

## Constitution of India and Environmental Governance:

### Administrative and Adjudicatory Process

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Lecture No. 22

EIA Notification, 2006 - II

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• **STAGES IN EC: MAX. 4 :**

1. **SCREENING**- only for "B" Projects- scrutiny of application by SEAC to determine whether or not it requires further envtl. studies for preparation of an EIA prior to EC – Projects requiring EIA (-marked B1) and those do not require it (-B2), as per guidelines issued by MoEF from time to time.
2. **Scoping**: Process where in the respective EAC , for "A" & " B1", determine detailed and comprehensive Terms Of Reference (TOR) . Form, addressing all relevant envtl. Concerns for the preparation of EIA Report- EAC to determine specific TORs, on the basis of info. furnished in the prescribed appln., a site visit by a sub-group of EAC- TOR to be conveyed to the applicant by the EAC, with in 60 days of receipt of Form 1-approved TORs to be displayed on the website of MoEF & the concerned State level EIA Authority- applns. For EC may be rejected by the concerned Regulatory Authority, on the recommendation of the EAC, at this stage itself- in which event, the decision together with reasons for the same shall be communicated to the applicant in writing within 60 days of receipt of appln.



There are 4 stages in the environmental clearance. We just mentioned a little while back. The job of the environmental appraisal committee at the Central level or the State Environment Impact Assessment Committee at the state level is the following that they have to carry out the screening, they have to carry out the scoping and they have to do the appraisal and then come up with a recommendation. What is screening? Screening is supposed to be done only for those that are there in category B projects.

That means it is only done at the state level. So, the scrutiny of application is done by the state body, to determine whether or not this particular proposal requires further environmental studies for preparation of an EIA, prior to environmental clearance. That means what? All applications will come, at the state level. And these that are there at the state level, the application need not have an environment impact statement already appended to the scrolling. Some kind of an environment management plan, some kind of a proposal, which would actually give some idea as

to what this project is about.

Now here this body, it sits in judgment over this proposal, scrutinizes the application. That is why it is called the screening. It screens those applications and put them under two heads. Or these kinds of projects require a very detailed environment impact assessment study being provided before it is going to be cleared for, it is going to be put up for environmental clearance. So, such are those groups of projects which do require environmental impact assessment are marked as B1.

Remember that all these are the state level and so these are B (pro) B category projects. And for B category projects, B1 indicates that these are the projects that require EIA to be appended to the application before it is taken up for environmental clearance. And then the other category. Other group of those projects that do not require such a kind of thing and they can still be cleared, then it is marked as B2.

And how do they really mark these as B1 and B2? How do they really decide as to whether this particular developmental activity requires a very detailed environment impact statement? An assessment of environmental impacts, a report to be produced by the developer. For that the ministry of environment, from time to time issues guidelines. So, this is a body which will not just not act in a hunch anything like that. It is a very well-informed body and this body is guided and helped by a set of guidelines.

And what kind of guidelines are there? Well, they have a lot to do with the kind of impacts that this particular activity would have on the soil conditions, what kind of impact would have in the rainy season, what is the impact on the EIA. Like that there are several markers that are issued by the Ministry of Environmental Forest from time to time based upon which they have grouped them into category 1 or category 2, or what they are referred to as B1, B2 within B category projects.

So screening, sifting of those that require environmental clearance marked as B1, and those that do not require EIA as B2. So, B2 will have a easy run. They get cleared easily, because not many

questions are going to be posed that. But B1 requires more detailed scrutiny because the potential impacts on human health, hygiene, wellbeing and other environment is quite high, and you need, to provide us a far more detailed report of impact assessment on environment by you. That is what is the screening about.

Then the second one is the scoping. Here, scoping is done, both by the Central body and also the state body. Where the screening is done only at the State level, only for B projects, B category projects. Here, for scoping it is both an environment appraisal committee at the state and the central level for both A and B1 categories. Remember, we are dealing with B1 now. So, only A and B1 category projects or developmental activity require scoping.

What is scoping? Scoping is to determine the scope of the project. Determine a detailed and comprehensive terms of reference. What this particular committee is looking to get from the project proponent? What is the information that should be made available? The terms of reference that before we consider your application for environmental clearance, these are the kinds of things that you need have to satisfy, have you? These are the questions that you have to answer, should form is also made very clear as to how you need have to really respond to each of these questions pointedly.

