

**Environment Impact Assessment and the Legal framework for Conserving Biological Diversity \***

(Based on the **Sub thematic review report** by the author for the **Indian National Biological Diversity Strategy Action Plan** for the **Ministry of Environment and Forests, Government of India** and the technical coordinators of NBSAP, Kalpavriksh, India)

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### **Acknowledgements**

This study has been extremely enriching for me as a researcher and practitioner engaged in environmental law as it enabled me to see the benefits as well as the inherent defects in the legal framework, which generically determines environment protection in India and specifically determines Environment Impact Assessment (EIA) in India. This review revealed starkly that delegated or subordinate environmental legislation (such as the EIA notification) is often amended arbitrarily and changed by successive governments often to belie the very purpose for which the original environmental regulation or instrument was passed.

I would like to thank Ashish Kothari (Kalpavriksh) and V. Shruti Devi, my colleague for suggesting that I undertake this sub thematic review on Environment Impact Assessment and the legal framework for conserving biological diversity for the National Biodiversity Strategy Action Plan. The National Biodiversity Strategy Action Plan is a joint initiative undertaken by the Ministry of Environment, Government of India and its technical coordinators, Kalpavriksh. This opportunity enabled me to focus on the somewhat neglected and yet increasingly relevant subject of the legal framework for EIA in India with particular attention to the priority of conservation of biological diversity. Although this paper (which is based on the research conducted for the sub thematic review for the NBSAP) examines the EIA notification in the context of biodiversity conservation, it does this in broad brush-strokes without any specific reference to agro-biodiversity.

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### **Abstract**

My study of the EIA law in the country revealed that the EIA notification (passed under the Environment (Protection) Act) has the potential of being one of the strongest pieces of beneficial environmental legislation for regulating haphazard and unsound industrial development. However, at present, industries, project proponents and the regulating agency are paying mere lip service to the EIA notification (passed under the Environment (Protection) Act) and most often, industries manage to bypass the requirements of the EIA with impunity. The slack and ineffectual enforcement of the EIA notification combined with the existing loopholes and infirmities in the EIA law enable industries to conveniently circumvent the requirements of an EIA. Even when the industry conducts the EIA, most often the EIA report is hardly accurate and at times the findings of the EIA report have been conveniently misconstrued to suit the interests of the industries or project proponents. Often, industrialists and project proponents have deliberately misinterpreted and extrapolated the findings of the EIA report to prove a better environmental track record than they actually possess. In short, the EIA process in India has been reduced to a farce.

The EIA law (despite defects) in India in fact offers legal space for participatory, equitable and transparent processes for granting environmental clearance to industries. If the notification and specifically the provisions for public hearing are properly implemented, this would not just ensure greater public participation in the environmental decision making concerning the project or the industry but would also increase the responsibility of citizens groups, people's fora and environmental NGOs and enable them to raise important issues concerning the social, economic and the health impact of the project as well as articulating the need for the consideration of biological diversity impact in the EIA process. A vigilant citizen's group or a people's forum in turn would also ensure that industries have to address and engage with the attendant environmental problems and the anticipated impact and loss of biodiversity arising from the proposed expansion of an industry or the development project.

## Environment Impact Assessment (EIA) and the Legal Framework for Conserving Biological Diversity in India

### Introduction

It is apparent that most large-scale development projects in India have resulted in widespread human displacement as well rampant environmental damage. The positive benefits of development are offset by persistent problems of land and soil degradation, deforestation, industrial pollution, water pollution, air pollution, urban congestion and also the loss of valuable biological diversity present in the area where the development project is proposed. Today, given the unprecedented scale and nature of environmental damage resulting from economic development, it is evident that a proper investigation and study assessing the nature and extent of environmental damage resulting from the project or industry is absolutely imperative. Environment Impact Assessment, or EIA for short is a process whereby a scientific assessment is undertaken of the environmental costs as well as the benefits of a certain development project or an industry. In other words, EIA is a formal study assessing and predicting the environmental consequences of a proposed development project or an industry.

Along with the anticipated environmental impact (adverse or beneficial) of the project, the EIA report is also expected to highlight the anticipated social and economic impact of the proposed project. The EIA report is expected to amply illustrate how the proposed development project or the expansion of industry might affect people living in the area (where the project is proposed), their livelihood, economic and social well being and the estimated loss of biodiversity in the area, resulting from the proposed project. Along with the Impact Assessment study of a proposed project, the EIA report would further contain suggestions and solutions that would mitigate, minimize and even resolve the problems that are outlined in the assessment study. It is significant that the EIA process provides room for mitigation plans to minimize the anticipated adverse environmental impact from the proposed project.

In India, the EIA study is now a mandatory requirement and is a prerequisite for granting environmental clearance for certain listed industries and development projects (see Schedule 1 to the EIA notification of 1994). The EIA notification dated 27<sup>th</sup> January, 1994,<sup>2</sup> passed under the umbrella Environment (Protection) Act, 1986 specifically states that the expansion or modernization of any activity (if the pollution load is to exceed the existing one) or any new project listed in Schedule 1 of the notification shall not be undertaken unless it has been accorded

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<sup>2</sup> As amended by the Government of India's Ministry of Environment and Forests on 4.5.1994

environmental clearance by the Central government in accordance with the procedure specified in the notification.

The EIA notification further states that *any person who seeks to undertake any new project or the expansion or modernization of any existing industry or project shall submit an application for environmental clearance along with the mandatory EIA report, the Environment Management Plan and details of the public hearing (as specified in Schedule IV of the notification)*. Thus an EIA study has to be compulsorily undertaken by these industries and projects<sup>3</sup> in order to assess, examine and project the environmental and socio-economic consequences and repercussions of a proposed development project or the expansion of an industry. Clearly the purpose of the EIA study is then to provide relevant information about the proposed project to enable the implementing agencies to take an informed and rational decision about the feasibility of the proposed project against the backdrop of the resulting environmental consequences and decide whether environmental clearance can be given to the proposed project despite the adverse environmental impact arising from the proposed project. The EIA study would also outline the necessary mitigation measures that would be undertaken by the project proponent to reduce the adverse environmental impact of the project

On the basis of the EIA study, the Impact Assessment Agency in India ( the Central Government's Ministry of Environment and Forests), shall prepare a set of recommendations based on the technical assessment of documents and data furnished by the project authorities. Therefore on the strength of the EIA study and report, industries and development projects can be granted or denied environmental clearance by the concerned implementing agency (i.e. the Impact Assessment Agency). Environmental Impact Assessment has, therefore become an important regulatory mechanism through which decision makers, the project proponent and the citizens and citizens action groups can mitigate, reduce and even halt the adverse impact of a proposed project or the industry on the environment. Thus, on the basis of the EIA report, the project can be rejected outright or alternately the project proponent can be asked to modify the project in order to suit environmental conditions thus reducing the extent of environmental damage and thus enabling conservation of the last remaining storehouses of biological diversity.

