
PUBLIC HEARING: ASCERTAINING LOCAL CONCERNS - ROLE AND RELEVANCE IN THE EIA PROCESS

Anupriya Thakur, Research Scholar,

School of Law, Maharaja Agrasen University, Baddi, Email id- anupriya.thakur@outlook.com

Dr. Leena Pawar, Assistant Professor,

School of Law, Maharaja Agrasen University, Baddi, Email id- leena1079@gmail.com

ABSTRACT

Development is crucial in enhancing the quality of life and ensuring economic growth, but development should not be done at the expense of environmental degradation. The main issue of a developing nation such as India is to balance between economic development and environmental conservation. This balance can only be achieved through the active participation of citizens in the process of governing the environment and making decisions. One of the most important elements of a good EIA mechanism is public participation. It also gives the affected communities and stakeholders a platform to air their opinions, worries, and protests to the possible social and environmental effects of developmental undertakings. This participation facilitates transparency, responsibility, and trust among the proponents of the projects, authorities and the general population. Additionally, it enhances the spirit of democracy since development is a participatory decision and also informed. In the given research, I will concentrate on the issue of the involvement of the public in the EIA framework in India and its legal underpinnings. It compares and contrasts the extent and efficacy of the concern of people under the Environmental Impact Assessment Notification, 2006, against the proposed Draught EIA Notification, 2020.

Important Terms: Environmental Impact Assessment (EIA); Public Participation; Environmental Governance; EIA Notification 2006; Draught EIA Notification 2020;

INTRODUCTION

Citizens are major stakeholders in the national development process and have a basic right to access information and to be involved in decision-making processes that would have an impact on their lives, means of livelihood, resources, and property. This right takes on a special role, especially when it comes to a large-scale project of infrastructure, including hydropower projects and other developmental projects, which usually carry a lot of environmental and social consequences.¹

¹ The Constitution of India. Government of India, 1950, Articles 14, 19, and 21.

A public hearing is a formal type of gathering where the affected people, interest groups, and local communities are legally congregated and information is shared along with their opinions on a planned project. In this way, the participants can express their views, bring up some concerns, and propose alternatives or mitigation actions. In this regard, a community hearing is a crucial communication medium between the masses, project developers, and the government.²

Public hearings are constructive because they help in information exchange, exchange of ideas and concerns among the stakeholders, hence enhancing transparency and involvement in decision-making. They enable the citizens to be involved directly in making decisive decisions regarding developmental undertakings, as well as make sure that their interests are considered. Based on the principles of equity and social justice, the process of the public hearing performs the information dissemination and deliberation roles, as well as functions as a tool to negotiate the compensation and introduce the impact-reducing strategies. In the case of most communities, the initial official way of communicating with the development authorities is through public hearings. Since a significant portion of the population might be illiterate, not knowingly or be able to access written public notices, or might have limited access to newspapers, it is believed that public hearings are important in facilitation, encouragement, and empowerment of substantial engagement of local communities.³

OBJECTIVES OF THE STUDY

1. To examine the concept and importance of Environmental Impact Assessment (EIA) as a tool for balancing developmental needs with environmental protection in India.
2. To analyse the role and relevance of public hearings in facilitating public participation within the Environmental Impact Assessment process.
3. To study the legal framework governing public hearings under the EIA Notification, 2006, with special reference to procedural safeguards and public consultation.
4. To critically evaluate the draft EIA Notification, 2020, focusing on its impact on public participation, transparency, and access to information.
5. To assess the role of the Indian judiciary in strengthening public participation and safeguarding environmental rights through judicial interpretation and intervention.

² The Environment (Protection) Act, 1986. No. 29 of 1986, Government of India.

³ Environmental Impact Assessment Notification, 2006. Ministry of Environment and Forests, Government of India, S.O. 1533(E), 14 Sept. 2006.

SIGNIFICANCE

Good involvement of the people will play a major part in the successful execution of development projects. With communities being properly informed as well as effectively engaged, there is a higher chance that project implementation will go without many conflicts and delays. An effective framework of a public hearing can enhance the collaboration of the government, the private sector, and local communities to the realisation of the national development targets, as well as the solution of the local needs, concerns, and opportunities.