Not generalized answers. You have to answer to the point and only convince this body. So, you have to address all relevant environmental concerns in the report that you are going to prepare. So, EIA report is a very important report. In fact, that is the basic document. EIA report all the environment assessment report is a report produced by the project proponent. Normally they would engage an expert to do that. And it cannot be in any way they like.

In fact, this was actually a major problem. In the year 1994 the law was first made, there was no clear form, there was no clear procedure, there was no clear set of guidelines as to how this EIA report has to be prepared. In fact, in 1994 when this law was made, EIA was a borrowed expression brought from the western legal systems and nobody was having any clue as to what it actually meant. And by and large with a bit of a general understanding this would effect human health, is what effect the environment, on the base of which some kind of a report was being

prepared and that was scrutinized.

And later this became a subject matter of a big court controversy in the courts of law, and the court said just give him a report in highly technical language, not readable, not comprehensible, not comprehensive, will not do, you need to come up with a proper impact assessment study. So, so many guidelines the court itself started issuing. And having that experience of about a dozen years of trial and error in this new law as it is in operation now, clearly some guidelines are given.

They are comprehensive terms of reference are made out for each of the project by this expert body and these are sent to the project proponent. And the project proponent will have to address all of them and prepare his report. And that report need have to be submitted to his appraisal body. A site visit can be contemplated by the environment appraisal committee either at the State level or the Central level. And it is obligation of the project proponent to facilitate this site visit because they want to appraise themselves getting into the field of whatever there is there in the paper and then authenticate them.

And the terms of reference as so approved by them are displayed on the website of the ministry and the concerned state level EIA authority. The idea is, when you put it on public display any member of the public who is interested may know what is that is expected to be supplied and going to be provided by the project proponent and so what kind of activity that he is planning. Is it a major developmental activity of the kind of an iron industry, iron and steel industry? Or it is something to do with irrigation? Or is it something like a particular kind of product?

What kind of components that get into it and things like that, those details of the activity of the industry and so many other information. So, the terms of reference clearly spell out what should be contained in EIA report and so as an ordinary member of the public, if I go to their display, that is available with regard to a particular project that is taking place, or taking off in my place, I would know that this is what has been allowed to this fellow before a decision is made by them.

Many a time, at this stage of scrutiny, when once the appraisal body is convinced, that the kind

of information that is supplied is not equipped, the repeated requirements by them have not been properly addressed, then at this stage itself, the appraisal committee may recommend to the State government in B1 projects, the Central government in case of A projects, the government may decide on rejecting the application itself. So, no further scrutiny.

So, scoping is that stage at which and at that level which decisions can be made of rejecting a developmental activity. And this is to be communicated to the applicant within 60 days of receipt of such an application.

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- 3. **Public Consultation:** Process of ascertaining the concerns of local affected persons and others who may have a stake in envtl. Impacts of the project, with a view to take into account all the material concerns in the project etc. All "A" & "B1" shall undertake Public Consultation with the exception of 6 set of projects/activities - Public Consultation to have 2 components: (i) a Public Hearing at the site or in its close proximity-district wise, to be carried out in the manner prescribed in App.IV, for ascertaining the concerns of the local affected persons- to be conducted by the SPCB, proceedings should be forwarded to the Regulatory Authority; (ii) Obtaining responses in writing from other concerned people having a possible stake in the envtl. aspects of the activity, - to invite responses the concerned regulatory authority and SPCB to put up on their websites and also make available the hard copy of the same at notified places, the summary EIA Report of Applicant, within 7 days of receipt of written request for PH- Confidential info., etc. not to be disclosed in the Website-



The third stage, is the stage of public consultation. A very important one, quite unlike the public hearing that you find under the old law, the 1994 law. The nomenclature used for public engagement is what is referred as public consultation. What is public consultation under the new dispensation? It is a process of ascertaining the concerns of locally affected people and others who have a stake in the environmental impact of the project, with a view to take into account all their material concerns. All projects which are categorized under A at the central level, categorized as B1 shall undertake public consultation.

There are some exceptions, certain projects and activities. There are 6 set of projects and activities are exempt. But other than that, all others need have to take public consultation as a prerequisite before it goes for environmental clearance. So, public consultation will have two components. One is a public hearing. Public hearing at the site or very close to where this particular developmental activity is proposed. Wherein at the district level, it has to be carried out. There is a manner and procedure laid out there.

