

LOCATING THE PUBLIC IN INDIAN ENVIRONMENTAL DECISION-MAKING:

Enhancing Opportunities for Civil Society Participation

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EXECUTIVE SUMMARY

INTRODUCTION

The risks and costs associated with industrial, infrastructure and extractive projects to local communities and civil society can be high. Besides direct displacement, they can threaten traditional livelihood activities, compromise wellbeing, affect health and endanger those living close to such projects. India is preparing for accelerated growth and fast Covid recovery that centres around industrial expansion and resource extraction. Its plan to achieve net zero emissions by 2070 through large-scale renewable energy deployment is being pursued simultaneously.

To ensure that India's growth, economic recovery, and energy transition are achieved with the least social conflict, ecological impact and human costs, inputs from public, civil society and grassroots actors are crucial. The Intergovernmental Panel on Climate Change has recognised the role of "participatory" planning and "inclusive governance" in climate adaptation. However, a trend of disregard for laws that uphold community ownership of natural resources, recommend public participation in environmental decisions and seek transparency and accountability from governance systems is being observed.

This report examines the current environmental regulatory system in India, and identifies opportunities and challenges to meaningful public participation in environmental decision-making. It offers recommendations for broadening the space and scope for public engagement. The report is supported by a toolkit with practical suggestions to enhance public participation in environmental decision-making in India.

MECHANISM FOR PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION-MAKING

Mechanisms for public participation in environmental decision-making can be analysed at three levels:

- **Law and policy making:** During the creation of laws, including delegated and subordinate legislation

A 2014 policy recommends a pre-legislative consultation process, which largely lies unknown and unused. Specific to environmental regulations, environmental protection rules recommend that draft notification of a change in environmental law be made available for public scrutiny for a period of sixty days. However, the rules allow for bypassing this mandate if the Central Government deems it in the "public interest" to do so. Between 2006 and 2020, the Government has used this pretext to pass 35 out of 50 amendments

to the Environmental Impact Assessment Notification, without mandatory public notice.

- **Planning and governance:** During landscape or urban planning

There are very few spaces in planning exercises that provide for community engagement. While coastal zone management plans, development or master plans for certain cities and action plans on climate change have had public hearings and/or consultations, these processes have hardly had any substantial effect on final plans. Joint forest management, ecologically sensitive areas, district level committees, biodiversity management committees and critically vulnerable coastal areas provide scope for participatory governance of natural resources and landscapes, but they have either been co-opted by government officials, are considered elitist tools of conservation, or remain ignored and under-utilised.

- **Project decisions:** During environmental scrutiny of a new project or an expansion

Before a project commences, it has to obtain certain clearances. Out of these clearances, only a couple mandate public consultation. In case of environmental impact appraisal, public consultations and hearings are an important avenue for people to raise their concerns; however, they rarely have an impact on a project's fate. Thus, in effect public hearing remains a perfunctory exercise. Aside from environmental clearance, the Land Acquisition Act of 2013 provides for public hearings to assess the social impact of the acquisition and identify the rehabilitation and resettlement requirements. For projects coming up in tribal-dominated scheduled areas and forest areas, consent of the 'Gram Sabha' (village assembly) is required. Different state policies, rules and local-level protocols are altering these existing spaces for public participation. Some institutions, such as state pollution control boards and local governance structures, have scope for enhanced public engagement through easy access to decision-makers and grievance redressal. But government authorities have tended to ignore available spaces for public participation and allowed commercial activities to bypass such procedures.

The four case studies in this report demonstrate the use of spaces for public participation within the Indian environmental regulatory system. The first case study from Gujarat on wind energy development is a unique situation where in the absence of prior public consultation, those affected used the existing district-level grievance redress mechanism to restore access to village common resources. The second case study from Himachal Pradesh, demonstrates how people from villages around a hydropower project used the existing self-governance policy for tribal areas to negotiate a contract with the hydropower company. However, most of the conditions on which the hydropower project was allowed have not been fulfilled. The third case study presents a picture of

impacts of two coal mine expansions in Jharkhand without public hearing. Violations committed by the mining projects with impunity have meant hardships and risk to life for those living next to these mines. The fourth case study on development of a port project in Kerala raises questions around the absence of any platform for public participation after a project commences construction/operation.

BARRIERS AND LIMITATIONS

The analysis of available public participation mechanisms and their possibilities highlights a set of limitations and barriers of the existing environmental decision-making systems in India. These include:

- **Few legitimate spaces:** The existing mechanisms offer limited legitimate spaces for public engagement in environmental decisions, and most of these spaces are narrow in their impact. They are often unable to influence decisions that impact neighbourhoods and natural resources.
- **One-time participation:** The current mechanisms only allow for a one-time hearing, consultation or interaction without adequate follow-up actions by the project proponents or authorities.
- **Limited scope for appeal:** In the absence of a clear mechanism to appeal against poorly conducted public hearings and consultations, people often approach the courts. But the recourse to courts is difficult and lengthy.
- **Weak post-approval grievance redress:** Once a project is approved, a policy is in place or a planning exercise is complete, there are insufficient and weak mechanisms available for people to register complaints and raise concerns.
- **Limitations of protests & litigation:** With such limited possibilities for participation, citizens are often pushed to use their constitutional right to protest, complain to international forums or approach the courts. However, these recourses can be risky, expensive and unpredictable. Due to issues of access, privilege, availability of resources, and affordability, these mechanisms can also lead to skewed participation and raise questions around equity within environmentalism.

Aside from these limitations, public participation is further impeded by poor access to information, limited legal backing¹, poor implementation, overlapping jurisdictions, overly technical or legalistic language, and lack of or still-pending state regulations to enforce central laws, leading to a regulatory vacuum.

¹The Pre-Legislative Consultation Policy is legally non-binding, and provisions for public consultations on projects can be amended easily without referring the changes to Parliament. Instructions for engaging the public are often issued in the form of circulars and as mere suggestions, without any binding force.

RECOMMENDATIONS

1. **Raise awareness of and better implement the Pre-Legislative Consultation Policy:**

The international law on public participation in environmental decision-making requires genuine implementation of the Pre-Legislative Consultation Policy, including through awareness-raising of its requirements among central departments and state governments. Efforts should be made to also raise awareness of the policy among civil society.

2. **Define “Public Interest”:**

A committee with representation from the Environment Ministry, Ministry of Law, and civil society working on issues of enhanced citizen engagement in policy making should define the term “public interest”.

3. **Guarantee remedy for citizens affected by environmental harm:**

Laws issued by states under the Citizen’s Charter provide for time-bound delivery of service to citizens by various departments. These services should be extended to citizens aggrieved by pollution and bad environmental decisions. Affected citizens should be guaranteed time-bound action against the violators aimed at remediating environmental harm.

4. **Publicise citizen complaints and government responses:**

The information on complaints received, steps taken and resolutions achieved by various environmental institutions should be made publicly available online. Civil society groups can initiate crowdsourcing website/platforms where citizen complaints and government actions will be made available.

5. **Adopt proactive government policies institutionalising effective public participation:**

Government at all levels should proactively create conditions for meaningful participation. It should also keep the public informed around such processes, including publicising upcoming changes in simple non-technical terms in local languages, and providing platforms for appeal and complaint submission.

6. **Set targets and objectives for public participation:**

Objectives of public participation exercises should be defined. Once it is clear what the targets are, studies can be carried out to measure the effectiveness of existing practices and ways to achieve the desired outcomes.

ABBREVIATIONS

APSEZ: Adani Ports and Special Economic Zone

BMC: Biodiversity Management Committee

CRZ: Coastal Regulation Zone

CVCA: Critically Vulnerable Coastal Area

CZMA: Coastal Zone Management Authority

CZMP: Coastal Zone Management Plan

DC: District Collector

DLC: District Level Committee

DMF: District Mineral Foundation

EC: Environmental Clearance

EIA: Environmental Impact Assessment

EPA: Environment (Protection) Act

FCA: Forest Conservation Act

FCR: Forest Conservation Rules

FRA: Forest Rights Act

GoI: Government of India

IFC: International Finance Corporation

JFM: Joint Forest Management

LADA: Local Area Development Authority

LADF: Local Area Development Fund

MESA: Municipalities Extension to Scheduled Areas

MoEF: Ministry of Environment & Forests

MoEFCC: Ministry of Environment, Forests & Climate Change

MSME: Micro, small and medium enterprises

MW: Mega Watt

NGO: Non-Government Organisation

NGT: National Green Tribunal

NoC: No Objection Certificate

PBR: People's Biodiversity Register

PCB: Pollution Control Board

PESA: Panchayats (Extension in Scheduled Areas) Act

PP: Project Proponent

PLC: Pre-Legislative Consultation

RFCTLARR: Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement

R&R: Rehabilitation & Resettlement

RTI: Right to Information

SIA: Social Impact Assessment

SPCB: State Pollution Control Board

TPA: Tonnes per Annum

UN: United Nations

UNFCCC: United Nations Framework Convention on Climate Change

WLPA: Wildlife Protection Act

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-Meenakshi and Krithika



| A SOLID WASTE DUMP IN GUJARAT

1. INTRODUCTION

India's Draft National Land Utilisation Policy of 2013 envisages large-scale infrastructure expansion; rapid industrialisation, especially for manufacturing; increased urbanisation; and growth in the mining sector.² These changes will not be realised without human cost. A 2013 study by the Indian Institute of Technology, Rourkee places the number of internally displaced people due to development projects between 1947 and 2000 at 50 million.³ Aside from direct displacement, development projects put existing livelihoods under strain. They bring the ongoing occupations dependent on natural resources in direct competition with development needs - agriculture competes with industry, access to forest produce competes with mining, and fishing and grazing compete with urbanisation. Environmental degradation is another consequence directly faced by communities living close to industrial and mining projects contaminating their water sources and polluting the air they breathe.

Moreover, recent industrial disasters such as the Baghjan oil well blowout, Visakhapatnam gas leak and Neyveli boiler explosion, have highlighted the human impact of environmental violations and negligence. The cascading effect of land use modifications, developmental projects' disregard for environmental safeguards, and climate change have added to the intensity and frequency of disasters across the country.⁴ According to the National Institute of Disaster Management report of 2022, India experienced 1058

² Department of Land Resources. (2013). 'National Land Utilisation Policy- framework for land use planning & management'. Draft. New Delhi, India. Available at: https://smartnet.niua.org/sites/default/files/resources/draft_national_land_utilisation_policy_july_2013.pdf

³ Indian Institute of Technology, Roorkee (2011). 'Development projects vs Internally Displaced Populations in India: A Literature based Assessment'. p. 6

⁴ Extreme heat events in the northern plains, floods and landslides in Himalayan and the North Eastern part, floods in coastal areas, and late arrival of monsoon that stretched till the middle of October in 2022.

disasters including floods, cyclones, heat and cold waves between 1995 and 2020.⁵ The climate crisis has galvanised more political will to address increasing ‘natural disasters’ through an energy transition away from fossil fuels and towards renewable energy. At the 26th United Nations Framework Convention on Climate Change (UNFCCC) Conference of Parties, India made a commitment to achieve net zero emissions by 2070. This vision is to be met through unparalleled investments in renewable technologies and afforestation programs.⁶

However, the green image of renewable energy deployment and afforestation programs is masking the pollution associated with them, impact on public health and livelihoods, their land intensive nature and their actual contribution to reduced global emissions. To meet India’s energy needs, coal extraction, thermal power projects, oil and gas development and hydroelectric projects are being pursued with equal fervour. All of these projects require careful assessment of their impacts on public health, livelihoods and environment. Inputs from the public—especially those likely to be impacted by these projects—are crucial in ensuring that the projects are sustainable in the long run.

Meaningful public participation in environmental, energy, and climate policymaking has been shown to lead to better outcomes, is encouraged under international law, and could greatly benefit India’s energy transition, climate adaptation and sustainable development goals.⁷

And yet, public participation in India has been criticised for not including different stakeholders.⁸ Several policy measures and planning exercises are being implemented in a top-down fashion that excludes civil society, local communities and the general public. In fact, the past decade has witnessed a sustained lackadaisical interest by the government in implementation of laws that grant greater community ownership. To add to this, the government is attempting to fast-track the economic recovery from the Covid-19 pandemic through yet more steps that shrink spaces for public participation in existing laws.

In general, power has been shifted away from people and a democratic way of law and policy making. Civil society’s role as a partner in policy making and implementation is

⁵ Gupta et al (2022) ‘Mapping climate and biological disasters in India. Study of spatial & temporal patterns and lessons for strengthening resilience’. National Institute of Disaster Management and Deutsche Gesellschaft für Internationale Zusammenarbeit. New Delhi, India. Available at: https://nidm.gov.in/PDF/pubs/GIZNIDM_21.pdf

⁶ Ministry of New & Renewable Energy (2022). Press Release. ‘Renewable Energy in India’. New Delhi, India. Available at: <https://pib.gov.in/FeaturesDeatils.aspx?NotelId=151141&ModuleId%20=%202>

⁷ In fact, the Intergovernmental Panel on Climate Change (IPCC) too recognises in its 2022 report the need of community engagement and participatory planning for effective climate adaptation: “Inclusive governance that prioritises equity and justice in adaptation planning and implementation leads to more effective and sustainable adaptation outcomes...These approaches, multi-stakeholder co-learning platforms...community-based adaptation and participatory scenario planning, focus on capacity-building, and meaningful participation of the most vulnerable and marginalised groups, and their access to key resources to adapt.” IPCC (2022). “Climate Change 2022: Impacts, Adaptation and Vulnerability. Summary for Policymakers.” C.5.6. p 28. Available at: https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf

⁸ Roy, C (2013) ‘The law and short of it’. *PRS Legislative Research*. Available at <https://prsindia.org/theprsblog/the-law-and-short-of-it?page=145&per-page=1>

an essential aspect of collaborative governance. Recognising the importance of engaging civil society during the grand shift that India is embarking upon, this report focuses on identifying the lacunae in the Indian environmental regulatory system vis-à-vis public participation. The report is supported by a toolkit with practical suggestions and best practices identified through this analysis for enhancing public participation in environmental decision-making in India.

2. OVERVIEW & METHODOLOGY

The report provides an assessment of the scope of public participation in current environmental laws in India and offers recommendations to enhance public participation in environmental decision making. The term “environmental law” for this purpose has been understood as a broad term encompassing laws that govern the protection, management, and use of natural resources by competing demands.

This section (Section II) provides an overview of the report and brief on the methodology of research. Section III provides a brief history of environmental regulations in India. Section IV discusses public participation in environmental decision-making processes at three levels: (1) law and policy making (2) planning, and (3) project decisions. In this and the subsequent section on analysis, the following questions have guided our research:

1. What are the existing opportunities for public participation in environmental decision-making?
2. What kind of participation do they envisage? How does their implementation fare broadly and against international frameworks?
3. What are the enabling conditions for public participation?
4. What are the impediments to public participation?
5. How far does public participation go? Does it extend to monitoring and enforcement of environmental safeguards?
6. Are there mechanisms to invoke accountability and address issues raised by the public during these official processes?

Section V provides an evolution of the international framework for public participation in environmental decision and policy making. Section VI explores four case studies analysing public participation in environmental appraisal processes. These cases were selected for the particular opportunities they provided or denied to the project-affected communities:

- The first case study on windmill development in Gujarat offers an example where no environmental or pollution scrutiny is mandated by the law, leading to a lack of opportunities for the public to weigh-in on the project.
- The second case of hydropower development in Kinnaur, Himachal Pradesh provides a window into negotiations between tribals of four villages of Kinnaur and project authorities due to application of the Panchayat Extension of Scheduled Areas (PESA) Act.
- The third case is from the coal mining belt of Jharkhand, where old mines are being expanded with impunity and disregard to people’s right to participate in project decisions. This case raises the issue of post-project approval continuance and expansions without consultations.
- The fourth case is the large-scale port development in Kerala, in which issues and claims about project impacts remain despite a public hearing process.

S.NO.	CASE STUDY	STATE
1	Windmill development in Kutch	Gujarat
2	Shongtong hydroelectric dam in Kinnaur	Himachal Pradesh
3	Coal mining in Karanpura	Jharkhand
4	Port development in Vizhinjam	Kerala

Aside from the unique conditions for public participation, these case studies have been selected from different states of India, which have their own unique socio-economic conditions, politics, development trajectories and growth aspirations that have a bearing on public participation in environmental decision making.

Section VII of the report lays out analysis and observations based on the case studies and legal framework. Finally, Section VIII suggests recommendations for improving public participation in environmental decision-making for both policy makers and civil society.

3. EVOLUTION OF ENVIRONMENTAL REGULATION IN INDIA

Since liberalisation, successive governments in India have been chasing the goal of rapid economic growth. Coupled with international expectations of sustainable development and domestic aspiration of self-reliance in meeting the needs of its large population, India's environmental laws have been in a state of perpetual change.

Responding to the Stockholm Conference of Nations held in 1972, the Central Pollution Control Board and State Pollution Control Boards were constituted under the Water (Prevention and Control of Pollution) Act, 1974. They were intended to control the discharge of liquid effluents into water bodies that could render the water unfit for human and other living beings. In 1981, with the implementation of the Air (Prevention and Control of Pollution) Act 1981, the purview of the pollution control boards was widened to include prevention and control of air pollution.⁹ The Bhopal Gas tragedy in 1984 further emphasised the need for India to implement regulations for the safety of its citizens and protection of the environment.¹⁰ In 1986, the Environmental Protection Act and Rules were promulgated, falling under the enforcement of the newly constituted Ministry of Environment and Forests.¹¹

Litigation and judicial intervention have shaped environmental governance significantly in India. In the 1980s, public interest litigation on environmental issues took form and shape. While environmental legislation itself often restricted the *locus standi* of who could approach the court, through public interest litigation, any person having sufficient interest was allowed to bring a case.¹² The courts themselves took up several matters *suo motu*, exemplifying a long culture of judicial activism. Despite these developments and increased environmental awareness and activism, government commitment to environment protection remained largely cursory.

In the first decade of liberalisation, a number of subordinate laws were notified using the Environmental Protection Act, 1986. The Environmental Impact Assessment (EIA) Notification established the appraisal procedure for environmental scrutiny, and

⁹ Correspondent. (2000). 'Pollution Control: Changing Perceptions.' *Environment and Political Weekly*. October 7. India

¹⁰ Broughton, E. (2005). 'The Bhopal disaster and its aftermath: a review.' *Environmental Health* 4, 6. <https://ehjournal.biomedcentral.com/articles/10.1186/1476-069X-4-6>

¹¹ In 2014, the name of the ministry of environment & forests was changed to ministry of environment, forests and climate change.

¹² Sahu, G. (2008). 'Implications of Indian Supreme Court's innovations for environmental jurisprudence.' *Law Env't & Dev. J.*, 4, p.1.

showed the path for environmental clearance to projects.¹³ Through an amendment to the Notification in 1997, public involvement in environmental decision-making was mandated in an Indian regulation for the first time. With the promulgation of the Right to Information (RTI) Act, 2005, possibilities for citizens to engage with environmental laws increased. This was followed by the enactment of the Forest Rights Act in 2006, the result of a long campaign demanding the acknowledgment of the resource rights of forest dwellers. However, the same year saw the rewriting of the EIA Notification, in a way that circumscribed public participation.¹⁴

From 2000 to 2010, the details and limits of these environmental laws were further delineated. This was observed in the 2011 iteration of the Coastal Regulation Zone (CRZ) Notification. The law, a result of extensive public consultations in the years prior, defined the coastal areas where development would be regulated. Around the same time, in 2010, the National Green Tribunal (NGT) was set up to solely adjudicate on environmental issues, with both judicial and expert members. Until 2014, the Government had attempted to seek public opinion while drafting environmental laws, be it the Seed Bill or the CRZ Notification. However, in recent years, review committees have proceeded to reform key laws largely without public consultation, allowing ex-post facto environmental clearances or opening up the coasts and forests for development. Listed below are some of the recent changes in this direction:

- Between 2006 and 2020, over 70% of amendments in the EIA notification were passed, ignoring mandatory notice periods for public scrutiny.¹⁵
- The CRZ Notification was finalised despite 90% of comments opposing the draft.¹⁶
- Over 75% of the amendments to the CRZ Notification were made without mandatory public notice.¹⁷
- While a new iteration of the EIA law was opposed by the public, over 80 changes to the existing law, many similar to the ones proposed in the new iteration, were passed without public notice.¹⁸

¹³ Saldanha, L.F., Naik, A., Joshi, A. and Sastry, S. (2006). 'Green Tapism. A review of the Environmental Impact Notification'. Environment Support Group, Bangalore, India. https://www.education.gov.in/sites/upload_files/mhrd/files/document-reports/apppap_11_1.pdf

¹⁴ Ibid

¹⁵ Dinesh & Kapoor (2020) 'As forums for public scrutiny of environmental decisions shrink, public interest is dealt a blow'. Scroll.in. Available at <https://scroll.in/article/965276/as-forums-for-public-scrutiny-of-environmental-decisions-shrink-public-interest-is-dealt-a-blow>

¹⁶ Kapoor, M (2020) 'Govt Disregarded 90% Objections To 2019 Coastal Zone Law: Investigation'. *Indiaspend*. Available at <https://www.indiaspend.com/govt-disregarded-90-objections-to-2019-coastal-zone-law-investigation/>

¹⁷ Kapoor, M and Dinesh, K. (2017) 'India's coastal law is being altered in public interest – by bypassing the public'. *Scroll.in*. Available at <https://scroll.in/article/855104/indias-coastal-law-is-being-altered-in-public-interest-by-bypassing-the-public>

¹⁸ Kapoor, M & Dinesh, K (2021) 'Throughout the Pandemic, Environmental Clearance Law Has Been Under the Chopping Block'. *The Wire*. Available at <https://thewire.in/environment/throughout-the-pandemic-environmental-clearance-law-has-been-under-the-chopping-block>; Kapoor, M & Dinesh, K (2022) 'EIA Notification remains a draft, yet MoEFCC continues to edit 20006 version'. *The Wire Science*. Available at: <https://science.thewire.in/environment/moefcc-eia-notification-modifications/>

- Since 2017, existing coal mines have been allowed to expand without increase in land area up to 40% of their original capacity, without public hearings. In 2022, the same provision was extended beyond coal mines to all projects that need prior environmental approval for expansion.
- Hydrocarbon exploration projects were allowed to bypass environmental clearance.
- Changes have been made to the Indian Biodiversity Act to allow easy access to biodiversity for commercial purposes, impacting communities' right over traditional knowledge related to their resources and their say in benefit sharing.
- The Indian Forest Conservation Rules have been changed to fast-track forest clearance, without adequate measures to ensure that claims for forest rights are recognised.

