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Bhanupali-Bilaspur-Beri Railway project, Himachal Pradesh: Assault on the Mountains

by Garima Thakur

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Bhanupali-Bilaspur-Beri Railway project, Himachal Pradesh: Assault on the Mountains

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ABSTRACT

The Bhanupali-Bilaspur-Beri Railway Project is a major infrastructure project being undertaken in the mountainous state of Himachal Pradesh that is characterised by its limited railway connectivity. Keeping aside its nature as a public transit project that should ideally be welcomed in contradistinction to expansion of national highway networks in the state, the project and the model of extractive development it signifies, must be questioned in the context of regional ecological sensitivity and political economy. A scrutiny of the manner of application of environmental protection legal frameworks in approving the BBB project reveals that the law does not account for Himachal's geological and ecological sensitivity to avert proliferation of commercial infrastructure that exacerbate the impact of EWEs in the form of cloudbursts. Moreover, a non-legal, yet crucial enquiry must remain in whether construction of railways and expansion of national highways to initiate large-scale commercial ventures in the state, imitating a Western and plains-based development model, can define 'development' in Himachal Pradesh. A need for an alternative model of development is explored that is culturally-rooted, ecologically compatible, and defies the logic of linearity in the conception of development.

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INTRODUCTION

Himachal Pradesh has been exemplary of the fundamental conundrum prevalent in environmental law in India; one between economic development and maintenance of ecological equilibrium. A new railway project spearheaded in the Himalayan state comes at a time when ventures of economic development here have expanded to four-laning and tunnelling of national highways to boost tourism, blockading rivers for hydroelectric projects and mining the mountains for sustaining lucrative cement factories.¹ Himachal's uniqueness lies in its geology and natural environment, such as the forests, wildlife, mountainous terrain and valleys. It is under immense pressure by these projects, that various procedures of environmental law in India have surprisingly approved.²

Himachal's story is not isolated and fits in to a larger pattern; however, its geology, environmental diversity, political economy, and its grim history of repeated disasters exacerbated by anthropogenic climate change makes it a distinctive case study where activities are going on business-as-usual while backlash from nature in the form of disasters go unheeded.

In this comment, I document the Bhanupali-Bilaspur-Beri Broad Gauge Railway Project (hereafter, the 'BBB railway project') to initiate an enquiry into the unsustainable and assimilatory model of development being pursued in Himachal Pradesh. The BBB railway project is problematic *ipso facto* and symbolically due to ecological and geological sensitivity of its region of execution and replicating a plains-based development trajectory instead of ideating a truly 'sustainable' development model for Himachal.

In Part I, I begin with describing the distinctiveness of Himachal Pradesh that makes construction of a seemingly unproblematic linear project questionable. Delving into the legal specificities of project approval, I outline and discuss in Part II the findings of social impact assessment reports, forest clearance, and unsettling loopholes in requirement of an environmental clearance, all of which have given a green flag to the project. Broadening this discussion, Part III further complexifies the critique by documenting the premises of popular resistance against similar infrastructure development in the state, role of neoliberal model of development in fuelling acquiescence to such projects and a possible misuse of 'national security' exemption to further develop the BBB railway network all the way to Indo-China border.

¹ Shipra Parashar, 'Himachal Pradesh Rail Infrastructure: Projects Worth Rs 13,168 Crore in Progress; Aims to Give New Impetus to Railway Infrastructure' *Financial Express* (27 February 2024) <<https://www.financialexpress.com/business/railways-himachal-pradesh-rail-infrastructure-projects-worth-rs-13168-crore-in-progress-aims-to-give-new-impetus-to-railway-infrastructure-3406243/>> accessed 7 July 2025; Siddharth Pandey, 'Himachal Pradesh's Race for Development is Threatening its Precious Heritage, Ecology' (*Frontline*, 12 September 2023) <<https://frontline.thehindu.com/environment/development-projects-in-himachal-pradesh-have-ignored-the-states-geography-and-built-heritage/article67295602.ece>> accessed 21 August 2024; Jitendra Choubey, 'Man-made Disaster in Himachal Pradesh' *The New Indian Express* (23 September 2023) <<https://www.newindianexpress.com/xplore/2023/Sep/23/man-made-disaster-in-himachal-pradesh-2617434.html>> last accessed on 7 July 2025.

