



# Environment Clearances: *A race to development or destruction?*

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*'The sun, the moon and the stars would have disappeared long ago... had they happened to be within the reach of predatory human hands.'* (1)

## I. INTRODUCTION

The greed of mankind remains unsatiated. In the name of innovation, industrialisation and development, man has scoured and scavenged the earth, cleared forests and destroyed the various species of animal life. It is this selfish and thoughtless exploitation of earth, plant and animal life that has resulted into Global warming, Tsunamis, Acid Rains and Climate Change. To combat this self destruction, Conventions at global levels have been held and Environment protection laws at municipal levels have been enacted.

The Indian Government as a signatory to various international conventions like the Rio Declaration, Stockholm Convention, 1972, Basel Convention, Kyoto Protocol, etc. (2) has enacted various laws to protect its environment, flora and fauna though it was an infant democracy and at a stage where it was considered to be an under-developed country. Likewise, the role of the Indian Judiciary has been commendable in protecting the environment and conserving the animal and plant life. The twin principles of 'Polluter Pays' (3) and 'Absolute Liability' (4) enunciated by the Apex Court of India have laid a check on the government bodies and the industrialists from thoughtless exploitation of earth and its resources.

A whopping 230 projects have been given environmental clearances by the Ministry of Environment, Forests and Climate Change during the period, May, 2014 to November, 2014 (5). Most of these projects were stalled or clearances were not issued as there were protests from the environmental activists, social activists and farmers. The mass clearances by the Ministry of Environment and Forests in less than a span of one year raises many questions and casts doubts on the object of such clearances.

The Writer of this paper seeks to analyze the role of the Union Government and the Ministry of Environment, Forest and Climate Change, the rationale adopted in granting these clearances and assess the impact of these clearances on the environment and the various stakeholders.

## II. THE BACKDROP – A REWIND

A cursory look may be made with respect to certain projects which were mired in controversy due to strong opposition from environmentalists, NGOs, inhabitants and experts. The legality of some of these projects has been challenged not only in the various High Courts of country but also in the Apex Court.

## III. MOUNT GIRNAR ROPEWAY PROJECT

Mount Girnar, the highest peak in Gujarat is at 3,400 feet from the sea level. Girnar has five principal peaks, Ambaji, Gorakhnath, Guru Dattatreya, Oghad Ansuya and Kalka. Ambaji is the highest at 3,400 feet. The area of Girnar hills is around 70 miles. There are several Jain and Hindu temples located on various hills along Mount Girnar, which has 9,999 steps which is presently used by the Pilgrims. The absence of a ropeway had restricted the number of visitors so far. (6)

The Girnar ropeway would not only serve as an additional form of transport, but most importantly would improve the economy of Junagadh as it is expected to draw an additional 20 lakh tourists. The revenue is proposed to increase by Rs. 100 crores, besides it is expected to generate additional jobs.

## IV. OPPOSITION TO PROJECT

When the project was first mooted in 1995, Jains had opposed it on the ground that the ropeway project would turn this pilgrimage site into a tourist spot.



Environment groups and wildlife experts raised the issue of protection of 121 vultures, which are found in moderate number on Mount Girnar. Cliffs of Mount Girnar provide nesting and roosting sites to three species of vultures, namely, Long-billed vultures, white-romped vultures and the King Vultures. The construction of the Ropeway, movement of the trolleys during the day and the waste and noise generated during the various phases of the project would critically affect the conservation efforts of these endangered species. Likewise, this project would affect other migratory birds and 35 Asiatic lions which had made the Girnar forest their home. (7) The Ministry of Environment, Forest and Climate Change gave in-principle approval to the project subject to six specific conditions laid down by it on 7th February, 2011. (8) This would lead to clearance of forest area worth ninety (90) crores and also pose danger to the natural habitat of the vultures and Asiatic lions.

