



## Public hearing and environmental protection

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### Abstract

Public hearing is one of the essential features of the environment impact assessment in India. Significance of the public hearing is immense, because of the fact that it encourages the project affected people to share their views with regard to industrial site and its operation. Public hearing would be successful, provided the outcome of such public consultation is incorporated in the final report with regard to feasibility of industrial site and its operation. Public hearing, may have no value, when the persons, who will come to appear for consultation process, are not at all aware of pros and cons of environmental degradation because of industrial operation. Public consultation has been made mandatory from the year 1997 in India. Under the new Environment Impact Assessment Notification, 2006 conducting public hearing is a mandatory one. The present paper would like to analyse the process of public consultation in environmental protection regime.

**Keywords:** environmental degradation, public consultation, project site, environmental impact assessment authority

### 1. Introduction

India is very open to industrialisation. The promotion of industrial activities not only provides the financial stability of the nation, but also there will be good scope of employment opportunities. The industries which are of national importance and the products are exported outside India, will definitely make India proud not only about their quality product but also help to generate foreign exchange. The industries are not only having the burden of corporate social responsibility, but also corporate environmental responsibility to protect the interest of the present and future generation. It is well accepted fact that the industrial operation will pollute the environment, therefore, there must be scheme for the mitigation of such environmental pollution. However, it is to be noted here that if the industries are located near the city or villages, then the adverse environmental impact will not only affect the environmental components, but also would affect the human life and its surroundings. When the industries are being set up near the human habitation, it becomes an obligation for the government that before the industry is set up people of the locality should be taken into confidence through a process of public hearing. In this regard, if the people of the locality are not conversant with environmental pollution and problem thereof, then the NGOs can assist and help the people in the locality to understand the crisis of the industrial operation and at the same time whether the people of the locality can understand such pollution problem or not. Based on that if the people of the locality take the decision that yes to industry, the government should go ahead with that proposal or if the villagers or the people in the locality, showing their unwillingness for the setup of the new industry, because such industry can cause the environmental pollution and will affect their livelihood issues because of such pollution, then government should not take any step for setting up of the industry, rather, the government should think for relocation of such hazardous industries. In this article, I will analyse, with the help of decided cases, the situation that how India is vulnerable towards extreme pollution because of industrial activities and discuss the present

laws and regulations applicable for conducting properly the public hearing and how this public hearing is effective nowadays.

### 2. Industrial Operation and Damage to human environment

It is true that no nation can say no to industrialisation and for the purpose of ensuring financial stability and good employment opportunities, the nation will have to encourage industrialisation within its territory. Moreover, for India, because of participating and ratifying the World Commission on Environment and Development of 1987<sup>[1]</sup>, where the internationally acclaimed definition of 'Sustainable Development'<sup>[2]</sup> was declared, therefore, saying no to industrialisation not only will affect this international regulation, but also will affect the interests and rights of the future generation as well. In this regard, the concept of sustainable development promotes the idea that the nation must develop keeping in mind the scope of environmental protection and therefore the development should be sustainable for the environment.

The *Bhopal gas tragedy*<sup>[3]</sup> of 1984 was the first ever extreme category of environmental pollution, which was noticed by India and suffered by the people in Bhopal in the state of Madhya Pradesh. Thousands of people died because of the MIC<sup>[4]</sup> gas leakage and this incident was also questioning the location of the industry that even if the industry is established outskirts of the city, the poisonous gas can travel with the help of air and reach to people residing in the city and can endanger their life. The question is whether properly conducting public hearing before the setup of the industrial units of the Union Carbide Corporation could have avoided this environmental massacre of 1984.

It is noticed from the *Bichhri village*<sup>[5]</sup> case of 1996 that many villages, agricultural land water of the wells, surface water, cattle and human beings were badly affected because of the industrial operation in the district of the Udaipur, state of Rajasthan. The environmental pollution was continuing from

the year 1987, though, the NGOs helped and assisted the villagers to find complaint under section 133<sup>[6]</sup> of criminal procedure code, so that the public nuisance can be stopped immediately, however, this deterrence did not help the villagers from further pollution, because of the presence of huge amount of hazardous wastes accumulated within and outside the industrial premises. The magnitude of environmental damage that could not be assessed without the report developed by the National Environmental Engineering Research Institute (NEERI) at the request of the honourable Supreme Court. The report was prepared in detail and from which the apex court could make a proper diagnosis of the environmental crisis which was prevailing in that locality. It is interesting to note here that the industry was set up without conducting any proper public hearing in the concerned area.