The practise shows that an effective process of the public hearing must be:

1. Time-saving, so that decision-making and efficient implementation of activities are performed in time;
2. Cost-effective, minimising financial risks and uncertainty that relates to project investments;
3. Sustainable, which fosters long-term good results in development and environmental protection.

The observance of the public hearing process is a key factor in determining the positive outcomes of the project and raising the satisfaction and motivation of the population. A good public hearing must be inclusive and representative enough to be able to spread pertinent and reliable information and give timely feedback to the project planners and administrators. In this regard, all affected households, social groups, and local communities should be given enough representation and an active role to play in the decisions of informed, equitable, and sustainable development.

Environment Impact Assessment.

Environmental Impact Assessment (EIA) is a methodical anticipatory plan of action which is utilised to analyse, forecast, and assess the possible environmental, social and economic impacts of a planned development project prior to any definite decision being made on it to be approved or rejected. The idea of EIA became known worldwide during the Stockholm Conference on the Human Environment in 1972, which became an important landmark in the development of the international environmental management. The fact that EIA is also significant is also supported by Principle 17 of Rio Declaration on Environment and Development, which stipulates that the Environmental Impact Assessment as a tool of national use must be conducted in case of the proposed activities that are most likely to result in a substantial negative effect on the environment and to be approved by a competent national authority. EIA has been largely accepted as a prospective decision-making instrument that aids in foreseeing adverse effects on the environment



and also makes sure that ill effects are eliminated, minimised or averted using relevant avertive and remedial procedures.⁴

The alternative project options are taken into account in detail as part of the Environmental Impact Assessment (EIA) process, with the alternative of not developing the project being one of the options. It is a better option than the best alternative when there is a balance between the environment, the economic viability, and social well-being, thus encouraging the purpose of sustainable development. The role of the people in this process is of great importance since it enables an overall consideration of the social and environmental consequences of the development plans in the affected areas. Such kind of engagement assists in making an informed decision that can protect the quality of the environment and population health.⁵

The United States national environmental policy Act (NEPA), significantly contributed to the institutionalisation of EIA in the fact that it formalised the procedures of the environmental assessment besides putting more emphasis on transparency and involvement of the citizens in the environmental governance. The different legal tools are used to identify the participatory rights on the international level. Among them, one can find Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights, Principle 10 of Rio Declaration, 1992 and Agenda 21 that articulate the right to access the information, to participate in the process and the right to environmental justice as the essential aspects of the sustainable environmental regulation.⁶

PUBLIC HEARING

1. Development and Legal History of Public Hearings under the EIA Law

Public hearings were not obligatory in the original Environmental Impact Assessment (EIA) Notification of 1994. Nevertheless, the significance of the participation of people in the making of environmental decisions was realised and this prompted an amendment of the act in 1997 that subjected some types of projects to mandatory public hearings. Thereafter, under the Environment (Protection) Act, 1986, the Government of India substituted the 1994 notification with the EIA Notification, 2006, which currently regulates the whole process of public consultation.⁷

⁴ Draught Environmental Impact Assessment Notification, 2020. Ministry of Environment, Forest and Climate Change, Government of India, March 2020.

⁵ National Environmental Policy Act (NEPA), 1969. 42 U.S.C. §§ 4321–4370h, United States Congress.

⁶ Universal Declaration of Human Rights. United Nations General Assembly, Resolution 217 A (III), 10 Dec. 1948, Articles 19 and 21.

⁷ International Covenant on Civil and Political Rights. United Nations General Assembly, 16 Dec. 1966, Articles 19 and 25.

