

# DISCUSSION PAPER

Dams, Conditional Environmental  
Clearances and the Pari-Passu Clause

Shekhar Singh

DIS/DAMS/1988



RaAG

Research, Assessment and Analysis Group



Scripted in 1998, this paper was fed into the then ongoing discussion on how to deal with pari passu clearances of projects, which were proliferating. The issue has never been satisfactorily resolved.

The sketch on the cover and above is by Pratibha Pande.

1. In the last 15 years or so, there has been a tendency to grant conditional environmental clearance to major dams with a *pari-passu* clause. This means that the environmental studies and assessments that need to be done, and the action that needs to be taken in advance of project clearance would have to be done concurrently with project construction.
2. Presumably, such clearances are given when there is a need to expedite initiation of the construction of the project. The desirability, or otherwise, of this is not being discussed here.
3. There are three distinct sets of environmental issues relating to dam projects. These are:
  - i) Whether the project is environmentally viable? In other words, are the inevitable environmental costs of the project justified?
  - ii) What measures need to be taken, if the project is to be made environmentally viable, to minimise its negative impacts on the environment?
  - iii) What are the costs of such measures and how do they affect the financial viability of the project?
4. In order to answer question (i), detailed environmental impact studies need to be carried out and their findings assessed. On the basis of these, it can be determined whether the benefits from the project justify its inevitable environmental costs.
5. If, based on the earlier exercise, the project is found viable then the earlier studies have to be built-upon and action plans have to be formulated to minimise environmental damage.
6. Once the measures required for minimising environmental damage have been clearly determined, then they need to be costed in order to ensure that even if the project is considered environmentally viable, does it remain financially viable if all that is required to protect the environment is done.
7. Clearly, if proper decisions have to be made, all these questions have to be asked and answered prior to a project being considered for environmental clearance.
8. When a conditional *pari-passu* clearance is given, it usually means that these three questions have not been answered to the point where a final decision can be made. In other words, when a project is given conditional *pari-passu* clearance, there is a possibility that the project might subsequently be proved to be environmentally and/or financially non-viable.
9. There is also the practical danger that, due to the inadequate monitoring system of the Ministry of Environment and Forests (MoEF), once clearance is given, albeit conditional, the required studies and action plans would not be finished in time. Even where the studies and action plans are completed, there is the danger that the required remedial measures will not be implemented in time or properly. Therefore, in

10. those cases where the government has seen fit to grant environmental clearance even before the environmental and financial viability of a project is established, there is a special responsibility on the MoEF to ensure that at least the *pari-passu* clause, with all its inherent weaknesses, is properly adhered to.
11. It also has to be ensured that the decisions relating to the environment are being made in a democratic, participatory and transparent manner, especially by consulting and keeping informed all the main stakeholders, especially the communities most directly affected by the project.
12. The question of how exactly to determine what constitutes adherence to the *pari-passu* clause has never been settled. This is clear from the debates which surround this aspect of three of the major projects which have been given such conditional clearance: the Indira Sagar project in Madhya Pradesh, the Sardar Sarovar project in Gujarat and the Tehri project in Uttar Pradesh.
13. Recently, the Sardar Sarovar and Narmada Sagar project authorities have suggested that compliance with the *pari-passu* clause should be judged based on the proportion of submergence. In other words, they seem to suggest that the *pari-passu* condition would be fulfilled if, overall, the proportion of studies, action plans or action completed is not less than the proportion of the reservoir filled. This, however, appears to be an unsatisfactory and erroneous way to determining compliance with the *pari-passu* clause.
14. The correct interpretation of the *pari-passu* clause involves identifying the different types of environmental activities required under a conditional clearance, and the purpose of each. It must also be remembered that *pari-passu* means concurrent and not co-terminus action.
15. As already mentioned earlier, by giving conditional clearance with a *pari-passu* clause the government in effect allows project work to start without determining the environmental or financial viability of the project. However, this does not take away the right of the government to re-assess the clearance that it has given if findings of the required studies begin to establish that the project is environmentally non-viable. In other words, the government has the obligation to reverse its decision on the project if subsequent evidence suggests that the environmental costs of the project are unacceptable, or that their mitigation to within acceptable limits would make the project financially non-viable. For this purpose, all the required studies that assess the environmental impact of the project and determine costs of mitigation should be completed as soon as possible. This is essential in order to minimise the financial loss in case the project is proved to be non-viable and consequently scrapped. That is why conditional clearances often prescribe a time frame within which studies, action plans and even some action has to be completed.
16. The second objective of the various studies and action plans is to ensure that the environmental impacts of the project are minimised. For this purpose, it is essential that these studies and action plans are completed and action taken, before project related activities cause irreversible damage to the environment. In fact, where project activities threaten an ecosystem or species that is to be rehabilitated, not only studies and action plans but even successful rehabilitation must be completed before such project activities are allowed to commence. There could, for example, be an ecosystem or species that would disappear even if 10% of the area was submerged.