The *Tamil Nadu tanneries case (Vellore case)*<sup>[7]</sup>, *Calcutta tanneries*<sup>[8]</sup> case are also the example of the industrial operation which were not only affecting the environment but also seriously encroaching in human health sector making the human life at risk. In this regard, it is surprised to find out that, in these cases before setting up these kind of hazardous industries, no public hearing was ever conducted to look into the feasibility of the location and pollution of human environment. To conduct public hearing before setting up of any hazardous industries was never a part of any statute until 1994. The Environment Impact Assessment (EIA) Notification, 1994 was enacted under the Environment (Protection) Act, 1986. In this notification, conducting public hearing before setting up of industries was made available. However, in *Centre for social justice*<sup>[9]</sup> case of 2001, the honourable High Court of Gujarat analysed the efficiency of this clause related with public hearing and the court was not very satisfied with the manner or the procedure by which public hearing is to be conducted.

Public participation in the selection of industrial location can be discretionary depending on the fact that, what the nation expects about the significant role to be played by public hearing process. Therefore, based on the provisions of domestic law public consultation process may be mandatory or discretionary. More importantly, public consultation will be made compulsory but incorporation of the outcome of such consultation may be discretionary which lies on the government. Accordingly, the decision of the government may not consider the outcome of the public hearing while awarding environmental clearance, for example, country like Canada<sup>[10]</sup>. There may not be process of public consultation for every project, for example, higher the potential to cause harm to environment higher the possibilities of conducting public hearing. Therefore, public hearing should be mandatory for pulp mill industries, power plant, chemical industries, et cetera<sup>[11]</sup>.

In America, the National Environment Policy Act, 1969 gives liberty to the agency to devise its own mechanism to conduct public hearing. In this regard, it is to mention here that conducting public hearing is not a mandate under this law, however the agency has taken this as a common practice to conduct public consultation. Therefore, when the larger projects, which may be controversial with regard to its establishment and cause adverse impact to the environment, then public consultation seems to be necessary<sup>[12]</sup>.

It is also important to note here that merely for the sake of conducting public hearing may not come up with a fruitful

outcome which might be helpful to take a final call on the selection of location of the industrial site. Therefore, a proper planning is not only applicable before conducting public hearing, but also proper planning with regard to assessing, compiling and finding out the merits and demerits of such public hearing is also of immense importance, once the public hearing process is over<sup>[13]</sup>.

### 3. Public hearing under older EIA notification 1994

The best way to analyse the procedure of conducting public hearing under EIA notification 1994 is to discuss the *Centre for Social Justice*<sup>[14]</sup> case of 2001. In this case, the petitioner challenged before the Gujarat High Court that the environmental clearance granted to a thermal power project under the Gujarat electricity board cannot be considered as valid certification on the ground that the procedure by which the public hearing was conducted was void *ab initio*. It means that the public hearing/conservation is being mentioned under EIA notification 1994, however, the procedure by which public consultation was done, which was not satisfactory and therefore, petitioner asked the intervention by the honourable High Court. In this case, it was mentioned that conducting public consultation/hearing was not a part of any environmental legislation.

Therefore, it is important to note the Genesis of EIA notification 1994. Section 3 of the Environment (Protection) Act, 1986 states that the central government shall be empowered to take essential steps in the ecologically sensitive areas that whether certain categories of industries or operation of industries or processing plants should be set up or not. If those industries are set up then what conditions that are needed to be framed by the central government.

On the other hand, the Environment (Protection) Rules, 1986, under rule 5, it is required by the central government to notify through official Gazette about a new notification of environmental impact assessment and after publication of such notification within hundred and twenty days, the central government will receive all objections and suggestions from different corners and stakeholders and work on them. However, the central government may take action within 365 days from the date of the original publication of such notification on environmental impact assessment, regarding imposing restrictions of the location of industries or allow industry or its operation subject to conditions. Therefore, it is clear that regarding location of the industry that can be fixed by the central government, provided the setup of such industry will cause minimum harm to the environment. In January 27, 1994 EIA notification was published and it required that all the new industries to be set up while complying the provisions mentioned under this notification. After the amendment in 1997<sup>[15]</sup> the EIA notification, schedule IV was added to this notification which incorporated a mandatory 'public consultation' process to be conducted before finalisation of location of the industry.