This report takes a closer look at the trend to minimise public participation in India's environmental regulatory framework, detailing specific mechanisms that exist and how their use is evolving, with resultant impact on civil society and local communities.

4. MECHANISMS FOR PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION-MAKING

In the framework for Indian environmental regulation and decision-making, mechanisms for public participation can be analysed at three levels.

- **Law and policy making:** When laws, including delegated and subordinate legislation and policies are created.
- **Planning:** When landscape or urban planning exercises are carried out.
- **Project decisions:** When environmental laws and regulations examine a project, a factory or manufacturing unit, or infrastructural projects such as roads or mining projects and make assessments based on the nature of the activity and/or the location of the project. Assessments could be carried out prior to project commencement as a measure to decide if a project should proceed, or if an ongoing project should continue or be expanded based on an evaluation of its compliance and monitoring performance.

The Constitution of India has a two-tiered division of legislative powers. In its Seventh Schedule the Constitution provides three lists allocating powers between the Union and states: Central List, State List and the Concurrent List (where both the Centre and states can legislate).¹⁹ Since many environmental decisions are affected by subject matters falling under the State and Concurrent Lists, besides the central legislation, we also cite examples at the state and local level. These laws or policies have either enhanced or curtailed public participation in some way.

4.1 Avenues for Public Participation in Law and Policy Making

While “elected representatives make laws on behalf of citizens” in a representative democracy, citizens nevertheless retain the right to participate in the law-making process.²⁰ Meaningful public engagement with the legislative process ensures that laws are

¹⁹ Protection of wildlife and forests, minor ports, acquisition of land and factories are part of the Concurrent List; shipping, ports, mines, mineral and oil fields development are listed in the Central List; and agriculture, land, irrigation, public health, water supplies, industries (except for defence and those are of public interest) and fisheries fall under the State List.

²⁰ Kalra, H (2014). ‘Public Engagement with the Legislative Process. Background note for the conference on effective legislatures’. *PRS Legislative Research*. 24 November. https://prsindia.org/files/parliament/discussion_papers/1370586595_Public%20Engagement%20with%20the%20Legislative%20Process.pdf

aligned with public opinion and go through fewer changes after being passed.²¹ Public consultation is the most common way for democratic governments to provide opportunities for the public to engage with law-making.²²

In 2002, the National Commission to review the working of the Constitution observed that “our legislative enactments betray clear marks of hasty drafting and absence of Parliament scrutiny from the point of view of both the implementers and the affected persons and groups”.²³ In 2012, a National Advisory Council²⁴ subsequently recommended developing a pre-legislative consultation process, to “evolve from a representative democracy to a participatory, deliberative democracy, particularly for accountability to the people in the formulation of law and policy”.²⁵

4.1.1 PRE-LEGISLATIVE CONSULTATION POLICY

Following the recommendations of the National Commission to review the working of the Constitution and the National Advisory Council, a meeting of the committee of secretaries incorporated their suggestions. Soon after, the Pre-Legislative Consultation (PLC) Policy was developed in 2014 by the Legislative Department of the Ministry of Law and Justice.²⁶ The PLC Policy recommends a set of practices that should be followed “invariably” by all ministries and departments before finalising legislation.

Pre-Legislative Consultation Policy Recommendations:

1. The proposed law should be publicised through the Internet and “other means” for a minimum period of 30 days.
2. For laws that have a likely impact on a specific group of people, the proposed laws should be made available in such a manner that it gives “wider publicity to reach the affected people”.
3. Draft laws should be made available in regional languages.
4. As a good practice, the concerned ministry could hold public consultations in addition to making the draft available in the public domain.
5. Summary of the feedback received should be made available on the website of the ministry concerned.

²¹Select Committee on Modernisation of House of Commons. (2006) First Report. Available at: <https://publications.parliament.uk/pa/cm200607/cmselect/cmmodern/337/33702.htm>

²²Select Committee on the Constitution of the Legislative Process: Preparing Legislation for Parliament. (2017) Fourth Report of Session 2017-19. Available at: <https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/27/2702.htm>

²³Government of India (GoI). National Commission to review the working of the Constitution. Available at <https://legalaffairs.gov.in/sites/default/files/chapter%205.pdf>

²⁴The National Advisory Council is an advisory body created under the United Progressive Alliance government in 2004. It ceased to exist under the current government. Available at: https://prsindia.org/files/parliament/discussion_papers/1370586595_Public%20Engagement%20with%20the%20legislative%20Process.pdf

²⁵Anuja (2012) ‘NAC Panel drafts pre legislative process’ *Livemint*. 14 September. Available at <https://www.livemint.com/Politics/zwciM9feJ3MasUsafmKkdP/NAC-panel-drafts-prelegislative-process.html>

²⁶GoI. (2014). Pre-Legislative Consultation Policy. Available at <https://legislative.gov.in/sites/default/files/plcp.pdf>



| COASTS OF MUMBAI ARE ACCESSED BY THE KOLI COMMUNITY FOR CATCHING FISH

The Policy advises that the ministries and government departments proactively publish essential elements of the proposed change, including details of estimated assessment of impact on “environment, fundamental rights, lives and livelihoods of the concerned/affected people”. A recent analysis of the implementation of the policy revealed that 142 out of 186 bills introduced in the Parliament had no prior consultation.²⁷

Examining recent proposed/enacted amendments to environmental and related legislation, we found that most laws are not in compliance with the PLC Policy.

- **The CRZ Notification 2019 and the Draft EIA notification 2020 were in violation of the PLC policy.** The environment ministry did not upload the summary of comments received on the draft CRZ Notification on its website. Not only were the translations of the draft CRZ and EIA notifications not made available in regional languages, the submissions received in regional languages were compiled in a careless manner (for details, see Box on Translation of Draft EIA Notification 2020).
- **In proposed amendments to the Forest (Conservation) Act, 1980, the MoEFCC published a consultation paper but granted only 15 days for the public to send their comments.** The issue gained attention on social media; due to public uproar over the Government not following its own policy

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A recent analysis of the implementation of the policy revealed that 142 out of 186 bills introduced in the Parliament had no prior consultation.²⁷”

²⁷ PS, A. (2021) ‘The need for a proper Pre- Legislative Consultation Policy’ *The Hindu*, 26 November. Available at <https://www.thehindu.com/news/national/the-need-for-a-proper-pre-legislative-consultation-policy/article37677558.ece>.

of providing a minimum of 30 days for public comments, the Environment Ministry extended the duration. In fact, the Ministry had to relent on the issue of making translations available and provided the translation of the consultation paper in regional languages on its official website.²⁸

- **In August 2020, the Ministry of Mines allowed only ten days for obtaining public comments on proposed changes to mining regulations.**²⁹
- Recently, the Department of Tourism of Goa published a Draft Jetty Policy and invited public comments over a period of 15 days. The Policy is meant to regulate the operation of passenger cruises on waterways of Goa. The issue of development of jetties in the state met with public protests as they are alleged to be used for transport of coal. In the Loutolim Gram Sabha (village council) the members carried slogans “say no to jetty, say no to coal” against the construction of the jetty at Rassima and Loutolim.³⁰
- **In September 2022, the Centre circulated a Draft Hydropower Policy to the states for their feedback and discussion. However, it has yet to be made available publicly.**³¹

²⁸ Deshmane, A (2021) [Tweet] 21 October, Available at <https://mobile.twitter.com/DeshmaneAkshay/status/1447242911440011275>

²⁹ Ministry of Mines (2020). 'Note on the Proposal for mining reforms'. 24 August. Available at: <https://mines.gov.in/writereaddata/UploadFile/notice24082020.pdf>

³⁰ TOI (2022) 'Goa: Protests against jetty rock Gram Sabha at Loutolim' *Times of India (TOI)*, 5 September. Available at <https://timesofindia.indiatimes.com/city/goa/protests-against-jetty-rock-gram-sabha-at-loutolim/articleshow/93989871.cms>

³¹ Sing, C. S. (2022). 'Hydro policy may link free power with project progress' *Economic Times*. India. Available at: <https://economictimes.indiatimes.com/industry/energy/power/hydro-policy-may-link-free-power-with-project-progress/articleshow/94490440.cms?from=mdr>

Translations of Draft EIA Notification, 2020

A draft EIA Notification was issued on 23rd March 2020 to replace the existing EIA Notification 2006. A case³² was filed in the Delhi High Court, where one of the demands was to provide translation of the draft in all official languages. The petitioner argued that the proposed draft would have effect all over India and therefore translations should be made available in languages other than Hindi and English. The petitioner noted that the CRZ notification issued in 2010 was translated into nine coastal languages.³³ The Court, considering the far-reaching consequences for the public consultation process, ordered MoEFCC to publish translations of the draft in regional languages within ten days of the order. The Government initially (in June 2020) resisted doing the translations but agreed on record to translate the draft almost a year later.³⁴ After the final translations were made public, the consultation process for the draft EIA was reopened and suggestions were invited on the translated versions of the draft in December 2021.

The Central Government, however, specified that this was an exception and a special case, failing to view this judgment as precedent-setting.³⁵ However, the consultation paper on proposed amendments to the Forest Conservation Act in 2021 was also translated, following criticism.³⁶

4.1.2 PRIOR MANDATED NOTICE

Amongst the environmental laws we examined, only the Environment Protection Act, through its accompanying rules, requires the Government to give 60 days' notice to the public before making amendments to notifications issued under the Act. However, the notice can be bypassed "whenever it appears to the Central Government that it is in the public interest to do so". Between 2006 and 2020, 70% of 50 amendments made to the EIA Notification bypassed the rule of giving public notice, using the justification of "public interest".³⁷

Regarding the Draft CRZ Notification, the draft was published only on the ministry website and not in the Gazette. In fact, the Ministry of Environment, Forests and Climate Change

³²Vikrant Tongad v Union of India, WP (C) 3747/2020


³³The CRZ notification was translated due to inputs received during consultations and the recommendations of the MS Swaminathan Committee.

³⁴Deshmane, A (2021) 'Govt blinks on draft EIA law translation. Has a precedent been set?' *The Morning Context*. 1 September, Available at <https://themorningcontext.com/chaos/govt-blinks-on-draft-eia-law-translation-has-a-precedent-been-set>

³⁵Ibid

³⁶Deshmane, A. (2021) [Tweet] 21 October. Available at <https://twitter.com/DeshmaneAkshay/status/1451134332790136832>

³⁷Dinesh, A K. & Kapoor, M. (2020). 'As forums for public scrutiny of environmental decisions shrink, public interest is dealt a blow.' *Scroll.in* 22 June. Available at: <https://scroll.in/article/965276/as-forums-for-public-scrutiny-of-environmental-decisions-shrink-public-interest-is-dealt-a-blow>



Between 2006 and 2020, 70% of 50 amendments made to the EIA Notification bypassed the rule of giving public notice, using the justification of "public interest".³⁷

suggested that the non-publication of the draft in the Gazette be considered an “exceptional case”. The Ministry argued that the purpose of publication of the draft on the Gazette was served by uploading the draft on its website. However, experts felt that mere publication of the draft on the administrative ministry’s website did not facilitate wider engagement. They viewed this omission as a violation of the Environmental Protection Rules, 1986.³⁸

Closing Public Consultation Space

Under the Environment Protection Act, the Central Government has the power to take all measures needed for protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. Using these powers, the MoEFCC has issued notifications such as the EIA and the CRZ Notification. These notifications and amendments automatically avoid parliamentary scrutiny. Further, there is a trend of making major policy changes through office memorandums, without any public notice or consultation. For instance, post facto clearances, wherein projects can obtain environmental clearance after having started operation, were made a reality through an office memorandum delineating the standard operating procedure for projects initiated without environmental clearance.

Our latest analysis shows that up until now, over eighty percent of the changes made to the 2006 EIA Notification in the form of amendments and office memorandum have been made without notifying the public of the proposed change.³⁹

4.1.3 PARLIAMENTARY COMMITTEES

Parliamentary committees offer a way for public participation to occur during the legislative process. Certain bills which propose amendments to a law are referred to the Department-related Standing Committees for their review and submission before the Parliament.⁴⁰ These Committees can call upon experts for their views and also invite public comments.⁴¹ The National Commission to Review the Working of the Constitution recommended that funds be allocated to parliamentary review committees to assist them in holding public hearings and collecting data, but this has not been implemented. As committee reports have a persuasive value, they are potential spaces where public participation can translate into decisions. The Committee on Science & Technology and Environment & Forests, which examines Bills related to environmental legislation,

³⁸ Kapoor, M. (2020). 'Govt. disregarded 90% objections to 2019 Coastal Zone Law: Investigation.' *IndiaSpend*. 26 February. Available at: <https://www.indiaspend.com/govt-disregarded-90-objections-to-2019-coastal-zone-law-investigation/>

³⁹ Based on on-going research by Meenakshi Kapoor and Krithika A Dinesh on changes to the EIA Notification.

⁴⁰ Until 1993, parliamentary committees were constituted on a case-to-case and ad-hoc basis for certain bills. But in 1993, 24 Department-related Standing Committees were constituted to scrutinise bills from all major ministries of the government.

⁴¹ Kanadje and Ram, (2019). 'Parliamentary Committees Increasing their effectiveness.' *PRS Legislative Research*. December. Available at https://prsindia.org/files/parliament/discussion_papers/Parliamentary%20Committees%20Increasing%20their%20effectiveness.pdf

has held consultations with NGOs, civil society and the public in the past on environmental issues of Himachal Pradesh and the Nuclear Safety Regulatory Authority Bill, 2011.⁴²

Review Committee Addresses Public Concerns Even Before they are Raised

The reform of the Coastal Regulation Zone (CRZ) Notification, 2011 began in 2014. The process of review through an expert committee was initiated ostensibly to address concerns raised by coastal states. However, the process remained a closed-door exercise that did not even involve key institutions such as the State Coastal Zone Management Authorities, District Level Committees or coastal communities (see section 4.2.2 for more on District Level Committees). The committee report was not made public until the Central Information Commission directed the MoEFCC to make the report available.

In 2018, the draft CRZ Notification was released for public comment. Despite massive opposition to a fresh notification after just eight years from the law's passage, the new notification was passed. RTI applications revealed that over 90% of close to 35,000 comments received on the draft notification rejected the draft. Comments were also not translated, further increasing the likelihood that decision-makers would not consider them. The MoEFCC finalised the law in January 2019, noting that the objections did not warrant attention because they "principally" fell within the same set of concerns already addressed by the Nayak Committee, constituted in 2014 to review the 2011 Notification. However, the Committee had not met with the public while reviewing the law, and submitted its report in 2015, three years before public comments were gathered on the draft law.

⁴²Gol.(2015) Two Hundred and Sixty Ninth Report Environmental Issues of Himachal Pradesh in General and Shimla in Particular. Available at https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/19/24/269_2016_6_15.pdf; Gol (2012) Two Hundred and Twenty First Report on the Nuclear Safety Regulatory Authority Bill, 2011. Available at: https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/19/24/221_2016_7_15.pdf



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4.2 Avenues for Public Participation in Planning & Governance

Planning exercises often determine land use and consequently environmental outcomes. Areas are sometimes designated as protected, sensitive or fragile and demarcated for conservation purposes. They can also be declared as industrial hubs or special economic zones. Many of these declarations (establishing wildlife sanctuaries, national parks, or special economic zones) do not have any space for public participation or have shown limited effect on the outcomes. For instance, when states were mandated to form Action Plans on Climate Change, several of them obtained inputs from different stakeholders, but the process was inadequate and ineffective in having any perceptible impact on the plans.⁴³ There are, however, some spaces where communities are consulted or have participated in designating the use of an area. In this section, we discuss the emerging spaces with scope for communities to participate in governance. The examples that we discuss are exceptions rather than the rule.

4.2.1 COASTAL ZONE MANAGEMENT PLAN

A coastal zone management plan is a document that guides coastal governance and development. The maps provided with the plans demarcate tidal lines, which then decide the different regulatory zones within the first 500 meters from the high tide line of the sea. Urban and rural zones, water areas and ecologically sensitive areas are marked on these maps. The Coastal Regulation Zone (CRZ) Notification, 2019 requires all coastal states and union territories to prepare such coastal zone management plans (CZMP). **States are expected to conduct public hearings on draft CZMPs. However, several of these have been rushed with “incomplete” CZMPs pushed forward, with the principles of transparency side-lined.**⁴⁴

⁴³Dubash, N.K. and Jogesh, A., (2014). From margins to mainstream? State climate change planning in India. *Economic and Political Weekly*, pp.86-95.

⁴⁴Chaitanya, SVK. (2018) 'Tamil Nadu pushes 'incomplete' Coastal Zone Management Plan, calls for hearing in 12 districts' *The New Indian Express*. 2 April. Available at: <https://www.newindianexpress.com/states/tamil-nadu/2018/apr/02/tamil-nadu-pushes-incomplete-coastal-zone-management-plan-calls-for-hearing-in-12-districts-1795775.html>; Herald (2021) 'Public hearing on CZMP – A FARCE! *Herald*. 7 March. Available at: <https://www.heraldgoa.in/Review/Public-hearing-on-CZMP---A-FARCE/171904>

4.2.2 DISTRICT LEVEL COMMITTEES (DLCs)

The 2011 CRZ Notification introduced District Level Committees (DLCs). DLCs were envisaged as institutions to help the state-level Coastal Zone Management Authorities implement the CRZ Notification. While the coastal authorities are located in the capital cities of coastal states and union territories, DLCs are closer to the coast. With mandatory participation of representatives of local traditional coastal communities, including fisherfolk, the committees are the primary means for participatory governance. For instance, in Gujarat, DLCs are required to take note of and act on complaints of local communities. However, in some cases, DLCs are not constituted and in most cases they are under-utilised.⁴⁵ The latest report of the Comptroller Auditor General of India has found that the DLCs of Tamil Nadu did not have representatives from local traditional coastal communities.⁴⁶ In Andhra Pradesh, DLCs were not constituted and in Goa they were constituted in 2017, six years after the CRZ Notification, 2011 mandated the creation of DLCs. Two districts of Karnataka still did not have DLCs as of March 2021.⁴⁷

4.2.3 CRITICALLY VULNERABLE COASTAL AREAS

CRZ Notification, 2011 provided for notification of critically vulnerable coastal areas (CVCAs). It suggested that 12 sites⁴⁸ across the country and the entire mangrove area of Sundarbans should be notified as CVCAs. The notification further states that these areas will be identified, planned, notified and managed based on guidelines issued by the environment ministry. However, CVCAs are notified through a process of consultation with those inhabiting the coast and dependent on it for their livelihoods. Integrated management plans of the areas will consider the conservation aspects of the region and the needs of local communities, according to the Notification.

⁴⁵ Menon, M., Kohli, K and Kapoor, M. (2015). 'Ignoring the institutions that can save our coastal regions'. *India Together*. 13 April. Available at <https://indiatogether.org/ignoring-dlccs-in-environment-protection-and-coastal-zone-governance-environment>

⁴⁶ Office of the Comptroller Auditor General of India. (2022). Press Release. 'Audit Report on conservation of coastal ecosystems tabled'. 8 August. Available at: <https://cag.gov.in/uploads/PressRelease/PR-PRESS-RELEASE-ON-REPORT-NO-4-ENGLISH-062f0fb0772f048-00009679.pdf>

⁴⁷ Ibid.

