



Making our Voices Matter

A Guide to Environmental Public Hearings



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TEAM

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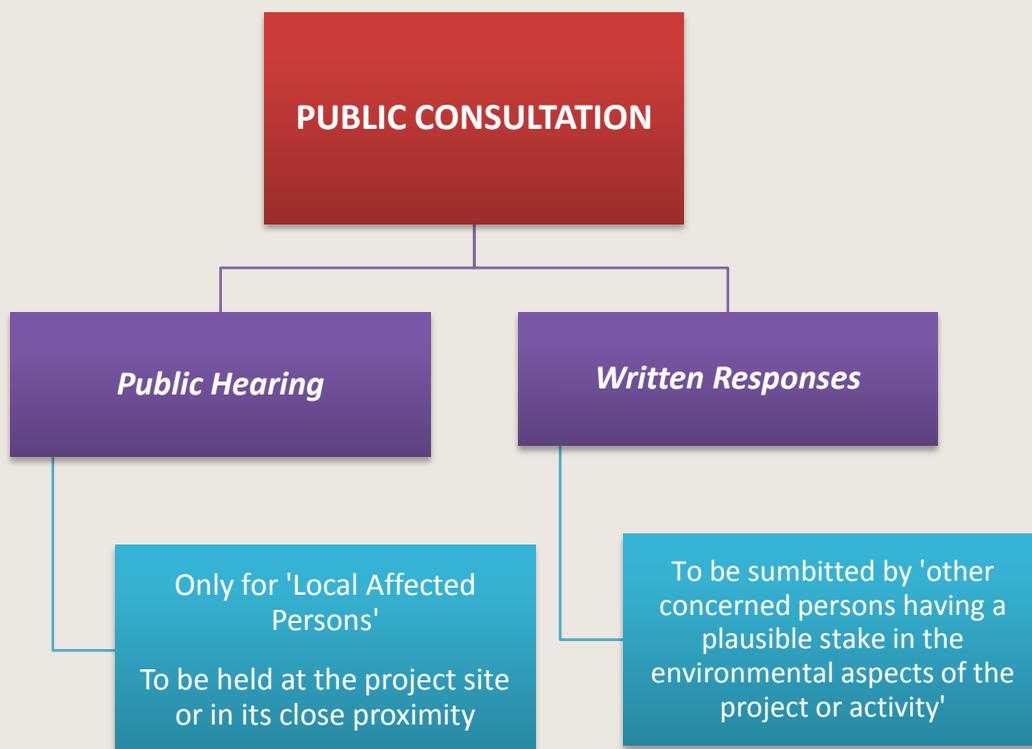
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About 'Making our Voice Matter'

Almost every other day in some part of India, a Public Hearing is held for obtaining the views of local people on proposed projects whether it is mining, dams, highways, thermal power plants etc. People generally participate with the genuine hope that their views will be considered by the decision makers. Unfortunately, the people are heard but their voice does not matter so far as the final decision is concerned. Projects are routinely approved without considering the concerns raised at the time of Public Hearing. At the same time, local communities and civil society groups are generally faced with a Public Hearing for the first time. With no previous experience, they lack the ability to effectively participate in the Public Hearing process. *'Making our Voice Matter'* is aimed at equipping communities, local institutions and civil society groups to effectively participate in the EIA process and ensure that their views and concerns are taken seriously by the decision makers. It relies on legal provisions, Court decisions and experiences of Public Hearings across the country to help understand the Public Hearing process easily.

What is Public Consultation?

Public consultation is the corner stone of the Environment Impact Assessment (EIA) process. It is intended to ascertain the views of 'local affected persons' and 'others with a plausible stake in the environmental aspects of the project' on the environmental impacts of a proposed project. The views are to be considered by the agency responsible for granting or rejection of a proposed project at the Central or State Government level. There are two parts of the Public Consultation process – Public Hearing and submission of written representations.



Why are Public Hearings important?

Public Hearings are organised as part of the EIA Process. The purpose is to bring out the opinion of the public regarding a proposed project and its implications. Public Hearings are mandatorily required for a range of projects

“40. ... We therefore hold that in the context of the EIA Notification dated 14th September 2006 and the mandatory requirement of holding public hearings to invite objections it is the duty of the EAC, to whom the task of evaluating such objections has been delegated, to indicate in its decision the fact that such objections, and the response thereto of the project proponent, were considered and the reasons why any or all of such objections were accepted or negated. The failure to give such reasons would render the decision vulnerable to attack on the ground of being vitiated due to non-application of mind to relevant materials and therefore arbitrary.”