The EIA procedure is remarkably progressive in theory and actually provides for an environmental public hearing whereby persons affected by a project can record their objections and the public can at-least participate in the decision-making process concerning the environmental clearance to be granted to the project. Although the public hearing is often just a cursory consultation often done hastily by the Collector of the area in which the proposed project is coming up, the

<sup>3</sup> There are 30 categories of industries for which an EIA is a prerequisite for industries desirous of obtaining an environmental clearance. See Annexure I of the EIA notification of 1994 for the complete list.

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provision of a public hearing at-least ensures that there is some element of public consultation and that, at least in theory, there is an element of public participation in the decision to grant or refuse the environmental clearance to the proposed project. It is apparent that the process of holding the public hearing has to be significantly improved to make this process more participatory, democratic and transparent. However even the provision of a public hearing in the EIA notification is a huge step forward towards ensuring participatory environmental decision-making. Unfortunately, even the opportunity of a public hearing is often not seized and effectively utilized by people affected by the proposed project, voluntary organizations and environmental NGOs working in the area. Thus citizens groups, welfare associations and NGOs inadvertently waive their right to a public hearing by not attending these and hence, are as much to blame as the Government authorities who try to bypass the requirements of the public hearing or limit the public hearing to a mere cursory consultation with the public. Non governmental organizations on their part have also been slack in asserting that the public hearing is organized for listed projects and that the objections and the views of the people affected by the project are recorded at the public hearing.

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It is significant that the EIA process is however grossly deficient and is inadequate from the perspective of conserving biological diversity and the Indian EIA Notification is conspicuously silent on standards or parameters for assessing the impact of the proposed project on biological diversity. Thus there is no proper assessment of the anticipated loss of biodiversity and the impact on the biodiversity in the area (the impact on the entire ecosystem which would entail looking at the impact on the habitat as well as on the flagship species found in the area) where the project is proposed. It is evident that the EIA would be comprehensive and accurate only if a multidisciplinary approach is adopted and biodiversity impact is considered along with the environmental, social as well as economic impact of the proposed development or project. It is vital that biodiversity considerations are not an after thought in the EIA study but are an integral and essential part of the EIA study of the proposed project.

However, despite the shortcomings of the EIA law, the importance of an Environment Impact Assessment (EIA) has grown in the present day especially as planners and policy makers alike have appreciated the failure of the development process to address the adverse environmental consequences that accompanies development. EIA is then a vital means for ensuring sustainable development especially in the context of answering the twin challenges of conservation and development in developing countries.

## Discussion

The main objective of this sub-thematic paper would be to discuss the benefits and shortcomings in the EIA procedure and highlight the inadequacies in the EIA notification especially with reference to the concern of conservation of biological diversity. While

analyzing the merits of the EIA notification and bringing out the flaws in the EIA notification, this paper would also hope to provide constructive suggestions for enabling the EIA notification to be a more effective and legally effective instrument for enabling the conservation of biological diversity and accomplishing sustainable development.

Several questions come to mind. Does the EIA notification merely allow industrial pollution within certain acceptable limits? Does the EIA notification actually give the industries a legal “license to pollute” within acceptable limits? Does the EIA study actually enable industries (who are notorious for their poor environmental track record) to actually acquire an environment friendly image and even continue “pollution under consent”? Can the EIA legislation go a step further and even ban and prohibit certain operations, processes and industries that are perceived as harmful to the environment especially in biodiversity rich areas?

Does the EIA notification even obliquely address the concern of the conservation of biological diversity or is the EIA procedure simply viewed as a necessary step in the routine process of granting environmental clearance to industries? Does the EIA report entail assessing the loss of biodiversity in a certain area where a development project or the expansion of an industry is planned? On the basis of the EIA report and the estimated loss of biological diversity in the area, can certain hazardous industries be completely prohibited and restricted especially in ecologically sensitive areas and areas rich in biodiversity? In fact can the implementing agency take further action on the basis of the EIA and prohibit and black list certain industries in certain exceptionally ecologically fragile areas (which are important gene pools of biological diversity) owing to the anticipated adverse impact on biological diversity?

Has the EIA report been viewed as another hoop through which industries have to jump through? Or do industries perceive the EIA process as a beneficial process and can the EIA report help industries to plan and take additional measures to improve their overall environmental performance? Does the EIA process promote environmentally benign development? Or, conversely, has the EIA process been used to mislead the citizens and affected persons about the anticipated environmental impact of a certain project? Shouldn't the EIA study be carried out by an independent party rather than be commissioned by the industry concerned in order to ensure authenticity of the EIA study and the findings?

#### **Lack of Biological diversity considerations in the EIA procedure**

Environmental impact assessment processes are established and applied in over 100 countries around the world but biological diversity considerations are often inadequately addressed or completely overlooked in practice while carrying out the EIA study. Many countries, with few exceptions such as Sri Lanka and Bhutan incorporate the concept of biodiversity in the definition of the term “environment”, which includes resources such as land, water, air, organic and inorganic matters, as well as living organisms that do constitute components of biological diversity. Although most environmental laws restrict

industrial pollution (within acceptable limits) and prohibit effluent discharge beyond a prescribed limit, very few of these laws draw the vital connection between development and the impact of development on areas that are rich in biological diversity. There are hardly any laws that make it legally binding on the implementing agency or the project proponent to take account of the impact of the proposed project on biological diversity and take concrete steps to conserve areas that are the last gene pools of biological diversity. Thus environmental laws often overlook the need for regulating activities that have an adverse and unprecedented impact on biological diversity. In fact biodiversity considerations are conspicuously absent in the EIA process and individual EIA reports do not take into account or even make a mention about the estimated biodiversity loss from proposed projects or industries. Thus, the need for studying the impact of the project on biological diversity is not even a priority for the regulating agency and development projects seeking environmental clearance do not even need to address the loss or impact on biological diversity while seeking environmental clearance for their project.

It is obvious that the concern for conserving biological diversity is almost completely ignored in the EIA Notification in India and at almost every stage of the EIA process, the assessment of the anticipated loss of biodiversity in areas where the project is proposed is overlooked.

It is also glaring that there are no obligations on the Government or a certain Government department to undertake strategic environment assessment, which entails assessing the implications of an entire sector or the Government taking stock of the impact of an entire Policy of the Government (such as the National Power Policy or the National Rehabilitation Policy) on the environment.

It is also alarming that although we, in India have a large number corpus -of them environmental laws if one puts together all along with pollution laws, forest and wildlife related legislations, specific provisions scattered across Town and Country Planning Acts and Industry related acts at the centre and state levels,- there are really very few legally sound environmental laws Legal mechanisms that can be effectively utilized for available for can be effectively used for enabling concrete measures to be undertaken for the conservation of biological diversity. The EIA notification is one such beneficial instrument that regulates rapid industrial expansion and can contribute to the conservation of biological diversity in the designated area. However, the ineffective implementation of the EIA notification and the lack of political will to enforce the provisions of this notification have reduced the EIA process in India to a farce.