² The Energy and Resources Institute (TERI), 'Green Growth and Biodiversity in Himachal Pradesh' (2015) 1 <<https://www.teriin.org/projects/green/pdf/HP-Biodiversity.pdf>>.

I. CONTEXT OF THE PROJECT

Himachal Pradesh, a Western Himalayan province in India, harbours the three broad categories of Himalayan ranges, namely the *Shivalik* ('Lesser Himalaya'), *Himachal* ('Great Himalaya') and *Himadri* ('Trans Himalaya'), depending on the altitude above sea level.³ Altitudinal variations indubitably lead to different varieties of vegetation, forests, wildlife species, *inter alia*, along with differences in climatic conditions. The climatic conditions referred to range from mid-to-low range temperatures manifested in different types of precipitation observed (rainfall-snowfall) and existing vegetation.⁴ The climatic and geological peculiarity of the state has accordingly shaped aspects of human life. Himachal is defined by a primarily agrarian economy, with people living in rural areas having myriads of traditions and cultures depending on the sub-region within Himachal. Upper Himachal, that includes the Fifth Schedule districts of Lahaul and Spiti and Kinnaur, have distinctive cultures and are comparatively more rural than Lower Himachal, where most of the urban towns are located.⁵ As per Indian State of Forest Report 2023, Himachal Pradesh has a forest cover of 27.99 percent of the total geographical

land.⁶ However, the methodology used to calculate forest cover by the Forest Survey of India in formulating ISFR 2023 has been questioned by experts, who allege that the forest lost due to development activities had not been accounted for, *inter alia*.⁷ Thus, conjecturally, Himachal's forest cover may have dwindled due to extensive construction ventures and infrastructure development.

The distinctive ecological sensitivity of Himalayas have led to demands to declare the Higher Himalayas as an 'eco-sensitive zone', a concept that has legal significance in India in terms of restrictions on harmful and extractive human activities.⁸ The notion of limiting unsustainable encounters with the fragile mountain ranges has been strengthened with impacts of anthropogenic climate change already joining forces with the state's geological peculiarities, such as high susceptibility towards landslides,⁹

³ R B Singh and Pankaj Kumar, 'Geographic and Socio-economic Realities of Himachal Pradesh, Northwestern Himalaya' in R B Singh and Reija Hietala (eds), *Livelihood Security in Northwestern Himalaya: Case Studies from Changing Socio-economic Environments in Himachal Pradesh, India* (Springer 2014) 11,13-14.

⁴ *ibid* 17-19.

⁵ Tribal Development Department, Government of Himachal Pradesh, 'Tribal Areas' < <https://himachalservices.nic.in/tribal/en-IN/tribal-areas.html> > accessed on 7 July 2025.

⁶ Forest Survey of India, MoEFCC, 'India State of Forest Report 2023 (Volume II)' (2024) 99. As per ISFR 2023, Forest cover is defined as "Forest cover" refers to all lands, more than or equal to one hectare in area, with a tree canopy of more than or equal to 10 percent, irrespective of ownership and legal status; and includes orchards, bamboo, and palm' (ISFR Volume 1, 7)

⁷ The Wire Staff, "Erroneous Misleading": 60 Ex-Civil Servants Challenge Environment Ministry's Forest Report' *The Wire* (4 February 2025) <<https://thewire.in/environment/erroneous-misleading-60-ex-civil-servants-challenge-environment-ministrys-forest-report>> accessed on 7 July 2025.

⁸ Shubhra Sharma and Anil D Shukla, 'Need to Declare the Higher Himalaya an Eco-sensitive Zone' (2023)125(8) *Current Science* 822-823.