You have the district collector, the affected persons, or the potentially exposed persons for the kind of impacts or the stake holders of this, the project proponents, the pollution control board people, the appraisal committee people, they all would come together and this is to be conducted by the State Pollution Control Board. And the proceedings shall be forwarded to the regulatory

authority for B1 projects at the state level. To the regulatory authorities for A projects at the central level.

The second component of this public consultation that many a people will not be in a position to come for the public hearing, or there are times when such a kind of organization of public hearing may not be possible, I will come to that a little later. In such cases, obtaining responses in writing of others concerned people, having a possible stake in the environmental aspect of the activity. So, one is public hearing, another is ascertaining opinion through written submissions.

And once these were consolidated, the proceedings of the public hearing, the opinions that are made available after consolidation, when it goes to the regulating authority, the concerned regulatory authority and SPCB, the State Pollution Control Board, are to put up on their website, the entire information and make them available in hard copy at notified places, the summary of the EIA report of the applicant within 7 days of the receipt of the written request of the public hearing.

It is a very confidential information, not to be disclosed in there, if, if there are confidential information, then that is made available to the authorities, they are not to be disclosed in the website. But all other information, which could be put in the public domain are displayed and available in certain public places, people can have access to it and when they come for the public hearing, they raise those issues and concerns and get relief.

Public hearing is a forum, a facility and an opportunity for the members of the public to know, what this project is about. First hand from the very project proponent himself. And they can raise their concerns and get clarifications from the project proponent. And there are governmental authorities who are there, who will convey these proceedings in a orderly way, to get to know the concerns, ventilation of their ideas and getting the responses. And the gist of it would also be made available as a public record.

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- Applicant, upon completion of Public consultation shall address all the material envtl. concerns and make appropriate changes in the draft EIA & EMP(- or, in the alternative, submit a supplementary report) and submit the same to the concerned Regulatory Authority for appraisal.
- 4. **Appraisal** :- Detailed scrutiny, in a transparent manner, in a proceeding, to which the applicant shall be invited((- to furnish clarifications, if any) by the EAC – on conclusion of proceedings, the EAC to make categorical recommendations to the Regulatory Authority, either for grant of prior EC on stipulated terms or rejections, along with reasons- Appraisal Procedure, as in App.V -Appraisal, of those that do not require Public Consultation, be on the basis of info. In Form I & I A and any other validated info. Available -To be completed within 60 days of receipt of final EIA/Form I /IA - Recommendations to be placed before the competent authority for decision, with in the next 15 days.



And then, on completion of the public consultation will be required. The applicant, the project proponent will be required to address all the material environmental concerns. Because the gist of the entire public consultation carried out through this particular process will be made available to the project proponent and so there are certain concerns he could address there, certain other concerns he was not able to address immediately and certain other queries that are put forth by the regulatory agency and these need have to be addressed satisfactorily to the satisfaction of the authority, the draft EIA and the environment management plan or the alternative supplementary report and the same should be submitted to the concerned regulatory authority for appraisal.

This is the second stage. Third stage. So, we start with screening. That only for category B projects. The second one is scoping, for both B1 and A projects. Stage 3, public consultation. There are times that public hearing may not be possible under certain circumstances which are listed out there, law and order problem, or as we are experiencing now, the issue of corona virus.

And in such cases when there is a pandemic, there maybe difficulty in organizing such a kind of a public hearing, then through ascertaining opinions of the people through various other means including getting written submission from them, consolidation of that forwarded to applicant, the applicant shall address them. And then with the necessary papers when we submitted to the regulatory authority, it is submitted for appraisal. That is the fourth stage, the appraisal.



Appraisal is a detailed scrutiny carried out in an open and a transparent manner in a regular official proceeding carried out by the appraisal committee at the State or the Central level as the case may be, to which the applicant shall be invited. So, it is not a hush hush job. You are experts. You have got all the information. We will decide, you cannot say that. In a meeting, when you are taking it for appraisal, you need to invite the applicant who shall have the entitlement to be invited and be present when the deliberations take place. There, there may be some additional clarifications sought, there may be certain more information required to be given, there may be certain questions posed to which he has to respond and so the very presence of the applicant is felt necessary. So, this is the first part of the appraisal. You conduct the proceeding and at the conclusion of the proceeding, the environment appraisal committee will sit separately and make a categorical recommendation to the regulatory authority.