⁴⁸ CRZ 2011 has provided an indicative list of 12 sites to be notified as CVCAs. They are Karwar and Coondapur in Karnataka, Gulf of Mannar in Tamil Nadu, Gulf of Khambat and Gulf of Kutch in Gujarat, Malvan and Achra-Ratnagiri in Maharashtra, Vembanad Lake in Kerala, Bhitarkanika in Odisha and Coringa, East Godavari and Krishna in Andhra Pradesh.



In Andhra Pradesh, DLCs were not constituted and in Goa they were constituted in 2017, six years after the CRZ Notification, 2011 mandated the creation of DLCs. Two districts of Karnataka still did not have DLCs as of March 2021.⁴⁷

Communities will be involved in the management of these areas. In Gujarat, Maharashtra and West Bengal, state governments have assigned DLCs the task of identifying CVCAs and other ecologically fragile areas and assist the State Coastal Zone Management Authorities in preparation for area-specific plans for the CVCAs.

4.2.4 ECOLOGICALLY SENSITIVE AREAS

Using the powers granted within the Environment Protection Act, 1986⁴⁹ the MoEFCC has notified ecologically sensitive areas (ESAs) across the country. Once an area is declared as ecologically sensitive, certain activities such as commercial mining, and hydroelectric projects are prohibited, while others are either regulated or permitted.⁵⁰

Many of these ESAs, such as Doon valley and Dahanu, came to be notified as a result of civil society action.⁵¹ Observing that the onset of certain activities/projects were detrimental to the environment and local livelihoods, citizens in these areas started protesting. In the case of Dahanu and Numaligarh, while the environmentally-unsound project (a thermal power plant in Dahanu's case and a refinery in Numaligarh) proceeded, the area was safeguarded against future destruction through these notifications.⁵² However, these areas are also reported to be subject to an elitist approach of conservation which has not paid enough heed to local communities' concerns. The Supreme Court, in June 2022, had directed that 1 km from all protected areas should be declared as ecologically sensitive. Following this, protests started in parts of Kerala because the Supreme Court by making the forest bureaucracy in charge of notification of ecologically sensitive zones extended their powers beyond protected areas. Many believe that this would leave people's rights over forests and livelihoods at the mercy of the



Most of the ESAs notified in the last decade have only been based on interactions between the Centre and the state governments. Public participation has been limited to publication of a draft notification for public review.

⁴⁹Section 3 of the EPA grants power to the central government to take any measures to protect the environment and control environmental pollution and section 5(1) of the EPR authorises the central government to prohibit or restrict any industries, operations or processes in certain areas.

⁵⁰Gol. (2011). Guidelines for Declaration of Eco-Sensitive Zones around National Parks and Wildlife Sanctuaries. 9 February, Available at: <http://moef.gov.in/wp-content/uploads/2017/06/1%20Guidelines%20for%20Eco-Sensitive%20Zones%20around%20Protected%20Areas.pdf>

⁵¹Kapoor, Kohli & Menon (2009). 'India's notified ecologically sensitive areas (ESAs)- The story so far'. Kalpavriksh and WWF India. Available at: https://wwfin.awsassets.panda.org/downloads/indias_notified_ecologicallysensitive_areas.pdf

⁵²Ibid.

forest officials.⁵³ Most of the ESAs notified in the last decade have only been based on interactions between the Centre and the state governments. Public participation has been limited to publication of a draft notification for public review.

4.2.5 PARTICIPATORY/JOINT FOREST MANAGEMENT

The National Forest Policy, 1988 envisaged a role for people in the development, protection and management of forests. The 1990 guidelines for participatory forest management issued by the MoEF involved village communities in regeneration of degraded forest lands.⁵⁴ Soon after, the joint forest management (JFM) was extended to “good forests areas”. The scheme provided for benefit sharing for the JFM committees if they had “satisfactorily” protected the forests for at least ten years. Such limitations and presence of forest officials in the executive committee of JFM took community control away.⁵⁵ Besides, the scheme imposed a uniform institutional structure without any heed to regional diversity⁵⁶ and existing inequities in traditional societies. Similar observations have been made in the case of Van Panchayats of Uttarakhand. The Van Panchayat system, in its original form, empowered the residents of a village to regulate grazing, cutting of branches, collection of fuel and firewood and distribution of forest produce within the village. The system was created in 1921 in response to the colonial rules that cut off community access to forests. While the system shifted the power from the government to the locals, it has been viewed as exclusionary due to local participation being limited to mostly upper caste men. A series of future dilutions in the original management system diminished the decision-making powers of locals and gave more control to forest and revenue department officials.⁵⁷ As of 2021, half of the Van Panchayats were yet to undergo elections, short on funds and dysfunctional.⁵⁸

4.2.6 PEOPLE’S BIODIVERSITY REGISTER

The People’s Biodiversity Register (PBR) is a document that records “information on availability and knowledge of local biological resources, their medicinal or any other use or any other traditional knowledge associated with them”. PBRs got their legal standing in 2004 when the rules accompanying the Biological Diversity Act, 2002 were enacted. However, the practice of keeping PBRs predates the Biodiversity Act. In the 1990s, NGOs and academics prepared PBRs with different purposes - primarily to doc-

⁵³ Malhotra, R (2022) ‘Explained: What are Eco-Sensitive Zones and why are there protests in Kerala against them?’ *Indian Express*. 24 June, Available at: <https://indianexpress.com/article/explained/everyday-explainers/eco-sensitive-zones-supreme-court-verdict-kerala-protests-7988081/>

⁵⁴ Lele, S. (2014). ‘What is wrong with Joint Forest Management?’ In ‘Democratizing forest governance in India’ Pp. 25-62

⁵⁵ Ibid.

⁵⁶ Panigrahi, R. (2006). “Democratization of forest governance: myths and realities. Eleventh Biennial Conference of the International Association for the study of common property. Bali, Indonesia 19-23 June. Vasundhara. Odisha. Available at: https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/2167/Panigrahi_Rekha.pdf?sequence=1

⁵⁷ Lopes, F. (2022). “How Van Panchayats, meant to protect Uttarakhand’s forests, are losing their relevance” *IndiaSpend*. Available at: <https://www.indiaspend.com/governance/how-van-panchayats-meant-to-protect-uttarakhands-forests-are-losing-their-relevance-830561>

⁵⁸ Azad, S (2021). “Over 50% van panchayats dysfunctional in Uttarakhand.” *Times of India*. Available at: <https://timesofindia.indiatimes.com/city/dehradun/over-50-van-panchayats-dysfunctional-in-uttarakhand/articleshow/81975301.cms>

ument eroding local knowledge on medicinal uses of plants, to record land management practices, and map local resources.⁵⁹

The 2004 Rules give Biodiversity Management Committees set up at the local level the responsibility to maintain PBRs. **Biodiversity Management Committees (BMC)** are bodies with people's representatives, responsible for creating people's biodiversity registers. However, their role in creating these registers and finalising the terms of access and benefit sharing of their resources is limited. In 2016, a court case was filed on the implementation of the Act itself; it was found that only 3.5% of the BMCs were constituted. By August 2020, BMCs were set up in all regions and PBRs were prepared in 71% of the areas.⁶⁰ While the pace of setting up BMCs picked up, the public participation aspect has been diluted as the preparation of the registers is often outsourced to consultants, and locals' role is "restricted to that of helping researchers in data collection".⁶¹

4.2.7 DISTRICT MINERAL FOUNDATION

In 2015, through an amendment of the Mines and Minerals (Development and Regulation) Act 1957, the District Mineral Foundation (DMF) fund was created for districts affected by mining operations. The fund is operationalised through levying royalties on mining companies. The purpose of DMF is to implement developmental and welfare projects, mitigate adverse impacts during and after mining, and ensure sustainable livelihoods for affected persons. Identifying affected persons, which is a key aspect of the DMF, is to be done in consultation with Gram Sabhas, as per the central guidelines, "Pradhan Mantri Khanij Kshetra Kalyan Yojana". Further, these guidelines also provide that approval of the Gram Sabhas⁶² is required for all plans, programs and projects in the Scheduled Areas, where the Panchayat Extension of Schedule Areas (PESA) Act, 1996 is

⁵⁹ Gadgil, M., (2000). People's biodiversity registers: lessons learnt. *Environment, Development and Sustainability*, 2(3), pp.323-332.

⁶⁰ Mohan, J. (2020) Final report in compliance with the orders of the Hon'ble Tribunal in O.A. No. 347 of 2016, Chandra Bhal Singh Vs Union of India & Others. National Green Tribunal. 15 September. National Biodiversity Authority. Available at: https://greentribunal.gov.in/sites/default/files/news_updates/FINAL%20REPORT%20OF%20CHENNAI%20N.B.A.%20IN%20A%20347%20OF%202016%20TITLED%20CHANDRA%20BHAL%20SINGH%20&%20ORS%20VS%20UOI%20&%20ORS.pdf

⁶¹ Dutt, B. (2020). 'The Peoples' Biodiversity Register, meant to empower local communities, is leaving them out', *The Hindu*. Available at <https://www.thehindu.com/sci-tech/energy-and-environment/the-peoples-biodiversity-register-meant-to-empower-local-communities-is-leaving-them-out/article32869691.ece>

⁶² Gram Sabha is the general assembly of all adults of a village



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applicable (see section 4.3.3 for details on PESA). Each state government is mandated to implement DMF, including decisions on who comprises the governing bodies. These governing bodies have poor representation of affected people, with only two states (Rajasthan and Karnataka) out of the twelve having affected people in these bodies.⁶³ No formal process or representation was given to Gram Sabhas while instituting and implementing DMFs.⁶⁴ And some states are eliminating the role of Gram Sabha in DMF fund utilisation. Telangana has transferred the powers and functions of Gram Sabha to a DMF committee that administers and executes projects under DMF. A study by the Centre for Science and Environment identifies this as “a classic case of how desperately DMFs are being misappropriated to serve ‘special interests’ over the needs of mining-affected people”.⁶⁵

Highlights

Coastal Zone Management Plans (CZMPs) are expected to be based on public hearings. But many states have rushed ahead with incomplete CZMPs.

District Level Committees (DLCs) were established to help the state-level coastal zone management authorities implement the CRZ Notification to enhance participatory governance. However, many DLCs are underutilised, and some have yet to be set up.

Critically Vulnerable Coastal Areas are to be notified through a process of consultation with coastal communities dependent on coastal resources for their livelihoods.

The Joint Forest Management programme has some scope for people’s participation in forest governance but is controlled by forest officials.

Biodiversity Management Committees have people’s representation and are responsible for creating People’s Biodiversity Registers. However, the people’s role has been limited to data collection.

The District Mineral Foundation Fund, created for districts affected by mining operations, is meant to identify affected people in consultation with Gram Sabhas. However, funds are often misused.

⁶³ Banerjee, S., Shalya, C., Valaparla, S.K., Ranjan, R., Dhingra, A. and Sarangi, A. (2018). ‘People first: District Mineral Foundation (DMF), status report 2018’. *Centre for Science and Environment*. New Delhi

⁶⁴ Ibid

⁶⁵ Ibid

4.3 Avenues for Public Participation in Project Decisions

Before any project or activity that is likely to have an impact on the environment commences, it is required to obtain permissions from various authorities established under different laws, depending on the kind of project, and its impact and the location of the project. For instance, if the project involves forest land, developers are required to apply for a forest clearance. If the project falls within regulated areas of the coasts, the applicant must follow the process under the CRZ Notification, 2019. If projects are required to undertake any non-forestry activity in protected areas, the provisions of the Wildlife Protection Act, 1972 come into play.

4.3.1 ENVIRONMENTAL IMPACT ASSESSMENT NOTIFICATION 2006

The public consultation process under the EIA Notification provides a space for people to put forth their concerns. The process was established in 1997 through amending the 1994 EIA Notification. Typically, the public consultation process under EIA Notification has two parts: a public hearing to ascertain the concerns of local affected persons; and obtaining written responses from other concerned persons having a ‘plausible stake’ in the environmental aspects of the project or activity. When the EIA Notification was revamped in 2006, one of the major changes with respect to the public hearing process was the addition of a provision that the public hearing can be foregone if the regulatory authority feels that it is not possible to conduct the hearing in a manner that will allow the concerned local people to express their views freely.⁶⁶

The process has been one of the most contested spaces of public participation within environmental regulation. Dilutions by the State, litigation on various aspects of a public hearing and reports of dubious processes followed on the ground are some of the long-standing concerns around the public hearing process.

That this provision of the EIA Notification is ‘used’ by people widely as a platform to put forth their opinions, signals that people are keen to have a say in development projects that shape their lives. However, the public hearing or consultation is conducted at a stage of the project where the process of land acquisition has begun, finances are secured, detailed project reports prepared, and the parties to implement the project identified. The stage at which the public hearing is conducted indicates that it is not intended for understanding whether people “want” the project or not. The only requirement as per the Notification is that the project proponent responds to concerns raised by the public. The consultation is therefore merely an exercise to, at minimum, check a box and to understand likely impacts and mitigate them, at most. Speaking about the purpose of a public hearing, the Delhi High Court has said that public hearings are a form of social audit, which provides, “where necessary, social acceptance of a project and also gives an opportunity to the Expert Appraisal Committee to get information that may not be

⁶⁶ CSE (n.d.) EIA Legislation, Centre for Science and Environment, Available at: <https://www.cseindia.org/eia-legislation-402>

disclosed to it or may be concealed by the proponent.” Courts have also opined that public hearings are an “essential component of the EIA process”, “an embodiment of the principles of natural justice”, and “a form of participatory justice”.⁶⁷

While the public consultation process under EIA notification is undoubtedly an important avenue for people to raise issues of concern and voice their opinions, the practice of public hearings has been notoriously low quality. The spaces for public hearings, especially in resource rich areas, are known to be policed places, in some instances even cordoned off to the directly affected communities.⁶⁸ A recent public hearing in Odisha on an aluminium plant is reported to have used drones to police the hearing.⁶⁹ In another instance, the National Green Tribunal, the special court for adjudicating environmental matters in India, was presented with evidence of people with guns in a video clip of a public hearing for a ‘critical’ thermal power plant in Uttar Pradesh. The Tribunal consequently found the public hearing to not have been conducted fairly and freely, and set aside the environmental clearance given to the plant.⁷⁰

Who can participate?

The text of the original EIA Notification states that the public hearing process is for local affected persons. However, in a subsequent court decision⁷¹, the court established that since the Notification does not *prima facie* preclude or prohibit those not living in close proximity of the project site from participating, everyone is permitted to participate and express their views.

Notice of public hearing:

The notice of public hearing is stipulated to be at least 30 days before the date of a public hearing. According to the EIA Notification, the notice should be published in one national daily and

⁶⁷ See S Nandakumar v. The Secretary to Government of Tamil Nadu Department of Environment and Forest and Ors., W.P. Nos. 10641 to 10643 of 2009, High Court of Madras, Centre for Social Justice v Union of India

⁶⁸ Kalshian, R. ed., (2007). ‘Caterpillar and the mahua flower: Tremors in India’s mining fields’. *Panos South Asia*.

⁶⁹ Sundaresan, R. (2021). ‘How Odisha Government Kept The Public Out Of A Public Hearing For A Bauxite Mine’. *Article 14*. 21 November. Available at <https://article-14.com/post/how-odisha-government-kept-the-public-out-of-a-public-hearing-for-a-bauxite-mine-619f0831a5c44>

⁷⁰ Debadyo Sinha and Ors v Union of India and ors, <https://www.casemine.com/judgement/in/5c062bf1b338d16e11efe95c>

⁷¹ Samarth Trust v Union of India



While the public consultation process under EIA notification is undoubtedly an important avenue for people to raise issues of concern and voice their opinions, the practice of public hearings has been notoriously low quality. The spaces for public hearings, especially in resource rich areas, are known to be policed places, in some instances even cordoned off to the directly affected communities.⁶⁸

one regional vernacular daily. The notification also states that where newspapers do not reach, authorities should inform the local public through beating of drums, advertisement or announcement on radio or television. The draft EIA Notification, 2020 proposed a reduction in the minimum period for notice of public hearing before the date of holding the public hearing from 30 to 20 days. The issue was highlighted by several campaigns, civil society organisations and researchers. In October 2022, the draft expired. While this change has not been incorporated as yet, several of the proposed dilutions have been inserted into the EIA Notification 2006 through amendments and office circulars.

Information available prior to a public hearing:

Before a public hearing the summary of the EIA report in English and the official local language, as well as the draft EIA report are made available in specified local offices. EIA reports present a two-fold problem for the users. First, EIA reports are often written in very technical language, making it difficult for those likely to be affected to understand. Second, the quality and accuracy of these reports are often questionable. These reports are made by accredited consultants hired and appointed by project proponents, raising doubts about their independence. Further, many reports have contained false or inaccurate information.⁷²

Venue:

As per the EIA Notification, public hearings should be held at or in close proximity to the site. In practice, this is determined by the State Pollution Control Board, and could mean a variety of places. For instance, in a public hearing conducted in 2005 for the Orsapat Bauxite Mining project in Odisha, affected community members needed to travel through dense forests for two days to reach the venue of the public hearing.⁷³ Following litigation⁷⁴, the venue of the public hearing was made more specific. As per the court judgment, the venue should be “as near as possible to the site of the proposed project or to the affected village”. It should not be farther than the headquarters of the taluka (a section of a district in India) of either of these

⁷² Dutta, R. (2019). ‘Failed by NGT, saved by SC’. *Deccan herald*. 29 April. Available at <https://www.deccanherald.com/opinion/in-perspective/failed-by-ngt-saved-by-sc-731335.html>

⁷³ Kalshian, R. ed. (2007). ‘Caterpillar and the mahua flower: Tremors in India’s mining fields’. *Panos South Asia*.

⁷⁴ Centre for Social Justice v Union of India



The draft EIA Notification, 2020 proposed a reduction in the minimum period for notice of public hearing before the date of holding the public hearing from 30 to 20 days.

places. Interestingly, the MoEFCC, which often issues office memorandums on procedural matters on the pretext of court decisions, has not issued a guideline or an amendment updating the public hearing location requirements as per the court's judgment.

Presiding Authorities:

The 1994 EIA Notification provided for a panel to oversee the public hearing proceedings, with subsequent discussion of who the panel should include (e.g. board representatives, state environment department, senior citizens, environmentalists, etc.). However, the practice of a panel was abolished in 2006, with the issuance of the new version of the EIA Notification. Now, the public hearing is presided over by one mandated authority, which is usually the district collector, district magistrate, deputy commissioner or his or her representative not below the rank of an additional district magistrate or an authorised district-level officer not below the rank of sub-divisional magistrate.

Closing of a public hearing:

Once the public hearing concludes, the minutes of the hearing are read out in the local language to the attendees and signed by the presiding authority. The public hearing is also video-recorded.

After a public hearing:

The materials from the public hearing are examined by the Expert Appraisal Committee. By law the project proponent should incorporate, *“the concerns expressed in the public hearing along with action plan and financial allocation, item wise, to address those concerns”*. However, authorities are not bound to accept public opinion on project proposals. In the case of limestone mining in Bhavnagar district of Gujarat, the project was granted clearance despite over 90% of landowners opposing the takeover of their land for extracting limestone.⁷⁵ Indeed, when the landowners raised a complaint with the expert appraisal committee, the committee accepted the submission of the district collector overseeing the public hearing that the concerns

⁷⁵ Kapoor, M. (2021). 'How Limestone Mining Has Pitted Gujarat's Farmers Against Govt'. *IndiaSpend*. 6 August. Available at <https://www.indiaspend.com/gujarat/how-limestone-mining-has-pitted-gujarats-farmers-against-govt-765778>.



Interestingly, the MoEFCC, which often issues office memorandums on procedural matters on the pretext of court decisions, has not issued a guideline or an amendment updating the public hearing location requirements as per the court's judgment.

of the public were “duly recorded”⁷⁶. **There is also no system of providing ‘feedback’ to the participants to ensure any meaningful response to concerns raised at the hearing. Since participation in effect is limited to the hearing, its meaning is perfunctory and superficial.** Accountability is limited to preparation of an action plan ‘addressing’ public concerns. However, the action plans often do not fully respond to the issues raised in a public hearing. Once a proposal is cleared, the project owner is mandated to provide the final environmental clearance letter for public view.


KEY CONCERNS PERTAINING TO THE CURRENT PUBLIC CONSULTATION PROCESS UNDER EIA

COMMUNICATION	Short notice period, elusive notices of public hearings
TRANSLATION	Only the summary of the EIA report is translated into the local language
TECHNICALITY	EIA reports are often very technical and difficult to understand
CONFLICT OF INTEREST	Project proponents hire consultant to prepare the EIA reports, resulting in conflict of interest
QUALITY	Incomplete information, shoddily prepared EIA reports with inaccuracies
FOLLOW-UP	Limited to written responses to issues raised
POWER DIFFERENTIAL	Power imbalance between company, government and affected communities can lead to intimidation of those affected

4.3.2 RIGHT TO FAIR COMPENSATION, TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

The Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 provided space for prior consent of landowners in cases where private parties were involved. It mandated social impact assessments (SIA) and Rehabilitation and Resettlement (R&R) packages to all affected families even beyond land-

⁷⁶Chaturvedi, R., (2004). ‘Environmental Hearings: Participatory Forums or a Mere Procedure?’. *Economic and Political Weekly*, pp.4616-4619.



