



Review Paper

Legality and Legitimacy of Public Participation in Environmental Decision Making Process: A Review of Scenario from State of Odisha, India

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Abstract

Development is a continuous process and is essential to enable the population to attain a better standard of life. But it should not be at the cost of the environment. The challenge of a development pattern striving to harmonize economics with social and environmental need requires active citizen participation in public issues. Involvement of the public is one of the fundamental principles of a successful EIA process. It not only provides an opportunity to those directly affected by a project to express their views on the environmental and social impacts of the proposal but also brings about transparency in the environmental clearance system. However it has been found out that this vital part of environmental clearance process has become mere symbolic due to weaknesses in regulation, lack of awareness and expertise among the participants. This raises question on effective EMP implementation and re-addressal of environmental externalities. The present paper tries to identify the key anomalies and deficiencies by analyzing the minutes of a number of public hearings covering diversified sector in Odisha followed by discussion with project proponent, project affect people and officials of regulatory agencies. Based on the findings, the paper gives a number of suggestive measures about how to make this process more effective and participative.

Keywords: Public involvement, consultation, participation, environmental impact assessment (EIA), Environmental management plan (EMP).

Introduction

Principle 10 of the Rio Declaration states that “environmental issues are best handled with participation of all concerned citizens”. This declaration also outlines three important elements to public involvement in environmental decision making process: access to information, participation by raising their voice through public hearing and participate in decision making process through effective access to judicial proceedings. India’s economic development propelled by rapid industrial growth and urbanization is causing environmental problems that have local, regional and global significance. The developmental projects are largely responsible for the loss of biodiversity, degradation of natural resources such as water and soil thus affecting the lives and livelihoods of tribal and rural communities dependent upon it¹. Similarly rapid industrialization and urbanization in India’s booming metropolises are causing serious environmental problems. India took a bold step to include environmental protection rights and duties in its Constitution. The Constitution of India specifies that the State shall endeavor to protect and improve the environment and to safeguard the natural resources of the country. According to the Constitution, it is the fundamental duty of every citizen of India to protect and improve the natural environment and to have compassion for living creatures. By raising environmental concerns to the constitutional level, India

has provided its citizens with a powerful policy tool to protect the environment². The Right to a clean environment has been recognized as inherent in the Right to Life under Article 21 of the Constitution³. One of the most important aspects of such a right is public participation in the management and sustainable use of the environment⁴. In India, as in any democratic society, people hold the power to shape public opinion and government policy. As the economic situation improves, in India as in any other economy, an increasing number of people place a greater value on environmental quality and are able to voice their demands more aggressively. Strengthening opportunities for effective public consultation and participatory decision-making can play a critical role in a country⁵. Public participation is a powerful legal instrument with the community for protecting their environment from the deleterious impact of developmental projects. People living near any proposed project are well aware about the possible impacts of a project on the local environment or community resources and able to identify possible impacts that may not have considered through any other means. Here the community is empowered to voice their opinion and choose from development options and then reject or accept the proposals⁶. Though public hearing is an excellent means of apprising people about the impacts of project, it still remains as a symbolic gesture in environmental clearance process. Till date, environmental public hearing has failed to achieve its objective. Institutional constraints including lack of political and

administrative will; unavailability of information; lack of transparency; inadequate capacity of participants and misconceived perceptions about public involvement are some of the major hindrance which should be properly addressed to make environmental protection participative.