⁹ TARU Leading Edge Pvt. Ltd., 'Hazard, Vulnerability & Risk Analysis Atlas and Report for the State of Himachal Pradesh: Landslide Hazard Risk Assessment' Composite Final Draft Report (March 2015) <<https://hpsdma.nic.in/admnis/admin/showimg.aspx?ID=2671>>16, accessed on 7 July 2025.

to destroy costly infrastructural projects recurringly every year. The flooding of rivers due to torrential downpour and cloudbursts in various areas of Himachal, particularly Kullu and Shimla districts, have been reclaiming nature taken by intrusive four-lane highways, hydropower dams and even more small-scale properties of the people, who plausibly followed the lead of the State in tampering with the geological and ecological make-up of Himachal.¹⁰

Among multiple 'underdeveloped' regions of India, Himachal is witnessing a transformation to enhance state's accessibility and prospects for exploitation to generate 'financial prosperity', amidst a history of state fiscal deficit.¹¹ To support lucrative activities such as tourism, hydroelectricity projects, industries including cement manufacturing and pharmaceuticals, rural-to-urban private construction activities, and allied economic opportunities, improvement in transportation infrastructure has been integral.¹² After a chronological

transition from two-lane roads to four-lane expansion and tunnelling of major national highways in the state, and despite its miserable failure in monsoons almost annually, developing a railroad network in the state is the impending assault on the state's ecology. A 63-kilometre Broad Gauge railroad connecting Himachal with the well-established railway network of India, is an infrastructural project that easily escalates the stakes involved while considering radicality of Himachal's imitation of the extractive-neoliberal development model.¹³ Currently, Himachal is connected to the broad-gauge railway network only in lower district of Una, and two narrow-gauge railroads operate between Kalka and Shimla, and Pathankot and Joginder Nagar, as a colonial vestige.¹⁴ However, the seemingly small-scale broad gauge project in question, BBB railway project forms the normative stage to develop railway connectivity to Leh, conspicuously through districts defined and annihilated by extractive tourism such as Manali, Kullu, and Lahaul and Spiti, that has been made easily accessible by the Atal Tunnel.

The genesis of the BBB Railway Project dates back to 1995-96 when traffic survey for the construction of railroad in this stretch was undertaken by the Northern Railways.¹⁵ The traffic survey report was

¹⁰ Vaishnavi Rathore, 'Himachal's Four-lane Highways to Hell' (*Scroll.in*, 13 September 2023) <<https://scroll.in/article/1055781/himachals-four-lane-highways-to-hell>> accessed on 7 July 2025; Harpreet Bajwa, 'Two Major Highways Worst Hit by Himachal Floods' *The New Indian Express* (30 July 2023) <<https://www.newindianexpress.com/thesunday-standard/2023/Jul/30/two-major-highways-worst-hit-by-himachal-floods-2599985.html>> accessed on 7 July 2025.

¹¹ Manshi Asher, 'In Himachal, A Deluge of Missed Warnings' *Hindustan Times* (16 July 2023) <<https://www.hindustantimes.com/opinion/in-himachal-a-deluge-of-missed-warnings-101689491312270.html>> accessed on 7 July 2025.

¹² *ibid*; Suha Priyadarshini Chakravorty, 'Collective Sustenance and the Environment: A Political Economy Analysis of Tourism in Himachal Pradesh, India' (PhD Thesis, SOAS, University of London 2021) 150-152; Ravinder Sood, 'Cement Plants, How Many the State Can Sustain' (*Hill Post*, 19 January 2008) <<https://hillpost.in/2008/01/cement-plants-how-many-himachal-needs/4325/>> accessed on 7 July 2025.