Regarding inadequacies found in conducting public hearing was, in a way, accepted by the Gujarat High Court. One of the demand of the petitioner was that if the High Court finds that there are problems with regard to following the procedures while conducting public consultation, then the court must issue directions on how to conduct public hearing. For conducting public consultation, the appropriate authority must issue public notices, that is, notice must be informed to public in general

and public in the project affected area in particular. The petitioner's claim that the public hearing/consultation was conducted without proper notice that was accepted by the High Court. Public notice has a very important role to play. One of the aims of conducting public consultation is to come up with the reality that how far the people in the locality, where the industry would be set up can sustain with the industrial operation which is going to act adversely to natural environment and to the people. Therefore, in this public notice the people of the affected area can participate and provide the views that how long and how far the people can sustain with the industrial operation if they are adverse to nature. Another aim of the public notice is that to know the reality about selection of location. In my opinion, let me take a situation hypothetical, it is because if the selection of location affects 50 people in a village or a selection of location where almost 5000 people will be affected because of the adverse industrial operation is a factor which can be decided, provided the people who will be affected come to know about selection of location of industry through public notice and come forward and participate in public consultation process. According to my opinion, conducting public hearing of the affected people will be fruitful only, when the people are aware of the adverse impact to the environment which may arise because of setting up of industries.

Inadequacy with regard to conducting public hearing was also proved by the petitioner, who claim that the public notice was not published in vernacular language with wider circulation. It is an important procedure that the public notice should be made available in local language also. This is because the people who would be affected if they are not aware of the English language regarding the publication of the public notice, then in spite of having public notice published in the leading newspaper and because of unaware of such public notice by the people who would be affected because of such selection of location the entire process of public hearing will be vitiated. Therefore, publication of public notice in vernacular language is one of the essential elements.

Deficiency in conducting public consultation/hearing was also proved from the fact that the venue for hearing was fixed at the district headquarter, far away from the selection of location of the industry, and most of the project affected people, who are not rich but poor cannot afford to travel district headquarter and express their views. This kind of an agreement to conduct public hearing for the poor people is nothing but to disable them from the participation in the public consultation process.

More importantly, the panel which was constituted to shield the people in this process of public consultation, the petitioner claimed, that the committee was not properly constituted and if the committees not properly constituted with several experts, then one can imagine that what kind of outcome will come from such committees with regard to selection of location of industry.

The petitioner claimed that, since the notification is failing to address the critical issues of procedure of public consultation/hearing, therefore such notification should not be continued for its operation. However, the honourable court clarified its position and authority while taking into reference a case, *Maharashtra State board for secondary and higher secondary education* <sup>[16]</sup> case of 1984 and stated that it is not the duty of the court to find out whether a rule or notification has merit or not, but a court can look into the authority that

whether that policy, which is being made by the policy making body is authorised under the delegated legislation to make such policy. If such policy making body has no authority under the delegated legislation, then that policy or rule or notification can be declared null and void. However, if such policy is enacted under the delegated legislation by the policy making body than that rule or notification shall be valid for its operation. If the court goes further to determine the merit or demerit of such policy made by the policy making body that will be beyond the jurisdiction of the court.

Finally, the Gujarat High Court issued directions by which a proper public consultation can be conducted. The court stated that selection of site for conducting public hearing should be as nearest as possible from the location of the industrial site. The state pollution control board should issue the public notice in two leading newspapers which will have wide circulation of such public notice, so that the interested persons and stakeholders can come and participate in such public consultation process. The state board should also ensure that the copy of the public notice in the original language, particularly the language which is understood by the project affected people, should reach to them appropriately. The court further directed that there should be a gap of minimum 30 days between this service of the notice and conducting public hearing/consultation. The minutes of the public hearing should be well prepared and should be kept in record and whoever is willing to access such minutes of the meeting should be allowed to have those documents at the payment of requisite fees. More importantly, the Gujarat High Court issued directions stating that the public at large they never come to know that whether the industry has been issued environmental clearance after conducting public consultation. Therefore, it is a mandate to the state government and also to the central government that after conducting public consultation, whenever the environmental clearance shall be granted to any industry, that environmental clearance certificate should be published in the newspaper, so that public at large can come to know about the selection of the industrial site and industrial operation.