Role of Public Participation in Environmental Clearance

Process: Public participation may be encompasses many different activities like seeking information about a project, raise voice before village assemblies, writing comments on draft EIA and raising voice in a public hearing. Environmental Impact Assessment (EIA) was legally notified in the year 1994 under the Environmental Protection Act 1986⁷. However, it was only in 1997 that the EIA Notification 1994 was amended and for the first time public involvement in the environmental clearance through the public hearing mechanism was made statutory. After two decades of EIA practice in India, the environmental clearance process moved out of the inner coterie of the government departments. The government appointed experts and project proponents to include the public in general in the environmental clearance process. In EIA Notification 2006, the public hearing was 'reengineered' in a way that some of the structural constraints of the public hearing were addressed, but at the same time the scope of public hearings in terms of making a substantial impact on the project decision making was reduced. Involvement of the public is one of the fundamental principles of a successful EIA process. It not only provides an opportunity to those directly affected by a project to express their views on the environmental and social impacts of the proposal but also brings about transparency in the environmental clearance system. Most EIA processes are undertaken through public consultation rather than participation. Public consultation refers to the process by which the concerns of the local people regarding the adverse impacts of a project are ascertained and taken into account in the EIA study. This concept was legally introduced in India in the form of 'public hearing' in 1997. Since then the public hearing process has been conducted as a mandatory step of environmental clearance for most projects and activities. The public consultation process ensures an equitable and fair decision-making process resulting in better environmental outcomes. It is an important component for all kinds of project. This is because public consultations help allay the concerns of the local community, and reduce inaccurate information in the EIA report.

Objective: This article tries to analyze various aspects of environmental public hearing by analyzing a number of public consultation programme conducted in various parts of Odisha covering various types project. It tries to find out the level of achievement of objective of environmental public consultation after 17 years of its introduction. The article tries to find out if public consultation has increased awareness among the project affected people or it has remained as a mere symbolic process. Lastly and most importantly, based on the findings, necessary recommendations are given which can be implemented to make public consultation effective and purposeful.

Methodology

The methodology used in the research of this article has been doctrinal in nature. Various sources of literature from articles, journals, websites, official documents were referred. The official proceedings of 20 numbers of public hearing covering different category of project and location were being analyzed from various perspective. Apart from this, a number of environmental activist those who participated in the public consultation, project affected person, project proponent and officers of state pollution control board were interviewed to find out various drawbacks and outcomes of public consultation programme.

Results and Discussion

In this study, twenty (20) number of public hearing proceedings, covering various category of project were analyzed by collecting the official proceedings from state pollution control board office. This includes 5 projects each from Industry, mines, road and irrigation sector located in various part of state. These public hearing were conducted during 2012-2013 period. While some projects were green field project, some are found expansion project. Various aspects of public hearing such as awareness on environmental subject, availability of documents such as EIA and Executive summary, notice for conducting public hearing, participants composition, oral and written deliberation, presence of influencing personality like political representatives and location of the public hearing was analyzed by using these document and discussion with the environmental activist, officials of state pollution control board and project affect people. The key findings of the analysis are as follows:

Information regarding place of occurrence of public consultation:

Out of the twenty proceedings of public consultation analyzed, it has been found out that in all cases, prior notice has been circulated in one English and local daily. However, in a number of proceedings, it has been found out that a number of participants has complained regarding less information about occurrence of the public consultation programme. For example, a number of participants of public consultation of M/s Bhusan Energy Ltd, Meramundali and Kalinga Calciner Ltd at Paradip complained about lack of information about the occurrence of public consultation programme. Similarly considering the literacy rate of people in the mining project area, and circulation of the newspaper in which advertisement has been given, it can be concluded that this procedure of information dissemination is not at all sufficient. It has been found out that except news paper advt, no other ways such as drum beating, local information dissemination through poster/pamphlets distribution were practiced either by project proponent or regulatory agencies for wider dissemination of information. Similarly in all the 20 public consultation programme, considering the project affected people (people residing in surrounding 10 Km), the people participated in public consultation is less than one

percentage. So there arises a big question, is the voice of all the affected people are heard?

Technical interpretation of EIA report: 100% of the interviewed people those who participated in various public consultations are in view that the EIA report is too much technical to be understand by them. Even the executive summary prepared in vernacular language is found to be too much technical to be understand by a common people. They are completely ignorant about the content of the report. For that reason, the topic of discussion at public hearing was not subject oriented. Similarly the officials of state pollution control Board also admitted that translating the technical terms of EIA report to understandable form for common project affected people is a key challenge and it is a major issue which needs to be addressed. They also stressed that local NGO or literate person; college lecture can play a lead role in making this report to understandable for common people.