Delhi High Court's decision in *Utkarsh Mandal v. Union of India & Ors.*

that have been specified in the EIA Notification, 2006 which is issued under the provisions of the Environment (Protection) Act, 1986. The Public Hearing process provides the only democratic space for voicing concerns by the public on the environmental implications of a proposed project.

The law requires that the Expert Appraisal Committee (in the Ministry of Environment and Forests) and the State Expert Appraisal Committee (SEAC) (at the State Government level) carry out 'detailed scrutiny' of the minutes of the Public Hearing including written responses received from interested persons. The Expert Appraisal Committee has to give categorical reasons as to how the

objections raised by the public have been taken care of by the Project Proponent.¹

Are Public Hearings mandatory for all Projects?

Most projects where substantial investment or land requirement is involved require Public Hearing. These include mining projects, power projects, distilleries, metal industries etc.

¹ As per the order of the High Court of Delhi in *Utkarsh Mandal v. Union of India & Ors.* W.P. (C) No. 9340/2009 dated 26.11.2009 available on the website of the High Court of Delhi at <http://lobis.nic.in/dhc/SMD/judgement/30-11-2009/SMD26112009CW93402009.pdf>.

Prior Environmental Clearance is mandatory for certain categories of projects. Without the prior Environmental Clearance, a project proponent cannot undertake any activity related to the Project including civil construction. Only fencing can take place to stop encroachment of the site and construction of a temporary shed for the guards.²

The EIA Notification categorises projects into two categories in so far as 'prior environmental clearance' is concerned: Category A and B. This categorisation is based on impact the activity is going to cause to the environment and also on people.³

- Category A projects require a prior environmental clearance from the Ministry of Environment and Forests i.e. environmental clearance has to be obtained prior to any work commencing at the place.
- Category B projects require a prior environmental clearance from the State Environment Impact Assessment Authority (SEIAA). Some of the Category B projects do not require an EIA report.⁴

Some Projects for which Public Hearing is not required:

Public Consultation including Public Hearings are mandatory for most mega projects except –

- Modernization of irrigation projects
- All projects or activities located within industrial estates or parks approved by the concerned authorities, and which are not disallowed in such approvals.
- Expansion of Roads and Highways which do not require any further land acquisition
- All Building /Construction projects/Area Development projects and Townships
- All projects or activities concerning national defence and security or involving other strategic considerations as determined by the Central Government.

² Ministry of Environment and Forests Office Memorandum dated 19.08.2010 available at <http://moef.nic.in/downloads/public-information/Act-prior-EC.pdf>.

³ For further details on the categorisation of Projects under the EIA Notification, please refer to the Schedule to the EIA Notification available on the website of the Ministry of Environment and Forests at <http://www.envfor.nic.in/legis/eia/so1533.pdf>.

⁴ For further details on Projects for which Public Hearing need not be held, please refer to Para 7 (i), Stage III *Public Consultation* of the EIA Notification, 2006.

How can one get involved in the Public Consultation process?

Participation in the Public Consultation process can be in two ways:

- *Firstly*, through oral submission at the time of the Public Hearing.
- *Secondly*, through written representations highlighting concerns and issues with respect to the proposed project including any shortcomings in the EIA report. These written representations have to be sent to the respective State Pollution Control Board and/or the concerned Regulatory Authorities i.e. MoEF in respect of category A projects and the State Environment Impact Assessment Authority (SEIAA) in respect of Category B projects and have to be made within the period from the date of publication of the notice and till such date as the Public Hearing is held.

How can one know that a Public Hearing is going to be held?

It is the responsibility of the concerned State Pollution Control Board to **widely publicise** a Public Hearing before it is held. A notice giving the following information has to be published at least 30 days before the date of the Public Hearing:

- Date and time of the Public Hearing
- Venue of the Public Hearing
- Places at which the required documents (discussed below) will be available

The notice should be published in one major national daily newspaper and one regional vernacular daily/official state language newspaper. In places where the newspaper does not reach, the competent authority is supposed to publicise the Hearing through other means – drum beating, announcing on radio/ television etc.