Consequently, it cannot be argued that if 10% of the surveys of wildlife have been completed and 10% of the remedial action taken, then it does not violate the *pari-passu* clause if 10% of the area is submerged. Clearly, 100% of the surveys and action plans and 100% of the rehabilitation must be completed before such submergence is allowed.

17. Similarly, degraded catchments would have a negative impact on the project by silting up the reservoir. Where any impoundment starts before the catchments (at least the very high and high erodibility categories) are adequately treated and stabilised, an important purpose of catchment area treatment is defeated. Clearly, if all this is kept in mind, the simple formula of percentage of impoundment being co-related to the percentage of environmental study and action is not correct.
18. Many other such examples can be given to establish that if proper management of the environment is to take place, a simple formula equating the proportion of impoundment to the proportion of environmental studies and action taken, would not work.
19. I have attempted below to suggest some sort of a timetable for many of the specific aspects relating to the environment. My belief is that, unless this or a similar timetable is followed, the *pari-passu* clause for these projects could not be considered as having been complied with.

Issue	Required Time Frame*			Remarks
	Study (to be completed)	Action plan (to be completed)	Implementation (to be completed)	
1. Catchment Area Treatment	Prior to start of construction of coffer dam/ main dam	Prior to start of construction of coffer dam/ main dam	Two years prior to any impoundment (Of at least the very high and high erodibility categories of the catchment)	All very high and high erodibility catchments must be treated and allowed to stabilise before any impoundment is permitted, in order to prevent siltation. Infact, the actual activity of catchment area treatment, which often involves pit digging and other earthwork, can temporarily enhance rates of siltation. Therefore, it is important that all these activities are completed before any trapping of silt through impoundment starts.
2. Rehabilitation	Prior to start of construction of coffer dam/ main dam	Prior to start of construction of coffer dam/ main dam	Two years prior to impoundment	The rehabilitation component of the project is perhaps the most critical and is the one which usually requires the largest financial outlays. As such, it is essential that all studies and action plans must be completed before any impoundment, including that due to building-up of back waters, takes place. This also includes the identification of land and its acquisition. However, the shifting of families should start only when the impoundment schedule is final. The process should start at least two years in advance of impoundment, with the families having the option to maintain both sites while they settle down in their new homes. The final shifting of project affected persons should be done only when submergence of an area is imminent.
3. Seismicity and dam safety	Prior to start of any construction	Prior to start of any construction	Prior to start of any construction	Critical for ensuring the safety of the dam and other structures. It is therefore important that construction should not be started till all the safety-related studies are completed and the resultant modifications, if any, to the structural designs have been incorporated.

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\* If specific dates have been prescribed in the clearance letter, by which any or all of these steps have to be completed, then those dates have to be adhered to, if they are earlier.

4. Impact on human health	Prior to start of construction of coffer dam/ main dam	Prior to start of construction of coffer dam/ main dam	Prior to impoundment	The negative impacts of reservoirs on human health, especially as they breed vectors, are well documented. Even in the Narmada project there is concrete evidence of this. Therefore, preventive measures must be in position prior to impoundment.
5. Impact on aquatic ecosystems	Prior to start of construction of coffer dam/ main dam	Prior to start of construction of coffer dam/ main dam	Prior to diversion/ impoundment	The diversion of the river, building of a coffer dam and the creation of reservoirs have major negative impacts on aquatic ecosystems, especially on fish diversity, other biodiversity, and on water quality. As this is an irreversible process once diversion or impoundment starts, it is important that studies and action plans be completed prior to any diversion. Implementation of preventive measures should be completed prior to the affecting activity (diversion or impoundment) being permitted.
6. Dust and noise pollution at construction site	Prior to any construction	Prior to any construction	Prior to any construction	The construction activities related with such projects pose a significant threat of dust and noise pollution on the surrounding ecosystem and human settlements. It is, therefore, essentially to study the surrounding ecosystems and to develop and implement action plans for the minimisation of the impacts and for the rehabilitation of species and ecosystems, prior to the start of construction.
7. Submergence of terrestrial biodiversity	Prior to start of construction of coffer dam/ main dam	Prior to start of construction of coffer dam/ main dam	Prior to impoundment	All wildlife (flora and fauna) studies and action plans must be completed prior to any impoundment being allowed. Rehabilitation programmes, as required, must be implemented so as to ensure that species or ecosystems are adequately rehabilitated before their original locations are submerged.
8. Archaeological monuments and sites	Prior to start of construction of coffer dam/ main dam	Prior to start of construction of coffer dam/ main dam	Prior to submergence of site/ monument	Archaeological monuments must be identified and shifted out prior to their sites being submerged. More importantly, all archaeological sites must be investigated and the findings evaluated prior to their being submerged. Where required, salvage of archaeological objects must be done prior to impoundment.