Presentation of Project salient features by non-environmental background Person: The analysis of proceedings of public consultation shows that in 95% case, persons having non-environmental background preferably head of the project initiate the presentation of the salient features of the EIA report. It has been found out that in mines project, the mines manager, in industrial project: mechanical manager, in road project: civil engineer/ social expert initiate the presentation on environmental issue. Ideally a person having sound knowledge on environment should give presentation on the report and other senior officials can give clarification or supplements him in between if needed.

Subject of discussion at Public consultation: The main objective of public consultation in environmental clearance

process is to sensitize the local people about the adverse impact of the proposed project on environment. The public consultation process ensures an equitable and fair decision-making process resulting in better environmental outcomes. The type of consultation, whom to consult during EIA activities, when and how to do so and who should do it all vary significantly from project to project. This depends on the needs of the project. However, it is an important component for all kinds of project. This is because public consultations help allay the concerns of the local community, and reduce inaccurate information in the EIA report. Ideally public consultation should start from when the idea of the project is conceived and continue throughout the course of the EIA. The three main stages when public involvement can take place in the EIA process are scoping, impact analysis, implementation and follow up.

The level of awareness on the environment among attended public was find out by analyzing the subject of oral as well as written deliberation of the participant. The subject of discussion at public consultation was totally categorized in to 4 types such as environmental, livelihood/ service, both and local issues. It has been find out that in industrial project; most of the people are quite sensitive/ aware about pollution issue of the industry. These project consultation programme were mostly held at urban and industrial area. The level of awareness is found to be quite high in this area as shown in figure 1. However level of environmental sensitization was found quite poor in mining, road and irrigation project. It has been found that most of the mining projects are located at remote areas of Odisha mostly habituated by tribal people. Out of the total deliberations in public hearing at mining project, participant's sensitization on environmental subject was quite poor as shown in figure 2.