It is equally also disconcerting that there are very few legal instruments or legal provisions that make it mandatory for the government, project proponents or the industry to undertake at their own cost, prescribe positive steps and measures -for conserving conservation of biological diversity in the area where the project is proposed. These measures would also include measures by the Government authority to zone, phase and restrict industries on the basis of the ecological importance of the area (and the biodiversity values of the particular area) and would also envisage measures to relocate industries to areas where the minimum possible environmental damage would be caused where biodiversity impact would be negligible. Additionally such measures could also entail completely prohibiting certain imminently hazardous industries especially in



certain ecologically fragile areas that are valuable storehouses of biological diversity and areas that are considered ecologically sensitive where conservation of biological diversity would be absolutely imperative.

### **Processes of Participatory Decision Making in the EIA process**

Another concern of the paper would be to examine whether the EIA report is a public document in the sense that the information contained therein is accessible to the public or whether the contents of this report are in practice, treated as “official secrets”. Although, on paper, the EIA report (subject to public interest) would be available to the public, it is possible that in practice, that access to much of the information contained in the EIA report would be a huge ordeal for the people and the technical information contained in the EIA report would be incomprehensible and inaccessible to the public.

Further, does the EIA process actually involve citizens and local people (affected by the proposed project) in deciding about the feasibility of a proposed project? Do their objections play a critical role in deciding about the environmental clearance to be subsequently granted to the proposed project?

Further does the EIA notification specify that the contents of an EIA report have to be publicized to citizens at large, so that objections can be filed by citizens and members of the public if the project is perceived to violate human rights and environmental norms? What about the language used in the EIA report? Is the EIA report translated and publicised in the local language? Are the contents of the EIA report publicized in the vernacular so that the public can understand and comprehend the implications of the EIA report? Or is the language so highly technical and complicated that the EIA report is beyond the comprehension of the local people thus ensuring that the people affected by the project can seldom file objections regarding the contents of the EIA report.

What is the significance and importance of the public hearing while granting environmental clearance to a proposed project? Does the public hearing actually enable the public to participate and have a vote in the decision-making process regarding the environmental clearance to be given to the proposed industry? Or is the public hearing merely considered a formality and does the public hearing process merely entail a cursory consultation with the public and the affected population? Is the public hearing conducted on a routine basis without any significant bearing on the environmental clearance that would be sanctioned to the proposed project? And how does the process or outcome of the public hearing affect the environmental clearance that would be subsequently sanctioned to the proposed industry?

Further is the public hearing <sup>4</sup> an integral and sacrosanct part of the process of the environment impact assessment? Or can the public hearing be dispensed with altogether in certain cases if the Impact assessment Authority so chooses? Further, can the environmental clearance for the proposed project be rejected solely on the basis of the public hearing? In other words, does the public hearing play a decisive role for the fate of the proposed project? It would also be worthwhile to consider if the concerned government department is legally bound to act upon the outcome of the public hearing.

#### **Right to Information concerning the EIA report**

This paper would also examine whether the minutes of the public hearing are made publicly known to people affected by the proposed project. Further, it would be useful to examine the legal liabilities on the concerned government agency regarding compensation and rehabilitation of persons affected by the project. Does the concerned government department or agency have to inform the public about the proposed resettlement plans in the area where the project is located? Is the EIA Notification conspicuously silent about the liabilities of the government agency regarding compensation and rehabilitation of persons affected by the proposed project? Some of these questions would be addressed in this sub-thematic paper.

#### **The Environment Impact Assessment Notification of 1994**

The Environment (Protection) Act, 1986, (hereinafter EPA) is one of the few environmental statutes that vests the Central Government with wide-sweeping powers to regulate and contain industrial pollution and environmental degradation. The EPA, an umbrella legislation enables the Central Government to take steps to restrict and regulate environmental degradation. This Act allows the Central Government to also take on a proactive role for the protection and improvement of the environment. Accordingly, the Act vests the Central Government with wide powers to lay down standards for emission or discharge of environmental pollutants from various sources. Additionally, the Act also vests the Central Government with powers to restrict any industry, operation or process or class of industries, operations or processes in certain areas (for example, areas that are rich in biological diversity) and any industry, operation or process shall be prohibited in such areas subject to certain safeguards. Further Section 3 (3) of the Act also empowers the Central Government, if it considers it necessary, to constitute an authority or authorities for the purpose of exercising and performing

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<sup>4</sup> The public hearing is a process wherein objections from the public are heard and persons affected by the project are given an opportunity to air their views, complaints and grievances about the proposed project.

such powers and functions (including the power to issue directions under section 5) as may be specified in the order constituting the authority.

The Central Government's Ministry of Environment and Forests, in accordance with the powers vested in it by the Environment (Protection) Act, 1986 passed a notification way back in 1994 making Environment Impact Assessment a mandatory requirement for granting environmental clearance for expansion and modernization of any existing industry and for undertaking any new development project included in Schedule 1 to the notification. This notification was passed under clause (a) of sub-rule 3 of Rule 5 of the Environment (Protection) Rules and ensures that environmental clearance would be necessary for any new project or the expansion or modernization of any existing industry or project (specified in Schedule 1 of the Notification) and further environmental clearance would only be given to industries and development projects that undertake environment impact assessment and submit an Environment Impact Assessment report.

~~The Environment Impact Assessment Notification, 1994 (hereinafter the EIA Notification) is one of the few regulatory mechanisms through which environmentally unsustainable development projects and industries responsible for environmental offences can be~~

~~brought to book~~ According to the EIA notification, 30 categories of industries have been specifically identified as requiring an Environment Impact Assessment. However for certain development projects like minor ports, the requirement of an EIA has been waived and thus the requirement of an EIA for projects such as minor ports has been exempted. However, even this exemption of the EIA for minor ports has provoked controversy as many activist organizations are quick to point out that minor ports only differ from major ports only in terms of jurisdiction and not in terms of actual size.

Despite apparent lacunae (discussed subsequently), the Environment Impact Assessment Notification, 1994 (hereinafter the EIA Notification) remains one of the few beneficial legal instruments through which environmentally hazardous development projects can be checked and polluting industries responsible for environmental offences can be made accountable for the anticipated environmental damage from the industries.

Further failure to comply with the requirements of an EIA attracts penal measures although, it is disconcerting that in practice, non-compliance with the EIA procedure is seldom acted upon. The procedure for EIA is hardly foolproof and most often industries and other development projects manage to circumvent the requirements of an EIA with impunity. In some cases, even where industries and other development projects have complied with the EIA procedure and have furnished EIAs, this is done with as a mere formality. In many cases industries have conducted an EIA as an afterthought, long after they have been established. The Ministry of Environment and Forests on its part, has allowed several hastily produced, shoddy, inaccurate and misleading EIA reports.