According to the 2006 Notification, the projects are categorised into Category A and Category B depending on the scope of impacts they may cause to the environment and human health. The Central Government has to clear certain projects in the category of A, such as expansion or modernisation projects, in advance with the assistance of the Ministry of Environment and Forests (MoEF). The category B projects, however, are supposed to be cleared by the respective State or Union Territory Environment Impact Assessment Authority (SEIAA). It is mandatory that the SPCB/UTPCC completes the public hearing process and hands its report within forty five days; otherwise, another authority may be appointed.⁸

2. Procedure and Scope of Public consultation under the EIA Notification, 2006.

Stage III of the Environmental Clearance process, according to the EIA Notification, 2006, under the Environmental Impact Assessment, is called the public hearing. The public consultation process does not involve only those individuals who are directly impacted by the proposed project, but is spread to all individuals or organisations that have a legitimate interest in environmental protection.⁹

The consultation process by the populace is divided into two parts. In the first one, oral submissions of the stakeholders are collected, and a public hearing is held at or around the project site. Second, the community is to provide written feedback, especially with regard to site selection and environmental effects. Its SPCB convenes the public hearing in the project site or in an area that is close to the project. Union Territories have a hearing that is done by the UTPCC.¹⁰

The Pollution Control Board should also have broad publicity of the public hearing at least thirty days before the date of the public hearing. In the notice, it should be indicated clearly:

1. The time and date of the public hearing;
2. The precise and readily available place of the hearing; and
3. The places where project-related documents are exposed to be seen by the people.

This notice should be advertised at least in one of the national newspapers with wide circulation and one regional vernacular or official state language newspaper. In cases where the newspapers do not sufficiently cover the affected population, other forms of communication like public

⁸ Rio Declaration on Environment and Development. United Nations Conference on Environment and Development, Rio de Janeiro, 1992, Principles 10 and 17.

⁹ Agenda 21. United Nations Conference on Environment and Development, 1992, Chapter 23, pp. 351–361.

¹⁰ Ministry of Environment and Forests. “Office Memorandum on Conduct of Public Hearings.” Government of India, 19 Apr. 2010.

announcements, drum beating, radio or TV stations and print notices should be embraced to achieve successful distribution of information.¹¹

3. Documentation, Accessibility, and Conduct of Public Hearings.

These records should be made available so that they are easily accessible to people. The Summary EIA Report should be made available in the public libraries, as well as in the specified government offices, and various relevant places, and also on the official website of the case concerned Pollution Control Board. Notably, the Summary EIA Report should be made available to the community at least thirty days before the day of the public hearing.¹²

As per the MoEF Memorandum of 19 April 2010, several public hearings should not be planned on the same date, time, and location. In cases where hearings on the various projects are held in the same venue on the same day, reasonable time breaks have to be given between hearings so that meaningful participation can be achieved.¹³

The SPCB or UTPCC is supposed to keep a full record of the proceedings of the public hearings. This involves writing down the statements given, the names of all those present and attaching the list of those present to the final proceedings. In order to achieve inclusivity, the proceedings should be translated into the local vernacular language that the audience present is conversant with. The completed proceedings are then carried over to the competent authority to be considered under the process of deciding on environmental clearance.¹⁴

DRAUGHT NOTIFICATION 2020

The involvement of the public is very important in improving the Environmental Impact Assessment (EIA) structure by making it more legitimate, transparent and effective. Although the presented Draught EIA 2020 does not drastically alter the structure of the notification of 2006, it also presents some meaningful changes related to the issue of public consultation.¹⁵

Like the EIA Notification of 2006, the draught EIA Notification of 2020 does not mention all types of projects in which the community is not obliged to be consulted. According to the 2006 notification, the projects pointed out by the Central Government as a matter of national defence or security or other strategic factors were not subjected to the public consultation process. This is the

¹¹ *Adivasi Majdoor Kisan Ekta Sangathan v. Ministry of Environment and Forest*, National Green Tribunal, Principal Bench, New Delhi, 2013.

¹² *Adivasi Majdoor Kisan Ekta Sangathan v. Ministry of Environment and Forest*, National Green Tribunal, Principal Bench, New Delhi, 2013.

¹³ *Him Parivesh Environment Protection Society v. State of Himachal Pradesh*, (2018) 2 SCC 58.