SEVERAL ROAD WIDENING PROJECTS ARE ONGOING IN THE HILLS OF HIMACHAL PRADESH

owners, and increased the quantum of compensation. Both social impact assessments and determination of the R&R package required public hearings. **However, several state governments have diluted the provisions pertaining to social impact assessments and consent, through state-level acts and state rules notified under the Central Act.**⁷⁷ The changes followed a failed attempt by the National Democratic Alliance government to amend the law through a series of ordinances.⁷⁸

Notification of Public Consultation

The Notification stating the purpose for land acquisition and to begin the consultations for SIA is issued by the State Government. This is to ensure that the social impacts of the project are assessed and recorded and to ensure the project is for a 'public purpose'. The notification is provided in the local language to the Panchayat (village council), Municipality or Municipal Corporation of the area where the land is being acquired. A copy of the notification is made available in the offices of the District Collector, Sub divisional Magistrate and block level revenue officer and on the website of the State Government.

Intersection of Land Acquisition and Environmental Clearance

The SIA has to be made available at the time of the EIA if the project for which the land is being acquired needs to obtain environmental clearance under the EIA Notification, 2006. As the EIA process often occurs in parallel with the land acquisition process, the two intersect. EIA Notification, 2006 allows projects involving acquisition of land to fence the land and construct a temporary structure on it prior to the grant of environmental clearance. Although, the MoEFCC has clarified that such provisions do not entitle the project proponent to claim *fait accompli* with regard to grant of the environmental clearance, there have been instances in the past when project developers have invoked that "substantial physical progress" has been made and obtained environmental clearance.⁷⁹

⁷⁷ Kohli, K & Gupta, D (2016) 'Mapping Dilutions in a Central Law'. *Centre for Policy Research* Available at https://cprindia.org/system/tdf/working_papers/Mapping%20Dilutions%20in%20a%20Central%20Law.pdf?file=1&type=node&id=5562&force=1

⁷⁸ Ibid.

⁷⁹ Sinha, A. (2016). 'Art of Living event: How Sri Sri Ravi Shankar got away with *fait accompli*'. *The Indian Express*. 10 March. Available at: <https://indianexpress.com/article/explained/art-of-living-event-how-sri-sri-ravi-shankar-got-away-with-fait-accompl/>

Missed Opportunities, Increased Risks

Land acquisition under the RFCTLARR Act is one process that mandates consent of a considerable proportion of those getting displaced and a social impact assessment, including public hearing.

While states have shrunk the possibilities of public participation in assessment of environmental and social impacts of land acquisition projects, the high costs of acquisition have pushed the concerned authorities to attempt other workarounds. In a move to reduce land acquisition, the National Highway Authority of India carried out vertical cutting of hills in Himachal Pradesh instead of horizontal cutting that required more land. This led to landslides during rains.⁸⁰

Land Pooling Touted as Participatory Land Development

As a way around consent, high compensation and the need to conduct social impact assessment under the RFCTLARR Act, 2013, a land pooling mechanism has been promoted across the country. The land pooling model is based on a partnership between landowners and the developer, often involving State Government and private developers, in which landowners get a portion of lost land back after development. For instance, in Dholera the State Government of Gujarat would take 50% of farmers' land without compensation and return the other half at a different site after adjusting the price of the half taken without compensation. While the Gujarat Government proclaims that the scheme is voluntary, the Gujarat Town Planning and Urban Development Act assumes 'public purpose' for town planning schemes, which allows for forcible acquisition and obstructs obtaining genuine consent. Under RFCTLARR Act, for public private partnership projects, consent of 70% of landowners is mandatory. But the language of consultation and 'public purpose' in the Gujarat policy is a step down from the owners' consent required under the RFCTLARR Act.⁸¹ In Delhi, the development authority has been failing to implement the land pooling policy due to lack of contiguous parcels of land for development. As a solution, the Delhi Development Authority is currently considering amending its development law to make it mandatory for remaining landowners to join the pooling scheme once 70% of the owners have voluntarily agreed to pool the land, bringing the 'voluntary' nature of the land pooling scheme into question.⁸²

⁸⁰ IANS (2018). 'Himachal: Rains wash away INR 2739 cr NH-22, geologists blame unscientific design'. *National Herald*. 4 September. Available at: <https://www.nationalheraldindia.com/india/himachal-rains-wash-away-indian-rupee2739-cr-nh-22-geologists-blame-unscientific-design>

⁸¹ Sampat, P & Sunny, S. (2016) 'Dholera and the myth of voluntary land pooling' *Manupatra*. Available at: <http://docs.manupatra.in/newsline/articles/Upload/E0DBDE12-5CB4-4BBB-AC8F-97001D495266.pdf>

⁸² Kumar & Tyagi (2022). 'Delhi's land pooling policy can't go ahead as landowners' concerns remain unresolved'. *The Wire*. 1 June. Available at: <https://thewire.in/political-economy/delhis-land-pooling-policy-cant-go-ahead-as-landowners-concerns-remain-unresolved>



| KINNAUR IS A SCHEDULE V AREA IN THE STATE OF HIMACHAL PRADESH

4.3.3 PROVISIONS OF THE PANCHAYATS (EXTENSION IN SCHEDULED AREAS) ACT, 1996

The provisions of the Panchayats (Extension in Scheduled Areas) Act 1996 or PESA mandate that Gram Sabhas (village assemblies) or Panchayats are consulted before land acquisition happens in scheduled areas for development projects, as well as before resettling or rehabilitating persons affected by projects in scheduled areas. As per a written reply of the Minister of State for Panchayati Raj, only six out of the ten states in which PESA is applicable have made their state rules.⁸³

In Chhattisgarh, there is an on-going movement opposing proposed coal mines in the Hasdeo Aranya region. Recognising that formal consultation processes with likely-to-be-affected groups happen late, one of the strategies adopted by the people in Hasdeo Aranya is to proactively intervene at an early stage of the mining proposal – i.e., during the allocation or auction of a coal block.⁸⁴ Gram Sabhas were convened and proposals for coal auctions were rejected through resolutions. This was followed by communication of these resolutions to relevant government authorities.⁸⁵ However, despite the protests, coal blocks were still allocated to companies for development.

In the case of the Shongtong Karcham Hydropower project, people were able to execute an agreement with the company, Himachal Pradesh Power Corporation Limited because of the requirement of Gram Sabha's consent before commencement

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As per a written reply of the Minister of State for Panchayati Raj, only six out of the ten states in which PESA is applicable have made their state rules.⁸³”

⁸³ Ministry of Panchayati Raj. (2022). Strengthening of PESA Act. 2 February. Available at: <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1794826>

⁸⁴ Gupta, P. (2022) 'Harnessing Constitutional And Policy Spaces For Organized Resistance Movement To Save Hasdeo Aranya Forests' In book: Organizing Resistance and Imagining Alternatives in India, Cambridge University Press

⁸⁵ Ibid.

of any activity in the scheduled district of Kinnaur of Himachal Pradesh (see Section 6.2 for details).

In 2013, the MoEF passed an order exempting linear projects such as construction of roads, canals, and laying of pipelines and transmission lines which spread across several villages from the requirement of obtaining consent of Gram Sabha.⁸⁶ In Samatha V Union of India, the High Court of Andhra Pradesh, however, found the 2013 order inconsistent with the PESA Act.

Municipalities Extension of Scheduled Areas Bill 2001:

Rural areas with increasing population become qualified for conversion into urban areas and governance by municipalities. The 50th report of the Standing Committee on Urban and Rural Development (2003) notes that 181 urban local bodies exist in 86 districts in Fifth Schedule areas.⁸⁷ By 2010, over 200 urban local bodies existed in urban scheduled areas.⁸⁸ However, there is no legal provision for facilitating tribal rights in these newly formed municipalities. In 2001, the Municipalities Extension to Scheduled Areas (MESA) Bill was first proposed with provisions for self-governance by the urban tribal population. In November 2021, the MESA bill was reintroduced in the parliament but has yet to be discussed.⁸⁹

4.3.4 FOREST CONSERVATION RULES WITH SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Rules 2012 established a procedure for recognition of rights of those living in a forest area for 75 years or three generations. The law vests various rights in forest dwelling-Scheduled Tribes and other traditional forest dwellers. These include the individual right of habitation, self-cultivation for livelihood, access and use of minor forest produce and community-based rights of habitation, and management of forest resources.

Gram Sabhas are given an important role in the FRA, as they initiate the process for determining individual and community forest rights, receive, prepare and maintain

⁸⁶ Gol. (2013). Diversion of Forest land for non-forest purposes under the Forest (Conservation) Act, 1980- ensuring compliance of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006. 5 February. Available at: [http://forestsclearance.nic.in/writereaddata/public_display/orders/1503732839\\$FRA.pdf](http://forestsclearance.nic.in/writereaddata/public_display/orders/1503732839$FRA.pdf)

⁸⁷ Ministry of Urban Development and Poverty Alleviation. (2003). Fiftieth Report Standing Committee on Urban and Rural Development. November. Available at: https://prsindia.org/files/bills_acts/bills_parliament/2001/scr1193221700_Provisions_of_the_Municipalities.pdf

⁸⁸ Bijoy, C.R. (2021). 'How a history of broken promises has let down India's scheduled areas.' *The Wire*. 9 November. Available at: <https://thewire.in/rights/how-a-history-of-broken-promises-has-let-down-indias-scheduled-areas>

⁸⁹ Joseph, J. (2021). 'Tribal panchayats in protected areas being illegally converted into municipalities.' *Frontline*. 22 September. Available at: <https://frontline.thehindu.com/the-nation/investigation-pushed-even-from-the-margins-tribal-panchayats-in-protected-areas-illegally-being-converted-to-municipalities/article65893689.ece>

a list of claims, and pass resolutions regarding claims. The Gram Sabhas constitute Forest Rights Committees through election. They consist of 10-15 members from the Gram Sabha, where at least two thirds of members are from Scheduled Tribes. These committees assist the Gram Sabhas in processing and verifying claims. Once claims are verified by the committees, they return to the Gram Sabhas to pass resolutions on the claims, through simple majority. A quorum of at least half of the Gram Sabha is required, with at least one third women and half the number of claimants or their representatives present.

Grant of community forest rights provides opportunities for participation in the protection and management of the allocated area. For instance, in Simlipal in Odisha, a community forest rights land deed was granted in 2015. Having a history of forest protection and a committee established prior to receiving official community forest rights, a rechristened committee now meets twice a month to discuss issues of forest protection.⁹⁰

Participation in the form of consent comes into play in the legislation in two processes:

(i) Project decisions: Forest diversions for non-forest purposes need to acknowledge the sought or approved forest rights claims on a forest area.⁹¹ This requires obtaining consent of the Gram Sabha for forest diversion to serve as evidence of completing recognition of rights under the FRA. However, the recent Forest Conservation Rules (FCR) 2022, which aim to make forest clearance 'efficient', pass the responsibility of ensuring compliance with the FRA through the consent of Gram Sabhas to state governments. Previously, the Centre (National Government) would ask for compliance with forest rights before diverting any forest land for non-forest use. The rules were tabled in Parliament during the Monsoon session of 2022 and two motions were moved for their annulment.⁹²

⁹⁰ Prava, P (2020) 'In Odisha's Similipal park, recognition of community rights paved the way for sustainable growth'. *Scroll.in*. 29 June, Available at <https://scroll.in/article/965361/in-odishas-similipal-park-recognition-of-community-rights-paved-the-way-for-sustainable-growth>

⁹¹ See letter dated 30.07.2009 of the MoEF to all state governments on ensuring compliance of the FRA

⁹² Nandi, J. (2022). Centre overhauls process to grant clearances for projects on forest land. *Hindustan Times*. Available at: <https://www.hindustantimes.com/india-news/centre-overhauls-process-to-grant-clearances-for-projects-on-forest-land-101663700974908.html>



Gram Sabhas are given an important role in the FRA, as they initiate the process for determining individual and community forest rights, receive, prepare and maintain a list of claims, and pass resolutions regarding claims.

(ii) **Critical wildlife habitats: forest rights within critical wildlife habitats in protected areas can be modified or resettled if certain conditions are fulfilled. For instance, state governments have to establish that the presence of rights holders causes irreversible damage and threatens the existence of wild animals. Another condition that needs to be fulfilled is having the free informed consent of the Gram Sabhas to proposed resettlement options. A study on the implementation of the FRA in protected areas found that relocation was taking place even in buffer areas, which are outside critical wildlife habitats.**⁹³

Access to Information

One of the prerequisites for effective public participation is access to information. Under some of the environmental laws in India, there are only a few provisions that explicitly provide for public access to information. For instance, the EIA Notification makes it mandatory to display documents such as terms of reference and environmental clearances in the public domain. Similarly in the Air and Water Act, information about the consents granted and standards of emission are to be made available to the public for inspection.⁹⁴

The importance of access to information in environmental decisions was highlighted in the Save Mon Federation case. As per the NGT Act, a person filing against an environmental clearance must file it within thirty days from the date of the order. Beyond this, a delay of 60 days may be condoned. In the Save Mon Federation case, the court held that the communication of the environmental clearance is complete only when the order is available on the Ministry's website.⁹⁵

Further, the Right to Information (RTI) Act enacted in 2005 provides citizens a provision to request information from the government, to which governments need to mandatorily respond within specific time periods. One of the provisions of the RTI Act is that public authorities disclose information on a *suo motu* basis so that citizens have to resort to RTI requests at a minimum. In the case of the Shailesh Nayak committee review of the CRZ Notification of 2011, the Central Information Commission directed the MoEFCC to disclose the committee report, which it had not made public for long. The report included findings of the review of the CRZ Notification and was slated to decide the future of coastal areas and communities.

4.4 Extending Possibilities of Participation

Participation is often envisaged in planning, project decisions and law & policymaking processes. In this section, we examine the structures within law where there is scope for participation in other spaces – such as enforcement of laws, monitoring project com-

⁹³UN (2017) The Status of the Forest Rights Act (FRA) in Protected Areas of India A Draft Report Summary, UN, Available at <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/01/Summary-Final-Implementation-of-FRA-in-PAs.-Final-14.11.2017-as-printed.pdf>

⁹⁴Ghosh, S. ed., (2019). 'Indian environmental law: Key concepts and principles'. *Orient Black Swan*.

⁹⁵Ghosh, S., (2013). Access to Information as Ruled by the Indian Environmental Tribunal: Save Mon Region Federation v. Union of India. *Review of European, Comparative & International Environmental Law*, 22(2), pp.202-206.

pliance with environmental conditions, and local-level structures that can be stretched further to ensure meaningful and effective public participation.

Below we examine the key laws formulated and authorities constituted by the states, which extend the possibilities of citizens' involvement in environmental policymaking.

4.4.1 STATE POLLUTION CONTROL BOARDS

Multiple environmental laws (e.g. the EIA Notification, CRZ Notification, Air and Water Act) task government bodies with monitoring and enforcement. However, there is surprisingly limited space in the law for citizens to lodge complaints in the event of non-compliance. Nevertheless, there are instances of citizens writing complaints to pollution control boards (PCB) and eliciting responses. The Central Pollution Control Board in 2016 issued guidelines to report complaints about air pollution through social media platforms such as Facebook and Twitter, a mobile application Sameer, or through letters.⁹⁶ A central system was also created to redress air pollution complaints made in the National Capital Region, which required the board to respond within 24 hours of a complaint.

However, there is scope for wider public participation under India's pollution laws. Both the Air and Water Act have clauses that enable pollution control boards to empower "any person" to perform their functions. Arguably this provision can be used to empower citizens to perform functions of inspection and to monitor enforcement of environmental conditions. At the time the Air and Water Act was being drafted, the PCBs may have been conceived merely as administrative bodies, and not as platforms citizens could approach for redress. But the regional offices of the State Pollution Control Boards remain the primary environmental bodies and governmental authorities mandated to monitor and enforce environmental compliance. They are potentially powerful spaces for citizens to engage more closely. **In fact, a 2002 study carried out at the instance of the Planning Commission acknowledged that the PCBs are providing a "public service".⁹⁷ The report went on to say that the ability of the SPCBs in exercising their powers "is affected by the interference of powerful interest groups and pressure groups". In fact, earlier in 2000, the Planning Commission recommended active involvement of affected populations in industrial clusters in periodic monitoring of samples generated by polluting industries and testing in private labs. The Commission felt that this would "prevent a polluters-authorities nexus".⁹⁸**

In December 2015, aiming to ease regulations for industry, the Ministry of Industry and Commerce published the Business Reform Action Plan for States/Union Territories. This was done to purportedly "increase transparency and efficiency of various govern-

⁹⁶ CPCB (n.d) Guidelines for Management of Complaints Related to Air pollution in Delhi-NCR, Available at https://cpcb.nic.in/air/Citizen_Guidelines_Air_Complaints.pdf

⁹⁷ Program Evaluation Organization (PEO). 2002. Evaluation study on the functioning of state pollution control boards. Available at: <http://www.indiaenvironmentportal.org.in/files/spcb-final.pdf>

⁹⁸ Program Evaluation Organization (PEO). 2000. Evaluation study on the functioning of state pollution control boards.

ment regulatory functions and services for business in India.” The policy, amongst other recommendations, asked PCBs to frame their inspection policy/guidelines for different categories of industries for “satisfactory compliance of environmental regulations and ensure inspections are transparent”.⁹⁹ **Most states only imagine complaints coming from the industries and project owners who require consent and permission. However, Karnataka and Odisha SPCBs have considered the need for site inspection as a step towards taking action on citizens’ complaints.** Karnataka, as part of its inspection policy, notes steps to be taken in addition to the inspection procedure, in order to respond to complaints. Similarly, the 2002 study of pollution control boards notes that the West Bengal SPCB organises public hearings to resolve citizen complaints. On receipt of a complaint the board officials conduct site inspections and on the basis of the inspection report organise a hearing for the complainant and the respondent in order to “mitigate their differences”.¹⁰⁰ Certain other state institutions have allowed platforms for accepting grievances. For instance, the Gujarat and West Bengal State Coastal Zone Management Authorities (SCZMA) hold open days for the public to report their grievances. **However, it is not clear how authorities are responding to the complaints.**

4.4.2 COMMON LANDS LAWS

Most states have laws to protect village common lands. Common lands are often designated as ‘wastelands’ in government records but are in active use by nearby communities. They could be village common ponds, scrub forests from where the poor collect fuelwood and fodder, marshlands or snow-covered areas.

In Punjab, the Punjab Village Common Lands Act governs the use of village common lands, and in Gujarat a Gauchar Policy has been notified for the same. The Gauchar policy mandates that 40 acres of land is to be maintained for 100 cattle heads. The policy prohibits the parcelling of Gauchar land for any industrial or commercial purpose. It provides an opportunity for those dependent on common lands to seek their return to Gram Panchayat in case of commercial takeover. In Punjab, the district Development and Panchayat Officers have been given powers to adjudicate on issues related to “Jumla Mustrarka Malkan,” or village common land.¹⁰¹

⁹⁹The Business Reform Action Plan as published by the Government of India provides the below guidance for states and UTs to prepare their inspection policies:

- Identify the list of industries that need to be inspected based on “computerized risk assessment”.
- Publish the checklist for inspection.
- Allow the industries to view and download the inspection report.
- Mandate that same inspector does not inspect an industrial unit twice consecutively.
- Link the inspection with online application and approval system
- Mandate that the inspection report is to be submitted within 48 hours of inspection
- Exempt non-polluting industries with a history of satisfactory compliance from environmental compliance inspection, or allow self-certification (in lieu of conducting physical inspections)
- Allow third party certifications instead of Departmental inspections under all environment/pollution laws for medium risk industries

¹⁰⁰Program Evaluation Organization (PEO). (2002) Evaluation study on the functioning of state pollution control boards. Available at: <http://www.indiaenvironmentportal.org.in/files/spcb-final.pdf>

¹⁰¹Tribune News Service. (2022) ‘DDPOs given powers to decide village common land disputes in Punjab’. *The Tribune*. 8 June. Available at: <https://www.tribuneindia.com/news/punjab/ddpos-given-powers-to-decide-village-common-land-disputes-402205>

In September 2021, the Supreme Court of India decided that use of Gauchar land by the State or any third party alike for any purpose other than what is permitted is not allowed.¹⁰² However, contrasting laws have been passed in Gujarat. Take the case of the Gujarat Land Grabbing Act 2020, which provides for removal of ‘encroachments’ on government lands. These ‘encroachments’ are often structures of those who have been residing in and/or dependent on forests for generations. The law comes into conflict with the FRA. Karnataka has a similar Act: the Karnataka Land Grabbing Prohibition (Amendment) Act, 2020. However, the recent Karnataka Land Grabbing Prohibition (Amendment) Bill, 2022 prohibits criminal proceedings against farmers who have encroached upon government-owned rural lands. The Bill was recently passed in the State Legislative Assembly.