In fact in several cases in India, the EIA procedure has been used by industries to whitewash their real intentions of maximizing their profits at the cost of large-scale environmental degradation and the EIA report has been actually used by industries to acquire an environment friendly image despite the fact that they are notorious for large-scale pollution and have the worst track record for environmental degradation. For instance, in a leading Public interest case (PIL) involving the Sanghi Cement Industries in Kutch district in Gujarat, the fraudulent and misleading EIA report (prepared by a reputed research institute) was used and referred to by the concerned industry to actually assert that the area in question (i.e. the Narayan Sarovar Sanctuary) was not a biodiversity rich area. The concerned industry conveniently used pre-monsoon data to mislead the court about the real ecological value and importance of the area. Thus, on the basis of this fraudulent EIA report, the concerned industry sought to “denotify” the Narayan Sarovar Sanctuary in Kutch, Gujarat in order to pave the way for the expansion of its cement industry. In the ensuing legal battle with a leading conservation NGO, the said cement industry purposely referred to and highlighted the pre-monsoon data in the EIA report to mislead the Court into believing that Narayan Sarovar Sanctuary was actually an arid area without significant flora and fauna (despite the area being notified and declared as a sanctuary). The industry therefore argued that the area could be conveniently denotified to make room for their own profit-oriented interests.

Despite these apparent lacunae, the EIA notification is still an empowering and beneficial piece of delegated legislation. If the EIA report is fully utilized, it could indeed enable a more informed, transparent and participatory process for granting environmental clearance to industries and development projects. In this context, it is truly significant that the government agency responsible for granting environmental clearance (the Impact Assessment Agency) can actually refuse environmental clearance to such industries solely on the basis of the EIA (although, in practice, this is rarely done).

Significantly the EIA notification also creates a legal avenue for a public hearing whereby the public and the affected population can air their grievances and (ideally) file objections about the proposed project. Thus, through the mandatory public hearing, the public has to be informed about the EIA report and the subsequent environmental clearance that would be given for the proposed project and therefore people affected by the project, as well as activists and NGOS can actively participate in the decision making process concerning the environmental clearance for a proposed industry.

Therefore if the public hearing is conducted in accordance with the provisions of the EIA Notification by the government authority, this could prove to be an important legal forum through which the citizens and the affected population can record their objections about the environmental clearance granted or refused to the proposed project. However, it is significant that the EIA notification is conspicuously silent on whether the environmental clearance for a project can be refused solely on the basis of the public hearing. Thus if public opinion is unanimously against a certain development project (as the project would have

severe repercussions on the livelihood and homes of the people in the area), would the Impact Assessment Agency consider this as a sufficient legal ground for refusing environmental clearance to the proposed project?

The EIA notification is also ambiguous about the consequences or the necessary attendant measures that would be taken by the Impact Assessment Agency when a proposed project has been unanimously opposed in the public hearing. The aspect of fines and punishments is also very feeble and no explicit mention of the specific fines is mentioned in the EIA notification. The EIA notification is also conspicuously silent on the concerned government department's responsibilities and duties to take steps for resettlement and rehabilitation for people displaced from the proposed project. ~~The process of conducting an EIA would measure the environmental and socio-economic consequences and impact of a proposed project and would be vital for assessing the feasibility of a proposed project.~~

~~The Central Government's Ministry of Environment and Forests passed a notification way back in 1994 making Environment Impact Assessment a mandatory requirement for granting clearance for expansion and modernization of any existing industry and undertaking any new development projects. This notification was passed under clause (a) of sub-rule 3 of Rule 5 the Environment (Protection) Rules and ensures that clearance would only be given to industries and development projects that undertake environment impact assessment. Further failure to comply with the requirements of an EIA attracts penal measures although non-compliance with the EIA procedure is seldom acted upon. Moreover the procedure for EIA is hardly foolproof and most often industries and other development projects manage to bypass the requirements of an EIA with impunity. Even where industries and other development projects have complied with the EIA procedure this is done with as a mere formality. (all these problems should be brought out later, first the provisions of EIA and clearance need to be explained). In many cases industries have conducted an EIA as an afterthought, long after they have been established. The Ministry of Environment and Forests on its part, has allowed several hastily produced and inaccurate EIAs. In fact in several cases, the EIA procedure has been used by industries to actually acquire an environment friendly image despite the fact that they are notorious for large-scale pollution and degradation of the environment. This needs to be substantiated with examples. Most often industries are grumbling that these procedures need to be done.~~

### **Rationale**

The main objective of this sub thematic paper would be to examine the inherent flaws in the EIA procedure and highlights the defects in the EIA notification with reference to conservation of biological diversity. While bringing out the apparent shortcomings of the notification, the paper would hope to provide constructive

~~suggestions for making the EIA notification a more effective and legally sound instrument for enabling conservation of biological diversity.~~

~~Several questions come to mind. Does the EIA notification merely set acceptable standards for pollution by industries (does the objective of the notification entail setting standards at all? I thought pollution standards are set by the Pollution control laws?)? Can the notification go a step further and even ban and prohibit certain operations, processes and industries that are perceived as harmful to the environment~~

~~Does the EIA notification even obliquely address the concern of biological diversity or is the EIA process simply viewed as a necessary step in the process of granting clearance to industries? Has the EIA process been used to actually legalise industrial pollution and does it give industries a license to legally pollute (within so called acceptable limits)? This is a very strong and negative statement! If at all you would like to retain it, it would need to be substantiated with example. Another concern of the paper would be to examine whether the EIA report is a public document or whether the contents of this report are treated as "official secrets". Further does the EIA notification specify that the contents of an EIA report have to be publicized to citizens at large, so that objections can be filed if the project is perceived to violate human rights and environmental norms? Does the EIA process actually involve the public in deciding about the viability of a proposed project? Or does the process of a public hearing pay mere lip service to participatory decision making? Further is the mandatory public hearing merely a step in the process of granting clearance to industries or is the concerned government department legally bound to act upon the outcome of the public hearing? Are the minutes of the public hearing made publicly known to people affected by the proposed project? What are the legal liabilities on the concerned government agency regarding compensation and rehabilitation of persons affected by the project? Some of these questions would be considered in this sub-thematic paper.~~

~~(it would be useful at this stage, of before this, to explain the history of EIAs before 1994, briefly. See my paper on dams for this; other sources for this history may also exist)~~

#### **The EIA Notification dated 27<sup>th</sup> January, 1994**

The Government of India's Ministry of Environment and Forests made EIAs a mandatory requirement for ~~29~~ 30 (aAdded with an amendment later on...) designated projects by a notification dated 27<sup>th</sup> January, 1994. As per this notification, project proponents are bound to furnish an EIA report, an Environmental Management Plan and a Project report to the Impact Assessment Agency for clearance of the project. As per this notification, the Impact Assessment Agency is the Central Ministry of Environment and Forests.