The Delhi High Court has held that adequate publicity has to be given to a Public Hearing before it is held or else concerned persons would not be able to participate. It has further held that for adequate publicity notice regarding the

Public Hearing has to be repeated and spread over ten days so that as many people as possible can be made aware of the Public Hearing.⁵



Who can participate in a Public Hearing?

- **'Local affected persons'** – those residing in close proximity to the project and who are affected by the Project. Thus in the case of Hydro power projects, even communities which reside downstream or upstream of the Project can participate at the Public hearing.
- Even those who do not reside in close proximity of the project can participate in the Public Hearing.⁶

⁵ As per the order of the High Court of Delhi in *Utkarsh Mandal v. Union of India & Ors.* W.P. (C) No. 9340/2009 dated 26.11.2009 available on the website of the High Court of Delhi at <http://lobis.nic.in/dhc/SMD/judgement/30-11-2009/SMD26112009CW93402009.pdf>.

Is Public Hearing limited only to 'environmental impacts' of the proposed project?

*“17. ... A public hearing is a form of participatory justice giving a voice to the voiceless (particularly to those who have no immediate access to courts) and a place and occasion to them to express their views with regard to a project. Participatory justice is in the nature of a Jan Sunwai where the community is the jury. ... The advantage of a public hearing is that it brings about transparency in a proposed project and thereby gives information to the community about the project; there is consultation with the affected parties and they are not only taken into confidence about the nature of the project but are given an opportunity to express their informed opinion for or against the project. **This form of a social audit, as it were, provides wherever necessary, social acceptability to a project and also gives an opportunity to the EAC to get information about a project that may not be disclosed to it or may be concealed by the project proponent.**”*

Delhi High Court's decision in
Samarth Trust v. Union of India & Ors.

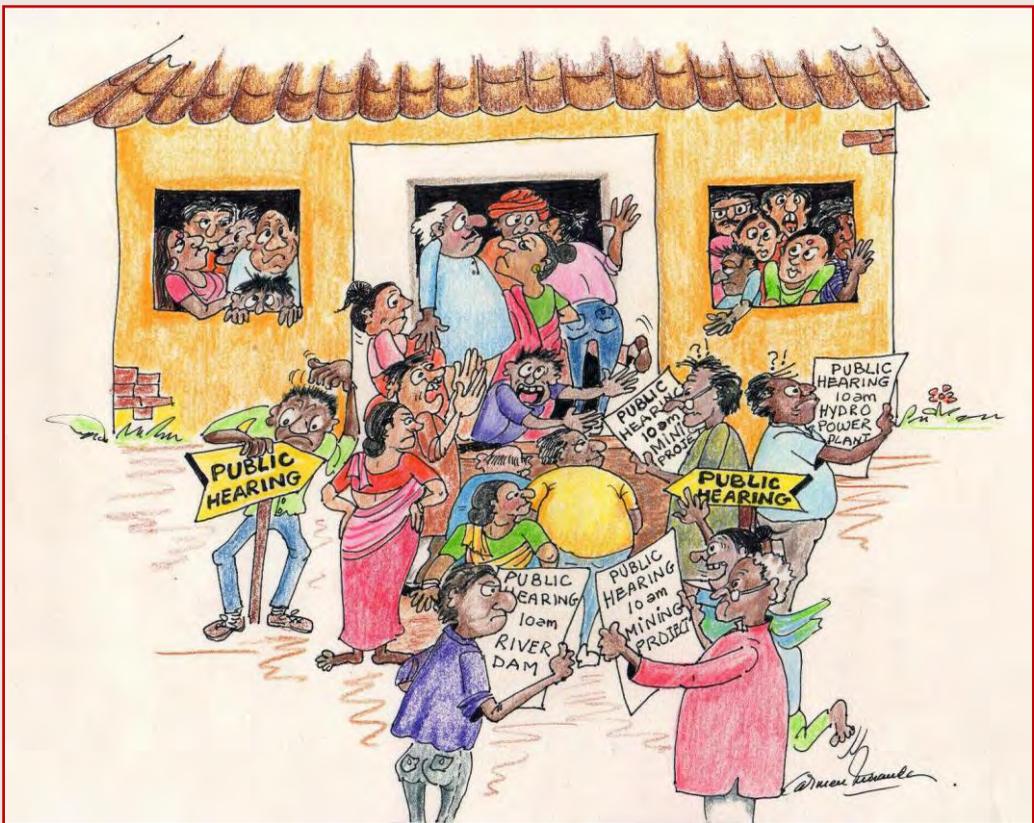
In theory, Public Hearing is intended to concentrate only on the environmental impacts of a proposed project. However, the word 'environment' is to be interpreted broadly and issues concerning the social as well as economic (including livelihood) impacts are part of EIA studies and can therefore be raised during public hearings. Thus 'Social Impact Assessment, R&R Action Plan'⁷ are part of EIA studies and issues concerning these can be raised during public hearing.