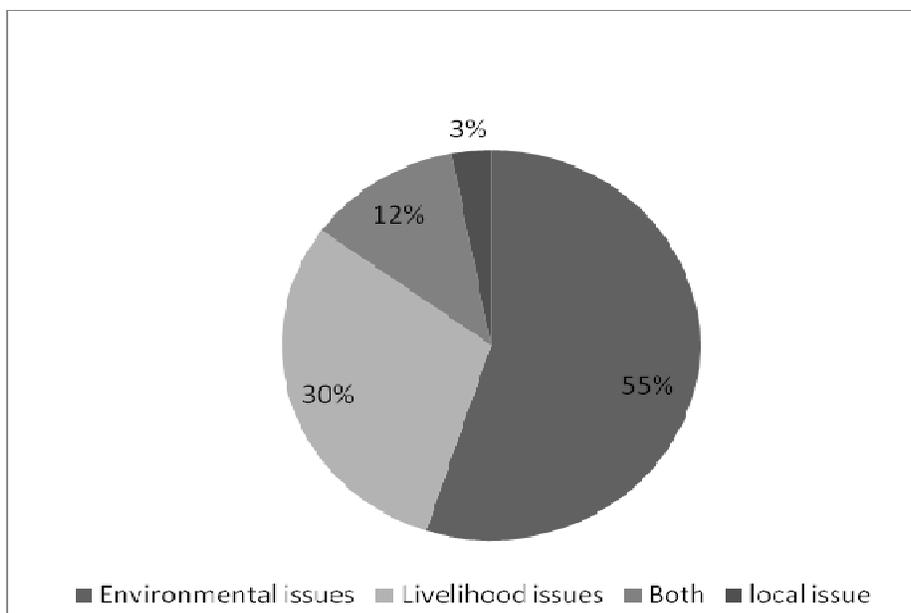


Figure-1
Analysis of Subject of Deliberation in Industrial Project

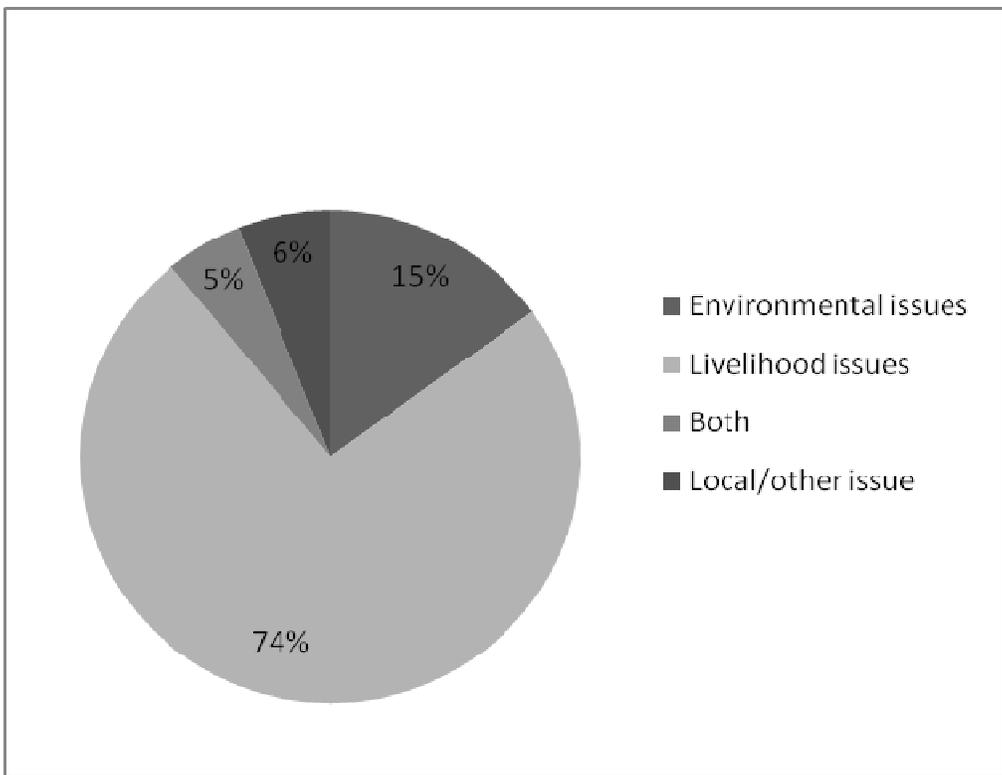


Figure-2
Analysis of Subject of Deliberation in public hearing in Mining Project

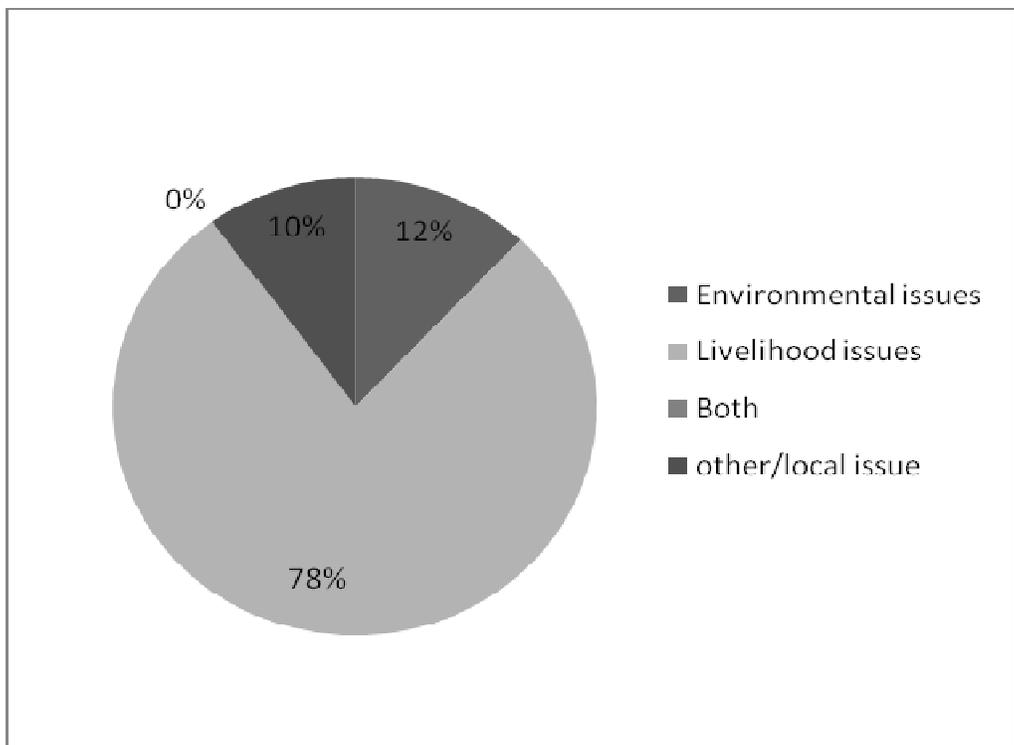


Figure-3
Analysis of Subject of Deliberation in public hearing of Road Project

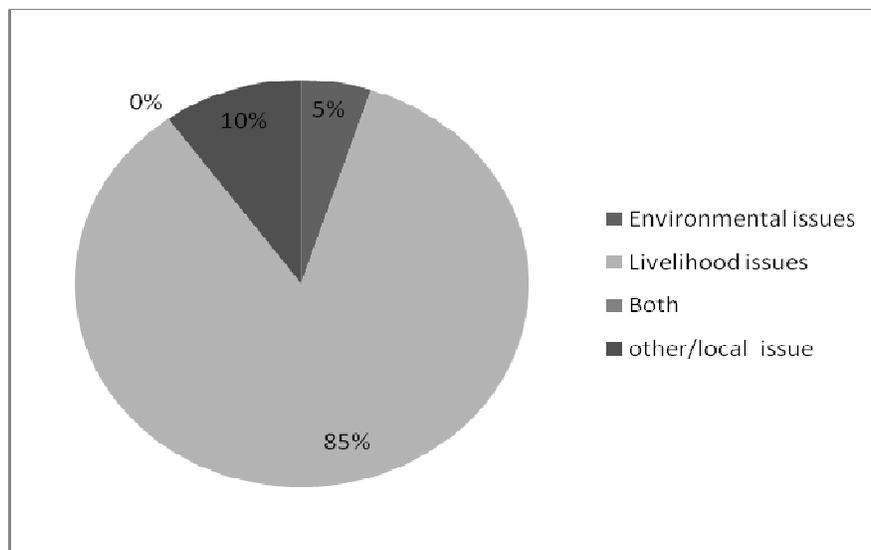


Figure-4
Analysis of Subject of Deliberation in public hearing of irrigation and other Project

Only 15 percentage of total participants give opinion on environmental subject while maximum of the discussion (74 %) was on livelihood aspect. Maximum of participants raised question on employment, construction of road, pond and other financial gains at their area. A number of people discussed on local issues. Similarly figure 3 and 4 shows the comparative lower level of sensitization on environmental issues in road and irrigation public consultation programme. This gives an conclusion that location as well as literacy level of affected area plays an important level in success of environmental public consultation programme. For example in the public consultation of M/s Bhusan energy ltd, all the 100% participants voiced against the expansion of the project anticipating more pollution level in future days due to proposed expansion.

Participation of Influential people in public hearing: The presence of influential person like village sarpanch, panchyat representatives, MLA, representative of MLA were conspicuously found in all the public hearing. Out of the total no of person deliberate in the meetings, around 15 percent of participants belongs to these category those who are found to be supporter of the project. it has been found out that their concerns were mostly limited on the employment generation and peripheral development issues, while a very few person under this category discuss on the real topic or environmental issue. Though in a democratic setup like India, role of people elected representative is quite significant, however analyzing their deliberation, it can be concluded that they are being deliberately pushed, backed by project proponent for their benefit.