EIA has been the subject of much discussion and controversy since the articulation of the need for an EIA in the original notification of 1994. Today, an EIA is not just vital from the environmental point of view and for ensuring biodiversity conservation but is equally vital from the point of this need in the

~~notification passed in 1994. Today, an EIA is not just vital from the environmental point of view but also from the point of view of social inclusion and equity. The importance of the EIA report is underlined by recent legal battles fought by the Narmada Bachao Andolan against the Narmada Dam and the Supreme Court's views decision on the same. In the aftermath of the Supreme Court judgment in the Narmada case, it is felt by most environmental activists that an EIA is needed to anticipate and preempt the undesirable environmental changes that would result from the proposed project. Indeed it is easier to make industries and proposed development projects responsible for the anticipated adverse environmental and socio-economic consequences before the project is established rather than after the project has received the green signal from the Government.~~

Although the EIA Notification is a progressive measure ~~towards regulating industrial pollution~~ and ~~the EIA report enables the Impact Assessment Agency to restrict~~ environmentally hazardous industries ~~(not only this, it regulates other things also)~~ and promote environmentally benign industries, the EIA notification is replete with problematic and contradictory clauses. Even practically, the EIA reports are seldom ~~used~~ ~~used by the government agency~~ to arrest unsound and unsustainable development. ~~and clearances given to~~ In practice, government authorities responsible for granting environmental clearance to the proposed project or industry have rarely rejected environmental clearances to industries solely on the basis of ~~the EIA report~~. ~~Further,~~ the environmental clearance given to certain industries is rarely withdrawn on the basis of subsequent monitoring and compliance reports. Surprisingly, even ~~citizens action groups and local people's institutions~~ have failed to use the provisions of the EIA notification, 1994 to lobby against environmentally destructive and hazardous industries and to ensure that conservation of biological diversity is accomplished through compliance with the EIA report.

**Provision of Site Clearance Myopic?**~~(clearance cannot be revoked on the basis of EIAs...they can be rejected outright, or they can be given subject to conditions...once given, they cannot be revoked on the basis of EIAs, but can be revoked on the basis of monitoring compliance reports...this latter aspect is missing from the discussion here).~~

The EIA notification, 1994 specifies that in the case of site-specific projects (such as mining, pit head thermal power stations, hydro power, major irrigation projects etc.), project authorities are required to intimate the location of the project site to the Central Government (in the Ministry of Environment and Forests, (MoEF)) while undertaking investigation and survey. The MoEF on its part would convey a decision regarding suitability of the proposed site within thirty days. ~~Need to describe the Siting guidelines as being different from EIA notification. While doing an EIA, these guidelines need to be kept in mind while presenting the appropriateness of the site. This might not be mandatory as of now, but it would be better if EIA reports are prepared keeping the Siting requirements in mind~~ It is alarming that even before conducting the Environment Impact Assessment study;



the proposed site of an industry can be sanctioned and approved. How can the ecological importance of an area be determined and assessed before the EIA study for the project at the proposed site is conducted and before any scientific assessment is made regarding the environmental importance, values and the adverse environmental impact in the area? Shouldn't the process of an EIA precede the approval of the project site in order to ascertain the ecological importance of the area and therefore the site should only be approved keeping in mind the ecological importance and biodiversity values of the area?

It would also be more rational, sound and economical to conduct a rapid EIA of the proposed project and then grant site clearance for the proposed project as this would ensure that sites that are ecologically important and rich in biodiversity would not be chosen (keeping in mind the biodiversity values of the area and the anticipated impact on biodiversity) for locating any development project or industry. ~~What is more~~ In practice, it is ~~disturbing- that in some cases- that~~ land acquisition proceedings ~~can~~ have actually been initiated even before the EIA studies are carried out and even before the feasibility of the project is examined in the context of environmental considerations.

In ecologically sensitive and areas rich in biodiversity, it would be myopic to grant site clearance and then discover (through the subsequent EIA studies) the huge attendant environmental problems (for instance: the unprecedented and irreversible loss of biodiversity that would disrupt the fine balance of the ecosystem) resulting from the project. Once a project has been given a site clearance, it would also be extremely frustrating and economically disadvantageous for the project proponent to be denied environmental clearance on the basis of the fact that the area is an ecologically important area. Although, the site clearance technically does not allow for any construction, in practice, construction is often undertaken by the industry as soon as it receives site clearance. Therefore from the point of view of bio-diversity conservation, it is imperative that the proposed site of the industry is approved only after conducting a rapid EIA of the proposed project and— assessing the extent of the environmental damage (and the projected impact on biodiversity) that would be caused if the project is located at the proposed site.

#### **Lack of People's Representation in the Decision Making Process concerning the EIA**

~~Further, i~~ It is also disturbing that the notification envisages the Impact Assessment Agency (IAA) to be constituted wholly by the Union Government's Ministry of Environment and Forests without the requisite expertise of professionals (working in the field of environment) and other people's institutions outside the government. If the Ministry of Environment and Forests deems it necessary, it may consult a Committee of Experts. The constitution of a committee of experts was mandatory according to the earlier EIA notification. However with subsequent amendments to the EIA notification, the constitution of the committee of experts is now optional and the committee would only be



constituted at the discretion and the arbitrary whim of the Impact Assessment Agency. It would be important to make the constitution of a committee of experts mandatory again so that people outside the government agency can make be involved in the EI process and can make suggestions for the conditions subject to which the environmental clearance would be granted to the industry/project proponent. It would be important to have experts (on biodiversity, wildlife and livelihood issues) on the team that would advise the implementing agency in connection with granting or refusing environmental clearance to the project proponent. (pl. mention that this was originally mandatory, then diluted subsequently to become optional. Perhaps a suggestion should be recommended that this be made mandatory once again). However At present, the final approval or sanction of an EIA is left entirely to the discretion of the Impact Assessment Agency/IAA. It is also shocking that the EIA is approved and environmental clearance is sanctioned without any involvement of the local population and representatives of citizens groups (affected by the proposed project) let alone any token participation by representatives from people's local people's institutions (such as *panchayats* or fishermen welfare associations). The EIA Notification does make a mention that the suggestions from the public voiced at the Public Hearing are to be taken into account during approval of the EIA. The Impact Assessment gives itself 30 days after the Public Hearing has taken place to complete the assessment process.