Issue	Required Time Frame			Remarks
	Study (to be completed)	Action plan (to be completed)	Implementation (to be completed)	
9. Impact on downstream aquatic ecosystems	Prior to start of construction of diversion canal/ coffer dam/ main dam	Prior to start of construction of diversion canal/ coffer dam/ main dam	Prior to diversion/ impoundment	The blocking of a river by a dam has significant negative impacts on the downstream aquatic ecosystems. These include a loss of nutrients due to the trapping of silt by the dam. The change in water flow regimes and the blockage of passage of migratory fish. Even the diversion of the river waters has many such impacts. As these are irreversible impacts, studies, action plans and implementation must be completed before any diversion or impoundment is permitted.
10. Water logging	Prior to start of construction of coffer dam/ main dam	Prior to start of construction of coffer dam/ main dam	Prior to impoundment	The social and economic justifications for large dams are usually very critically dependent on the benefits from irrigation. However, these benefits are often not realised because of significant problems relating to waterlogging in the command area. Consequently, the possibility of water logging and the modalities of preventing such waterlogging must be determined before permitting any impoundment. Very often, when the modalities of preventing waterlogging are properly understood, there is a requirement to change the water use patterns determined for the project. This becomes impossible if the project has progressed to a stage where impoundment has been permitted.
11. Compensatory afforestation	Prior to start of construction of coffer dam/ main dam	Prior to start of construction of coffer dam/ main dam	At least five years prior to the cutting of trees in the submergence zone	Compensatory afforestation, as the name suggests, is meant to compensate for the forests that would be felled or submerged as part of the project. Consequently, the compensatory forests must be established before the original ones are cut or submerged.
11. Other environmental issues				A similar analysis has to be done for each of the other environmental issues to determine what is the proper timeframe within which they should be studied, their action plans developed and implementation started and completed.

The preparation of this discussion note was preceded by extensive discussions with various practitioners and experts and their views taken on board as far as possible. Enclosed are the views of:

1. Mr Ramaswamy R. Iyer, former secretary, ministry of water resources, Government of India.
2. Mr R. Rajamani, former secretary, ministry of environment and Forests, Government of India
3. Mr N.D. Jayal, founder president of the Himalaya Trust
4. Ms. Medha Patkar, convenor of the Narmada Bachao Andolan (NBA) and of the National Alliance of People's Movements (NAPM)
5. Mr Samar Singh, Secretary General of WWF India
6. Mr Ashish Kothar, founder member, Kalpavriksh
7. Mr Ashok Khosla, President, Development Alternatives
8. Mr L.C. Jain, Indian High Commissioner to South Africa, and Vice-Chairman, World Commission on Dams
9. Mr S Maudgal, senior adviser, ministry of environment and Forests, Government of India, in charge of environmental impact assessment

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By hand

March 3, 1998

Prof Shekhar Singh  
Indian Institute of Public  
Administration  
Indra Prastha Estate  
New Delhi - 110002