Arrangements at Public Hearing and its intention: By discussion with project participant, it has been found out that in almost all public consultation, the necessary arrangements were made by project proponent. Even some interviewed person tells

that facilities like food, transportation, pandal construction for meeting, were arranged by the project proponent. The role of district administration or pollution control Board was limited. Though there is no clarity about who will arrange the meeting in EIA notification, however the expenditure made by the project proponent puts question on the neutrality of the process.

Has public hearing become a mere symbolic gesture in Environmental clearance process? It has been found out that though in a number of public consultation programme, there were majority opposition by participants to project, the projects were later found got clearance. The voices of people were ignored during clearance process as evident found in various public consultations. Though in the oral deliberation of **M/s Bhusan Energy ltd**, Meramundali 90 percent of the participant opposed the expansion, still it got environmental clearance. Same evidence is found in a number of other project. So a big question arises has this process become a mere symbolic in environmental clearance process?.

Key Findings: It is clear from the study that most of the public participated not due to environmental concerns but for economic interests/gain. It was found that illiteracy among the people is one of the major causes of inefficient public participation process. It can be concluded that lack of awareness of public about their right to participate is being misused by the project proponent. Also, the authority shows no interest to make people aware of environmental impacts of their project and was liberal to the project impact on the environment and related issues. Thus, it can be concluded that the public involvement exercise was meant just to be in compliance with rules and regulations of the process. It seemed as if the public hearing was very well staged, so as fulfilling the criteria of obtaining environmental clearance for the project.

Recommendations: Some of the key recommendations which can make public consultation more effective and fruitful are as follows: i. Translating the EIA report in to a simple and understandable form for common people is one of the major grey areas that needs to be addressed in order to make the consultation programme fruitful. Mere translation of executive summary is not going to solve the problem. State level NGO, person having sound knowledge on environmental issue can be engaged for such work. And most importantly it should be availed one month before at local area such as in Panchyat office, anganwadi or at common public access area. ii. Ensuring larger participation of project affected people by adopting suitable strategy apart from the traditional way such as drum beating, dissemination of information through poster, pamphlets and using loudspeaker. This will ensure in making environmental clearance process more participative. iii. Addressing the concerns raised by the participants in this forum should be properly placed during the clearance process. The content of proceedings should be tampered proof. Where there is a maximum opposition to the project, special attention should be given by the regulatory agencies in these projects. The project should be given go ahead/nod only after addressing the concern raised by the project affected people. iv. The State should take pro active steps to ensure full, meaningful and effective public participation. v. The concerns of affected people should be presented clearly before the Expert appraisal committee so that the committee would have a firsthand idea about the project.

In today's global environment every country is focusing on sustainable development. Public participation is a tool to achieve sustainable development⁸. Overall Environmental consultation programme gives a scope to both regulatory agencies, affected people to exercise their rights in protection of environment. It should be taken as an opportunity for addressing the upcoming threats to environment in form of pollution. It should be taken as a tool for ensuring environmental management in developmental projects.

Conclusion

The environmental awareness needs to be cultivated in any society to be an ideal society, or rather to be more precise, in other words, an ideal society means, the society which has the environmental awareness⁹. Now a day, a mutual trust and faith of project affect people on the regulatory bodies and project proponent has sharply fall. Environmental public consultation is a forum where, this lost trust can be regained by making it more participative and free from technical juggernauts. The public participation component of environmental clearance must be strategically and carefully planned and executed as part of a long term environmental management program of educating and building capacity of all stakeholders involved. Though experience of common people about public consultation programme is quite bitter, still it is the only forum that provides

space for common people to raise their concern. Advantage off such meetings can be only taken through creation of awareness among project affected people. The role of non govt organization, people forums is quite important in educating and making aware people on various aspects of proposed project in a simple and lucid way. Similarly the expert appraisal committee should give due emphasis on the deliberations raised at public hearing during the clearance process and it should be clearly reflected in the conditions that are imposed on the project for comply in post clearance period. This also brings into focus the need for private multinational (or public) industries to take some responsibility towards the environments and populations they are located in¹⁰.

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