Thus in the case of the proposed mega port at Ennore (barely 65 kilometres away from an extremely ecologically important wetland, Pulicat lake), the fishermen who were dependent on the lake for their livelihood and were likely to be displaced by the upcoming project were never consulted before the location and establishment of the port project, threateningly close to this ecologically sensitive wetland area. When the fishermen ~~men~~ of Pulicat lake asserted their right to see the EIA and the pre-feasibility studies for Ennore Port, they were informed by the Ministry of Environment and Forests that the approval for the proposed port at Ennore was granted prior to the EIA notification of 1994 and thus fell outside the ambit of the EIA notification! As the project was approved prior to the EIA notification of 1994 coming into effect, presumably there was no EIA conducted before the establishment of the project and there was no EIA report that could be made available for the fishermen and their representative associations. In many cases, the local communities have not even been informed about the conditions upon which environmental clearance has been granted and in some cases, communities have vociferously stated that they do not want the project and the authorities have still gone ahead and granted permission to the project proponent.

#### **Lack of Vital Information with persons affected by the project**

The EIA report submitted by the proposed industry or the project proponent is then, in practice treated as restricted information and is only available with the Ministry of Environment and Forests (although as per the notification, summaries of the report, recommendations and conditions subject to which environmental clearance is given can be accessed by the public at the headquarters of the IAA

*subject to public interest*). According to the latest amendment to the EIA notification dated 26<sup>th</sup> September, 2002, the half yearly compliance reports submitted to the Impact Assessment Agency shall be also made available to the public, subject to public interest. However, in practice, it might be an uphill task for the people affected by the project to actually access the compliance reports. Despite the attempt to make the EIA process seem participatory and democratic, it is clear that the Ministry of Environment and Forests enjoys sole and unilateral decision making powers in approving or refusing clearance to the proposed project on the basis of the EIA. ~~There have been instances where special expert committees have been formed like the River Valley Committee. It needs to be analysed why this was shifted from being mandatory to "if needed"~~ Further the Ministry may consult the Committee of Experts *if it deems it necessary*. Thus the Ministry of Environment and Forests enjoys wide discretionary powers and is not legally bound to consult the Committee of experts or individuals and groups working in the field of environment or -even- the local population while deciding the feasibility of a certain project (although as per the Notification "*comments from the affected population may be solicited in public hearings*"). Even the composition of the Committee of Experts who may be consulted by the Impact Assessment Agency (i.e. the Ministry of Environment and Forests) reveals that the committee would be composed and appointed only at the discretion and with the approval of the Ministry of Environment and Forests. The composition of the EIA Committee reflects marginal and inadequate representation of the project affected villages and there is no provision for representatives of the local interest groups such as welfare organizations and women's or farmer's cooperatives in the area where the project is proposed.

**Lacunae in the EIA notification**~~also individuals and groups working in the field of environment~~:

Another problematic clause of the Notification is that if no comments are received from the Impact Assessment Agency within the time limit, the project would be deemed to have been approved as proposed by the project authorities! Clearly, this clause ~~could be~~ allows itself to manipulate ~~ion~~ to accommodate the interests of the ~~private~~ industrialists. Thus if no comments are received by the Impact Assessment Agency on the project report, this could be conveniently construed as an approval. In cases where the industrialists have the economic and political power, it would be extremely easy for them to make use of this clause to get the Impact Assessment Agency to remain silent on the project report (beyond the prescribed time limit) and thus their project would automatically get approved even without examination of the EIA report. It is necessary that there is absolute transparency in the working of the IAA, so that no discrepancy and misuse can creep into the EIA process.

**The EIA Notification amended on 4th May, 1994**

The EIA notification that was passed on 27<sup>th</sup> January, 1994 was further amended on 4<sup>th</sup> May, 1994. The 4<sup>th</sup> May, 1994 notification ~~further~~ weakened several of the stringent provisions placed by the earlier notification. The most disturbing change brought by the amendment notification was that the requirement of a comprehensive Environment Impact Assessment was waived and was substituted by a single season report (excluding the monsoon season). This single season report was called a Rapid Impact Assessment report. This note even goes to the extent of stating that the requirement of an EIA can be fully dispensed with by the Impact Assessment Agency, “*in case of projects which are unlikely to cause significant impacts on the environment*”. ~~This needs to be read with the next sentence in the explanatory note which is~~ note further states: *‘In such cases, the PP-project proponent will have to furnish full justification for such exemption, for submission of EIA.*

It is disturbing and problematic ~~preposterous (pl. avoid language like this, it will only make people defensive)~~ that even without conducting an EIA ~~and the EIA report~~, the Impact Assessment Agency (IAA) can decide that a project is unlikely to have a significant impact. This clause then undermines the importance and significance of ~~the entire EIA notification and~~ subverts the purpose behind ~~the EIA process~~ as the IAA can unilaterally decide (without even considering the EIA report) that a project is unlikely to have a significant impact. In fact the explanatory note inserted by the 4<sup>th</sup> May, 1994 notification further waters down the intent and impact of the original EIA Notification as the explanatory note waives the requirement of an EIA for certain projects where the project is expected to have an insignificant environmental impact.

It is disturbing that the legislative intent of an Act or subordinate legislation (such as Notifications, Government orders and Rules) can be so altered and diluted by passing dubious explanatory notes according to the whims and fancy of mere government officials. ~~Can this be a recommendation that the notification along with the explanatory notes be open for public comment before they are amended. As of now, only the notifications are open to public comment (this too seems to be happening only sometimes and with poor publicity, so people hardly get to know the period within which they need to send in their comments).~~ Can the Government then be allowed to arbitrarily alter and subvert the purpose and spirit behind statutes such as the Environment (Protection) Act? Thus the amendment Notification dated 4<sup>th</sup> May, 1994 defeats the very purpose of the original Notification and provides a legal avenue for ~~private-interested~~ parties and industrialists to bypass the stipulations of the earlier Notification.

It would be vital to ensure that the process of amending a notification is not ~~undertaken~~ arbitrarily but is justified on account of changes, which could not be ~~anticipated or~~ expected at the time of passing the original notification. ~~Thus the sanctity and the objective of the original notification~~ (and the spirit behind the parent Act i.e. the Environment (Protection) Act) ~~should be preserved and~~

subsequent amendments to the original notification should only allowed when changes occur which could not be foreseen at the time of passing the original notification. It is also important that the amendment process is made truly transparent and involves active participation of the public and citizen's action groups. In the present situation, although objections from the public are invited when an amendment notification is proposed, it is significant that in practice, objections of the public are rarely considered or acted upon to revoke the amendment notification and the amendment notification is rarely modified solely on the basis of objections and comments received from the public. Thus objections are “duly considered” by the Impact Assessment Agency. It is rare that an amendment notification has been shelved or withdrawn because of public pressure. It is also important that the amendment notification along with the explanatory notes should be open for public comment before they are amended. As of now in practice, it has been observed that only the original notifications are open to public comment (this too seems to be happening only occasionally and with poor publicity, so people hardly get to know the period within which they need to send in their comments).