⁶ As held by Delhi High Court in *Samarth Trust vs. Union of India* W.P. 9317 of 2009. Please refer to decision dated 28.05.2010 available on the website of the Delhi High Court at <http://lobis.nic.in/dhc/MBL/judgement/28-05-2010/MBL28052010CW93172009.pdf>.

⁷ Appendix III, S.No. 7 of the EIA Notification, 2006

Can Public Hearings of different Projects be held at the same time?

The Ministry of Environment and Forests has issued an Office Memorandum on 19 April 2010 directing all Pollution Control Boards to ensure that the Public Hearings for different projects are not scheduled to be held on the same date, time and venue. The Boards have to ensure that even if the Public Hearings for different projects are being held at the same venue on the same day, there must be a sufficient gap of time provided between two Hearings.



Where can a Public Hearing be held?

Public hearings are to be held at the following places:

- At the project site ; or
- A site which is in 'close proximity' to the project site⁸

The spirit of the provision is to ensure maximum participation of the affected people in the Public Hearing process. It is therefore to be held at a place which is convenient for the public to access. This can be the project site itself or an area which is in 'close proximity'. 'Close proximity' would refer to an area nearest to the project site where arrangements can be made to organise a Hearing in which all affected persons can participate without difficulty and which also ensures wide participation of all concerned persons.

If the Project site extends beyond the boundaries of a state or Union territory, then a Public Hearing has to be organised by the Pollution Control Board of each state or Union territory separately.

Public Hearing can be held in places which are not in close proximity to the Project site

According to the EIA 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...

Material concerns exist not only amongst those who live in close proximity to the Project but also those who are otherwise affected by the Project – such as those who live upstream or downstream of the river. Therefore, a Public Hearing to ascertain the 'material concerns' must be held at all places where such concerns could possibly arise – such as upstream and downstream areas of a river.

⁸ Para 7 (III) (ii) (a) of EIA Notification, 2006

What are the documents to be provided before a Public hearing?

The documents to be provided before the Public Hearing are:

- (1) Draft Environment Impact Assessment Report (EIA Report)
- (2) Summary EIA Report

These documents have to be in English as well as in the official language of the State or the local language and have to be made available at least 30 days prior to the date of Public Hearing. The draft EIA Report must be prepared in the accordance with the Terms of Reference (ToRs) that have been issued by the concerned agency (EAC or SEIAA).

What should the Summary EIA Report contain?

Appendix IIIA of the EIA Notification 2006 provides a description of what should be contained in a Summary EIA report. It states:

“The Summary EIA shall be a summary of the full EIA Report condensed to ten A-4 size pages at the maximum. It should necessarily cover in brief the following Chapters of the full EIA Report: -

1. Project Description
2. Description of the Environment
3. Anticipated Environmental impacts and mitigation measures
4. Environmental Monitoring Programme
5. Additional Studies
6. Project Benefits
7. Environment Management Plan”

What should the Draft EIA Report contain?

The Draft EIA report has to follow the structure provided in Appendix III of the EIA Notification 2006-

1. Introduction
2. Project Description
3. Description of the Environment
4. Anticipated Environmental Impacts & Mitigation Measures
5. Analysis of Alternatives (Technology & Site)
6. Environmental Monitoring Program
7. Additional Studies
8. Project Benefits
9. Environmental Cost Benefit Analysis
10. Environment Management Plan
11. Summary & Conclusion
12. Disclosure of Consultants engaged

Where will these documents be available?