In September 2021, the Supreme Court of India decided that use of Gauchar land by the State or any third party alike for any purpose other than what is permitted is not allowed.¹⁰²

¹⁰² Kakkar (2021) ‘Use Of Gauchar Land By State Or Any Third Party Contrary To What Is Permitted Cannot Go On: Supreme Court’. *LiveLaw.in*. 9 September. Available at <https://www.livelaw.in/top-stories/supreme-court-use-of-gauchar-land-by-state-third-party-for-other-purposes-not-allowed-181223>

4.4.3 LOCAL LEVEL GOVERNANCE STRUCTURES

The scope for participation increases with decentralisation, as it makes governance structures more accessible and gives the public a chance to interact more closely with local authorities. Article 243W of the Constitution gives municipalities the authority to function as self-governing institutions. They are entrusted to prepare plans for economic development and social justice, and to perform a list of functions including urban planning, public health, and solid waste management. However, studies have found that municipalities and similar urban local bodies lack autonomy and have only limited powers in practice.¹⁰³

In 2005, through the Jawaharlal Nehru National Urban Renewal Mission, states were mandated by the Ministry of Urban Development to enact the Community Participation Law. The law itself ironically was pushed through without any public consultation.¹⁰⁴ This policy essentially mandates states to create lower-level governance structures (lower than Ward Committees) with elected members.

Locating Power to the Local Level

District collectors are also empowered to “monitor compliance, check violations, seal illegal wells, launch prosecution against offenders, and institute grievance redressal related to groundwater”. The 2015 Central Ground Water Authority Guidelines empower district collectors to also grant NoCs for groundwater use. In the case of Gujarat wind projects, district collectors pass orders for land allocation for renewable energy projects. In the absence of any prescribed grievance redress mechanism in several laws concerning natural resources, people take their grievances to district collectors.

4.4.4 LOCAL AREA DEVELOPMENT FUND IN HIMACHAL PRADESH (STATE LEVEL)

The 2006 Hydropower policy of Himachal Pradesh has provisions for a Local Area Development Fund. The policy requires that project developers deposit 1 to 1.5 percent of the project cost into an account with the District Commissioner, the Local Area Development Fund (LADF).¹⁰⁵ The fund is allocated by the Local Area Development Authority (LADA) for local development activities. The authority comprises the Sub-district Mag-

¹⁰³ Kaur, P and Gupta, S. (2020). 'Examining urban local governance in India through the case of Bengaluru'. *PRS Legislative Research*. 24 December. Available at: <https://prsindia.org/theprsblog/examining-urban-local-governance-in-india-through-the-case-of-bengaluru>

¹⁰⁴ Coelho, K., Kamath, L. and Vijaybaskar, M. (2011). Infrastructures of consent: Interrogating citizen participation mandates in Indian urban governance. *IDS Working Papers*, 2011(362), pp.01-33.

¹⁰⁵ Department of MPP & Power, Government of Himachal Pradesh. (2011). Revised guidelines for management of local area development fund (LADF) in respect of hydroelectric projects. Shimla. Available at <http://www.hppcl.in/WriteReadData/userfiles/file/R%20and%20R/RevisedGuidelines%20for%20management%20of%20Local%20Area%20Development%20Fund-%205th%20October%202011.pdf>

istrate, affected area Panchayat Pradhan (village head), other sub-divisional officers and a representative of the project developer. The committee is responsible for identifying projects to be developed and submits the list of identified projects to the District Commissioner. The District Commissioner authorises the necessary expenditure after approval. The project could be a cremation ground, dispensary, road repair, footbridge, irrigation system, lift irrigation or a village meeting hall. A 2014 study into the workings of LADA and utilisation of LADF for 49 commissioned small hydropower projects found that project developers had not fulfilled their obligations to local communities via LADF.¹⁰⁶ The study identified a lack of clearly defined project-affected areas, inconsistent record-keeping, and varied levels of awareness among village Pradhans about the scheme as the possible reasons.¹⁰⁷

4.4.5 PUBLIC GRIEVANCE SYSTEMS

The Department of Administrative Reforms and Public Grievances has set up an online redressal system – the ‘Centralized Public Grievance Redress and Monitoring System’ – for citizens to register their grievances on “any subject related to service delivery”. The centralised system covers all ministries and states.¹⁰⁸ Arguably, citizens can lodge complaints about environmental issues in case of failure of a particular department or ministry to effectively monitor environmental compliance or redress complaints on pollution.

The Citizen’s Charter that forms the basis for this redress system is modelled on the United Kingdom’s Citizen’s Charter. It draws on the principle that public services are funded by citizens and government officials need to provide quality services in exchange.¹⁰⁹ States have since issued legislation on the Right to Service. These laws provide time frames within which a department has to provide services such as a new water connection, certificate issuance, pensions, and responses to financial assistance applications. In fact, many states promise timely service delivery for issuing authorisations such as Consent to Establish and Consent to Operate by the Pollution Control Boards to companies. However, ensuring air and water quality, enforcing pollution control measures and assuring the public of time-bound redress of environmental complaints are not seen as service delivery.

4.4.6. DEVELOPMENT AND MASTER PLANS


Spatial planning of a city or town is carried out through a development or master plan. In these plans, land use of different areas is fixed, and it governs the use of natural

¹⁰⁶ Baker, J.M. (2014). ‘The socio-ecological impacts of small hydropower projects in Himachal Pradesh Part-2’ *South Asia Network on Dams, Rivers and People*. 11 June. Available at: <https://sandrp.in/tag/lada/>

¹⁰⁷ Ibid.

¹⁰⁸ Department of Administrative Reforms and Public Grievances. (n.d). ‘About CPGRAMS’ Available at: Centralized Public Grievance Redress and Monitoring System

¹⁰⁹ GoI (2021). Citizen’s Charters- A Handbook. 6 October. Available at: <https://goicharters.nic.in/public/upload/pdfs/DSF6gw.pdf>



LARGE SOLAR ENERGY PROJECTS ARE BEING PLANNED OVER WASTELANDS OF SPITI, HIMACHAL PRADESH

resources in an area.¹¹⁰ Recent civil society-led initiatives have attempted to deepen participation during the preparation of these plans.¹¹¹ For example, the Mai Bhi Dilli campaign in Delhi was undertaken to make Delhi's Draft Master Plan of 2041¹¹² representative and inclusive. The Campaign had dialogue with the Delhi Development Authority on construction worker safety, housing, home-based work practices and transportation.

Similarly, the Chennai Metropolitan Development Authority recently announced plans to hold consultations with residents on its Third Master Plan 2027-2046. 28 assembly constituencies will work with officials to prepare the vision document for the third master plan. Citizens' views were sought online in September 2022 on their vision for the future of the metropolitan area. The Housing and Urban Development Minister indicated that every village in the area would also be visited for consultation purposes. In its first consultation in September, members from the LGBTQ+ community, persons with disability and local bodies gave their suggestions on urban planning, women's safety, and inclusivity.¹¹³ In Mumbai, the fishing community advocated for the inclusion of their settlements, fish markets and livelihood areas in the city's development plans.¹¹⁴

4.5 Curtailing Avenues for Public Participation

As mentioned in the introduction, there is an ongoing trend in India to curtail public participation, with shrinking opportunities for engagement, blatant ignoring of public opposition, or doing away with opportunities altogether. Listed below are some examples.

¹¹⁰ Mahadevia, D and Joshi, R. (2009) 'Subversive Urban Development in India: Implications on Planning Education'. Centre for Urban Equity, CEPT University, December. Available at: https://www.researchgate.net/profile/Darshini-Mahadevia/publication/239615258_Subversive_Urban_Development_in_India_Implications_on_Planning_Education/links/58aefde2a6fdcc6f03f34837/Subversive-Urban-Development-in-India-Implications-on-Planning-Education.pdf

¹¹¹ Saha, S. (2012). 'A Note on Community Participation in India'. *Centre for Policy Research*. 28 June. Available at: <https://cprurban.wordpress.com/tag/policy-brief/> ; Main Bhi Dilli campaign in Delhi- <https://www.mainbhidilli.com> ; Majhita, A; Sinha, A and Narayan, M (2021) 'Building Back Better: Informal Workers Stake Their Claim for an Inclusive Delhi', 20 September, Available at <https://www.wiego.org/blog/building-back-better-informal-workers-stake-their-claim-inclusive-delhi>

¹¹² The Master Plan prepared by the Delhi Development Authority for a period of 20 years is a planning document laying out the land use regulations, planning and design protocols for the city.

¹¹³ The Hindu Bureau (2022). 'Residents to be consulted on city's Third master Plan'. *The Hindu*. 20 September. Available at: <https://www.thehindu.com/news/cities/chennai/residents-to-be-consulted-on-citys-third-master-plan/article65909886.ecce>

¹¹⁴ Joseph, M (2021) 'The people and their plan for cities' *India Together*. 4 September. Available at <https://indiatogether.org/people-plan-government>

Public Hearing Exemptions

Public hearings within the environmental appraisal process have been curtailed drastically in the last few years. Either entire projects or parts of them have been exempted from public hearings under the EIA Notification through direct relaxations, re-categorisation, or exclusion from the purview of the EIA process (See Annexure 1). In particular, public hearing exemptions have been granted to coal mining expansion projects since 2010, in the name of national and public interest. By 2017, coal mine expansions of up to 40% were excluded from the public hearing process. By April 2022, all projects expanding or modernising up to 50% of their original capacity could request this exemption if the expansion did not involve additional land. This change was proposed in the new iteration of the draft EIA in 2020, which expired recently. However, this change has been executed through an MoEFCC office memorandum and is therefore currently in effect.

Weakening of Himachal Pradesh Hydropower Policy

In March 2014, the government of Himachal Pradesh altered the 2006 Hydropower Policy.¹¹⁵ The 2006 Policy required a No Objection Certificate (NoC) from the Gram Panchayat twice: once at the detailed project report stage and again after the impact assessment for commencement of work. This requirement for small hydropower projects was replaced with “effective consultations” with Gram Panchayats. Their objections and suggestions would be heard by a Sub-divisional magistrate and decided through a “reasoned speaking order”. The aggrieved parties could appeal before the District Collector and afterwards with the Principal Secretary of Power.

Gram Panchayats were also meant to be approached at different times for seeking consent on various clearances/actions. Instead, the 2014 Policy stipulated that Gram Panchayats would be approached in “one go” for consultation on all aspects of a project, after the Sub-divisional Magistrate’s order for hearing objections and inspection by joint inspection committee for statutory clearances such as forest clearance, land lease, and consents from the PCB.

¹¹⁵ Government of Himachal Pradesh. MPP & Power Department (2014). Notification. 4 March. Available at: https://himachal.nic.in/WriteReadData/1892s/4_1892s/Notification-81571151.pdf

No EIA for Railway Projects

Under the Environmental Impact Assessment Notification, 2006, a big lacuna that has been highlighted time and again is the exclusion of railways, such as the proposed Hubballi-Ankola railway line project in the Western Ghats Forests, or the North East Frontier Railway Project. As of this report's publication, both of these projects are in the public eye for their potential and actual impacts.

In the case of Hubballi-Ankola, in the absence of the requirement to obtain an environmental clearance, the project has been subjected to wildlife scrutiny because it cuts through a tiger corridor and the Western Ghats of Uttara Kannada district of Karnataka. In June 2022, the National Board for Wildlife constituted a committee to look into the project, without any people's representation or even the National Tiger Conservation Authority's involvement.¹¹⁶ The project was cleared by the State Board for Wildlife in 2020 despite strong opposition; however, the Karnataka High Court stayed the project soon after.¹¹⁷

In the case of the North East Frontier Railway project, also exempt from obtaining an environmental clearance, news reports have highlighted the lack of a public hearing in the approval process.¹¹⁸ Possibilities of land compensation in the districts operating under customary laws where community-ownership was prevalent has led to disputes among locals and strained the social fabric of the region. The impact of constructing 64 bridges and tunnels along 111 km from Manipur to Myanmar on the Ejei River on dependent lives and livelihoods is beginning to show.¹¹⁹ A recent landslide in the Noney district of Manipur killed 46 people, and was attributed to shoddy construction that ignored the fragile local ecology.¹²⁰

¹¹⁶ Patil, N. (2022). 'Hubballi-Ankola Railway Line Is Proof Our Green Governance Is in Shambles'. *The Wire Science*. 28 June. Available at: https://science.thewire.in/environment/hubballi-ankola-railway-line-environmental-governance/?utm_source=substack&utm_medium=email

¹¹⁷ Sharma, K and Dutta, A (2020) 'Court Stays Rail Project Through Western Ghats That Activists Say Isn't Needed At All'. *Scroll.in*, 3 July. Available at: <https://www.indiaspend.com/court-stays-rail-project-through-western-ghats-that-activists-say-isnt-needed-at-all/>

¹¹⁸ Sitlhou, M (2020) 'Ground Report: A Pending Railway Project Has Manipur Villages Living in Fear'. *The Wire*, 21 February. Available at: <https://thewire.in/rights/manipur-railway-project-land-acquisition-displacement>

¹¹⁹ Ibid.

¹²⁰ IANS (2022) 'Death toll rises to 46 in Manipur landslide, 17 still missing'. *Business Standard*. 4 July. Available at: https://www.business-standard.com/article/current-affairs/death-toll-rises-to-46-in-manipur-landslide-17-still-missing-122070401096_1.html

Land Policies to Facilitate Industrial and Renewable Energy Projects

States have also been curtailing state-level laws on public participation (listed in Section 4.4). Draft EIA notification 2020 had proposed certain exemptions to micro, small and medium enterprises (MSMEs). While the draft has expired, states have brought in measures for businesses to easily access land. For instance, the state of Bihar removed a levy payment for converting the use of agricultural land to non-agricultural purposes. Gujarat allowed a similar change in its MSME (Facilitation, Establishment and Operation) Act, 2019.

Rajasthan, Madhya Pradesh, Maharashtra and Gujarat already have land allocation policies, especially targeting “wastelands”, for renewable energy projects. In Gujarat, “fallow and non-fertile” land is allotted for development of renewable parks of over 1000 MW based on its potential for infrastructure and power evacuation.¹²¹ Developers can also identify land that the state government will verify. However, there is no mention of involving in these decisions those dependent on such government land for food or fodder collection and any other livelihood activities.

Dismantling of Local-Level Governance

Often, governments raise suspicion around the governing ability of Gram Sabhas. For instance, in 2017, the Himachal Pradesh Government claimed before the High Court that the Gram Sabha lacked the capacity to weigh in on the forest clearance for the Kashang hydroelectric project. Decentralised governance faces certain direct attacks too. Fifth schedule areas and coastal villages are being turned into municipalities, removing tribals’ right of self-governance in the former and increasing developmental pressure and denial of traditional coastal livelihoods in the latter. In Manuguru, one such converted urban area, the Municipality has not had elected representatives since 2005.¹²² Rather, it is being governed by Municipal Corporation and Urban Development Department officials. Relocation sites for tribal populations displaced by ongoing mining operations have also been included in such transformations.

¹²¹ Government of Gujarat. (2019) Allocation policy of Government waste land for Wind /solar /wind -solar hybrid Park. Available at: https://indextb.com/files/2021/7/0fe726f9-05c3-4f57-9a57-8337ad73d1ee_Allocation%20policy%20of%20Government%20waste%20land.pdf

¹²² Joseph, AG (2022) ‘Tribal panchayats in protected areas being illegally converted to municipalities’ *Frontline*. 22 September. Available at <https://frontline.thehindu.com/the-nation/investigation-pushed-even-from-the-margins-tribal-panchayats-in-protected-areas-illegally-being-converted-to-municipalities/article65893689.ece>

States' Response to Weakening of Participation by the Central Government

While in most cases, states have not objected to the dilutions made by the Centre, there have been instances when states have acted otherwise. Actual impact of these actions by state governments, however, has been limited. The exemption granted by the MoEFCC to allow hydrocarbon projects to bypass environmental impact assessment and public consultations was made without public notice. The Central Government had earlier made changes to the oil and gas exploration regulations, which made hydrocarbon reserves from Cauvery delta and other oil rich areas available for exploration and extraction. It led to mass protests across the Cauvery delta in Tamil Nadu. This pressure resulted in the Tamil Nadu Agricultural Zone Development Act 2020, declaring Cauvery delta a “protected agricultural zone” in which industrial development was barred. However, according to news reports, drilling work is going on in the guise of maintenance work of existing wells.¹²³

In Chhattisgarh, the State Assembly passed a resolution asking the Centre to cancel the allotment of all coal blocks in the Hasdeo Aranya forest area.¹²⁴ However, the State Government had given forest clearance to the project a few months ago. It also wrote a letter to the Central Government pleading to revoke the forest clearance. The local activists saw this letter only as a way to keep up appearances and pacify the protestors.¹²⁵

¹²³ Raveendhren, R.S. and Shabbir, A. (2022). 'How hydrocarbon projects in Cauvery delta overshadow rights.' *The Times of India*. 1 February. Available at: <https://timesofindia.indiatimes.com/city/chennai/how-hydrocarbon-projects-in-cauvery-delta-overshadow-rights/articleshow/89262505.cms>

¹²⁴ Mishra, R. (2022) 'Chhattisgarh assembly passes resolution, says cancel coal block allocation.' *Hindustan Times*. 27 July. Available at: <https://www.hindustantimes.com/india-news/chhattisgarh-assembly-passes-resolution-says-cancel-coal-block-allocation-101658901506838.html>

¹²⁵ Jha, S. (2022). 'Chhattisgarh urges Centre to roll back Hasdeo mining nod; activists want more.' *Down To Earth*. 2 November. Available at: <https://www.downtoearth.org.in/news/mining/chhattisgarh-urges-centre-to-roll-back-hasdeo-mining-nod-activists-want-more-85741>

Below is a summary of key changes made to central-level regulations that curtail public engagement that have been issued without due public scrutiny, or otherwise shrink the space for public participation.

<p>2019</p>	<p>New Coastal Regulation Zone Notification -notified despite 90% of submissions rejecting the draft -contains several relaxations that jeopardise fishers’ access to coasts</p>
<p>2020</p>	<p>Draft Environmental Impact Assessment Notification -reduced public hearing notice -increased validity of EC</p>
<p>2021</p>	<p>Forest Conservation Act Amendment Consultation Paper -exempts zoos, safaris, and plantations from obtaining FC -in absence of need for FC, communities’ rights over forests are not protected from private users</p>
	<p>Oilfields (Regulation & Development) Amendment Bill -exempts petroleum operations from restrictions applicable to mining operations in and around ecologically sensitive areas</p>
<p>2022</p>	<p>Biodiversity Act Amendment Bill -provides easy access to biological resources for commercial use, without recognition of communities’ rights over them</p>
	<p>Amendment to Forest Conservation Rules -Gram Sabha consent regarding forest rights deemed states’ responsibility</p>
	<p>Order stipulating Standard Operating Procedure for environmental violations -notified as an office memorandum, without public notice</p>

EC: Environmental Clearance; FC: Forest Clearance

5. EVOLUTION OF INTERNATIONAL DISCOURSE ON PUBLIC PARTICIPATION

Public participation in governance was established in the Universal Declaration on Human Rights in 1948 through the provision of the right to partake in one's government, as well as free voting in elections and equal access to public services.¹²⁶ The right was further extended by the International Covenant on Civil and Political Rights (ICCPR), 1966, which provided the right to take part in the conduct of public affairs. The ICCPR also granted citizens the right to access information.¹²⁷ In 1972, the Stockholm Conference emphasised the need for citizens, communities, governments and the private sector to protect the environment.¹²⁸ This was followed by the World Charter for Nature of 1982, which provided for the opportunity to participate in environmental decisions, and the disclosure of impact assessments of "all planning" to the public "to permit effective consultation and participation".¹²⁹ These principles were reinstated in the Tokyo Declaration of the World Commission on Environment and Development in 1987¹³⁰ and in the Hague Recommendation on International Environmental Law in 1991.