¹³ Parivesh, 'Detailed Note (Item no. 4)- Full title of the project: 63.1 km Bhanupali-Bilaspur-Beri New Rail Line project in the State of Himachal Pradesh (Phase-II, from km 23.900 to km 38.300)' <https://forestsclearance.nic.in/writereaddata/Add-info/0_Q_11123125112121CorrectedDetailed-Note.pdf> 1, accessed on 7 July 2025.

¹⁴ Indian Railways, 'Kangra Valley Railway' <https://indianrailways.gov.in/railwayboard/view_section.jsp?lang=0&id=0,1,304,366,535,960> accessed on 7 July 2025.

¹⁵ Parivesh (n 13) 1.

submitted to the Ministry of Railways which sanctioned the construction work in 2008-09.¹⁶ However, fructification of this project only began to surface in 2015 when the project was assigned to the Rail Vikas Nigam Limited (RVNL).¹⁷ The railway project has largely proceeded without coming under the radar on the repercussions that it will have on the state's geological terrain, along with the potentially menacing risks it may face given that Himachal is grappling with increasingly recurring and unpredictable EWEs. Himachal Pradesh has witnessed harrowing disasters in the recent past, most notably annual floods in the Beas and Satluj valleys, caused by excessive monsoon downpour and exacerbated by questionable infrastructure namely four-lane highways, dumping of construction muck in floodplains, and multiple structures built to support uncapped tourism activity in the hills.¹⁸

II. THE LEGAL SUCCESS FOR BBB RAILWAY PROJECT

Apart from signifying a remarkable advancement in Himachal's transportational infrastructure development, the BBB project is also helpful in analysing the interplay of various clearances required for the

fructification of any infrastructural project in India. The standard clearances required include environmental clearance under the Environment Protection Act, 1986 and the Environmental Impact Assessment Notification, 2006, the forest clearance under the Forest (Conservation) Act, 1980, and the wildlife clearance under the Wildlife Protection Act, 1972. While the environmental clearance is a general provision required to assess substantial and marginal environmental impacts that a project may have on and near the project site, forest and wildlife clearances come into the picture when a project has the potential to decimate and interfere with forestland or wildlife-sensitive areas (including the eco-sensitive zones).¹⁹ Another important and relevant category of assessment exercise involves social impact assessment which, among other scenarios, will have implications if the project site falls under the ambit of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 ('FRA, 2006'). The FRA seeks to empower forest-dependent Scheduled Tribe communities, *inter alia*, by prioritising their dependency when claims over forestland by external project proponents are raised.

One of the most comprehensive documents available on the BBB project is the final social impact assessment report conducted by Shimla-based PLAN foundation in the context of the state's land acquisition

¹⁶ *ibid.*

¹⁷ TERI (n 2) 1.

¹⁸ PTI, 'Himachal Pradesh Monsoon Havoc: Over 260 Roads Closed, 3 Districts Under Red Alert for July 6' *The Hindu* (5 July 2025) <<https://www.thehindu.com/news/national/himachal-pradesh/himachal-pradesh-monsoon-havoc-over-260-roads-closed-3-districts-under-red-alert-for-july-6/article69776435.ece>> accessed on 7 July 2025.

¹⁹ Wildlife Protection Act, 1972: Section 5C empowers the National Board for Wildlife to carry out impact assessments for development activities that may be carried out in wildlife protected areas. This has been construed, among other provisions, to introduce the element of wildlife clearance. Forest Conservation Act, 1980 [Now, 'Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980']: Section 2 provides for requiring forest clearance in case of diversion of forestland for non-forest purposes.

and rehabilitation statute.²⁰ The report is dated June 2022. Apart from evaluating social costs of the project, that have been majorly documented as insignificant in the face of outweighing social benefits that will accrue as a result of this project, the report also notes some potential environmental impacts, given that social and environmental consequences of such projects are often interdependent. 35,921 non-fruit bearing trees and 15,174 fruit bearing trees form part of 'assets' that will be acquired and felled as a result of this project.²¹ Notably, forestland that has/is being acquired for project execution harbours some forest-dwelling population which has/will adversely get affected by the project.²² However, Himachal Forest department procured certificates of no-objection of acquiring at least 52.71 hectares of forestland under FRA, 2006 for this project in 2019.²³