Alarminglly, It is disturbing that the Explanatory note to the amendment notification makes environmental clearance for expansion or modernization of existing projects conditional. The note specifies that a project proponent is only required to seek environmental clearance for a proposed expansion/modernization activity only if the resultant pollution load is to exceed the existing levels. As per this explanatory e-note, if it is certified that no increase in the pollution load is likely to occur due to the proposed expansion or modernization, the project proponent will not be required to seek environmental clearance.

(the history of public hearings is unclear here...pl. explain the original clause and how it evolved?)

-The Explanatory note further clarifies and narrows the scope of the term “concerned parties or environmental groups affected by the project” and stipulates that only bona-fide residents located at and around the project site or the site of displacement would be consulted. The note also limits public hearings only for projects involving “larger displacement or having severe environmental ramifications”. Again the term “larger displacement” is not defined and is left ambiguous. Thus, the explanatory note makes public hearings a pre-condition for environmental clearance only for industries that involve large-scale displacement and for industries having severe environmental repercussions. The explanatory note further states that the public hearing would only be necessary for industries involving large displacement. This would in fact imply that public opinion and public participation in the process of granting environmental clearance is considered unnecessary especially for projects that do not involve large-scale displacement. It is clear that the explanatory note attached to the amendment notification of 4th May, 1994 was a retrograde measure taken by the Government to circumvent and bypass the conditions imposed by the EIA notification dated 27<sup>th</sup> January, 1994.

### The EIA Amendment Notification dated 10<sup>th</sup> April, 1997

The 4<sup>th</sup> May, 1994 EIA Notification (passed under the umbrella Environmental Protection Act, 1986) was followed by amendment dated 10<sup>th</sup> April, 1997. This notification was ~~surprisingly~~ more progressive than the earlier amendment and reiterated the importance of public hearings. Thus the provision of public hearings was restored by this amendment and the provision of a public hearing was made mandatory for all industries and development projects requiring an EIA. ~~Further~~ ~~However,~~—this notification exempted widening and improvement of highway projects from the requirement of environmental clearance except roads that passed through ecologically sensitive areas such as National Parks, Sanctuaries, Tiger Reserves and Reserve Forests. Thus for the first time, the notification specified the importance of conserving certain ecologically important and sensitive areas such as National Parks, Sanctuaries, Tiger Reserves and Reserve Forests. Significantly, this notification for the first time prescribed special attention for such ecologically important areas such as National Parks, Sanctuaries, Reserve Forests and Biosphere Reserves.

The EIA Notification amended on April 10, 1997 was ~~also~~ more progressive in the sense that for the first time it mandated clearance for any ~~listed/notified~~ project ~~please check I think it is only for thermal projects as the schedule I list in this notification is only for thermal project clearance. ('...in relation to the thermal power plants specified in Schedule I annexed to this notification...')~~ located within the radius of 25 kilometres of the boundary of Reserve Forests, ecologically sensitive areas including National Parks, Sanctuaries and Biosphere Reserves. Thus the amended EIA notification recognized the need for regulating certain industries, operations, processes and activities within certain ecologically sensitive areas. Even the composition of the panel for the public hearing is slightly ~~shade~~ more representative than the panel envisaged in the earlier EIA notification. According to this amendment three representatives of local bodies such as Municipalities or Panchayats may be inducted in the public hearing panel along with senior citizens of the area (albeit nominated by the District Collector).

However it is imperative that several changes be made within the EIA process in order to make the EIA process more transparent ~~and~~ ~~and~~ truly participatory. It is necessary that the public hearing and the hearing of the objections from the public including those affected by the project is done prior to the completion of the EIA report. Holding the public hearing after the completion of the EIA report would make the public hearing virtually redundant ~~and~~ ~~and~~ the objections of the public ~~would not be reflected~~ or taken account of ~~in the EIA report~~. In fact ~~holding the public hearing after the completion of the EIA report~~ would be virtually giving persons affected by the project a *fait accompli*. ‡

It is also important to make real the right of the public to access the project report ~~and the entire EIA report~~ (and not merely ~~allow~~ access to the Executive Summary of the project). In order to make this right real, it would be necessary to

ensure that the relevant documents including the project report, the conditions upon which environmental clearance is given and all compliance reports and all other documents related to the EIA are made available to persons affected by the project. There have been some instances where the EIA reports have been photocopied by environmental groups from the PCB office and the groups have paid the cost of photocopying. Such a practice needs to be built into the procedures made procedural (including rehabilitation and resettlement plans) are made available with the gram sabhas and panchayats. The contents of the summaries of the project report should be widely publicized (in written and oral form) and in at least two leading dailies (one in the vernacular language) in and around the project site and in areas neighbouring the proposed project.

The ~~latest~~ EIA notification (as amended on 27<sup>th</sup> January, 2000) ~~There is the amendment of December 2000. This amendment is also a crucial one as it excludes road construction of roads for defence projects from the purview of an EIA~~ enlarges the list of projects requiring environmental clearance and includes pulp and paper, dyes and cement industries as well as foundries and electroplating industries.

~~The latest amendment now that of 1<sup>st</sup> August 2001, which has severe repercussions on biodiversity. The memorandum submitted by 30-40 odd groups in May 2001 highlights the problems to some extent.~~

The latest amendment to the EIA notification is the amendment notification dated 26<sup>th</sup> September, 2002 which waives the requirement of a public hearing for small scale industrial units, mining projects, widening and strengthening of highways and modernization of existing irrigation projects.

Provided that for pipeline projects, Environmental Impact Assessment report will not be required:

Provided further, that for pipeline and highway projects, public hearing shall be conducted in each district through which the pipeline or highway passes through:

*“And whereas it has been found that Small Scale Industrial Units, Mining Projects with lease area up to twenty five hectares, widening and strengthening of Highways, and modernization of existing Irrigation Projects cause minimal impacts, both on the environment and people living in the vicinity;*

*And whereas the environment impact of such projects can be assessed on the basis of the information provided by the project proponents to this Ministry even without a public hearing;*

Now, therefore, the following notification which the Central Government proposes to issue in exercise of powers conferred by sub-section (1) read with clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) is hereby published as required under sub-rule (3) of rule 5 of the Environment (Protection) Rules,

1986 for the information of all persons likely to be affected thereby; and notice is hereby given that the said draft notification will be taken into consideration after the expiry of a period of sixty days from the date on which copies of the Gazette of India containing this notification are made available to the public.

### **Judicial decisions on Environmental Impact Assessment and conserving biological diversity**

In the last two decades, the Judiciary has had to intervene in many environmental matters and has had to progressively interpret provisions of environmental statutes such as the Environment (Protection) Act, 1986 in order to ensure that industries conform to basic environmental norms and standards especially in the face of swift industrial expansion under the policies of liberalization sweeping the country in the late 1990s. Thus the Judiciary has had to play a proactive role in restricting industrial pollution especially in ecologically sensitive areas. In fact the Judiciary has extensively commented on the lapses of the Executive and has taken strict cognizance of the tardy enforcement of environmental laws by the Executive. Therefore exceptional judicial activism has been critical for a strict enforcement and implementation of environmental laws.