In 1992, public participation in environmental decision-making was adopted as a principle in the United Nations Rio Declaration on Environment and Development during the Earth Summit (see Principle 10, "*the environmental issues best handled with participation of all concerned citizens, at the relevant level*"). The Rio Declaration further emphasised governments' responsibility to ensure citizen access to information.¹³¹

The international discourse on citizen participation in environmental decision making began with access to information and graduated towards collaboration, with intermedi-

¹²⁶ United Nations General Assembly. (1948) Universal Declaration of Human Rights. Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

¹²⁷ United Nations General Assembly. (1966) The International Covenant on Civil and Political Rights. Available at: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

¹²⁸ The United Nations Conference on the Human Environment. (1972) Stockholm Declaration and Action Plan for the Human Environment. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/NL7/300/05/IMG/NL730005.pdf?OpenElement>

¹²⁹ United Nations General Assembly. (1982). World Charter for Nature. Available: <http://www.un-documents.net/wcn.htm>

¹³⁰ The World Commission on Environment and Development. (1987). Tokyo Declaration. Available at: https://idl-bnc-idrc.dspacedirect.org/bitstream/handle/10625/1037/WCED_v19_doc174.pdf?sequence=1&isAllowed=y

¹³¹ United Nations Conference on Environment and Development. (1992). Rio Declaration. Available at: <https://www.un.org/en/conferences/environment/rio1992>

ate stages of consultation and consent. The Aarhus Convention of 1998, whose objective is the right to a healthy environment, sets forth three pillars of participation, including participation in administrative decision making, access to information, and access to justice. It states that the right to participation in administrative decision-making is possible with “early notice of a decision-making process”. The Convention also calls for administrative or judicial procedures to challenge acts and omissions by private and public bodies. Proceedings should be fair, equitable and not prohibitively expensive, and provide adequate and effective remedies.¹³²

Article 10 of the United Nations Declaration on the Rights of Indigenous Peoples adopted in 2007 further introduced the concept of consent, highlighting the significance of free, prior and informed consent for indigenous peoples.¹³³ It states:

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

The Nagoya Protocol of the Convention on Biodiversity requests national governments to institute prior, informed consent in their biodiversity laws and ensure that consent is obtained in access and benefit sharing of traditional knowledge and resources.¹³⁴ In 2018, the United Nations Office of the High Commissioner for Human Rights released Guidelines on the Right to Participate in Public Affairs, further expanding the public’s right to participate in governance to not just voting and civic affairs but engaging broadly in consultations to “co-draft” laws.¹³⁵

¹³² United Nations Economic Commission for Europe. (1998). Convention on Access to Information, Public Participation in Decision making and Access to Justice in Environmental Matters. Available at: <https://unece.org/environment-policy/public-participation/aarhus-convention/text>

¹³³ United Nations General Assembly. (2007). United Nations Declaration on the Rights of Indigenous Peoples. Available at: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

¹³⁴ Secretariat of the Convention on Biological Diversity. (2011). Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity. Available at: <https://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf>

¹³⁵ United Nations Office of the Human Rights. (2018). Guidelines for States on the effective implementation of the right to participate in public affairs. Available at: https://www.ohchr.org/sites/default/files/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf



WIND ENERGY PROJECTS ARE TAKING OVER COMMON AND PRIVATE AGRICULTURAL LANDS IN KUTCH, GUJARAT

6. CASE STUDIES

6.1 Wind Energy Development in Kutch

India is racing to meet its renewable energy target of 450 GW by 2030. Gujarat, a state on the western coast of India, has the highest potential wind energy generation in the country.¹³⁶ The state holds the capacity to produce almost one-fourth of the country's wind energy, according to the National Institute of Wind Energy. Kutch¹³⁷, the largest district of Gujarat and India overall, has been key in tapping into this potential. Village common lands that are often listed as 'wastelands' in the land records are being appropriated by wind energy companies. Residents of five villages are trying to intervene and free their common use lands from wind energy projects.

Background: Kutch district lies in a semi-arid climatic zone with an average annual rainfall of less than 75 cm. Rebuilding after the 2001 earthquake brought with it a wave of rapid industrial and infrastructure development. The Government of Gujarat has steamrolled port development, port-based industries, road and railways construction projects in the district since.¹³⁸ The Solar Energy Corporation of India, the implementing agency for the country's renewable energy projects, has initiated wind energy projects of over 6000 MW in the district. As a further boost to the sector, in July 2022, the Ministry of Power directed the State Electricity Regulation Commissions to have a minimum percentage of the total consumption of electricity from renewable energy sources.

¹³⁶ Ministry of New and Renewable Energy. (2021). Annual Report 2020-21. New Delhi India. Available at: https://mnre.gov.in/img/documents/uploads/file_f-1618564141288.pdf

¹³⁷ Alternate spelling is 'Kachchh'

¹³⁸ Gujarat Infrastructure Development Board (GIDB). (2005). Study on Potential Development of Kutch, Gujarat. July.



ELECTRIC POLES ARE OFTEN ERECTED ON VILLAGE COMMON PONDS AND GRAZING LANDS

Scope for Public Participation: The Environmental Impact Assessment Notification of India exempts renewable energy projects from obtaining an environmental clearance. This implies that these projects are initiated without any appraisal of their social and environmental consequences, regardless of their size or fragility of the site, or ongoing livelihood activities in the location. With exemption from obtaining an environmental clearance, the projects are also absolved from conducting public consultation on project impacts.

Under the Air and Water Acts, all activities likely to pollute water sources or the atmosphere need to obtain prior consent. State pollution control boards or union territory pollution control committees across India grant consent to establish and operate to such projects. However, solar photovoltaic, wind power and mini hydroelectric projects (less than 25 MW) are exempted from obtaining consent.

Environmental and Social Impact:

Diminishing Common Lands: Seasonal grasslands, deserts, coastal sandy areas, scrub forests and mangroves of Kutch, termed ‘wastelands’¹³⁹ and previously offering opportunities for industrialisation, are now being viewed as renewable energy sites. However, these sites are in active use by communities – particularly for agriculture and animal husbandry, which the government recognises as important economic activities.

Takeover of Private Land: The semi-arid climate of Kutch does not allow year-round farming. In the absence of irrigation facilities, most farmers pursue ‘Piyat Kheti’, or ‘rain-fed’ agriculture, which does not require land to be visited on a daily-basis. Since farming is pursued at the subsistence level, farmers often do not pay taxes. If a district collector, who is in charge of allocating land for renewable energy projects, visits a site and finds it to be not in use, and if revenue documents have no record of tax payment

¹³⁹ According to the Department of Land Resources assessment carried out in 2015-16, Kutch has over 16% of its land demarcated as ‘wasteland’ https://dolr.gov.in/sites/default/files/Gujarat_2.pdf

or farming, the land may be allocated to wind energy developers. In Bhadreswar, a farmer we spoke to was unaware for a long time that his land was being excavated to erect a windmill.

Impact on Agriculture and Animal Husbandry: The government has identified that one wind turbine requires one hectare of land but additional land is required for keeping the equipment, and construction of road for movement of heavy vehicles. Transport of a blade of a turbine requires a path of at least 15 meters on a straight road and a 100-meter path on a circular road.¹⁴⁰ In the Vavar village of Mundra Taluka, one of the companies paved a path through a pond by filling it, before erecting transmission lines in the pond. Following changes in drainage patterns, and the natural water course, residents of Vavar have been unable to use the area as a source of drinking water for their cattle and grazing as they had previously been doing until 2019.

Biodiversity Loss: The problem is particularly severe for Kutch as most land in the district gets tagged as wasteland when it is actually scrub forest with multiple local uses. In Sangnara village in Nakhatrana Taluka, farmers have complained of windmills threatening their forests and sacred groves. In Anjar Taluka, locals have reported peacock deaths due to collision with wind turbine transmission lines.

Locating Responsibility: In the absence of public consultation and assessment of impacts prior to the start of wind energy development projects, it takes longer for locals and government to assess impact. Usually the company accesses village maps, finds a plot to be empty and applies for its takeover. The District Collector verifies the request and if he finds the land to be empty in his records, he allocates it for wind energy projects. District Collector orders allocating land for wind turbines usually prohibit erection of turbines and electric poles near farms, grazing land or a natural waterbody.

Public Strategy and Action: In the absence of environmental impact appraisal and pollution scrutiny, those whose private lands have been allocated to wind turbines have no recourse other than to approach the District Magistrate's office. In the case of village common lands, the residents of Vavar, Chasra, Undrodi, Bagda and Vanguda villages, all dependent on the village pond, wrote to the District Collector about the impact of the use of common lands for electric poles. They highlighted the Collector's order that bars the use of village ponds, grazing lands and riverbanks for such activities and demanded resolution. In October 2022, on an 'open day' in the office of the Sub-divisional Magistrate in Mundra, the village heads again raised these issues.

Outcome: Several of the landowners who lost their land to wind energy without due compensation have ongoing cases in the Magistrate court. But in the case of the vil-

¹⁴⁰ Kaur, R. (2022). Expansion of windmills in Kachchh impact unique thorn forest and wildlife. *Mongabay*. India. Available at: <https://india.mongabay.com/2022/04/expansion-of-windmills-in-kachchh-impact-unique-thorn-forest-and-wildlife/>



WATER OF SATLUJ RIVER HAS BEEN CHANNCELED INTO SEVERAL TUNNELS TO HARNESS HYDROPOWER

lage common lands, soon after the complaint and the meeting at the Sub-divisional Magistrate's office, the Collector passed an order directing removal of the electric poles from the common village pond.

This case study offers an insight into the paucity of avenues for the public to apprise the government authorities of livelihood activities around a supposed wasteland or land resource. Lengthy legal battles are being fought in courts, at great hardship for many small-scale farmers and cattle-keepers. In the absence of any prior public consultation, people have to rely on post-project grievance redressal mechanisms. In the case of Vavar village, the locals were able to access the redress platform due to the ease of accessibility (open days for the public to broach government offices with their grievances) and received a remedy, exemplifying how with respect to renewable energy projects, public participation has generally taken the form of post-project grievance redressal.

6.2 Shongtong Hydro-Electric Project in Kinnaur

In 2019, India recategorised large hydropower projects as renewable. The total hydro potential of Himachal Pradesh, an Indian state nestled in the western Himalayas, is calculated at 25,000 MW.¹⁴¹ Kinnaur, a tribal district in the upper reaches of Satluj basin, has been a hotspot of hydropower development for the past three decades. As bumper-to-bumper¹⁴², run-of-river¹⁴³ hydropower development begins to impact local ecology and livelihoods, the hills of Kinnaur district are reverberating with the "No Means No" campaign against setting up of new hydel projects. Residents of villages near Shongtong-Karcham hydropower project recall their 'successful' contract with the hydropower company, list out broken promises and narrate felt impacts.

¹⁴¹ Website of Himurja. Page: Hydro Power Policy. <https://himurja.hp.gov.in/policy/hydro-power-policy/>

¹⁴² Hydropower projects arranged in a manner that water from one hydro project meets the reservoir of the next.

¹⁴³ Run-of-river projects require little or no water storage as they channel water from a river through canal (penstock) to spin a turbine.



| LOCALS LINK TUNNELLING WITH INSTANCES OF LAND SUBSISTENCE

Background: The early 2000s saw a renewed push for hydropower development across the Himalayas to meet India's growing electricity demand.¹⁴⁴ The "50,000 MW Initiative", launched by the Indian Government, planned to achieve this capacity by 2017 and add another 67,000 MW of hydropower by 2027.¹⁴⁵ Discourse around climate change mitigation and the Clean Development Mechanism further incentivised this growth. In Himachal Pradesh, several problematic run-of-the-river hydropower projects were initiated using loans from international financial institutions and banks as a 'clean alternative' for power generation.¹⁴⁶ Satluj, an important glacial river and tributary to the Indus river, has over 140 hydropower projects at various stages, according to the 2017 report on the state of rivers of Himachal Pradesh.¹⁴⁷ Kinnaur, the tribal-dominated district, is home to seventeen large commissioned, under construction and planned projects, including the 402 MW Shongtong-Karcham project, an under-construction run-of-river hydropower project. The Shongtong project was initiated over ten years ago under the Himachal Pradesh Clean Energy Development Investment Program of the Asian Development Bank. The Himachal Pradesh Power Corporation Limited (HPPCL), a state utility company, has contracted Patel Engineering for the construction work.

Scope for Public Participation: The Fifth Schedule of the Indian Constitution grants special protection to areas with predominant tribal populations. Under the Panchayat (Extension to Scheduled Areas) Act PESA, 1996, fifth scheduled areas, as they are commonly called, require any project or development activity to obtain the consent of the Gram Sabha (the village assembly) in the form of a No Objection Certificate (NoC). As a tribal dominated area, projects in Kinnaur require the consent of

¹⁴⁴ Dharmadhikary, S (2008). 'Mountains of concrete: dam building in the Himalayas' International Rivers. California. USA. Available at: https://archive.internationalrivers.org/sites/default/files/attached-files/ir_himalayas_rev.pdf. After intense development of dams from the 1960-1970s, construction of big hydropower projects slowed down in the Himalayas due to questions around their development objectives and opposition from affected people.

¹⁴⁵ Ibid.

¹⁴⁶ Asian Development Bank (nd) 'India: Himachal Pradesh Clean Energy Development Investment Program- Tranche 4', Manila, Philippines.

¹⁴⁷ South Asia Network on Dams, Rivers and People. (2013). Hydropower generation performance in Sutlej River basin. Available at: <https://sandrp.in/2013/07/08/hydropower-generation-performance-in-sutlej-river-basin/>

the assemblies of impacted villages.

The National and Himachal Pradesh Hydropower Policy create a Local Area Development Authority/Committee and Fund. Under the fund, hydropower projects contribute a percentage of the project cost to development of the region through the Local Area Development Authority. The Authority, due to the presence of the Panchayat Pradhan (village head), provides an opportunity for locals to engage with the government on development projects in their area. The fund, however, is reliant on the project's scale: the bigger the project, the more the local development fund. Unfortunately, development decisions are still often taken without local involvement.

Environmental and Social Impact: Run-of-the-river hydropower projects are considered as 'clean alternatives' to not just thermal power but also to 'conventional' dams.¹⁴⁸ However, they still have impacts, including disruption of natural water flow, loss of forest and biodiversity, vulnerability to landslides and other hazards.¹⁴⁹ In the case of the Shongtong project, six villages, including Mebar, Powari, Khwangi, Barang, Shudhrang, and Kalpa were identified as affected.¹⁵⁰

Dumping of Construction Debris: For Shongtong, a tunnel was dug and underground powerhouse constructed after excavating a large quantity of debris.¹⁵¹ All along the Satluj river, a series of hydroelectric projects have created retaining walls at designated dumping sites. Due to poor retaining structures, the debris erodes riverbanks and exacerbates floods during heavy rains.¹⁵² In the case of Shongtong, the situation is worse: according to locals, over 25% of debris from the tunnels is directly thrown into the river.

Landslide: On June 21, 2014, locals from Mebar reported a mudslide in Limkate, Ynbro and Jakhrang nalla area on the left bank of Sutlej River. Locals allege that the landslide was a result of tunnelling and blasting carried out to construct the project. They also claim that cracks and subsidence of land pose risks to nearby houses and agricultural fields.

Impact on Livelihoods: Damage to agricultural crops and drop in horticulture yield

¹⁴⁸ Asher, M & Bhandari, P. (2020). 'Mitigation or myth? Impacts of hydropower development and compensatory afforestation on forest ecosystems in the high Himalayas' *Land Use Policy*. V100. Available at: <https://www.sciencedirect.com/science/article/abs/pii/S0264837719315819?dgcid=author>

¹⁴⁹ Ibid.

¹⁵⁰ Mebar village is located 340 m above mean sea level. It receives 2-3 m snowfall and is considered the longest glacier of Kinnaur. Locals grow vegetables, apples, pears and plums and other fruits during summer months in Mebar. At the onset of winters, they trek for about 10 kms through the forest to reach their winter village in Ralli. Powari and Khwangi villages sit closest to the barrage site of the Shongtong project.

¹⁵¹ In run-of-river projects, water from the river is diverted to an underground tunnel and released after a few kilometres into the turbines through a surge shaft for making electricity. In the case of Shongtong, the tunnel is nine kilometers long, the barrage site is located near Powari and the powerhouse is proposed near village Ralli on left bank of river Sutlej upstream of confluence of river Baspa with river Sutlej.

¹⁵² Asian Development Bank. (2010). 'Climate Change Adaptation in Himachal Pradesh: Sustainable Strategies for Water Resources'. Philippines. Available at: <https://www.adb.org/publications/climate-change-adaptation-himachal-pradesh-sustainable-strategies-water-resources>

have been observed and are reportedly linked to construction dust. In addition, almost 50 hectares of mostly forest land has been allotted for dumping debris. One villager's apple yield has decreased from 20 boxes to only four boxes per tree, and he has not been compensated for this loss. Much of the allotted land is forestland, leading to 339 trees being cut just for muck dumping, including the near-threatened Chilgoza pine, whose fruit is a key source of local livelihoods.

Locating Responsibility: The Shongtong project was granted an environmental clearance in 2011 for a period of ten years, during which it was expected to complete construction. However, the project has faced delays and is overspent. While its environmental clearance would have expired in 2021, an amendment to the EIA law in 2022—introduced without public scrutiny—extended the validity of hydropower projects automatically from ten to thirteen years. This has absolved the HPPCL from seeking an extension. With this the possibility of an expert review and an opportunity for people to take their grievances to the expert committee is eliminated.

After the grant of initial environmental clearance, the expert appraisal committee of the MoEFCC has considered the project's request to expand from 402 to 450 MW, directing the company to conduct a public consultation on the proposed expansion. Local communities allege that the project is already generating 450 MW of power. Recently, the committee created a sub-committee, which would visit the area to inspect the alleged violation and decide on the project request to approve the expansion.

The affected villages are short of avenues to lodge their grievances. Even the agreement that the locals made with HPPCL before granting their NoC prior to the start of construction has proven to be ineffective.¹⁵³ The Local Area Development Fund, which potentially could be used for participatory development of the region, is under the final control of the Deputy Commissioner who can choose development projects for the area.

Public Strategy and Action: HPPCL approached local communities in 2008 with a request for the NoC as required under the PESA Act. The public hearing for the project as mandated under the Environmental Impact Assessment requirement took place on 28 and 29 July 2009. In total, six public consultations took place between July 2009 and February 2011.¹⁵⁴

¹⁵³ Ministry of Home Affairs (nd). PESA Act 1996. New Delhi. Available at: https://www.mha.gov.in/sites/default/files/PESAAct1996_0.pdf

¹⁵⁴ HPPCL. (2018) Final resettlement plan of Shongtong Karchham HEP along with comment response matrix. Available at: http://www.hppcl.in/WriteReadData/userfiles/file/R%20and%20R/2018_4_1Resettlement%20Plan%20of%20Shongtong%20Karchham%20HEP-min.pdf

In 2011, the residents of Mebar had drafted an agreement including their demands for jobs for locals, a ropeway between Mebar and Ralli villages and a share of electricity for them. The agreement was executed between Mebar Gram Panchayat and HPPCL. Around the same time in 2011, the project received its environmental clearance. However, several of the promises made to the tribals of villages through this agreement remain unfulfilled.

Litany of Unkept Promises: A big point of dissatisfaction for locals has been the pending ropeway construction. Currently, locals walk the distance between Mebar and Ralli. According to the agreement locals had with HPPCL, the ropeway was to be constructed by the HPPCL and maintained by the Gram Panchayat. But the government now plans to construct the ropeway using the Local Area Development Fund. The Fund was supposed to be used for projects other than the ropeway. Now the locals feel short-changed: instead of honouring the agreement made while obtaining their consent, HPPCL is retrofitting the ropeway project in local area development fund utilisation plans.


Residents of Mebar, Powari and Khwangi villages allege that payments to the Gram Panchayat for damage to their agriculture crops and horticulture productions due to construction dust have also stopped over the past four years.

Local communities attribute the 2014 landslide to Shongtong project construction. But inspections by the Geology Department that took place between October and November 2014 ascertained that excessive rainfall caused the landslide. While no compensation was given to the villagers for the damage, the HPPCL constructed a retaining structure to stop further subsidence. The locals felt that this was a violation of their agreement with HPPCL, Clause 4 of which states that any damage caused by a calamity or accident that takes place during the time of the project construction and until two years after completion of construction work, will be compensated by the HPPCL after due assessment of the damage.

Barang Panchayat asked for support for road construction between Chhetrang and Chooldarang, and lift irrigation. The project was also expected to provide financial support equivalent to 500 days of minimum wage under the Forest Rights Act to the 328 affected families of Barang village. According to locals, these promises were also not met.

After the project received its environmental clearance, locals have attempted to complain to district and state authorities about improper dumping of muck and the pending ropeway construction, but with limited success. However, some villagers received an injunction against muck dumping along the river in 2020 from the High Court of Himachal Pradesh.¹⁵⁵

¹⁵⁵ Panwar, T.S. (2020). 'Shongtong Karcham story a stark precursor to dilution of environment laws'. *News Click*. 18 July. Available at: <https://www.newsclick.in/Shongtong-Karcham-Story-Stark-Precursor-Dilution-Environment-Laws>



| AMRAPALI MINES IN JHARKHAND

Outcome: A project planning exercise that began on a hopeful note wherein tribals were able to ask questions, demand project details and come up with their own terms for the project to commence in the region, now seems toothless. In the absence of a functioning grievance redressal mechanism, tribals are left with limited avenues to invoke accountability for the project or hold the developers to account.

6.3 Expansion of Two Coal Mines in Karanpura

In 2017, to address the 'coal shortage' within the country, the MoEFCC granted a special concession to coal mining projects, allowing existing coal mines to increase their output by 40% of their original capacity without a public hearing.¹⁵⁶ Citing a heatwave and need for more power, in May 2022, India raised the allowed-capacity-increase of coal mines to 50%, again without a public hearing.¹⁵⁷ To meet growing electricity demand and execute the post-pandemic economic recovery, India's coal needs are projected to double by 2040.¹⁵⁸ With 144 operational mines and more reserves to be harnessed, Jharkhand is expected to contribute significantly to meet this demand.¹⁵⁹ Using the 2017 provision, in Karanpura, Jharkhand, two existing coal mines are expanding despite poor environmental compliance and no public hearings, while the locals continue to live with the impacts of extensive pollution.