As there was problem with regard to procedure associated with conducting public consultation under EIA notification 1994, therefore, government of India, subsequently, given deep thought on the parameters of conducting public hearing and finally, came up with a new notification in the year 2006, where a detailed description has been made regarding procedure connected with public hearing on the selection of industrial site.

#### **4. The environment impact assessment notification, 2006 and public hearing**

The EIA notification of 2006 has been prepared while keeping in mind about the loopholes available in the early notification of 2004. Therefore, regarding the authority to arrive a new notification on environmental impact assessment has the same Genesis of legislation and rules. For example, the new notification 2006 has been enacted by following the mandates mentioned under section 3 of the Environment (Protection) Act, 1986 and the provisions under rule five of the Environment (Protection) Rules, 1986.

In this new notification, there is a requirement of obtaining prior environmental clearance certificate for any new industry to be set up or new location to be prepared for industrial

management. The projects or activities which require prior environmental clearance have been covered under Schedule I<sup>[17]</sup> of this notification. The industries which are listed under category A, for which the certification shall be given by the central government and the industries which are listed in category B, for which the state level environmental impact assessment authority shall issue environmental clearance certificate<sup>[18]</sup>. The industries, such as, petroleum refinery plant, coke oven plant, asbestos industry, soda ash industry, leather processing industry, chemical fertiliser industry, pesticides industry, the distilleries industries, et cetera are a few examples of the industries listed in schedule A and B.

The EIA notification 2006 shall be applicable to all the new industries. The existing industries for which the early notification of 1994 was applicable, now they come under the operation of this new notification and any modernisation or expansion of the existing industry will be regulated under this new notification of 2006. Similarly, any change in the existing product or mixture of the product, the industry concerned with changing such a nature of the product will have to take clearance as per the requirement of new notification of 2006.

The state level environmental impact assessment authority shall be constituted under subsection 3 of section 3 of the Environment (Protection) Act, 1986. There will be three members<sup>[19]</sup>, who will look after the functions of this authority as per the requirement of notification 2006.

The new notification of 2006 on environmental impact assessment, has made categorisation of various industries under two categories, for example, category A and category B. This categorisation has been made based on the fact that how the industries are potential to cause severe harm to human health and natural or man-made environment<sup>[20]</sup>.

There will be two expert committees, one, at the centre in the name of expert appraisal committee<sup>[21]</sup> and at the state, the state level expert appraisal committee<sup>[22]</sup>. There is a mandate that these committees shall meet at least once in every month<sup>[23]</sup>. Moreover, these committees shall take part in screening, scoping and appraisal of those applications which are made by the industries for seeking environmental clearance<sup>[24]</sup>.

For any new project, the application seeking environmental clearance, shall undergo with for procedures, first, screening (which is only applicable for industries listed in schedule B)<sup>[25]</sup>, second, scoping, third, public hearing and fourth, appraisal.

Screening process is beneficial to figure out that whether the industry applied for environmental clearance falls under the category B1 or under category B2. This is because, under the new notification of 2006, the industries coming under category B2, the environmental impact assessment report is not required. Therefore, it is necessary that all categories of industries shall make application before these expert appraisal committee and the committee shall take a call that whether the industry requires the environmental impact assessment report at all or not<sup>[26]</sup>.

The next method mentioned under the notification of 2006 is scoping, which means to find out what kind of adverse environmental impact associated with the industries coming under category A and category B 1. Based on this finding a decision with regard to fixing the schedule for public hearing is done under the new notification<sup>[27]</sup>.

Terms of references are prepared by the expert appraisal committee, in which a detailed report about the environmental impact assessment is provided for which an application was

made for seeking environmental clearance. In this regard, the authorities, such as, central government or the state level environmental impact assessment authority may accept the report provided by the expert appraisal committee, but that does not mean that the environmental clearance are always granted. The authority may even reject the application with regard to prior environmental clearance certificate based on the sound report about severe adverse environmental impact assessment which could be faced if the new industry is allowed to work in the current location<sup>[28]</sup>.