¹⁴ *Rudresh Naik v. Goa State Coastal Zone Management Authority*, 2015 SCC OnLine NGT 327.

¹⁵ *Talaulicar & Sons v. Union of India*, (1989) Supp (2) SCC 351.

exemption that has been preserved in draft EIA 2020. Moreover, the Draft EIA 2020 still does not apply the environmental impact assessment and public consultation requirement to all projects of the category B-2, and at the same time also expands the scope of activities that will be subject to the category B-2.¹⁶

Considering the raised penetration of digital technologies, internet access, and mobile communication, the draft EIA 2020 suggests establishing the notice period of the public consultation at twenty days, as compared to thirty days as established in the EIA Notification 2006. This decreased time limits people and communities concerned and pressures them to explore the complicated project documentation and present their issues within a narrow time.¹⁷

Moreover, the draft EIA 2020 specifically states that any project connected with the national defence, security, or any other strategic interests should not be subjected to public consultation. It also limits access by the masses to such information about such projects, hence limiting transparency and curbing the opportunity of the masses to review and be part of the processes of environmental decision-making.¹⁸

JUDICIAL RESPONSE TO PUBLIC PARTICIPATION

The judiciary of India has reiterated that the right to a clean and healthy environment, which encompasses the right to clean air and clean water, is an indissoluble part of the right to life in Article 21 of the Constitution of India. Courts in India have been at the forefront in identifying environmental protection as one of the fundamental human rights through progressive interpretation. Simultaneously, the judiciary has been trying to balance the conflicting interests of economic development and environmental protection. In that regard, the judicial intervention has served the purpose of strengthening the significance of public hearings as one of the most important features of the environmental clearance procedure. The objections that were expressed by local citizens on the project were not duly documented, and the summary of the proceedings was not done in the local language and was not distributed among the masses. Due to these shortcomings, the court said that the environmental clearance, which was granted, was invalid and struck it down.¹⁹

On the same lines, in *Utkarsh Mandal v.*, the court pointed out that the EIA Notification requires conducting public hearings when inviting stakeholder objections. It was established that the Expert Appraisal Committee (EAC) should clearly indicate in its ruling whether it has taken into account

¹⁶ *Ramesh Agarwal v. Union of India*, W.P. No. 10601 of 2009, Chhattisgarh High Court.

¹⁷ Divan, Shyam, and Armin Rosencranz. *Environmental Law and Policy in India*. 2nd ed., Oxford University Press, 2001, pp. 95–120.

¹⁸ Leelakrishnan, P. *Environmental Law in India*. 4th ed., LexisNexis Butterworths, 2016, pp. 312–345.

¹⁹ World Bank. *Environmental Impact Assessment Sourcebook*. Vol. 1, World Bank Publications, 1991, pp. 1–25.

the objections of the public and give its reasons as to why or why not. The court noted that a failure to capture such reasons would make the decision arbitrary and vitiated since no mind has not been applied.²⁰

In *Samarth Trust v. The court, Union of India*, emphasised how participatory the public hearings are by terming them as a two-way communication process through which both the project proponents, the authorities and the affected communities are able to engage in meaningful dialogue. The court made a strong point that, because of their importance, public hearings need to be done with utmost sincerity and with a firm belief in making sure that effective public participation is ensured.²¹

The latter was also reaffirmed in *Him Parivesh Environment Protection Society v.* where it was stated that it is crucial to consult local communities. In the State of Himachal Pradesh, the court therein ruled that the studies on environmental impact assessment should only be conducted after consultation with the inhabitants of the impacted site. In categorical words, the court said that any study done without the participation of the affected communities lacks credibility and usefulness.²²

In *Rudresh Naik v.* The court held in *Goa State Coastal Zone Management Authority* that regulatory authorities had the duty to give acceptable and justifiable explanations as they were accepting or rejecting issues raised in the public hearings. Otherwise, the court warned, the public consultation process would become more of a formality and not worth the purpose.²³