¹⁵⁶ This exemption usually requires a project to meet following conditions:

- a public hearing conducted once before and no new area is required
- predicted air quality parameters are within the prescribed norms
- coal transportation is through conveyor and railway wagons, "involving no transportation through roads"
- compliance status of the EC conditions is monitored and found to be satisfactory by the Regional Office of the pollution control board.

¹⁵⁷ Kapoor, Krithika and Thapliyal. (2022). 'How the environment ministry lets Coal India break the rules'. *The Morning Context*. Mumbai, India. Available at: <https://themorningcontext.com/chaos/how-the-environment-ministry-lets-coal-india-break-the-rules>

¹⁵⁸ Asian Free Press. (2022). 'India relaxes environment rules for coal mines, citing heatwave'. *The New Indian Express*. Available at: <https://www.newindianexpress.com/business/2022/may/11/india-relaxes-environment-rules-for-coal-mines-citing-heatwave-2452327.html>

¹⁵⁹ Pai, S. (2021). 'Understanding just transitions in coal-dependent communities case studies from Mpumalanga, South Africa and Jharkhand, India'. The Centre for Strategic and International Studies & Climate Investment Funds. Available at: https://www.researchgate.net/publication/355900607_UNDERSTANDING_JUST_TRANSITIONS_IN_COAL-DEPENDENT_COMMUNITIES_Case_Studies_from_Mpumalanga_South_Africa_and_Jharkhand_India#fullTextFileContent



NORTH URIMARI MINE HAS CONTINUED TO EXPAND DESPITE POOR COMPLIANCE WITH ENVIRONMENTAL SAFEGUARDS

Background: In Urimari village in Barkagaon Tehsil of Hazaribagh district in Jharkhand, North Urimari mine has been in operation since 1997-98.¹⁶⁰ 50 kms away in the neighbouring district of Chhatra is the Amrapali coal mine. Central Coalfields Limited, a subsidiary of Coal India Limited, operates the two mines and several other operational opencast and underground coal mines between them. Coal India Limited has been pursuing capacity enhancement of many of these. In 2017, MoEFCC granted coal mines an exemption from conducting public hearings for an increase in mining capacity.¹⁶¹

Scope for Public Participation: Both the projects were approved before the 2006 EIA Notification. For both projects, public hearings were held almost two decades before; in 2004 for the North Urimari/ Birsa project, and 2003 for Amrapali.¹⁶² Since 2017, these two projects have been able to bypass the public hearing requirement and increase their capacity by 40%. Considering how long ago the original public hearings were conducted, many conditions have now changed, including the region's demography, pollution load, climatic and economic conditions.

Land for the project was acquired under the Coal Bearing Areas Act, 1957, which does not provide for prior consent of the land owners. In the case of forest land, the requirement of Gram Sabha's confirmation that forest rights in the region are 'settled' provides an opportunity for locals to participate in project decisions impacting their forests.

¹⁶⁰ CMPDI (2022) Addendum EIA-EMP of Expansion of North Urimari OCP, CMPDI, Available at <http://environmentclearance.nic.in/DownloadPfdFile.aspx?FileName=CltwpQ5j0lwnLFv+ivlr6Gr/zwtDvF7glWLDus8dYHCX3vst/c9iObQi5ePGvbmCjeFljA9/VVLqUXFVburW+8MpLtcYN2aXCFH4lPKXB+4=&FilePath=93ZZBm8LWEXfg+HAIQix2fE2t8z/pgnoBhDIYdZCcxzXNVGkdTOPfxJ9apij6yL62GAPE4HIFJhDI3O7hJih1ww==; http://environmentclearance.nic.in/writereaddata/online/EC/291020192B5L7FY3UpdatedForm-I.pdf>

¹⁶¹ CW Team (2022) CIL Chief holds CCL meet to speed up mining clearances, 29 July, *Construction World*, Available at <https://www.constructionworld.in/energy-infrastructure/coal-and-mining/cil-chief-holds-ccl-meet-to-speed-up-mining-clearances/35542>

¹⁶² Supra note 155

Environmental and Social Impacts: The two mines, like several others in the region, are old mines, and have been operational in the region since the pre-independence era. Below are some of the impacts that have worsened due to their expansion and disregard of existing environmental safeguards.

Pollution from Coal Transport: Road transport of coal in open trucks without proper cover has resulted in coal spillage, and led to water and air pollution. Coal dust has settled on forest areas, agricultural crops, village ponds and streams and affected the health of those living nearby. The public hearing exemption was granted to North Urimari mine on the condition that there should be no additional road transport of coal. However, the project expansion proposed road transport of coal until the railway siding was constructed, which was reported to be under construction. The Amrapali mine was also allowed the relaxation in coal transport rules until the railway siding was ready.

Water Pollution: Siltation from overburden dumps and coal dust runoff into streams due to inadequate drainage has contaminated natural water sources in the region. Irrigation of crops with contaminated water has also affected the yield and health of agricultural crops. Overburden dumps are often poorly managed with weak retaining walls that can catch fire and lead to accidents.

Incomplete Rehabilitation and Resettlement: Another condition subject to which the public hearing exemption applies is that no additional land is taken over. However, the fact that several of these mines have not completed the rehabilitation and resettlement commitments associated with the initial land acquisition has been overlooked. 540 families for North Urimari and 452 families for the Amrapali land acquisition were to be rehabilitated and resettled. Yet many of them are still living in broken homes with bare basic amenities and limited resources at their disposal.

Locating Responsibility: The Expert Appraisal Committee (EAC) of the MoEFCC is responsible for making sure that projects are in compliance before granting them exemption from public hearings. The regional offices of the MoEFCC and the State Pollution Control Board are to verify the compliance of the environmental clearance letters, which the EAC relies on while appraising project proposals. However, both verification and appraisals are done in a perfunctory manner. In 2019, while appraising the Amrapali expansion proposal the EAC “observed various non-compliance/partial compliances”. The regional office of the Jharkhand Pollution Control Board issued a show cause notice to the company in 2018 for violating environmental clearance conditions. Yet, the projects have been allowed to bypass public hearings. The only restraint has come in the form of a grant of increase in capacity smaller than what was asked for. On its second request for an expansion of 40%, the EAC in January 2022 recommended the Urimari mine for 20% expansion. The EAC stated, “Fur-

ther expansion in capacity will only be considered by EAC when at least 75% of the conditions of the environmental clearance letter are complied fully.” In May 2022, the proponent applied for another expansion but the EAC delisted the proposal without stating a reason.

Public Strategy and Action: Public efforts during the initial negotiation process in the 1990s between the company and the locals in North Urimari resulted in land being given directly in the oustees’ names. The oustees (those who lived on the land and were displaced), by coming together as collective groups were able to obtain jobs for one member of each family. Thus, some of the oustees who now live in resettlement colonies are also employees of the mines.

In the case of Amrapali, those who were displaced by the mine have protested several times, demanding better compensation, employment and basic amenities.¹⁶³ Locals allege that protests have been met with assurances from project authorities and government alike but with limited action. After being granted the public hearing exemption for a 20% capacity increase, Central Coalfields applied for a second-time expansion. The environmental clearance for this expansion was granted in 2021, based on a public hearing conducted in 2020; however, many locals were unaware or uninformed of this public hearing.

In May 2020, a case was filed in the National Green Tribunal alleging non-compliance of environmental clearance conditions by Amrapali. The petitioner argued that the coal handling plant was not constituted, a green belt not developed and there was no effective management of water resources and prevention of run-off for fourteen years. It was argued that these were completely overlooked by MoEFCC and the Jharkhand PCB. The Tribunal in this case ordered in July 2022 the constitution of a committee to visit the project and to verify the allegations. The case later included other mines in the area. A fine of Rs 10,000 was imposed on the Chief Engineer and Regional Officer of the Jharkhand PCB for their negligence.

Outcome: In the case of coal mine expansions without otherwise mandatory public hearings, impacts of the ongoing operation that should have been captured in a fresh public hearing were overlooked. The public view is even more significant when reports on action taken on project compliance are made carelessly by the regional offices of the MoEFCC and PCBs. In the absence of public hearings, affected citizens have protested or approached the courts for redress of significant impacts and grievances.

¹⁶³ Jagran (2020). (in Hindi) 27 August. *Jagran* Available at: <https://www.jagran.com/jharkhand/chatra-lead-amrapali-project-deadlock-ended-coal-mining-and-transportation-started-20676135.html>



| PARTS OF SHANGUMUGAM BEACH CORDONED OFF AFTER COASTAL EROSION

6.4 Vizhinjam Port in Kerala

Vizhinjam port - a public-private partnership project for development of a deep-water multipurpose seaport in Kerala - was first proposed in the 1990s. Despite its questionable financial viability and location that is close to three existing ports, the project was approved for construction. As the project remains under construction, locals report impacts on beach ecology, traditional livelihoods, and their homes. The Vizhinjam port raises the question of public participation and remedy after a project commences. What is the redressal mechanism for people when predicted impacts become visible, disrupting lives and livelihoods?

Background: The Vizhinjam International Deepwater Multipurpose Seaport is situated in the Thiruvananthapuram district of Kerala. It was initially proposed in the 1990s,¹⁶⁴ and has been touted as a project arising out of the sacrifice of the common man.¹⁶⁵ It is a public private partnership between the state government and the Adani Ports and Special Economic Zone (APSEZ). The Comptroller Auditor General of India found the selection of concessionaire unduly favourable towards APSEZ.¹⁶⁶

The Vizhinjam project was pushed forward despite government reports questioning the project’s financial viability and suggesting development of smaller ports instead.¹⁶⁷ Significantly, the Committee Report on Ports from the Union Ministry of Shipping, as well as an Expert Appraisal Committee questioned the proposal given that there were three existing ports nearby.¹⁶⁸

¹⁶⁴ Joseph, A. (2019) Development For Whom? The Vizhinjam Port and Fisherpeople’s Woes 31 May. ALA <https://alablog.in/issues/issue-9/vizhinjam-port-and-fisherpeoples-woes/>

¹⁶⁵ Manorama, (2015), Vizhinjam: Kerala is no longer day dreaming. 5 December. *Manorama* <https://www.onmanorama.com/news/columns/straight-talk/vizhinjam-sea-port-udf-oommen-chandy-kerala-ldf-adani-group.html>

¹⁶⁶ Nileena MS, (2018) Adani’s Vizhinjam port still mired in controversy after inquiry into the CAG report. 22 October. *The Caravan* Available at <https://caravanmagazine.in/business/adani-vizhinjam-controversy-government-panel>

¹⁶⁷ Nair, S (2013) Vizhinjam port project not ‘financially attractive’: Report, 4 November, *Times of India*, Available at <https://timesofindia.indiatimes.com/city/thiruvananthapuram/Vizhinjam-port-project-not-financially-attractive-Report/articleshow/25228685.cms> ,

¹⁶⁸ Mathrubhumi (2016) Vizhinjam rings alarm bells as Centre finds Colachel more profitable, 9 July, *Mathrubhumi*, <https://englisharchives.mathrubhumi.com/news/kerala/english-news-1.1189957>



| ONE OF THE PROTEST SITES AGAINST THE VIZHINJAM PORT PROJECT

Scope for Public Participation: Ports are subject to environmental clearance under the EIA Notification, requiring a public hearing. Since parts of the area fall within the regulation of the CRZ, the project is also required to have a CRZ Clearance. However, there is no public participation mandated under CRZ processes, nor in the process for obtaining consent under the Air and Water Act.

Affected people can approach the District Collector and courts to address grievances. Since the International Finance Corporation (IFC) was involved as a consultant to the State Government in the project, the IFC Compliance Advisor Ombudsman can also receive grievance reports.

Environmental and Social Impact:

Erosion and Destruction of Houses: People living near the project area have reported damage to multiple houses as a result of drilling for port construction.¹⁶⁹ Reports also suggest that more than 800 homes have been destroyed due to erosion since 2017 in the fishing villages of Kochuthoppu, Poonthura, Valiyathura, Panathura, Kannanthura, Vettukad, Veli, Thumba and Saint Andrews.¹⁷⁰ Many of the displaced residents are still waiting for new homes and land while living in makeshift rehabilitation camps in government schools (3-4 families per classroom), abandoned godowns (warehouses) or relatives' houses.¹⁷¹

A June 2022 report of the National Institute of Ocean Technology (NIOT), commissioned by project authorities, analysed data from October 2020 to September 2021 and found erosion and accretion in many areas, without conclusively identifying the

¹⁶⁹ Balan, S (2020) Why Kerala fishermen are protesting against the Vizhinjam port construction again, *The News Minute*, 14 October, Available at <https://www.thenewsminute.com/article/why-kerala-fishermen-are-protesting-against-vizhinjam-port-construction-again-135338>

¹⁷⁰ Special Correspondent (2020) Adani denies causing erosion that destroys Kerala beaches, roads, homes, *Adani Watch*, Available at https://www.adaniwatch.org/adani_denies_causing_erosion_that_destroys_kerala_beaches_roads_homes

¹⁷¹ Anitha, S (2022) 'Letter from Anti Vizhinjam Adani Port struggle front' 26 July. *Countercurrents* Available at <https://countercurrents.org/2022/07/letter-from-anti-vizhinjam-adani-port-struggle-front/>

causes.¹⁷² In its latest report, again carried out at the insistence of project authorities, NIOT found that “Climatic events led to the erosion. The construction had little impact.” However, some scientists did not agree with the report. While acknowledging the contribution of the climatic events such as cyclone Ockhi and Tauktae to the eroding coastline, they insisted that port construction has made the area more vulnerable.¹⁷³

Increase in Accidents: Fisherfolk say that there has been an increase in accidents since port construction began.¹⁷⁴ A fisherman of more than 18 years noted that construction of breakwaters in the port has turned the harbour deadly, with waves rebounding off breakwaters and capsizing fishing boats in the harbour.¹⁷⁵

Decline in Fish Catch and Loss of Species: Fish catch has reportedly declined since project construction began. In 2017, a fisherman stated, “we used to get an abundance of fish - *ottoli* (anchovy), *ayala* (mackerel), *chhala* (sardine), *chilaw* (barracuda) and *vala* (ribbon fish). But now the availability has reduced drastically.”¹⁷⁶ One study documents the large decrease of fish species in fishing villages near the port project.¹⁷⁷ Fisherfolk who work near the port areas say the dredging work has caused habitat loss for several aquatic organisms, especially mussels and lobsters.¹⁷⁸ Experts have also noted the destruction of marine animal breeding grounds and coral reefs.¹⁷⁹

Delayed Compensation: The project’s Environmental Management Plan estimated that 3,423 fish workers and small business operators would lose their jobs. In 2017, protests were held against the project, primarily because allocated compensation for fisherfolk who lost their livelihoods due to port construction had been delayed.¹⁸⁰

Locating Responsibility: In the Vizhinjam port project, EAC meeting minutes indicate that the project was pushed through citing public interest and strategic im-

¹⁷² National Institute of Ocean Technology (2022) Shoreline change analysis of Vizhinjam coast using beach profiles and satellite images, Annual Report (October 2020 to September 2021) https://www.vizhinjamport.in/download/Annual%20shoreline%20change%20Report_Oct%202020%20to%20Sep%202021_%20NIOT.pdf

¹⁷³ Unnikrishnan, S. (2023). ‘Vizhinjam port-appointed institute says work not reason for erosion’. *The New Indian Express*. 16 January. Available at: <https://www.newindianexpress.com/states/kerala/2023/jan/16/vizhinjam-port-appointed-institute-says-work-not-reason-for-erosion-2538197.html>

¹⁷⁴ Elizabeth, J (2019) ‘Vizhinjam Harbour A Death Trap’, 21 October, *Madhyamam Weekly*, Available at https://drive.google.com/file/d/13lstePxiXpuT_K5_RXfej0QWT1vlsDV1/view

¹⁷⁵ Ibid

¹⁷⁶ Vohra, S (2022) ‘Fish famine, livelihood loss because of upcoming Vizhinjam port, say fishers of south Kerala’ 4 May, *Mongabay*. Available at <https://india.mongabay.com/2022/05/fish-famine-livelihood-loss-because-of-upcoming-vizhinjam-port-say-fishers-of-south-kerala/>

¹⁷⁷ Sahayaraju and Jament (2021) *International Journal of Fisheries and Aquatic Studies*, 9(5): 23-29 <https://www.fisheriesjournal.com/archives/2021/vol9issue5/PartA/9-5-5-196.pdf>

¹⁷⁸ Shaji, KA (2020) ‘Adani’s Vizhinjam Seaport Is Eating Up Thiruvananthapuram’s Beaches And Fishing Villages’, *Huffpost*, 11 October, Available at https://www.huffpost.com/archive/in/entry/adani-vizhinjam-seaport-kerala-thiruvananthapuram-coastal-erosion_in_5f8080cfc5b62d09d272b28d

¹⁷⁹ Ibid

¹⁸⁰ Vohra, S. (2022) ‘Fish famine, livelihood loss because of upcoming Vizhinjam port, say fishers of south Kerala’ *Mongabay*, 4 May, Available at <https://india.mongabay.com/2022/05/fish-famine-livelihood-loss-because-of-upcoming-vizhinjam-port-say-fishers-of-south-kerala/>



| VIZHINJAM PORT PROJECT AREA

portance, despite unresolved questions on scale, alternative locations, erosion levels and impacts on fishing communities.

Public Strategy and Action: Vizhinjam saw two distinct phases of public action. The first phase was before the construction of the port. The second phase is on-going since construction began and impacts started arising.

Before the project began, people raised concerns in a formal public consultation process to government bodies, expert appraisal committee, and by lodging complaints with international platforms and filing cases in courts. They even filed a petition demanding a translation of the full EIA report as only the summary was provided in the local language; however, the petition was dismissed. In 2012, a complaint was filed with the Compliance Advisor Ombudsman alleging that the IFC did not comply with the environmental and social performance standards of the World Bank.¹⁸¹

Additionally, several petitions to the National Green Tribunal challenged the grant of environmental clearance to the port.

In 2022, a protest led by the Latin Church lasted almost six months. Key protest demands included¹⁸²:

- Discontinuing port construction and studying the impacts on coastal erosion, including through a team comprising locals and experts nominated by protestors
- A rehabilitation package to affected families and temporary rent-free accommodation to those who lost their houses
- Speedy compensation for those involved in accidents
- Subsidised kerosene to run fishing boats

¹⁸¹ Kodath, C. (2012) Concerns of affected stakeholders, joint complaint on the proposed Vizhinjam port project, Compliance Advisor, 14 August, Available at https://www.cao-ombudsman.org/sites/default/files/downloads/ComplaintLetterforCAO_Public_Final.pdf

¹⁸² Manorama. (2022) Explained | 7 demands raised by fisherfolk protesting at Vizhinjam. *Manorama*. 18 August. Available at <https://www.onmanorama.com/news/kerala/2022/08/18/vizhinjam-protest-fishermen-what-are-seven-demands.html>

- Payment of minimum wages for those who could not work due to adverse weather
- Mitigation of coastal erosion

Outcomes: The Vizhinjam port project demonstrates how public hearings in their current format and mere documentation of people’s concerns are insufficient to prevent and address the social and environmental impact of large infrastructure projects. Even international platforms have not been of much use. The Compliance Monitoring Report of the complaints, published in June 2020, indicates that IFC standards for land acquisition were ignored and the Kerala government’s assurance to follow IFC performance standards was accepted on face value without much scrutiny.¹⁸³ While IFC changed its policies with respect to public-private partnerships in response, the report does not redress complaints beyond acknowledgment of inconsistencies on IFC’s part.

In 2016, the NGT ordered establishment of a seven-member-expert committee with representation from different government departments and institutions to monitor each condition of the EC and CRZ Clearance and file a report every six months to the Tribunal. The court also ordered a cell to be set up within the Kerala CZMA to regularly monitor shoreline changes within 10 km of the project area and display the annual shoreline changes in the public domain.

While the State Government, recently agreed in principle to some demands of protestors, there has been little action to date. For instance, while the Government constituted an expert body to study impacts of the port, they have not included members nominated by the protestors.¹⁸⁴ This has led the protestors to constitute their own body to conduct a parallel study.¹⁸⁵ The Government continues to maintain that the stoppage of port construction is “non-negotiable”. An order has been issued by the Government promising to pay Rs 5500 per month as rent to families displaced due to coastal erosion. While the order has been heavily criticised for the low level of compensation, it does clearly state that houses were lost in coastal erosion due to the Vizhinjam project.¹⁸⁶

¹⁸³ CAO. (2020) Compliance Monitoring Report, 23 June, Compliance Advisor Ombudsman, Available at https://www.cao-ombudsman.org/sites/default/files/downloads/MonitoringReport-Vizhinjam-FinalVersionforweb_000.pdf

¹⁸⁴ Ayyapan, R. (2022) ‘100 days, no land sighting for Vizhinjam fisherfolk’s anti-Adani struggle’. *Manorama*. 27 October. Available at <https://www.onmanorama.com/news/kerala/2022/10/26/vizhinjam-port-protests-100-day-updates-live.html>

¹⁸⁵ Ibid

¹⁸⁶ See Sreejith, KS. (2021) ‘The coastal community who pay the price for Adani’s Sea Port’. *Madhyamam*, 8 September, Available at <https://english.madhyamam.com/kerala/the-coastal-community-who-pay-the-price-for-adanis-sea-port-1071791>, Elizabeth, J (2022) [Tweet] 6 September, Available at <https://twitter.com/jishaeliza/status/1566868206081679360>

7. OBSERVATIONS & ANALYSIS

Limitations of the existing system

(i) Few legitimate spaces

Based on these case studies and overview of spaces for public participation, we categorise spaces for public participation as follows¹⁸⁷: invited spaces are when there is an explicit legal provision for public participation; limited spaces when the scope of participation is defined and circumscribed in its extent, reach and/or impact; and closed spaces where public participation does not occur.