Under stage III, of the new notification of 2006, gives the provision of public hearing<sup>[29]</sup>. In this process the people who are going to be affected because of the new industry to be set up in the locality concerned, therefore this project affected people will be heard by the committee, so that a final decision can be arrived at with regards to application made for seeking prior environmental clearance. In this stage, not only the project affected people, but also any other entity having a reasonable stake in the environment can also appear in this public consultation/hearing process. The main object of conducting this public hearing is to consider all the material aspects with regard to formation and establishment of a new industry in ecological sensitive area, so that the decision could be sound enough to protect the interest of human beings and the environment as well.

The process of public consultation/hearing is not required for certain industries as specified under the EIA notification of 2006. For example, expansion of national highways, for which public hearing/consultation is not required. Similarly, any new industry to be set up in the industrial zone or industrial park, there public consultation is not required to be conducted. At the same time, the expansion or modernisation of any existing project for which public hearing is not required to be conducted. Regarding construction of township and buildings thereof, for which public consultation is not required. The industries coming under category B 2, there public hearing is not required to be conducted. Finally, any project undertaken in order to meet the need of national defence strategies of the government of India, for which public hearing is not required to be conducted<sup>[30]</sup>.

How to conduct public hearing, is very well defined in this new notification of 2006. For example, the public hearing shall be done under two phases, first, public hearing at the site of the new industry or nearby places and second, requesting people to give in writing about the feedback with regard to selection of site for new industries<sup>[31]</sup>. Here, those people would be involved who are having reasonable stake in the environment. At the site of the new industry, the public hearing shall be organised by the state pollution control board and in case of the union territory, it shall be conducted by the union territory pollution control board. Under the new notification of 2006, it is a mandate that once the pollution control board receives application requesting for conducting public hearing, the entire procedure with relation to public hearing should be over and communicated back to the appropriate authority within 45 days from the date of receiving such application.

Fourth stage is connected with the appraisal<sup>[32]</sup>. In this process, the expert appraisal committee or the state level expert appraisal committee, as the case may be, shall make a detailed scrutiny of the application of the industry, the detailed EIA report and the outcome of the public consultation including public hearing proceedings. After going through all these, the

expert appraisal committee shall send recommendation to central government or the state level environmental impact assessment authority about the environmental clearance whether to be granted or not.

Once the recommendation has been received by the authority, then within 45 days from the date of receiving such recommendation of final communication shall be made to the applicant. In the other words, the total duration regarding communicating back to the applicant from the date of receiving the detailed environmental impact assessment report is hundred and five days. The same hundred and five days is also a mandate for those industries, from the date of making application along with all the requisite documents, where a report relating to environmental impact assessment is not required. For example, the industries which are coming under category B 2 under the new notification of 2006<sup>[33]</sup>.

In New York, the determination to call public hearings requires the lead agency to look for (1) the degree of interest in the action shown by the public or involved agencies; (2) whether substantial or significant environmental issues were raised; (3) the adequacy of mitigation measures; (4) consideration of alternatives; and (5) whether a public hearing could aid the decision-making process by (a) providing a forum for public comment, or (b) an efficient mechanism for the collection of public comment<sup>[34]</sup>.

What should be the duration of validity of the environmental clearance certificate once granted? For River Valley project, it is 10 years. 30 years' validity is given to mining industries. Other categories of industries, for which five years' duration is a valid duration of the environmental clearance certificate. Moreover, under the new notification 2006, there is a provision for extending the validity which may extend to maximum upto five years<sup>[35]</sup>.

Monitoring mechanism, after granting environmental clearance, is remarkable under the new notification of 2006. For example, the management of the project shall have to submit half yearly compliance report which will be submitted in the month of June and December every year. One may ask a question that whether environmental clearance certificate is transferable. The answer has been given under the new EIA notification of 2006 that it is transferable to a lawful person who is capable of undertaking the responsibilities of the new industry. It is interesting to note here that the earlier EIA notification of 1994 has not been replaced, but has been made active till the decision of the pending cases where the provisions of this earlier notification had been represented before the court of law<sup>[36]</sup>.

In the year 2016, the government of India has taken steps to amend the EIA notification 2006 on building permission<sup>[37]</sup>.