#### V. COAST GUARD SURVEILLANCE RADAR AT NARCONDAM ISLAND

Narcondam Island situated in the Andaman and Nicobar islands is the only habitat in the world of the three hundred (300) Narcondam Hornbills. The Chinese set up a listening post on the Coco Island which is opposite to the Narcondam Island. To counter this Chinese threat, the Coast Guard had proposed setting up surveillance radar on the Narcondam Island to monitor the ships passing through the Indian waters. Setting up this coastal surveillance radar would entail clearing the virgin forests of the Island to construct a two kilometre road. This would cause irreparable damage to the habitat of the hornbills which could lead to their extinction. (9)

Wildlife Activists and environmentalists have protested against the said proposal. National Board for Wildlife had urged Ms. Jayanthi Natarajan, the then Union Minister of Environment, to not clear the project. With the change in the Union Government and the Ministry in May, 2015, Mr. Prakash Javadekar, the present Environment Minister cleared the proposal in the interest of national defence and security.

The threat to the hornbills is more real and palpable today than the threat from the Chinese Intelligence which is in a distant tomorrow. The excesses of the Chinese can be tackled by the Indian Armed Forces by resorting to other alternatives but the Narcondam Hornbills have only one alternative, i.e., extinction!

#### VI. ADANI PORT AND SEZ LIMITED'S PROJECT IN KUTCH (APSEZ)

This Project sought clearances for a multi-product Special Economic Zone and Coastal Regulation Zone for desalination, sea water intake and constructing a pipeline in the Mundra region. A committee set up by the Ministry of Environment, Forest and Climate Change to assess the damage that would be caused to forestland and the Coastline came to the conclusion that there was widespread destruction to 75 hectares of mangroves which was declared as a conservation zone under the environmental clearance conditions. Likewise, the Committee had asked a fund to be set up by the Adani Group to mitigate the damage caused to the tune of one percent of the project cost or Rupees Two Hundred Crores, whichever was higher. (10)

#### VII. LEGAL WRANGLES

A Public Interest Litigation was filed by the villagers of Navinal near Mundra against the APSEZ in the Gujarat High Court as the company had allotted land to the various units flouting the mandatory environmental compliances laid down vide Environmental Impact Assessment Notification 2006. The Gujarat High Court on 13th January, 2014 ordered the closure of twelve (12) of such units due to lack of environmental clearances. (11) A relief was sought against the order of the Gujarat High Court from the Supreme Court. The Supreme Court of India in the same month granted an interim relief allowing the twelve (12) units to continue their operations but restrained them from further construction. It further directed the Environment Ministry to decide on the issue within three months from the date of order. (12)

After being pulled up by the Supreme Court of India, the Environment Ministry granted clearance to APSEZ but imposed several conditions with regard to the construction phase, conservation of the creeks, coastline and the mangroves.

#### VIII. IMPACT

Much to the dismay of the villagers, the Clearance for the afore-mentioned project would lead to loss of livelihood for 10,000 fishermen. Already, seventy five (75) hectares of mangroves have been cleared. The Committee set up to study the impact has found that there are signs showing deterioration and loss of creeks in the area where the construction of the project is taking place. (13) The reason for this has been attributed to the fact that the Adani Group has not taken precautions as to disposal of waste into the creeks. Though a fund is required to be set up to mitigate the loss caused, the moot question to be asked is whether it would reverse the damage already caused. Would it serve as a check on the companies who despite the order of the Gujarat High Court continued its operations? Would it deter them from further excesses?

It only seems to set a new principle of 'Pay and Pollute' to self-serving capitalists in the name of development.

#### IX. EXCESSES GALORE – INTENTIONS QUESTIONABLE:

The hurried manner in which clearances have been accorded by the Ministry of Environment, Forest and Climate Change in the following projects cannot be ignored. It only raises questions on the intentions of the Government.



The Girnar Ropeway Project, The Coastal Surveillance Radar at Narcondam Islands and The APSEZ are only the tip of the iceberg.