Dear Prof Shekhar Singh,

Thank you for your letter dated 19 February 1998 regarding the 'pari passu' question. As it happens, as Secretary, Water Resources, I had something to do with the introduction of the pari passu idea in 1986/87 in the context of the proposal for a 'conditional clearance' for the Sardar Sarovar and Narmada Sagar Projects. The Ministry of Environment and Forests was apprehensive that after obtaining a 'conditional clearance' the Project authorities might ignore the conditions and proceed with the construction work. It was in that context that I suggested that progress of construction work should be pari passu with progress on the environmental and rehabilitation front, and that construction work should not be allowed to proceed ahead of the rehabilitation and environmental protection measures. Unfortunately, that intention was not spelt out in so many words, with the result that the term pari passu has been widely misunderstood. A view much canvassed was that as the project construction work would take many years, there was plenty of time for environmental and rehabilitation measures; and that these could be taken up as and when necessitated by progress on the construction front, i.e., pari passu with the latter. Thus the intended relationship between construction and environmental/rehabilitation measures got reversed. It was this understanding of the pari passu condition that the Morse Commission had in mind when it criticised the idea severely in its report. It is necessary to keep reiterating the original intention that construction activities should not be allowed to proceed ahead of environmental and rehabilitation measures; and that the pace of the former should be determined by the status of the latter.

Coming now to your specific question, the clarification in the previous paragraph in a sense answers it. I entirely agree with you that a simple formula of matching percentages is not at all appropriate. As I have suggested above, progress on the construction front should be contingent on the state of readiness on the environmental/rehabilitation front, which should include advance action, preparatory work, the actual completion of remedial measures in some cases, and so on. Apart from initiating mitigative or compensatory action well in time, it is necessary to ensure that the possibility of

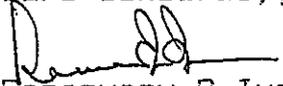
hardship, harm, injury or damage (to flora, fauna, the natural environment in general, human beings and their livestock, historical or religious edifices and monuments, and so on) has been guarded against before construction activity is allowed to proceed. It is also clear that remedial or protective measures which cannot be implemented once construction/submergence begins should be completed in advance.

That is my understanding of the pari passu principle. As that Latin phrase has been misinterpreted and distorted, I would suggest that the idea of a 'state of readiness' (as defined above) on the environmental and rehabilitation front should be stressed instead.

I hope that this clarification will be of some assistance.

With regards,

Yours sincerely,

  
(Ramaswamy R Iyer)

R.Rajamani

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Date: 3rd. March '98

Dear Prof. Shekhar Singh,

I have received your two letters of the 19th and 24th February about the *pari passu* clause and the BCPP project workshop in April. I have informed Dr.A.R.K.Sastry about my attending the workshop.

As regards the *pari passu* clause, it was meant to ensure that environmental moderation efforts are completed before the project itself is completed, in such a manner that the measures for mitigating the environmental impacts are completed before the project itself is completed. It was to enable the project authorities to take up concurrently with the environmental moderation effort those elements of the project having some lead time which do not impede or nullify the environmental measures. It was not intended to establish a mathematical equivalence as described by you except as a rough guide for phasing the expenditure, especially on the environmental effort. It was never intended to lead to a situation where the main project is completed or submergence of the area takes place without completing in full all those environmental measures which have to be tackled satisfactorily before the submergence takes place. It would be absurd if the archaeological treasures are not relocated, the fauna and flora rehabilitated and the catchment treatment completed before the submergence takes place. Similar safeguards were to obtain in the command area works where the canal excavations and letting out of water would have to be preceded by not only all the studies of environmental impacts but consequential moderation measures. The indices evolved should take care of these aspects with the weightage always being with the environmental measures. The clause was also intended to ensure full provisioning of funds for the environmental measures and to avoid temptations on the part of the project authorities, noticed too often in the past, of providing full resources for project works like the excavations, cofferdam, roads, buildings, dam structure, canals etc., and starving the environmental moderation effort which too often, was in the hands of other organisations who could be goaded to complete the works only by systematic release of funds. The tendency of the project authorities to stampe the completion of the dams and canals riding on the slowness or inefficiency of other departments was intended to be checked by this clause, to make them work closely with these other formations and show as much interest in environmental measures as in their civil works, As those who paid the pipers they were expected not only to call the tune but also see the tune is actually played and not drowned by the trumpets they themselves blew!

I hope my comments are of some use in your further discussions.

With all good wishes,

Prof. Shekhar Singh  
Indian Institute of Public Administration,  
Indraprastha Estate, Ring Road,  
New Delhi 110002

Yours sincerely

  
( R. Rajamani )



Fax: 331-9954

To: Prof. Shakti Singh, Indian Institute of Public Administration, Indraprastha Estate,  
Ring Road, New Delhi - 110002

Date: March 9, 1998

Dear Shakti,

I regret this delay in responding to your letter of February 19 which, however, reached me only on March 5 by postal mail which is painfully slow.