### 5. Supreme court on public hearing under EIA notification 2006

Indian judiciary, particularly the honourable Supreme Court has articulated that right to life as enshrined under article 21 of the Indian Constitution also includes right to get pollution free water and air. In general, we can say that right to pollution free environment is a fundamental right. Therefore, Supreme Court in India has not only articulated and developed the right to environment as a fundamental right but also came forward to strike a balance of the inherent conflict of development versus environmental protection. While promoting the very concept of sustainable development, the Supreme Court in India, has tried

to remove the presence of difficulties between environmental protection and development. Indian Supreme Court has also ventured in interpreting public hearing under EIA notification of 2006.

Environmental impact assessment conducted by the industries, at the time of making application for selection of site, may not be sound enough to take a final call for, unless the proper public consultation process has been initiated by the state agencies to address the objections raised by such communities who would be affected because of establishment of such industry project. The honourable Supreme Court has noticed irregularities with regard to conducting public hearing/consultation in series of *Vedanta*<sup>[38]</sup> cases.

Regarding, conducting public hearing/consultation process, instead of government agency, an independent agency should be given charge, who should be efficient to properly note down the objections generated through this public consultation process. Moreover, it is not sure that whether the government agencies are properly jotting down all the objections and suggestions or there are possibilities of concealment of substantial fact/information, because such facts if, they are revealed then perhaps location of industries site may be changed. More importantly, discharge of efficient function by the efficient members of the agency are always a question of consideration. Since, the entire process of conducting public hearing depends on the agencies entrusted with this responsibility, therefore, efficiency of the members including the ability to conduct public consultation process meticulously will be of paramount importance, that the government should look into<sup>[39]</sup>.

In *Lafarge mining*<sup>[40]</sup> case, the honourable Supreme Court stated that it is not only the new notification on environmental impact assessment 2006 provides a mandatory provision for conducting public hearing, but also the earlier EIA notification of 1994 was amended in 1997 to make the public hearing, mandatory provision.

In *Orissa mining Corporation*<sup>[41]</sup> case, it was observed by the honourable Supreme Court that even for expansion or modernisation of the existing project the application for seeking environmental clearance should be made to the appropriate authorities, but whether the expansion of the project would require a detailed environmental impact assessment report or not, that will be decided by such authority only.

In *construction of Park at Noida*<sup>[42]</sup> case the Supreme Court found that the EIA notification in 2006 has certain problem in its schedule and is not comprehensive one and the schedule should be prepared meticulously so that there should not be any misunderstanding regarding categorisation of industries or activities, in particular on building and construction project, township and area development project.

In *Deepak Kumar*<sup>[43]</sup> case, it was stated by the honourable Supreme Court that as per the provisions of the EIA notification of 2006 any mining activity which is possessing a land less than 5 ha, this notification shall not be applicable.

In *hydropower company's*<sup>[44]</sup> case the honourable Supreme Court made this observation that the purpose of conducting public hearing is basically to develop environment management plan.

In *Electrotherm*<sup>[45]</sup> case it was stated by the honourable Supreme Court that under EIA notification 2006 conducting public hearing/consultation is one of the integral part of

granting or awarding environmental clearance certificate. The court also stated that there is no value for a draft notification which proposes to amend the existing provisions, because unless the draft notification has been published in the official Gazette such notification will never come to an effect.

In *Sterlite industries* <sup>[46]</sup> case the honourable Supreme Court mentioned that to protect the closer of the plant of an industry it is mandatory for the industry to obtain environmental clearance to be granted by the Ministry of environment and Forest, government of India.

In *Talaular & Son's* <sup>[47]</sup> case the honourable Supreme Court stated that conducting public hearing is not only one of the essential features to be followed before granting environmental clearance, but also conducting such public hearing must be effective one. If any of the procedures not being followed while conducting such public hearing, then the purpose would be vitiated and authority would be asked to redo the entire procedure of public hearing.