The Renuka Dam Project on the tributary of Yamuna in Sirmaur district of Himachal Pradesh has been given approval by the Forests Advisory Committee. The project was envisaged with the object of supplying water to Delhi. The construction of the Dam will require diversion of 900 hectares of forest land and will also lead to the displacement of many villagers. (14)

Without settling the rights of the forest dwellers and tribals as required under The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Forest Advisory Committee gave its clearance to the project. In its enthusiasm and over zealotry, the Forests Advisory Committee sought the documents necessary for clearance after giving the green signal. Likewise, the Union Government allocated Rupees Fifty Crores even before the clearance was obtained!

The ambitious Kundaliya Dam on the Kalisindh River in Rajgarh District, Madhya Pradesh which would form part of the Parbati-Kalisindh-Chambal river-linking project has been approved. This would entail clearance of 680 hectares of forest land, 5001 hectares of private land and 2474 hectares of Revenue Land. The Social Impact Assessment report stated that a total of 1780 families would be displaced and 2861 families losing their land. (15)

The clearance for this project envisages diversion of water from the tributary, Lakhundar of the river Kalisindh. Such diversion of rivers has been decried upon by hydrologists who opine that the natural river flows must be maintained.

A proposal for forest clearance has been made for the Ken-Betwa River-linking Project. This project is to benefit the States of Madhya Pradesh and Uttar Pradesh by supplying water for irrigation and drinking purposes. It involves diverting 6,000 hectares of the Panna Tiger Reserve which is home to twenty four tigers and endangered alligators. Besides, the project will lead to displacement of 1,600 households. The Environment Ministry had commissioned the Wildlife Institute of India to assess the impact and the report on it is pending. The Project will also require clearances from the National Board for Wildlife. The Union Government has recently changed the composition of the Board which has already cleared 140 projects referred to it by July, 2015. In spite of the disastrous impact the project would have on the forest land, the locally extinct tigers and alligators, the project is set to receive clearance from the Environment Ministry as the Union Government has been indifferent to the needs of the wildlife, displaced families and environment in the past. These are not mere allegations but the statistics so far clearly indicate this indifferent attitude. This is further substantiated by the fact that the 770 households within the Panna Reserve are to be compensated under the wildlife related provisions instead of being compensated under the Land Acquisition Act which would entitle them to a higher compensation. (16)

#### X. STATISTICAL DATA – AN IMPENDING DISASTER

The writer of this paper has analyzed the impact of the various projects described here-in-above and the same is depicted as under:

**Table-1**

Project	Area of Forest Land Acquired/ to be acquired (Hectares)	Wildlife Affected/ Impact on Environment
The Girnar Ropeway	Forest Area worth 90 crores	121 Vultures & 35 Asiatic Lions
Surveillance Radar at Narcondam Island	0.637	300 Hornbills declared to be endangered species
APSEZ	75 hectares of Mangroves	Deterioration & Loss of creeks
Renuka Dam	900	Change in the river flow
Kundaliya Dam	680	Change in the natural river flow
Ken-Betwa River Linking Project	6,000	24 Tigers and Alligators

The above table only analyzes the six projects that have been cleared. As per the latest data put up by The Ministry of Environment, Forest and Climate Change, the statistics are as under: (17)

**Table-2**

Clearances	Number of Projects
*Environmental	11,691
Forest (Stage –I)	4,045
Forest (Stage –II)	20,876

\* Environmental Clearances granted is with regard to the proposals received by the Environment Ministry up to 3rd July, 2014.

As on 30th October, 2014, a total of 326 Projects are still awaiting clearance from the Environment Ministry.

If the impact of the various projects cleared as indicated in Table 1 is found to be far-reaching then Table 2 only predicts the devastation waiting to happen!



