii) project description; (iii) description of the environment; (iv) anticipated environmental impacts and mitigation measures; (v) analysis of alternatives (technology and site); (vi) environmental monitoring programme; (vii) additional studies; (viii) project benefits; (ix) environmental cost benefit analysis; (x) environmental management plan; (xi) summary & conclusions; and (xii) disclosure of consultants engaged. This list may be successful in standardizing the environmental impact assessment reports but will be least helpful in improving the quality, many experts opined that way. In addition to this there may be some approved techniques of assessment would have certainly
gone to improve the system, further the experts expressed during the interview.

Responsibility of the institutions – although this is much covered ground even in the new proposed draft the role of institutions is mere administrative to grant clearance after due verification of the environmental impact assess documents (of course with the assistance of expert appraisal committee). There is not much of proactive stance or responsibility assigned to the institutions involved in the process of environmental impact assessment. If the environmental institutions involved here had been assigned some responsibility to carry out strategic environmental impact assessment or regional impact assessment of their respective region or creating a standard data base comprising of all base line environmental data would have improved the system. This exercise would have given excellent chance for the regulatory agencies to develop and deepen their understanding of the local environmental challenges comprehensively.

Role of evaluator and accreditation of process – although this was very severely discussed during ministry’s consultations, new draft does not talk about accreditation of the environmental impact assessors and fixing up some responsibility on their behalf for negligent statements and doctored results. There is minor improvement which states that, the environmental impact
assessment document should reveal the consultants engaged with their brief resume and nature of consultancy tendered, but this is highly insufficient to address the challenge.
Notes and References

1 The researcher attended two of such consultative meeting held at New Delhi and Bangalore. He also made presentation during these meetings along with other experts who are invited.

2 This information was collected during the interview with Mr. Biswas, the former Chairperson of Central Pollution Control Board. The Ministry web site also contains some relevant information in this regard.

3 Details about Environmental Management Capacity Building Project are collected through files of National Law School of India University, Bangalore.

4 The Ministry of Environment and Forest made its intentions of reengineering process to a semi-public meeting convened on 29th November 2004. Not many are invited to the programme, as ministry’s sources claimed that, it is due to problems of accommodation in the conference room. During that meeting also not much of documents were released upon this proposed reengineering.

5 On 29th November 2004.

6 There are other public offices which are assigned some minor role, like publicizing the public hearing meetings to the public etc. but those are insignificant institutions to be involved in the current discussion.

7 Appendix VI appended to the new draft legislation.

8 By Prof. Sharma of Tata Institute of Social Sciences, Mumbai, and others.

9 This is one of the greatest weaknesses of the Notification, that drafting is of very poor quality.

10 They are (i) Modernization of irrigation projects; (ii) all projects or activities located within industrial estates or parks approved by the concerned authorities, and which are not disallowed in such approvals; (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 and activities; (vi) all projects or activities concerning national defence and security as determined by the Central Government.

12  Appendix III appended to the draft Notification.