In the *Indian Council for Enviro-legal Action versus Union of India* case<sup>5</sup>, the Court noted that all regulatory agencies including the Central Government had failed to perform their tasks and held that a court in its writ jurisdiction was empowered to direct remedial measures and recover the clean up costs from the polluter. In the given case the Court directed the Central Government to exercise its powers under Section 5 of the Environment (Protection) Act and thus directed the Central Government to give directions to the industry to remove the sludge and also impose the costs of remedial measures on the offending industry. Thus the Court stepped in to enforce the provisions of the Environment (Protection) Act, 1986 and ensure that industries are made accountable for the possible environmental damage resulting from the expansion of the industry or the location of the project even without specifically referring to the provisions of the EIA Notification of 1994.

In the *Dahanu Taluka Environment Protection Group vs. BSES* case<sup>6</sup>, a landmark judgment of the Supreme Court instructed the Central Government to constitute an authority under Section 3(3) of the Environment (Protection) Act to uphold the sanctity of the notification passed by the MoEF declaring Dahanu as an ecologically fragile area and the subsequent restrictions on the establishment of industries in Dahanu. The Ministry of Environment and Forests had approved a regional plan prepared by the State Government, which according to environmental groups working to protect Dahanu, violated both provisions of the CRZ notification as well as the “Dahanu” notification passed under the Environment (Protection) Act of 1986. Thereafter the Supreme Court responding to the contentions of the environmental groups, directed the National Environmental Engineering Research Institute, Nagpur to study the regional plan and

<sup>5</sup> As reported in AIR 1996 SC 1446

<sup>6</sup> Also reported in AIR 1991 BOM 301



examine whether it violated the provisions of the CRZ notification and the Dahanu notification. The NEERI report clearly stated that the BSES thermal power plant was located on wetlands in violation of the CRZ notification. The NEERI report extensively dealt with the biological diversity of the wetlands in Dahanu and noted that that the BSES would cause undue loss of biological diversity.

The Court therefore directed the State Government to adopt a modified regional plan subject to conditions specified by the Ministry of Environment and Forests and further directed the state government to implement all the recommendations of NEERI. The Court further directed the state government to prepare within a year (of the notification) a regional plan based on the existing land use in the region. Thus the environmental impact of the proposed industries was assessed and the Court was of the view that allowing rapid industrial growth would disturb the ecology of the fragile wetland ecosystem and thus restricted and prohibited certain types of environmentally hazardous industries.

### **Conclusion**

It is clear from the above analysis that the EIA Notification, which is presently in force in India, leaves much scope for improvement. The exemption of the Small Scale Industrial Sector (with an investment of less than Rs. 1 crore) from the purview of the mandatory public hearing required according to the Indian EIA notification of 1994 has generated much debate and this amendment undermines the very spirit of beneficial legislation such as the EIA notification. The latest amendment which waived the public hearing for the small scale industrial units would need to be stiffly opposed by citizens groups and environmental NGOS in order to ensure that the public hearing is an essential and integral part of the EIA process which cannot be dispensed with or waived in any event or circumstance. Thus the public hearing must be a sacrosanct and vital step in the EIA process in order to ensure that the EIA process is meaningful and in order to provide the affected population and citizens a *locus standi* to bring their objections or reservations about the proposed project officially on record.

Several additional changes in the public hearing process would be essential in order to make the EIA process in India truly participatory. It is evident that the process of public hearing should precede the grant of approval of the project report and should be planned at an early stage when the EIA study is actually underway so that objections and views of the “affected population” are considered while conducting the EIA of a certain project/industry and these objections/ reservations can be taken account of, before the decision to grant or reject environmental clearance to a certain project is taken.

In order to achieve social and environmental justice, the EIA Committee that would be consulted while granting environmental clearance to the proposed project or development, would need to be made more democratic and representatives of the local people’s institutions affected by the project would have to be made voting members of the EIA committee. In order to ensure that the participation in the EIA process is not illusory, this process should necessarily involve local and decentralised institutions and



the State authorities should devolve powers to local institutions such as *gram sabhas*<sup>7</sup> and *panchayats*<sup>8</sup> to participate and be a part of the decision-making regarding the environmental clearance to be given to the proposed project. It is also important that the EIA process is extended to necessarily involve not just panchayats but also other local voluntary groups who have a stake and interest in conserving the biodiversity of the area where the project is proposed. Such groups might include social and economic interest groups such as fishermen welfare associations, women's welfare associations and other voluntary groups to participate in the EIA process. Involvement in the EIA process would mean that local institutions would not just sit in the process of a public hearing but would mean that their representatives would also have a vote in the decision making process concerning the project and would have a say in the environmental clearance that would be granted to the proposed project or industry. Thus it would be necessary to enable representatives of local institutions such as *panchayats*, fishermen's welfare associations as well local women's co-operatives to be nominated on to the Environment Assessment Committee in order to consider the grant of approval or rejection for the environmental clearance for a proposed industry or project. The nomination of members of local institutions and interest groups would enable these representatives to not only stoutly defend the interests of the local people but would also act as the driver for the industry or the developer to address and consider the biodiversity impacts of a certain proposed project or industry in their locality. (the question is, how? Could you recommend specific measures for this, or changes in the EIA notification). The notification gives scope for this to happen but lack of information impedes this. Many local groups are not aware of the EIA and Public Hearing processes. Efforts have to be made in that direction, in order to make the process more participatory

It is apparent that only when there is adequate representation of members of the *gram sabha* and the *panchayat* in the EIA committee that the *gram sabha* and the *panchayat* would be able to play a proactive role in the EIA process. Further the *gram sabha* and *panchayat* would also be able to participate in the Public Hearing and inform affected villages (and neighbouring villages) about the EIA process and the conditions contingent to which the subsequent environmental clearance for a proposed project is granted.

This would necessitate putting in place a system where access to information about the EIA report would be readily available and easily accessible so that the local people and the affected population could be updated about the EIA of the proposed project and could actively participate in the EIA process.

In short, the EIA process would necessarily have to be decentralized to a greater extent. Further the process for granting environmental clearance would have to be more

<sup>7</sup> A *Gram Sabha* is a institution of local self government and acts as a supervisory body for the *Gram Panchayat*. The main roles entrusted to the *Gram Sabha* are microplanning, social audit of *panchayat* functioning, ratification of panchayat accounts and other supervisory and regulatory functions.

<sup>8</sup> A unit of local self government at the village level which has elected representatives (in elections supervised by the state election commission) who hold office for five years. The 73<sup>rd</sup> Amendment to the Constitution of India gave constitutional status to panchayats.

participatory and transparent to include greater participation of local people, NGOs, technical experts and members of people's institutions outside the Government.

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