## **XI. CLEARANCE PROCEDURES – PRACTICES THEN & NOW**

The procedure adopted by the present government in issuing clearances prima-facie remains the same. However, the practice has differed majorly with regard to the constitution and setting up of Expert Appraisal Committees and holding Public Hearings to expedite the process of clearances to the various projects. The procedure as laid down under The Environment (Protection) Act, 1986 is briefly outlined as under: (18)

## **XII. SUBMISSION OF PROPOSALS**

If the proposal falls under the Project A category, the Investor or the Project proponent has to submit the application to the Ministry of Environment, Forest and Climate Change or with the State Government where the proposal falls under the Project B category, along with Environment Impact Assessment Report, details of Public Hearings and No Objection Certificate from the State Regulators.

## **XIII. SCRUTINY OF THE PROPOSAL VIS-A-VIS EXPERT APPRAISAL COMMITTEE**

The application along with the necessary documents are at the first instance scrutinised by a multi-disciplinary staff functioning in the Environment Ministry who may undertake visits to the proposed sites, interact with the investors and consult experts where required. Thereafter, the proposals are placed before a specially constituted committee of experts known as the Expert Appraisal Committee. The composition of the committee is specified in the Environment Impact Assessment Notification. In case of special or controversial projects, the committee may also arrange for public hearings. Such a hearing may also be held by the committee to ensure public participation in developmental decisions.

## **XIV. RECOMMENDATIONS OF THE EXPERT APPRAISAL COMMITTEE**

After the scrutiny of the application and documents, site visits, consultation with experts and conducting public hearing where required, the Expert Appraisal Committee makes its recommendation for approval or rejection of the proposed project. This recommendation is further processed by the Environment Ministry which issues a Letter of Clearance or Rejection within thirty days from the date of the recommendation made by the Expert Appraisal Committee.

## **XV. EXPERT APPRAISAL COMMITTEES - COMMITTEES OF 'YES MEN'**

Thus, the Expert Appraisal Committee plays a crucial role in evaluating the environmental and social impact of the proposed project and helps the Environment Ministry in making a decision. The composition of this committee is pivotal in assessing and evaluating a project. The appointment of the members to the Expert Appraisal Committee is made by a notification issued by the Central Government. The ad-hoc constitution of these committees by the UPA Government in the past had come under much criticism. Besides, the allegations of delays and bribe had mired the Environment Ministry under the UPA rule.

With the change in power at the Centre, it was expected that the NDA Government would expedite the clearances of the various project proposals and bring about transparency to clearance process. The speed with which the number of projects has been cleared is shocking; especially those which have faced stiff opposition from Environmentalists, NGOs, Forest Dwellers and the Court. The Expert Appraisal Committees are presently constituted by hand-picked members who invariably toe the command of the Centre and issue clearances. Some of these committees have been headed by members without any expertise in the field of environment.

This dilution of criteria for appointing a Chairperson and members has made the process of issuing clearances summary and a mere formality. Such procedures will have devastating effect on the environment when the Chairperson and Members do not possess necessary expertise to assess and evaluate the social and environmental impact of the proposed project. Besides, instances are not wanting where such appointments have led to conflict of interest.

Conflict of interest has been evident from the fact that Mr. V. P Raja who has been appointed for the Thermal Project and Coal Mining Project is also the Chairperson for Maharashtra Electricity Regulatory Commission and his previous experience does not indicate any exposure to ecological or social issues relating to thermal power projects and coal mining. Mr. P. Abraham and Mr. M.L. Majumdar had to resign from the Chairpersonship of the concerned Expert Appraisal Committees because they were on the Board of Power or Mining companies; for the reason of conflict of interest. (19) Such conflict of interest would only lead to arbitrariness and defeat the object of setting up Expert Appraisal Committees.