Yes, we had this proceeding, we had invited this boy who is the project proponent, and this is our consolidated proceeding and these our findings and these are the set of recommendations, you as a state authority, you as a central authority as the case maybe, you can either grant a prior environmental clearance on stipulated terms, or reject them along with reasons. The appraisal procedure as is there in the appendix under the law needed to be confirmed to.

Appraisal of those that do not require public consultation, be on the basis the information in a particular form that has been prescribed and that, and any other validated information and then this should be made available for both the applicant to pen use that and then act upon. And the entire thing should be completed within 60 days of final receipt of the environment impact assessment and recommendations are to be placed before a competent authority for taking a decision in the next 15 days' time.

So, please look at this, it is a time bound procedure. There is no inordinate delay. Either in conducting of each stage of the deliberations here. Right from screening, scoping, public consultation to appraisal, each one is given a particular time frame within which they have to act, and the next 15 days, the decision has to be made.

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- *Regulatory Authority shall consider the recommendations and convey the decision to applicant with in 45 days of receipt of recommendations- normally recommendations are accepted, but in cases of disagreement, for reasons to be recorded, the Regulatory Authority shall request reconsideration by EAC, within 45 days of receipt of recommendation, - intimation of decision shall be simultaneously conveyed to the Applicant- EAC to consider the observations and furnish its views within the next 60 days- decn. Of EAC, following this, will be final and should be conveyed to applicant with in 30 days- deemed approval /rejection as per EAC Recommendation, if the Regulatory fails to convey its decision, within the stipulated time- decn. Of Regulatory Authority and Recommendation of the EAC, after the expiry of the stipulated period, shall be public documents*
- *Deliberate concealment/ misleading info. Shall make the appln. Liable for rejection and cancellation of prior EC- done after giving a personal hearing to the applicant*



The regulator authority when all this is done and is submitted to it, it shall consider the recommendations and convey the decision to the applicant within 45 days of receipt of recommendations. As a general rule, the recommendations of the expert body are accepted. But supposing the regulator authority decides otherwise, then it has to record the reasons, and there is no decision here. There is only a disagreement.

It has to record those reasons and get back to the appraisal committee again and ask them to reconsider the decision, recommendation, and these are the things that we have put together, will this help you in taking a final set of decisions to recommend anything to us, quite different from what you have done already, or you want to stick to that, it is your lookout, but decide within 45 days of receipt of this.

And within 45 days of receipt of such a recommendation, the decision of the authority need have to be made because the recommendations of the appraisal committee is like an advice, but what they have advised, the applicant should know and he should know within that 45 days of that. And so, the appraisal committee, and having given its recommendations, it shall become the final decision and convey to the applicant within 30 days, and if within 30 days, after the lapse of all this time and after going through all this processes, then if within 30 days decisions are not conveyed, then the project proponent may consider it is deemed approved.

If the regulatory authority fails to convey its decision within the stipulated time, it becomes deemed approved. So, decisions of the regulatory authority and recommendations of the environmental appraisal committee at the expiry of the stipulated period, shall become public documents. So here, in terms of public scrutinizing, what actually transpired in the process. Although from the stage of public hearing to appraisal, to decision making, people are in no way in the know of things. They will come to know of it after the decisions are made, because these have to be made public, so people have the right to information because it becomes a public document.

Any deliberate concealment of an information that should have been (dis) disclosed and not done, or any information which is misleading by the project proponent shall make his application liable for rejection. And even if environmental clearance is given, if it is subsequently found by whatever means, the government will have the power of cancelling that activity and bring the entire project to standstill.

But before doing that, a personal hearing has to be given to the applicant, look, you have misled us, you have actually concealed these things. Then it is an opportunity for the applicant to submit to the authority, “no no no, there is no misleading, there is no concealment, this is a misunderstanding, this is what I have revealed, please have a look at it.” That kind of an explanation, that kind of a clarification that he may issue or dissatisfied he may act on that, otherwise the authority will take its own decision and that decision will become a public document.