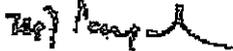
I entirely agree with you about the NCA's formula of environmental action being carried out at the same percentage as submergence being quite unsatisfactory to the point of being absurd. As you have stated, perhaps the most significant environmental action in such projects, such as Catchment Area Treatment to stabilise degraded slopes must not only precede submergence but, ideally, should be initiated immediately on sanctioning of the project and completed well ahead of submergence in order to have meaningful impact on checking erosion. If CAT is done *pari-passu*, its effectiveness in checking erosion and siltation of the reservoir will be undermined.

I agree with you in regard to wildlife and other biodiversity values also, the study and action required of which cannot be matched with submergence, as the two are totally incompatible. What is clearly needed in regard to environmental action, therefore, is distinct and separate time-based programmes, planned in advance of the sanctioning of the project, to determine the overall environmental impact, which may preclude the very feasibility of the project. However, if the project has to go through, there must be a separate time-frame for completion of environmental study and action well ahead of the completion of the project. These will have to be determined ecologically and empirically as to which particular environmental action can be completed at which particular stage of construction of the Dam. Clearly, it is meaningless to provide any *pari-passu* arrangement for environmental action with the construction of the Dam, specially in terms of equal, thumb-rule percentages. Natural values and engineering works simply cannot go together!

I hope this will give you some support for the next meeting of NCA's Environment Sub-group.

With warmest regards,

Yours sincerely,



(N.D. Jayal)

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# नर्मदा बचाओ आंदोलन

॥ बी १३, शिवम फ्लैट्स, एलोरा पार्क रस्ता, बड़ोदा ३९० ००७  
फोन : ०२६५-३८२२३२ फॅक्स : c/o ०२६५-३३०४३०/३३८५४१  
प्रति : एन.बी.ए. : ३८२२३२

॥ ६२, म. गांधी मार्ग, बडवानी, जि. खरगोन, म.प्र. ४५१ ५५१  
फोन : ०७२९०-२२४६४ फॅक्स : c/o ०७२९०-२२७८६ प्रति : एन.बी.ए. : २२४६४



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March 11, 1998.

Dear Shekhar,

Sorry for the delay in replying to your letter. I received it quite late, around 4<sup>th</sup> of March and then my hectic schedule, I was also hoping to talk to you <sup>so personally</sup> while in Delhi.

The issue of 'pari-passu' continues to haunt NCA, as it appears from your letter. You surely know and have read the discussion in the Morse Committee report.

The official definition referring to the percentage area covered by the mitigative measures and the % of area submerged, even without any relation between the two (i.e. area covered may be geographically much distant and having no impact on the loss due to the area submerged), is indeed absurd. Another view that is taken is that when a certain area has an impact, in that area, environmental measures should have been taken eg command area development in the area (in parts) to be mitigated with the former preceding the latter. This too is partial and while may be OK in some aspects, not in others. This approach certainly fails in rehabilitation measure as capacity to rehabilitate all (which is not possible through planning alone) needs to be established before construction progresses. This is true, as you have said in CAT, for other reasons. Your interpretation is perfect. CAT or Compensatory Afforestation (in relation to the loss in the particular basin) must be taken up in advance to be able to

minimise the impacts. The officials are obviously using the environmental compensatory measures as an eyewash, to push the project ahead. When even detailed investigations in such serious aspects as downstream impacts remain to be completed, what about compensating/mitigating the loss? I suppose, you must emphasise a need for a master plan which would provide a timebound environmental works showing what is the time gap between completion of work & submergence. Drawing from R & R again, the NWDTA demanded a master plan to be ready within 2 years with lands located. --- while also put forth the time, rehabilitation of a family to be at least one year before submergence of its land/property. Without a master plan, the latter condition would have very little impact. The master plan provides a feasibility test, helping one to assess the availability of resources, -- to the likely barriers. The same is true for Environment. If a sanctuary or compensatory afforestation is planned, The <sup>plan with</sup> maximum details must be ready before any work (today, beyond whatever is already done) while for each kind of measure, works to be completed a minimum time before the impact must be worked out. In the case of compensatory afforestation eg, identifying alternate lands, settling land disputes, availability of funds etc is to proceed but also plantation to have certain amount of growth already achieved when deforestation & its impact occurs. What is the point in planting trees when clearfelling/submergence of forest has occurred

Intervention maps and cumulative impact of all dams in the valley is forgotten completely. All other upstream projects leading to increased siltation, weared feeder roads or large displacement of humans & cattle, silted up streams, impact studies & basin-wide plan for the entire watershed.

or have started. This would leave a long time-gap that would result in irreparable loss, anyway. CAT is crucial and so is command area development.