## 6. Conclusion

The purpose of incorporating the procedure of public consultation while maintaining the public hearing is very much justifiable on the ground that no industrial operation can be allowed at the cost of extreme environmental degradation. Therefore, selection of industrial site or location should be done while properly conducting public hearing. The earlier EIA notification of 1994 was not having a mandatory provision for conducting public hearing, however, in the year 1997 with an amendment a mandatory public hearing procedure was incorporated. Though, the government of India while following the mandates of the Environment (Protection) Act, 1986 once more while replacing the earlier EIA notification of 1994 a new environmental impact assessment notification, 2006 was brought into. Obtaining environmental clearance certificate is mandatory for any categories of industries, however, conducting public hearing for all the projects are not necessary and it is clear from the schedule as available under the new notification of 2006 that the industries which are available under category B 2, for them neither public hearing nor the report of environmental impact assessment is required before granting the environmental clearance certificate. But, as the honourable Supreme Court has clarified in the case of *Construction of Park at Noida* case in the year 2011 that the time has come to give a close look to the schedule of the EIA notification of 2006 that there should not be any scope for any industry to slip out from the scope of environmental impact assessment because of the benefit of limited interpretation of the categories of industries. Public hearing, obviously, helps to develop the environment management plan, but how far it is realistic in nature, only the passage of time can inform us well.

## 7. References

1. The Commission's document is an overview of a conceptual/moral report on the state of global affairs in terms of environmental degradation, international economic inequality and poverty, and the inability of current national and international institutions to deal effectively with the challenges of securing equity for future generations. Available <http://public.wsu.edu/~susdev/WCED87.html> (last visited on 12.03.2017)

2. Sustainable development is defined as meeting "the [human] needs of the present without compromising the ability of future generations to meet their own needs." Available <http://public.wsu.edu/~susdev/WCED87.html> (last visited on 12.03.2017)
3. See, environmental studies of the Bhopal Plant Site, Available <http://www.bhopal.com/Environmental-Studies-of-Bhopal-Plant-Site> (last visited on 12.03.2017)
4. Methyl Isocyanate Gas
5. Indian Council for Enviro-Legal Action v. Union of India. 1996; 5SCC:281.
6. Section 133 CrPC provides a speedy and summary remedy in case of urgency where damages to public interest or public health etc. is concerned. Available at <http://www.ebc-india.com/lawyer/articles/2001v7a7.htm> (last visited on 12.03.2017)
7. Vellore Citizens Welfare Forum v. Union of India, AIR. 1996, SC 2715.
8. Mehta MCV. Union of India. 1997, 2 SCC, 411.
9. AIR. 2001, Guj 71
10. See, William Tilleman A. Public Participation in the Environmental Impact Assessment Process: A Comparative Study of Impact Assessment in Canada, the United States and the European Community, 33 Colum. J. Transnat'l L. 1995; 337:345.
11. See, Ibid at P.351
12. See, Jesse Moorman L, Zhang Ge. Promoting And Strengthening Public Participation In China's Environmental Impact Assessment Process: Comparing China's EIA law and U.S. NEPA, 8 Vt. J. Envtl. L. 281, Spring. 2007, 296-297.
13. See generally, Chester L. Mirsky and David Porter, Ambushing the Public: The Sociopolitical and Legal Consequences of SEQRA Decision-Making, 6 Alb. L. Envtl. Outlook. 2002; 1.
14. See, Supra Note. 9.
15. Amendment on. The process of environmental public hearing (EPH) was introduced in the environmental clearance process. 1997. Available at <http://www.cseindia.org/node/402> (Last visited on 12.03.2017)
16. Air. 1984 SC 154.
17. Under EIA notification 2006, in schedule-I, there are total a number of project activities have been covered. The project or activities have been categorised differently based on threshold limits and separated under category A and category B of Schedule-I. Project/activity number 1-mining, extraction of natural resources and power generation; project/activity number 2-primary processing, for example, coal washeries, mineral beneficiation; project/activity number 3-materials production, for example, metallurgical industries; project/activity number 4-materials processing, for example, petroleum industries, soda ash industries, asbestos milling; project/activity number 5-manufacturing or fabrication, for example, chemical and fertiliser industry; project/activity number 6-service sectors, for example, oil and gas transportation pipeline; project/activity number 7-physical infrastructure including environmental services, for example, airports, ship breaking industries, waste treatment plant, harbours, highways; project / activity number 8-building and