The **draft EIA Report** and the **Summary EIA Report** should be made available for inspection either electronically or in print form at the following places:

- Offices of District Magistrate/ Deputy Commissioner/ Collector
- Zila Parishad or Municipal Corporation or Panchayat Union
- District Industries Office
- Urban Local Bodies/ PRI's / Development Authorities
- Regional Office of the Ministry of Environment and Forests

It is necessary that people get access to the documents. They should be available at multiple places and not restricted to only the few places mentioned above. Therefore, according to the EIA Notification, **the Summary EIA report** has to be also made available at Public Libraries, select offices, and other suitable places.

Can I access these documents on the Internet?

Yes, the summary of the EIA Report should be available on the Internet.

At the hearing...

- Every person present at the venue has the right to speak and seek clarifications from the Project Proponent. It is the responsibility of the Project Proponent to respond to the queries.
- Seek specific responses from the project proponent on issues relating to the environmental impacts of the proposed project.
- Questions should be directed at the contents of the EIA report i.e. the expertise of the EIA consultant? Who were the scientists who conducted the studies? When was the study conducted and when was the site visit done? Who all were interviewed? Expertise of the project proponent in similar project across the country or world? Whether alternative sites or technology were used and reasons for choosing this particular technology and site?
- There is no requirement that the Public Hearing should be completed in a single day.

The Summary of the EIA report should be available on the website of the concerned Pollution Control Board. As the Summary has to be made available to the public at least 30 days prior to the date of the Public Hearing,⁹ the document should be available on the website at least 30 days before the date of the Public Hearing.



How is a Public Hearing Conducted?

A Panel consisting of the District Magistrate/ the District Collector / the Deputy Commissioner or his or her representative (not below the rank of an Additional District Magistrate), assisted by a representative of the concerned State Pollution Control Board, are responsible for supervising and presiding over a Public Hearing.

Tip

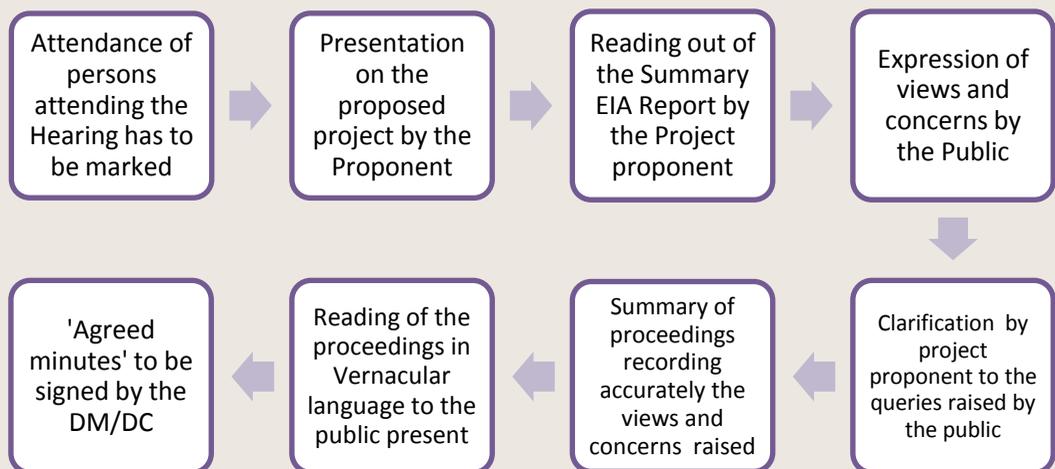
No one else, including MPs and MLAs can be part of the Panel.

The role of the public hearing panel is only to record the proceedings of the Public Hearing. The panel cannot recommend for the grant of

⁹ As per the decision of Delhi High Court dated 26.11.2009 in *Utkarsh Mandal v. Union of India*.

approval or suggest mitigation measures. The Panel must accept written representations as well as oral submissions during the Public Hearing from members of the public. It is essential that the adverse environmental impacts are also shared with the public by the representative of the Project Proponent.

What are the steps that are broadly involved in a Public Hearing?



What happens after the Public Hearing is over?

Once the Public Hearing is over, the proceedings of the Hearing have to be displayed **openly and clearly** at the office of the Panchayats within whose jurisdiction the project is located, office of the concerned Zila Parishad, District Magistrate/ District Collector / Deputy Commissioner, and the State Pollution Control Board. The State Pollution Control Board also has to display the proceedings on its website.