This practice adopted by the Centre has been criticised by the Hon'ble Justice Swatanter Kumar, Chairperson, National Green Tribunal Chairperson, who has issued a directive that such committees should be headed by persons having expertise in the field of ecology and environment. (20) The criteria for appointing a Chairperson to the Expert Appraisal Committees and State Expert Appraisal Committees are presently governed by the Environment Impact Notification (EIA), 2006. However, this notification emphasizes on the managerial merits rather than environment expertise which is a plain departure from the EIA Notifications of 1992 and 1994 and the same has been analyzed in Table 3. (21)

**Table-3**

<b>Eligibility of chairperson of EAC/ SEAC under EIA notifications</b>			
	<b>EIA Notification 1992</b>	<b>EIA Notification 1994</b>	<b>EIA Notification 2006</b>
Eligibility criteria for chairperson	Outstanding and experienced ecologist or environmentalist or technical professional in the relevant development sector having demonstrated interest in environment conservation and sustainable development.	Outstanding and experienced ecologist or environmentalist or technical professional or person with wide managerial experience in the relevant development sector.	Outstanding and experienced environmental policy expert or expert in management or public administration with wide experience in the relevant development sector*.
<p><i>*The union environment ministry, the respondent in the case, informed that the criteria as specified in the EIA Notification of 2006 has been modified through ministry notification of October, 2007. However it should be noted that the modified provision still retains the clause “public administration or management” expert, for selecting an EAC member</i></p>			

Thus, this dilution of criteria and appointment of ‘Yes Men’ only shows the anxiousness on the part of the government to curry favour the capitalists in guise of development.

#### **XVI. TRANSPARENCY – A MIRAGE**

The much promised transparency to the process of project clearances has been limited only to the statistics and status of various project proposals put up on the website of the Environment Ministry. The manner in which the decisions have been taken, the rationale behind giving clearances and the scientific credence in clearing the projects by the Approvals Committee is not made public. The Environment Ministry under the UPA Government would publish detailed minutes of the meetings of the Approvals Committee. The Ministry under the present government merely publishes the list of projects which have received clearances without clarifying the rationale behind granting the approvals.

The various clearances have been brought about by modifying scrutiny and consideration procedures through office memoranda and circulars. The practice adopted far from being transparent is a blatant violation of the procedure laid down by existing laws and rules!

#### **XVII. CONCLUSION**

The slow and systemic dismantling of the statutory authorities under the various Environment related laws, Summary Clearance Procedures, Constitution of the Expert Appraisal Committees of Chairpersons and Members without expertise in technical and ecological field, the pace with which the number of projects have received clearances in a span of less than a year of the present government coming into power only seem to cast doubts on the intentions of the government.

Further, the government is contemplating the amendment of the various environment laws. This amendment is not to make the laws more stringent and effective but to remove the bottlenecks in issuing clearances; issuing clearances for development projects and building infrastructure for a handful of capitalists.

Evidence is only mounting against the government as the talks of rehabilitation and providing livelihood is moving at a snail’s pace. The luke warm response from the corporate sector in adopting endangered species has only exposed the government’s weak attempts to cover up crony capitalism and has proved that Corporate Social Responsibility is mere a camouflage.

The objection is not against clearances and development. The objection is against the reckless and indiscriminate manner these clearances have been granted. The objection is against flouting the various Environmental Laws. The objection is against dismantling the various statutory bodies appointed under these laws. The objection is against the violation of compensatory jurisprudence in relocating and rehabilitation of displaced tribals and villagers. The objection is against the fact that the concept of sustainable development has been overlooked by the Union Government. The objection is against this myopic view of the Union Government.

Development is necessary. Whose development? What is the cost of this development? What is the impact of this development? These are the questions that need to be reflected upon. If a handful of capitalists profit while thousands of people lose livelihood, homes and land, it cannot be called development. If a handful of capitalists fill their coffers while the flora, fauna and topography is destroyed, it cannot be called development. If a handful of capitalists build empires while clearing thousands of hectares of forests, it cannot be called development.

It is nothing but a race towards annihilation; a race towards destruction!



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