- construction project, area development project including township. It is important to mention here that all categories of project/activities coming under activity number 8 (b) of the schedule one shall come under Category B1.
18. Notification No. 2. Requirements of prior Environmental Clearance (EC):- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity: (i) All new projects or activities listed in the Schedule to this notification; (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization; (iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range.
  19. See Notification of The Environment Impact Assessment Notification. 2006, 3.
  20. See Schedule-I of The Environment Impact Assessment Notification. 2006.
  21. See Notification (ii) of The Environment Impact Assessment Notification. 2006, 4.
  22. See Notification (iii) of The Environment Impact Assessment Notification. 2006, 4.
  23. See Notification of The Environment Impact Assessment Notification. 2006, 5.
  24. See, Ibid.
  25. See Notification of The Environment Impact Assessment Notification. 2006, 7.
  26. See Notification (I) of The Environment Impact Assessment Notification. 2006, 7.
  27. See Notification (II) of The Environment Impact Assessment Notification. 2006, 7.
  28. See Notification (I) (ii) of The Environment Impact Assessment Notification. 2006, 7.
  29. See Notification (III) of The Environment Impact Assessment Notification, 2006-(i) "Public Consultation" refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate. All Category 'A' and Category B1 projects or activities shall undertake Public Consultation, except the following: - (a) modernization of irrigation projects (item 1(c) (ii) of the Schedule). (b) all projects or activities located within industrial estates or parks (item 7(c) of the Schedule) approved by the concerned authorities, and which are not disallowed in such approvals. (c) expansion of Roads and Highways (item 7 (f) of the Schedule) which do not involve any further acquisition of land. (d) all Building /Construction projects/Area Development projects and Townships (item 8). (e) all Category 'B2' projects and activities. (f) all projects or activities concerning national defence and security or involving other strategic considerations as determined by the Central Government. 7.
  30. See, Ibid.
  31. See Notification (III) (ii) of The Environment Impact Assessment Notification. 2006, 7.
  32. See Notification (IV) of The Environment Impact Assessment Notification. 2006, 7.
  33. See Notification of The Environment Impact Assessment Notification. 2006, 8.
  34. Comp NY, Codes R, Regs. tit. 6, 617.8(d) (1992). For details see, William A. Tilleman, Public Participation in the Environmental Impact Assessment Process: A Comparative Study of Impact Assessment in Canada, the United States and the European Community, 33 Colum. J. Transnat'l L. 1995; 337:369.
  35. See Notification of The Environment Impact Assessment Notification. 2006, 9.
  36. See Notification of The Environment Impact Assessment Notification. 2006, 10.
  37. Press release on 16-December-2016 on Amendment in EIA Notification, 2006 on Integration of Environmental Conditions with Building Permissions: The Ministry has issued a notification S.O. No. 3999 (E) dated 09.12.2016 for integrating standard and objectively monitorable environmental conditions with building permissions for buildings of different sizes; Category '1' 5000 sq. mtr. to 20,000 sq. mtr.; Category '2' 20,000 sq. mtr. to 50,000 sq. mtr. and Category '3' 50,000 sq. mtr. to 1,50,000 sq. mtr., with rigorous monitoring mechanism for implementation of environmental concerns and obligations in building projects. Available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=155550> (Last visited on 12.03.2017)
  38. First Vedanta case (2008) 2 S.C.C. 222; Second Vedanta case, (2008) 9 S.C.C. 711; Third Vedanta case, (2013) 6 S.C.C. 476
  39. For further details, See, Navneeta Dash, Odysseys of Vedanta and POSCO in Odisha: An Enviro-Legal Critique, 6 Jindal Global L. Rev. 2015, 93.
  40. Lafarge Umiam Mining V. Union of India AIR2011SC2781
  41. Orissa Mining Corporation V. Ministry of Environment and Forest. 2013; 6 SCC 476.
  42. In Re: Construction of Park at Noida (2011) 1 SCC 744
  43. Deepak Kumar V. State of Haryana AIR 2012 SC 1386
  44. Alaknanda Hydro Power Company V. Anuj Joshi (2014)1 SCC 769.
  45. Electrotherm (India) Ltd V. Patel Vipulkumar Ramjibhai AIR 2016 SC 3563
  46. Sterlite Industries V. Union of India (2013) 4 SCC 575
  47. Talaulicar & Sons V. Union of India AIR 2016 SC 3351