'Pari-passu' I had heard was removed from framework/parameters in the sanctioning process by MOEF, isn't it? If not, we should either redefine, but better still, question 'pari-passu' clause itself. If you think strategically only redefining is possible then, 'Planning, executing those measures at a time when any project-impact would be compensated/prevented to the greatest extent possible' shd be suggested. On application this would suggest what you have in the case of wildlife management or CAT.

Let me give you a brief information in this regard. The catchment treatment work in the areas adjacent to directly affected is carried out but only to let the financial & other inputs go a waste. Lacks of plants were planted in the Maharashtra, Gujarat & M.P. tribal areas (with high slopes & ranges - critical areas) but survival rate, as it appears to me, is almost zero.

In the command area, large portions of agricultural land is already affected due to no drainage works & poor canal-lining/construction, with waterlogging and salinisation. There is a major media coverage on this. The question is again, will the command area be fully and properly developed before such impacts begin. There doesn't seem to be a will or an ability

I suggest that your group too should make field visits & have a surprise sample-checking to be able to identify and locate the seriousness. If not a group, why not yourself?

A detailed critique on the approach, plans and achievement on all aspects will be helpful, if prepared & provided for ESC of NCA but also the NVDA-Madhya Pradesh as well as the Task force appointed in M.P., Officially, for review of the whole valley development plan.

The Supreme Court process also will require this input. So please discuss with others in Delhi if necessary and suggest a possibility to have this ready. The court may go in for a hearing on env<sup>l</sup> issues soon.

But today they are more/mostly on rehabilitation. The rehabilitation of those affected due to environmental impact of CAT-waters affected sanctuary-affected shd be one of the issues (properly defined) as also the status of environmental & fresh land-use clearance. The latter, we had tried to show through official correspondence, as "lapsed." What is your view on both these?

You may have heard that judges have been criticizing NBA's role, obviously on the basis of a distorted reporting from certain quarters. Let's hope, they would see truth.

Let us know if you heard anything else ~~at~~ also ~~forward~~ the result of the meetings.

(We will be in Delhi from

March 24<sup>th</sup> - 26<sup>th</sup> by the hearings)

With regards,

of EMIL

Dear Shekhar,

Received your note on 'pari-passu'. This quick reply is to suggest some absolutely necessary changes before you go ahead and distribute it. Just a few points on this very critical issue.

1. The overall assessment, even in your note clearly suggests that the 'pari-passu' clearance as granted by the sanctioning authorities is absolute compromise with and violation of very basic environmental principles and framework of assessment, planning. This needs to be stated in no unclear terms.
2. ~~When the studies, actions and even implementation is to be completed before construction,~~ obviously no clearance can be granted till that happens. In case the government sees the great need to grant environmental clearance without establishing environmental and financial viability -- this should never be entertained as a possibility! If it is, then 'to see that at least pari-passu claims with all its inherent weaknesses is ahead to' is what remains to be done theoretically which is not only an unwanted compromise but also impossible to attain, as you have said at certain places.
3. Your time framework (without the 'pari-passu' context) is OK in some aspects but not in others (esp. R&R). On 'R&R' part in your table, I will say: (A) R&R having largest financial outlays. This is not true. It has in most cases, taken 1 to 3% of funds till last decade and may be little more now. (B) So that is not/should not be the reason for completion of studies and action plans in time. The reason is the criticality of human aspect/issues, on which there can be no compromise. (C) Studies, action plans before impoundment? All studies - the benchmark survey, socio-economic analysis, (study of social eco-institutions (likely impact), study on alternative sources of livelihood, -- must be completed prior to any finalisation of project (at Detailed Project Planning Phase) and of course before granting clearance, not just prior to construction. R&R in parts is generally planned to be completed atleast one/two years (recommendation of a National Working Group on Tribals) which too is not achieved but that is unacceptable. Total R&R of oustees of all categories to be established as feasible and resources - esp. alternative land as available before the project --, is the most critical process. You have referred to identification of land and its acquisition - which one? Land to be affected or land to be allotted for resettlement? What is hurriedly done is acquisition of affected land, alternate land is neither acquired/purchased nor identified for all affected.