Tip

Check if the Minutes accurately reflect what actually happened in the



Essential Check List

Use the following Check List to determine whether the Public Hearing has been conducted in accordance with the law.

If the answer to one or more of the questions mentioned above is **No**, then the Public Hearing has been held in violation of the EIA Notification as well as the law as laid down by the Courts.

NOTICE OF THE PUBLIC HEARING

- Was it published 30 days before the date of the Public Hearing?
- Did it include the date, time and venue?
- Did it mention the names of the offices/places where the draft EIA report and the Summary EIA report are available?
- Was it published in a major national daily newspaper **and** a regional vernacular

daily/official state language newspaper?

Has the Public Hearing been adequately publicised?

DOCUMENTS

- Is the whole draft EIA report available at the required offices (*mentioned above*)?
- Is the Summary of the draft EIA report available at the required offices (*mentioned above*)?
- Are both the documents available in English **and** in the official language of the state/local language?
- Were you allowed to inspect these documents?

Was the Summary of the draft EIA report available on the website of the State Pollution Control Board at least 30 days before the dated of the Public Hearing?

Is the Public Hearing the only Public Hearing being held on that day and at that venue?

Is the venue for the Public Hearing at the Project site or in its close proximity?

AT THE PUBLIC HEARING

- Other than the District Magistrate/District Collector/Deputy Commissioner or his or her representative and a representative of the Pollution Control Board, was there anyone else seated at the dais?
- Were the proceedings of the Public Hearing video-recorded by the Pollution Control Board?

Was the attendance of all those present for the Hearing marked?

DURING THE PUBLIC HEARING

- Did the representative of the Project Proponent make a proper presentation which could be heard by all and which covered all aspects of the Projects especially the adverse impacts of the Project?
- Was every person given an opportunity to ask questions/seek clarifications?

Did the representative of the Project Proponent respond to the questions asked/clarifications sought?

AT THE END OF THE PUBLIC HEARING

- Were the summary of the proceedings, accurately reflecting all the views and

concerns expressed by the people recorded and read over to the audience and explained in the local/vernacular language?

- Were the agreed minutes signed by the District Magistrate/District Collector/Deputy Commissioner or his or her representative on the same day?

Were the proceedings of the Public Hearing conspicuously displayed at the office of the Panchayats within whose jurisdiction the project is located, office of the concerned Zila Parishad, District Magistrate/ District Collector / Deputy Commissioner, and the State Pollution Control Board?

If a Public Hearing is faulty, what can I do?

- Bring it to the notice of the Ministry of Environment and Forests and the State Government and demand that infirmities which had crept into the process should be removed and a fresh Public Hearing be held.
- If the Public Hearing is faulty on the ground that the required information was not provided (including draft EIA report and Executive Summary), bring the same to the notice of the Public Hearing panel.
- If Environmental Clearance has been granted to a Project based on a faulty Public Hearing then the same can be challenged before the National Green Tribunal based in New Delhi. Such challenge has to be done within 30 days from the date when environmental clearance is granted. This time period may be extended to 90 days if the Tribunal is satisfied with the reasons provided for the delay.

How does one know whether a particular project has been approved or not?

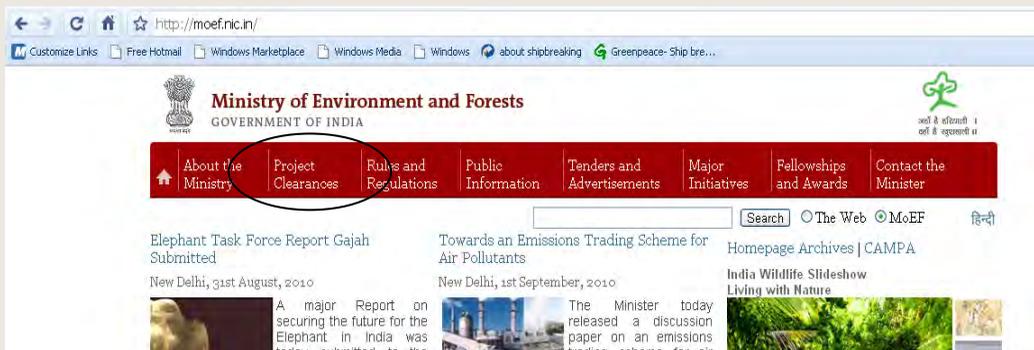
You can check the status of the clearance on the website of the Ministry of Environment and Forests – www.moef.nic.in. The Ministry has to display, within five days of granting an environmental clearance, the **entire order** on its website.¹⁰ The Project Proponent also has to prominently publish the **full Environmental Clearance order** including the environmental conditions and

¹⁰ As per the decision of the High Court of Delhi in *Jan Chetna & Another v. Union of India & Others* W.P.(C) 11157 of 2009 dated 14.10.2009.