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- *Validity of EC:- 10 Years(-river valley projects),max. 30 years (- mining),5 years (- in other cases)- validity extendable by Regulatory Authority, by 5 years, on appln. By applicant*
- *POST ENVTL. CLEARANCE MONITORING: -Obligation to submit half-yearly compliance reports- public documents*
- *Transferability of Environmental Clearance- to another, possible with in the validity period*



Once the environmental clearance is given, it will be a valid for a period of 10 years, for river valley projects. And in the case of mining projects for 30 years. 5 years in all other cases. Why do you fix this project time? There was a problem that when that time cap was not fixed earlier, as was there in the earlier law, no such time gap, one would be able to get the clearance, put it in his pocket and sleep over it. And for whatever reason would not even start the developmental activity.

So, many a time, the time taken and the energy that was put in, in taking decisions, in carrying out so many activities became a redundant exercise, wastage of time. And to put a halt to that, time cap has been fixed for these. If you cannot carry out this project, well at the lapse of this, you have to start things all over again. You have to give your application again, start things all over again. Based upon your expiry, expand project approval, you cannot carry on a project activity.

One of the novelties of this law, that was made in the year 2006, quite unlike the earlier law was that this law provides for post environmental clearance monitoring. They have given you the clearance and when once you execute the project, we still have the authority and the jurisdiction to monitor whether you are confirming to our conditions of giving clearance to you. An obligation on the part of the project proponent to submit half yearly compliance reports and these

are public documents. So, there are different stages of scrutiny, different stages of authentication, different stages of verification inbuilt into the system of law.

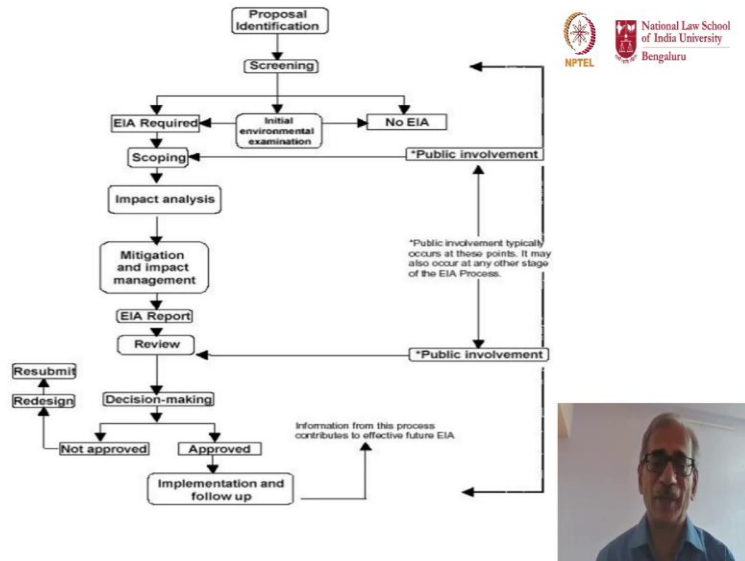
There were times when somebody who has made an application for getting environmental clearance suddenly for some very valid reason, is not able to proceed further, is not able to loan it, is not able to bring that into existence, maybe financial constraints or whatever, sudden calamity or anything like that. In that event, the question comes, whether that environmental clearance certificate that has been given, can it be transferred to anybody. Is there a scope for transferability of environmental clearance?

To somebody who is able, ready and willing, and who has that experience to carry on this particular developmental activity? Can I transfer that? It is almost like a right. Transferring a right. It is almost like a title to a property. So, can I transfer the title? The answer is yes. Within the validity period, the transfer can take place, not to anyone, there are terms and conditions laid down there. You have to approach the authorities and then inform them.

But such and such an entity subject to the conditions that you are going to lay down, we are going to transfer this clearance to them, we cannot carry this out, kindly permit. And the authority can come up with any kind of a requirement. For someone who is going to stream role this particular activity to give certain information, fulfil certain conditions before he will be permitted to carry out the activity. Clearance is given, but although you have claimed that you have satisfied all our requirements, still we will like to ascertain and then decide for ourselves.

But by and large, it is more of a formality, because once those conditions are satisfied, the transfer of the environment clearance certificate becomes very much valid.

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And one can, banking on that, carry out that particular developmental activity, having the nod of the environment ministry at the Central level, the environmental department at the State level, which is the decision making body there. A small flow chart has been given. All that has been explained so far, has been put in the form of a graph here. It is very easy to follow. And in one single snapshot, the entire EIA process has been captured in this flow chart, starting from the stage of proposal to the decision making, implementation and follow up has been put together in this particular chart.