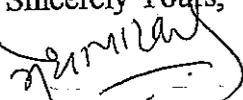
The process is to be completed 2 years prior to impoundment is what is stated in the table but 'it is to be started 2 years ahead' as per remarks. It is indeed a tangle. Hence acquisition today, shifting much later kind of situation which is in big projects, is inevitably problematic.

That is all for the moment.

Will you talk to Maneka Gandhi about serious environmental issues (water-logging in the command already started), downstream impacts, archeological aspects not yet fully studied, etc as she is in a position to respond as an authority (R&R Sub-groups) to sanction further construction?

NSP, Maheshwar are also facing mass-actions. NSP is also to be maintained by ESG now! (Agenda notes of the coming R&R Sub-group meeting on April 28th). You may, therefore, raise good forest felling, waterlogging, incomplete studies, etc urgently.

Sincerely Yours,

  
Medha Patkar.

To : Shri Shekhar Singh

From : Samar Singh

April 27, 1998

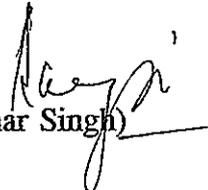
Sub : Dams-Conditional Environmental Clearances and the pari-passu clause

Many thanks for the draft paper on the above-mentioned subject. It is very pertinent and, in fact, should apply to all major development projects, with suitable modifications.

As a quick response, I feel the questions in para 3 of the note should be along the following lines:-

- 1) What are the likely negative impacts of the proposed project on the environment at its location and elsewhere?
- 2) What measures need to be taken to counter and/or minimise the aforesaid negative impacts?
- 3) What are the financial and other implications of such measures?
- 4) Considering the above-mentioned aspects (1, 2, & 3), is the proposed project acceptable and feasible?

I am somewhat uncomfortable with the term "environmentally viable". Hence the modifications suggested above.

  
(Samar Singh)

# SOUTH ASIAN REGIONAL REVIEW OF COMMUNITY INVOLVEMENT IN WILDLIFE CONSERVATION

Dear Shekhar,

I am responding to your pari-passu note. The note is generally clear, and covers most points. Some comments:

1. Para 2: It is not clear here why you are not tackling the desirability of the project; I am not suggesting that you should tackle it, but that you should clearly explain why you are not.
2. Para 13: The terms 'concurrent' and 'co-terminus' are not immediately clear.
3. Para 14: I think it becomes clearer later, but here too you could mention that there needs to be a minimum threshold of studies (to be listed) which have to be completed before even conditional clearance can be given, as they have a bearing on the viability of the project itself.
4. It may be useful to consolidate your findings in the following way:

**Studies:**

1. Studies to be done prior to clearance
2. Studies to be done prior to construction start
3. Studies to be done prior to coffer/main dam
4. Studies to be done prior to canal construction....etc.

**Action plan:**

1. Action plan to be prepared prior to construction
2. (and so on as above)

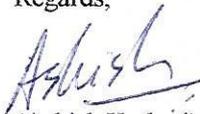
**Implementation of action plan:**

1. Implementation measures to be taken prior to construction
2. (and so on as above)

5. In the table, under Rehabilitation, you may have to briefly explain why "final shifting of project affected persons should be done only when ...imminent."
6. Under Impact on human health, you may want to distinguish between Preventive measures and Curative ones (which run through the project period).
7. No. 5 is Impact on 'upstream' aquatic ecosystems (downstream comes later).
8. Under Waterlogging, the implementation may be distinguished between those done Prior to impoundment in case of reservoir-related waterlogging; and those done Prior to canal operationalisation in the command area.
9. Other environmental issues include, and I think you should mention this, Reservoir rim stability, the required time frame for which is 'Prior to impoundment' (for study/action/implementation).

Hope these comments are useful. Let me have a copy of the final draft pl.

Regards,



(Ashish Kothari)



## Development Alternatives

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June 08, 1998

Dear Shekhar,

I received your draft paper on *pari passu* clauses a month back. Since then I have been out of town for much of the time and it is only now that I can respond.

I found the paper extremely clear and cojent and liked your table of specific time frames for different kinds of studies/action plans/action.

I think your proposed system will largely take care of the usual excuse that "you cannot stop the project after so much of money has been spent on it."