LEVEL	INVITED SPACE (CONSENT)	LIMITED SPACE (CONSULTATION, INVITING COMMENTS/ SUGGESTIONS)	CLOSED SPACES (NO PROVISION FOR PUBLIC PARTICIPATION)
Law-making		-Pre-Legislative Consultation Policy -Public comments on laws -Parliamentary Standing Committees	Ordinance
Planning/ Governance	-Panchayat (Extension to Scheduled Areas) Act (PESA) 1996	-District Level Committees (DLCs): space for governance -District Mineral Fund (DMF)/ Local Area Development Fund (LADF) -Masterplans/development plans	-Scheduled areas turned into municipal areas
Project Decisions	-Forest Rights Act (FRA) 2006: Gram Sabha consent -PESA Act 1996: Gram Sabha consent -Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement (RFCTLARR) Act, 2013: 70-80% consent of landowners in projects with private parties' involvement	-Environmental Impact Assessment (EIA) 2006: Public consultation including public hearing -Coastal Regulation Zone (CRZ) clearance (if DLC is involved) -RFCTLARR, 2013 (public hearing on social impacts and Rehabilitation and Resettlement)	-Wildlife Protection Act (WLPA) -Permissions under the Air and Water Act -CRZ (if DLC is not involved) -Exemptions from conducting public hearing/consultation or obtaining environmental clearance under EIA Notification

The above analysis shows that there are very few spaces that provide broad participatory rights and the possibility of influencing government decisions on natural resources. Even those that grant the public a right to weigh in on regional resource governance are not supported with facilitative conditions.

¹⁸⁷We rely on Gaventa's power cube which identifies the possibilities of participation-invited, created, and closed are identified. See Gaventa, J., 2006. Finding the spaces for change: a power analysis. *IDS bulletin*, 37(6), pp.23-33.



| EFFLUENTS BEING DISCHARGED INTO A RIVER

(ii) One-time participation

In most of the analysed laws, the space for public participation is usually limited to a one-time hearing, consultation or interaction. There is no onus on the government or company to interact with different stakeholders and institute inclusive, effective and meaningful engagements. For instance, after the public hearing under EIA, the project proponents have to comment in writing on the issues raised at the public hearing. There is no scope for a conversation on the impacts, or project authorities' accountability to seriously consider the issues raised. For instance, while over 90% of submissions on the draft CRZ law rejected the law, the Central Government still passed the CRZ Notification 2019. Similarly, even after strong opposition, provisions of the draft EIA 2020 are being incorporated one after another into the existing EIA 2006. Even laws that have possibilities for multiple interactions are being amended to limit them to one-time participation events. In the case of RFCTLARR, many state governments have diluted the provisions of social impact assessments. Similarly, the Himachal Pradesh Hydropower policy has replaced multiple consent requirements with one-time consultations with Gram Panchayat for small hydropower projects (see section 4.5 for details).

(iii) Limited scope for appeal

If people feel their voices are not heard in a public consultation process, they have limited appeal possibilities. The EIA Notification, FRA and PESA all provide for only consultations with the public before a project begins. When complaints are raised afterwards, in most cases they are merely recorded and responded to in a cursory way. In such a scenario, courts remain the only possible platform for raising concerns. Appeals to international mechanisms have not usually been fruitful for the aggrieved, as in the case of the IFC-supported Vizhinjam project.

(iv) Weak post-approval monitoring and grievance redressal

The scope of public participation in most laws is limited to consultation during the law-making or project-approval stage. After a law comes in place or a project is approved, the space for public participation is almost negligible. Post-approval, hardly

any platforms are made available to take fresh opinions from people. The limited possibilities that emerge when projects run into delays and require fresh environmental clearance or seek to expand are being snubbed by the MoEFCC (See details in Annexure 1). Even this curtailment of opportunities for the public to raise their concerns on ongoing projects is largely being carried out through office orders, which again bypass public scrutiny. Similarly, self-governance laws such as PESA lack any effective grievance redressal mechanism.

(v) *Limitations of alternative routes of public participation*

In the previous sections, we discussed the spaces that are available for public participation in environmental decision making. As explained above, these spaces are not ‘involving’, ‘collaborating’ or ‘empowering’ to meaningfully consider the views and concerns of people. This leads to communities innovating around different legitimate ways to influence decisions. They create possibilities by pushing the existing spaces to deepen their involvement in decision-making processes.¹⁸⁸ From using their constitutional right to protest¹⁸⁹, employing litigation to challenge decisions, complaining to administrative forums, seeking international redressal mechanisms, movement building, campaigning, and carrying out advocacy, people have used various legal strategies to push the space for participation.¹⁹⁰ **An analysis of strategies used by communities to address resource conflicts found that protests were the most popular commonly employed strategy.**¹⁹¹

The limitation of litigation is that access to courts is difficult, expensive and prolonged. This has skewed participation and raised issues of equity with respect to whether all interests, especially of the poor and marginalised, are represented in these cases.¹⁹² For instance, litigation on solid waste management has completely overlooked implications for the urban poor, as well as the role of informal recyclers and waste pickers. Judicial decisions often reflect middle class interests and views of environmentalism. Nevertheless, litigation has also in some cases resulted in strengthening or expanding existing spaces for public participation (see public hearings under Section 3.3.1).

¹⁸⁸ Dilay, A., Diduck, A.P. and Patel, K. (2020). Environmental justice in India: a case study of environmental impact assessment, community engagement and public interest litigation. *Impact Assessment and Project Appraisal*, 38(1), pp.16-27.

¹⁸⁹ In India, the right to protest is enshrined within the Constitution's Article 19, which protects the freedom of speech, including citizens' right to peaceful assembly. The right is however subject to reasonable restrictions and governments at both central and state level have enacted other laws which restrict this right. Further, there is also a shift in the jurisprudence, in recent times, that has viewed this right more narrowly. See Grover, V. Assessing India's Legal Framework on the right to peaceful assembly. Available at <https://www.icnl.org/wp-content/uploads/India-freedom-of-assembly-report-2021-final.pdf>

¹⁹⁰ Kohli, K., Kapoor, M., Menon, M. and Viswanathan, V. (2018). Midcourse Manoeuvres: Community strategies and remedies for natural resource conflicts in India.

¹⁹¹ Ibid

¹⁹² Rajamani, L. (2007). Public interest environmental litigation in India: Exploring issues of access, participation, equity, effectiveness and sustainability. *Journal of environmental law*, 19(3), pp.293-321.

Coalescing of Citizen Efforts Against Project Decisions

In Goa, a citizen-led movement is challenging three linear projects: the double tracking of a railway line, four-laning of a national highway and a transmission line. These projects cut across parts of a wildlife sanctuary and national park and cumulatively would result in cutting over 59,000 trees.¹⁹³ As a part of the movement, citizens and NGOs have held awareness campaigns and protested overnight at a railway track, while scientists have written submissions to the government. Through the movement, the political representatives were asked questions in the Legislative Assembly about the project.¹⁹⁴ Goa Foundation, an environmental action group, challenged the wildlife clearances given to the project in the Supreme Court. The court set up a Centrally Empowered Committee which recommended rejection of the transmission and railway line expansion and an alteration of the highway's route.¹⁹⁵ Following the Committee's report, the Supreme Court set aside the environmental clearance issued for the double tracking of the railway line and ordered a fresh assessment of environmental impact.¹⁹⁶ Several other protests, which witnessed participation from different groups of society—academics, scientists, activists, school and college students—have been observed in the last few years, including around campaigns such as the 'Save Mollem Campaign', a campaign for the Aarey forest, and a campaign against the Etalin dam.

¹⁹³ Lobo, J (2022) Magical Mollem: The Fight to Save Goa's Largest Wildlife Sanctuary, 27 July, *Roundglass Sustain* Available at <https://roundglassustain.com/conservations/goa-mollem-conservation>

¹⁹⁴ Herald (2022) Amchem Mollem hits out at Govt for ambiguous responses on linear projects, 5 August, *Herald*, Available at <https://www.heraldgoa.in/Goa/Amchem-Mollem-hits-out-at-Govt-for-ambiguous-responses-on-linear-projects/192600>

¹⁹⁵ Vohra, S. (2021) Proposed infrastructure through Goa's protected areas red-flagged by SC-appointed panel, 13 May, *Mongabay*, Available at <https://india.mongabay.com/2021/05/proposed-infrastructure-through-goas-protected-areas-red-flagged-by-sc-appointed-panel/>

¹⁹⁶ Maad, GK. (2022). 'Goa: SC quashes Railways' nod for Mollem double-tracking'. *Times of India*, 10 May. Available at <https://timesofindia.indiatimes.com/city/goa/sc-quashes-railways-nod-for-mollem-double-tracking/articleshow/91452397.cms>

KEY BARRIERS/CHALLENGES TO PARTICIPATION

Limited legal backing	The provisions for public participation are often legally non-binding
Lack of access to information	Public participation is further impeded by incomplete or inaccurate information, as well as challenges in accessing information
Poor implementation of existing provisions	Non-adherence to procedures, and disregard of existing provisions for public participation has stifled public engagement in government decisions
Parallel notifications	Parallel notification of laws and plans whose notice periods are concomitant affects genuine public participation
Language barriers	Technical language of the EIA reports and project and planning documents is alienating and intimidating; lack of translation into local languages
Missing action from states	Several central laws that provide for public participation such as the Panchayats (Extension in Scheduled Areas) Act (PESA) are pending PESA rules in half of the states with schedule V areas. Similarly, the Panchayat Extension in Schedule Municipal Areas has yet to be implemented. States such as Himachal Pradesh have asked in the past that they be allowed to bypass the Forest Rights Act (FRA), without any assurance that they will ensure forest rights for communities

8. RECOMMENDATIONS

1. Raise awareness of and better implement the Pre-Legislative Consultation Policy:

The Pre-Legislative Consultation Policy is already eight years old. Yet, it is not widely known. The government's own departments and ministries often violate the prescriptions of the policy. A nation-wide awareness drive directed at central ministries and state governments is the need of the hour. The Policy should be translated in regional languages and made available to all government departments and ministries. The policy should also be made binding to ensure more compliance with international standards on public participation. An incentive-based system wherein departments and ministries that follow the recommendations of the Policy are acknowledged on public platforms could also encourage its use.

As far as civil society is concerned, raising awareness around the prescriptions of the Policy among communities and grassroots actors is highly recommended. We provide a simple brief on the policy in the *Toolkit for Enhancing Public Participation in Environmental Decision-Making in India*. This can be used for translations, printing and disseminating the key recommendations of the policy.

2. Define 'Public Interest':

Our analysis has shown that the provision for 'public interest' has been abused to represent the interests of industries and businesses and deny the public their due right to information and participation in environmental decision-making. This goes against the spirit of national laws such as the Pre-Legislative Consultation Policy, as well as international frameworks. While there has been a sustained effort to define the scope of public participation, 'public interest' has remained undefined.

We recommend that a committee with genuine representation from actors such as the Environment Ministry, Ministry of Law, NGOs working on issues of enhanced citizen engagement in policy making and representatives of communities who have been affected by displacement in the name of public interest should arrive at a definition. The proposed definition of the term should be made available for public scrutiny and finalised after due consideration of public views. Inappropriate use of the term 'public interest' by the government should be publicised and criticised by civil society.

3. Guarantee remedy for citizens affected by environmental harm:

Under the Citizens Charter, state governments have issued legislation on the Right to Service. These laws provide for time-bound delivery of service by various departments, including electricity connection, water supply or issuance of ration cards. However, when it comes to environmental matters, the understanding of service delivery has been turned on its head. Inspection protocols of the state pollution control boards across the country promise service delivery for issuing authorisations such as Consent to Establish or Consent to Operate to companies in a given duration. They also consider complaints from companies pertaining to consent, authorisation and licenses under service delivery. But ensuring clean air, free-flowing water sources, and enforcing compliance with pollution control measures are not viewed as service delivery. This leaves citizens aggrieved by the violated terms of consent granted by these boards, outside this service delivery system.

We recommend that under the Citizens Charter, citizens aggrieved by violation of environmental conditions be guaranteed time-bound action against the violating companies and restoration of their environment. The action can include a greater role for institutions that are closest and most accessible to people, such as the regional offices of the State Pollution Control Boards and District Coastal Committees. By demanding time-bound action on complaints, civil-society can push government authorities towards this outcome.

4. Publicise citizen complaints and government responses:

Most environmental institutions track activities such as the number of permissions granted, notices issued, and directions given; the number of complaints redressed successfully should also be included as an indicator of these institutions' performance and effectiveness. Information on complaints received, steps taken and resolution achieved should be made available online and publicly. Currently, self-monitoring and self-declaration of emissions by companies are being encouraged over site inspections by the pollution control boards. In fact, the Air and Water Act stops short at only identifying PCBs as responsible bodies for monitoring and enforcement. Not much thought has been given to how citizens facing the impacts of non-compliance can file and pursue complaints. By instituting a procedure for citizens to complain to these institutions and seeking testimony from complainants after the complaints have been resolved, the current process of enforcement will become more balanced. Testimonies from complainants could also be a way to record the status of complaint redress. Pictures and satellite images of sites of violations with date stamps could also help ensure redress. Civil society can lead this action by initiating crowdsourcing websites with maps and data of violations, impacts, citizen complaints and government actions.

5. Adopt proactive government policies institutionalising effective public participation:

The government should be required to proactively create conditions for meaningful participation. Some of these conditions are as follows:

- Local communities and civil society should be empowered to share their views openly.
- People should be informed of relevant processes and any upcoming changes to major projects in simple non-technical terms, translated into local languages. All relevant information should be made available online and in nearby government offices.
- Governments should take special attention when marginalised groups are involved in processes such as public hearings and work to eliminate intimidation, coercion and forced consent.
- When their rights of participation are violated, people should have sufficient recourse within the administrative system to be heard and obtain redress.
- The existing spaces for public participation should be expanded, not limited to a one-time exercise.
- Online participation mechanisms should be in addition to—and not in place of— offline means of public participation.
- Government departments should coordinate to avoid parallel notification of draft legislation and ensure that citizens have enough time to genuinely review draft policies and laws.
- Civil society can help educate citizens about their rights and build capacity to approach redress and appeal forums.

6. Set targets and objectives for public participation:

While public participation in the Indian environment decision and policy making needs to grow, we also need to pay attention to what the desired objectives of such exercises are. What are we looking to achieve - an informed citizenry, a social contract, sustainable development, or collaborative decisions? Once it is clear what the desired outcomes and targets are, studies can be carried out to measure the effectiveness of existing practices and determine what changes are needed to achieve the desired outcomes. Civil society can further this goal by providing their suggestions and guidance on the objectives of public participation.

9. ANNEXURES

Annexure 1: Key Public Hearing Exemptions

DATE	EXEMPTION	TYPE
2009	Project Proponent (PP) of up to 15 Mega Watt using biomass/non-hazardous municipal waste and auxiliary fuel up to 15% exempted. PP using waste heat boiler without any auxiliary fuel exempted.	Environmental Clearance (EC) exemption
	For metallurgical industries, recycling units registered under Hazardous Substances Management Division exempted. Only those Secondary metallurgical industries that use furnace of 30000 Tonnes Per Annum (TPA) need EC. Units other than power plants based on waste exempted.	EC exemption
	Mineral prospecting including drilling exempted. (Earlier exempt only if clearance for concession area for physical survey obtained)	EC exemption
	Maintenance dredging (provided dredged material is disposed within the port limits)	Exemption from public consultation
	All building, construction and area development projects excluding those that have projects that are appraised at the Centre	Exemption from public consultation
February 2015	Linear projects in border states	Exemption from public consultation
September 2015	Stand-alone pelletisation plants in existence on/before 27th May 2014 with valid Consent to Establish and Consent to Operate	Exemption from public consultation
September 2017	Coal mining projects for an increase in production capacity of up to 40% in 2-3 phases, without land area increase	Exemption from public hearing
January 2020	Change in product mix, or any products for which category an EC is already obtained without any increase in pollution load, and production capacity increase of not more than 50%	EC exemption
	Off and on shore exploration for gas and oil	Re-categorisation
April 2022	Expansion projects within existing project premises/mine lease areas or modernisation	Exemption from public hearing
July 2022	Power plant up to 25 Mega Watt, based on biomass or non-hazardous municipal waste and using auxiliary fuel such as coal/lignite/petroleum products up to 15% (Previously, power plants up to 15 Mega Watt exempt)	EC exemption
September 2022	Research and development activities on laboratory/pilot scale	EC exemption
October 2022	Industrial shed that houses raw material, finished products up to the size of 150,000 sqm	EC exemption
October 2022	Maintenance of runway, terminal buildings and allied buildings within the existing land area of an airport	EC Exemption

Annexure 2: Evolution of international discourse on public participation in environmental decision-making

INTERNATIONAL FRAMEWORK	YEAR	DETAILS
Universal Declaration of Human Rights	1948	<p>Article 21: "1. Everyone has the right to take part in the government of his country directly or through freely chosen representatives. 2. Everyone has the right to equal access to public service in his country." 3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."</p>
International Covenant on Civil and Political Rights	1966	<p>Article 25: "Every citizen shall have the right and opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;" Article 19. 2. "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of choice."</p>
Stockholm Declaration	1972	<p>Article 7 of Preamble: "To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts. Individuals in all walks of life as well as organizations in many fields, by their values and the sum of their actions, will shape the world environment of the future."</p>
World Charter for Nature	1982	<p>Article 16 under III. Implementation: "All planning shall include, among its essential elements, the formulation of strategies for the conservation of nature, the establishment of inventories of ecosystems and assessment of the effects on nature of proposed policies and activities; all of these elements shall be disclosed to the public by appropriate means in time to permit effective consultation and participation."</p>
Tokyo Declaration of World Commission on Environment and Development	1987	<p>Article 5: "Greater public participation and free access to relevant information should be promoted in decision-making processes touching on environment and development issues."</p>
Hague Recommendation on International Environmental Law	1991	<p>Principle I.3d, IV.7 a-c: "In developing environmental policies at the national and international levels, states should apply inter-alia: the right of access for the public to and the duty of the states to provide information relating to environmental impacts and risks and related health hazards." Equal and full access to information, for individuals and institutions must be recognized as a prerequisite to implementing certain fundamental rights.</p>


Rio Declaration on Environment and Development, and the Statement of principles for the Sustainable Management of Forest, at the UN Earth Summit in 1992	1992	Principle 10: "Environment issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have the appropriate access to information concerning the environment that is held by public authorities including information on hazardous materials and activities in their communities and the opportunity to participate in decision making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy shall be provided."
Third Ministerial Conference 'Environment for Europe' in Sofia	1996	Preamble of Economic Commission for Europe Guidelines on access to environmental information and public participation in environmental decision-making: "Recognizing that in order to increase awareness of environmental problems and promote effective public participation, access to environmental information should be guaranteed, Recognizing that public participation contributes to the endeavours of public authorities to protect the environment, and bearing in mind that environmental policy and decision-making should not be restricted to the concerns of authorities..." Access to Environmental Information: Principle 1 to 15; and Public Participation in Environmental Decision-making: Principle 16 to 24
Espoo Convention on Environmental Impact Assessment in a Transboundary Context	1997	Article 3: "The concerned parties shall ensure that the public of the affected party in the areas likely to be informed of, and be provided with possibilities for making comments or objections, through the party of origin."
Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters	1998	Article 1: "In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention."
UN Declaration on the Rights of Indigenous Peoples	2007	Article 10: "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return."
Nagoya Protocol of Convention on Access and Benefit-Sharing	2010	Article 6: "Each Party shall take measures, as appropriate, with the aim of ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained for access to genetic resources where they have the established right to grant access to such resources." Article 7: "Each Party shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established."
UN OHCHR Guidelines on the effective implementation on the right to participate in public affairs	2018	Para 53: "Participation in decision-making processes may happen at different levels, from provision of information, through consultation and dialogue, to partnership or co-drafting. These levels relate to the degree of involvement or the 'intensity' of participation of rights holders in the different steps of the decision-making process (i.e. agenda setting, drafting, decision-making, implementation, monitoring and reformulation)."

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