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#### IV. ASPECTS OF CONCERN

**PRIMARILY, PROBLEMS OF IMPLEMENTATION, INADEQUATE POST-DECISIONAL OVERSIGHTS AND GREAT INCONSISTENCY AND DELAYS IN DECISIVE ACTION:**

- Poor procedure and weak implementation;
- Inadequate baseline data leading to unscientific and less than rational analysis;
- Lack of expertise for assessing impacts;
- Lack of inter-agency co-ordination;
- Limited capacity for review of EIA reports;
- Insufficient commitment to follow-up on the implementation of environmental protection and monitoring requirements;
- Potential delays in project implementation;
- Does not pay adequate attention to cumulative impacts of different projects



Now what are the problems? Is there any critique to this law? I have only given you the theory of what has been done and how this particular decision making process with regard to developmental activity having advent to concerns is foremost significance in this entire body, is worked out, that how does it work, how has it evolved, what has been the critique of it, are there any shortcomings on it? Well primarily, in these 14 years of implementation of this law, a one text talk of the developments that have occurred over a period of time.

The problems concern implementation in at a quasi of post decision over sites and great inconsistency and delay in the decisive action on the part of the government, both at the central and the state level. To put it in a nut shell, these are the primary aspects of concern. In terms of detail, number one, the observance of procedure, by the authorities and also by the project proponent has not been satisfactory. And in terms of implementation, the authorities are found to be short of expectations.

In terms of the base line data, that is made available, and the tools and techniques adopted by these expert bodies in analysing the data is made available, there are problems. One is the data that is made available is inadequate. And the second one, the ones who are sitting in judgment over those proposals and the information that is made available to them do not really apply and bring into play their scientific skills and abilities and the expertise and the professional competence that is required of them.

And that is not in full play, when the decisions are made. And that makes the environment clearance process as a suspect one. As not something which is professionally carried out, because many a time, there is lack of expertise and assessing impacts. And there is also a problem, that when once you need have to obtain information from different agencies of the state, information that are to be supplied by certain agencies which have information exclusively with them. Like for example, the energy sector.

You need certain information from the energy department, whether such and such a power supply agency has a license under that particular authority. And you need information on that to have an informed decision by you. There are delays in getting the information. There is poor

coordination in making available information and in making available so many other support and cooperation. So, lack of cooperation, lack of coordination amongst different agencies of state make EIA process a less than satisfactory exercise.

Review of EIA reports is another area of concern. There is a very limited capacity displayed by those who are engaged for doing this particular kind of a review, because each of these developmental activities many a time are a first of a kind in India. And finding expertise in India, it will be very difficult. Although the expert bodies and the professionals who are assembled together are drawn from within India, they may not have the necessary know how of that.

And many a time they co-opt people, they get people who are experts from elsewhere and many a times they are the ones who have industrial engagements and their opinions may not be something which is reliable based upon which decisions could be made. And many a time commitment are made after the implementation and certain conditions laid down by the authorities by the project proponent, but the commitments so made is not reflected in the form of action by them.

And even the authorities are supposed to have post decisional monitoring mechanism put in place. Either the mechanism it does not exist, or even when it does, it is hardly done. So, there are problems with regard to delays in implementation, there are problems of expertise, adequate attention not being paid, to even the cumulative impacts of different topics. Like for example, half a dozen projects are being considered for environmental clearance at different points of time in a particular landscape.

The authorities will not sit and then look into the cumulative impacts of all these projects together to have an informed decision. It is sectoral. Each one of them is being decided individually independently as though they are stand alone. The environment is impacted by very many activities that take place at the same time at one place.

There is neither the mechanism evolved, nor facility provided, nor even for that matter, the legal prescription available which would require such a kind of a cumulative impact of different



projects carried out before well informed decisions are made to take care of human health, hygiene, wellbeing and environmental concerns of conservation, protection, prevention of degradation, eco system conservation and things like that. But is it not that this is the basic objective of environmental practices made simpler?

Well, we are still at the stage of trial in working of a very highly specialized aspect of the law. We have a very specialized law. But in terms of working it, I think we have a very long way to go. That concludes our discussion of this component of this module. In the next session we will get into a reflection on self-regulation by the entities of carrying on their own impact assessment and putting in place a management system which is environment friendly.