Nevertheless, I think a strong watchdog element needs to be incorporated whenever accepting a *pari passu* approach to project approval. Since, as you say, MOEF monitoring systems are inadequate, such a monitoring responsibility should partially be placed on civil society organisations - local bodies, NGOs, etc.

The cost of carrying out this monitoring should be borne by the project and built into its budget. Infact, even the costs of developing their capacity to monitor properly (training, instrumentation, etc.) ought to be included in this.

Otherwise, I found your paper very logical and I enjoyed reading it.

Let us meet soon.

Yours sincerely,

  
Ashok Khosla

Mr. Shekhar Singh  
Indian Institute of Public Administration  
Indraprastha Estate, Ring Road  
**NEW DELHI - 110 002.**



भारत के उच्चायुक्त  
प्रिटोरिया  
दक्षिण अफ्रीका

HIGH COMMISSIONER FOR INDIA  
PRETORIA  
SOUTH AFRICA

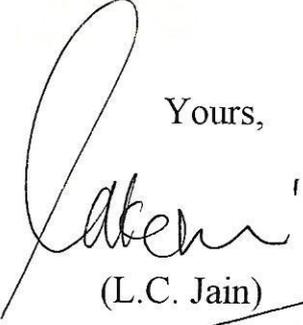
May 12, 1998

Dear Shekhar,

Thank you for your letter of April 14, 1998. I am grateful to you for sending me the draft paper. I entirely agree with the line of thinking and the very constructive suggestions outlined there. I hope you will be able to make them accept it.

With affection,

Yours,

  
(L.C. Jain)

Shri Shekhar Singh,  
Indian Institute of Public Administration,  
Indraprastha Estate, Ring Road,  
New Delhi 110 002



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GOVERNMENT OF INDIA

MINISTRY OF ENVIRONMENT & FOREST

पर्यावरण भवन, सी. जी. ओ. कॉम्प्लेक्स

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LODHI ROAD, NEW DELHI-110003

D.O.No. 3-87/80-1AI

March 25, 1998

Dear Prof. Singh,

Kindly refer to your letter dated 19th February, 1998 regarding implementation of project work pari-passu with the environmental stipulations. As you are fully aware that environmental studies are expected to be completed and incorporated in the DPR before an investment decision can be taken. In such a situation there should be no time lag between the studies being conducted, recommendations formulated, and their implementation schedule. Pari-passu clause, however, had been introduced as a special measure only in those projects where environmental studies were either not conducted at all or were incomplete and yet a decision was taken to go ahead with the project in such a way that the studies would be completed, recommendations made still in advance of the construction work and their implementation schedule integrated into the construction schedule.

Pari-passu clause essentially suffers from the following:

- It presumes that the environmental implications of the project are tolerable and their impact can be mitigated through remedial measures. Unfortunately, this is not always the case.
- Project authorities continue to treat environmental clearance as a formality with the result that conditions imposed are paid scant attention during actual implementation.

Cont....p.2

For these reasons project authorities could continue with ingenious arguments which often lead to absurd conclusions. Example, being, 50% construction of the dam and pari-passu completion of 50% rehabilitation. On the basis of different types of projects, it is my considered view that pari-passu clause, if imposed at all, have to be implemented on a "common-sense approach".

This essentially means that the following sequence should be adopted:

- Field surveys, studies, census, etc. to be completed well in advance of commencing any "preliminary works".
- Implementation schedule to be worked out for each of the recommendations covering Environmental Management Plan. These implementation schedules should be incorporated in a pert-chart clearly indicating the critical activities requiring priority action.
- Construction schedule should also be reflected on the pert-chart to so ensure that critical environmental activity schedules are not infringed by the construction schedule.

In practice, this is not being done thereby resulting in such anomalies as:

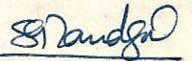
- Identification and enumeration of project effected persons continues even when the reservoir filling commences.
- Rehabilitation programmes continues much after the project has been completed.
- Environmental studies in the submergence continue even when submergence has already commenced, or in some cases even completed.

Implementation of Environmental Action Plans proportionate to construction of the dam or filling of the reservoir become meaningless for the population which is rendered homeless in the first phase of submergence itself. Provision of amenities and facilities at the rehabilitation sites cannot be satisfactory if done on a proportionate basis.

With kind regards,

Yours sincerely,

Prof. Shekhar Singh,  
IIPA, Indraprastha Estate,  
Ring Road,  
New Delhi-110002.

  
(S. Maudgal)