Talaulicar and Sons v. (1989) p. 34. Union of India noted that a public hearing is not simply a procedural obligation before the environmental clearance can be given, but the hearings should be carried out in a full and substantive way. The Court stated that the failure to follow the specified procedures would invalidate the whole process and, therefore, the authority will have to run the public hearing again.²⁴

Further, in *Ramesh Agarwal v.* The Hon'ble High Court of Chhattisgarh, the Union of India stated that delay in conducting a public hearing is only permissible when there are exceptional circumstances, or it is an emergency situation, as stated in Appendix IV of the EIA Notification,

²⁰ Sands, Philippe, et al. *Principles of International Environmental Law*. 4th ed., Cambridge University Press, 2018, pp. 511–545.

²¹ Bell, Stuart, Donald McGillivray, and Ole W. Pedersen. *Environmental Law*. 9th ed., Oxford University Press, 2017, pp. 605–642.

²² Boyle, Alan, and Michael Anderson, editors. *Human Rights Approaches to Environmental Protection*. Oxford University Press, 1998, pp. 1–28.

²³ Pring, George, and Susan Noe. *The Emerging International Law of Public Participation Affecting Global Mining, Energy, and Resources Development*. Rocky Mountain Mineral Law Foundation, 2002, pp. 11–55.

²⁴ Kravchenko, Svitlana. “The Aarhus Convention and Innovations in Compliance with Multilateral Environmental Agreements.” *Colorado Journal of International Environmental Law and Policy*, vol. 18, no. 1, 2007, pp. 1–50.

2006. The court explained that common administrative convenience is not a justifiable basis of delaying public consultation.²⁵

CONCLUSION

Environmental Impact Assessment (EIA) not only a technical process with a focus on the conservation of the natural resources but also a wider policy tool to govern and manage the environment. The success of a public hearing is not only based on the number of participants in the hearing, but the quality and content of the participation is more crucial. The inclusion of the public hearings in the processes of making decisions also enhances EIA as it involves the incorporation of the local knowledge of the stakeholders, and this incorporation involves their experiences, challenges, capacities and socio-economic issues. This kind of involvement promotes community involvement in development projects and aids the overall agenda of sustainable development. In appreciation of this, the EIA Notification, 2006, of the Ministry of Environment and Forests, officially established the public consultation, such as, the public hearings, as the indispensable stage of the environmental clearance procedure of particular classes of projects.

The EIA Notification, 2006, brought in a multi-level, systematic environmental clearance process, which formalised public participation. In this frame, the proponents of the project must also provide a literature review of the Draught Environmental Impact Assessment report and a non-technical summary of the same to be reviewed publicly. This is then followed by a community hearing wherein the concerned local authorities organise a hearing to seek objections, concerns and suggestions of the communities concerned and other stakeholders. Nonetheless, the Draught EIA Notification, 2020, represents a hybrid strategy in the sense that, on the one hand, some procedural changes are offered, and on the other hand, the role of public participation is undermined. The Draught notification shortens the period of time within which people can submit their responses, raises threshold levels of construction projects, and thus weeds out more projects from the scope of environmental scrutiny. It also completely exempts various types of projects from the requirement of public consultation, thus limiting the chances of community participation.

The Indian courts have repeatedly stressed the centrality of the Environmental Impact Assessment and have determined the clear procedural protection to achieve the effective participation of the populace. The judicial interventions have been critical in filling the gaps in the process of the public hearing and in supporting the necessity of transparency, accountability and fairness. The issue of active and meaningful public participation is still critical in the realisation of a sustainable development, as well as in the safeguarding of the socio-economic and environmental interests of

²⁵ Ebbesson, Jonas. "Public Participation." *Oxford Handbook of International Environmental Law*, edited by Daniel Bodansky et al., Oxford University Press, 2007, pp. 681–703.

the communities affected. The public hearing mechanism still lacks a number of limitations, notwithstanding its intended purpose. In most cases, it has been brought down to a mere procedure instead of a platform of participatory decision-making. The suggested notification does not do much to overcome these systemic shortcomings, and it is an indication of little development in enhancing the engagement of people within the EIA system.