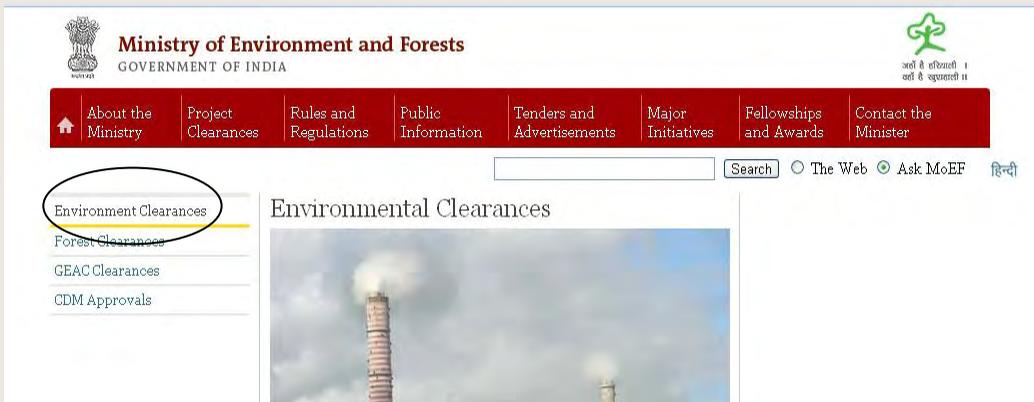
safeguards in two local newspapers and make the full order available on its website permanently.¹¹

How to check the MoEF Website?

- **Step 1** - Open the website of the Ministry - www.moef.nic.in
- **Step 2** - Click on **Project Clearances**



- **Step 3** - Click on **Environmental Clearances** and then **More Details**



¹¹ Para 10(i)(a) of the EIA Notification 2006 (after the 2009 amendment).



Environmental Impact Assessment (EIA) is an important management tool for ensuring the optimal use of natural resources for sustainable development. Environmental Management or planning is the study of the unintended consequences of a project. Its purpose is to identify, examine, assess and evaluate the likely and probable impacts of a proposed project on the environment and, thereby, to work out remedial action plans to minimize adverse impact on the environment.

The Ministry has issued the Environmental Impact Assessment Notification, 2006, which makes environmental clearance mandatory for the development activities listed in its schedule.

[more details](#)

- **Step 4** - Fill up the form that comes up and press Submit. You do not have to fill each of the columns.

Environment Clearance Status Query Form

(EC Search Query) [Click on radio button to Search EC Project.](#)

Project Submission	Upto 30th April 2009
Stages of EC Process	Projects Awaiting TOR
Project Category	All Categories
State Name	All States
Year	All years

Submit Reset

Date updated on every Friday

- You can also look at the minutes of meetings held by the various Expert Appraisal Committees on the website. Follow Steps 2 and 3 and then select Expert Appraisal Committee, followed by Minutes of the Meeting.

Environment Clearance Status Query Form

(EC Search Query) [Click on radio button to Search EC Project.](#)

Project Submission	Upto 30th April 2009
Stages of EC Process	Projects Awaiting TOR

About eRc

EIA Resource and Response Centre (eRc) was established in 2007 to keep a vigil on Environment Impact Assessment (EIA) processes and ensure that the impact of developmental activities on India's environment and communities is properly assessed and accounted for. It was established in response to the need to keep a watch on EIA reports that are based on inadequate and improper assessment of the impacts of proposed developmental activities on natural India including, wild flora and fauna, rivers, wetlands etc. and to ensure that they are challenged at the appropriate forum. eRc also acts as an expert third party advocacy and action group, which is in a position to scientifically critique faulty EIA reports of environmentally sensitive projects. These projects range from mining, hydro and thermal power to roads, highways and ports among others.



For further details please contact:

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