The SIA report expressly claims that the project will not have 'significant soil erosion' while proposes to ensure that excavated soil is dumped in a manner that does not lead to blocking of any drainage system.²⁴ Large scale soil extraction will inevitably lead to two apprehensions with

the potential of exacerbating or initiating ecological disasters:

Firstly, it will create an exigency of dumping muck, which the SIA seeks to resolve by using it in Ready Mix Concrete plants.²⁵ But this conveniently looks away from the irresponsible dumping executed by the project proponents in various other infrastructural projects, where the excavated material is accumulated around essential drainage system and rivers, blocking the course of way.²⁶ These have repeatedly resulted in flooding deluges where the rivers claim back the lost space, which have also endangered the projects themselves due to their vulnerability to unpredictable and increasingly recurrent incidents of geological reclamation.

Secondly, soil extraction will lead to deforestation of the project site or at least redefinition of the vegetation composition in and around the site, essentially leading to human intrusion in ecological and geological integrity. This finds relevance in the environmental ethics-based connotation of 'flattening of mountaintops' developed by David Strong. Rather than meeting the mountains at their own terms, Strong rightly argues that we are moulding them at our own terms by 'tunnelling under them, damming their streams, removing their tops, putting trams to their tops'.²⁷ Even

²⁰ PLAN Foundation, 'Social Impact Assessment Study for the Proposed Land Acquisition in District Bilaspur for Bhanupali-Bilaspur-Beri BG Railway Line: Draft Report' (June 2022) <<https://rtdchp.org/wp-content/uploads/2022/08/BBB-English-Final-19-July-3.pdf>> accessed on 13 August 2025.

²¹ *ibid* 54.

²² *ibid* 58.

²³ Parivesh, 'FRA Certificate (Under FRA 2006) to be issued by District Level Committee' <<https://forestsclearance.nic.in/writereaddata/FormA/Wildlife/511211251221MURBY-FRAcompressed.pdf>> accessed on 7 July 2025.

²⁴ PLAN Foundation (n 20) 98, 99.

²⁵ *ibid* 98.

²⁶ Vaishnavi Rathore, 'How Construction Muck Worsens Flood Damage in Himachal' (*Scroll.in*, 11 August 2024) <<https://scroll.in/article/1071853/how-construction-muck-worsens-flood-damage-in-himachal#:~:text=A%20report%20by%20the%20National,the%20boulders%20and%20other%20debris>> accessed on 7 July 2025.

²⁷ David Strong, 'Mountains: Rethinking Thinking like A Mountain' in Benjamin Hale, Andrew Light and Lydia Lawhon (eds), *The Routledge Companion to Environmental Ethics* (Routledge 2022) 107.

practically, loosening of soil due to cutting of mountains is a corollary which poses a direct threat to the costly infrastructure built, given that even one incident of landslide, mudslide and flooding can destroy key parts of it, thereby, requiring refuelling of funds to repair rather than structurally rethinking it. The SIA report passingly directs to compensate for the felled forestland by way of compensatory afforestation 'nearest to the sites where trees are felled'.²⁸

Similarly, another SIA report regarding land acquisition being undertaken for this project was prepared by SR Asia in 2021.²⁹ This SIA has primarily highlighted the benefits to Himachal's infrastructure that will accrue as a result of this project along with the warning that delay in execution of this project (often attributed to the delay caused by multiple clearance procedures such as for an environmental clearance, an impact assessment by way of screening, scoping, public consultation, appraisal is required)³⁰ would in fact be detrimental to the investment made.³¹ References to forestland and the sensitivities of their decimation have not been highlighted in depth, because the primary area of enquiry in an SIA, that too construed narrowly vis-à-vis land acquisition, surrounds largely the impacts on communities residing throughout the project site. However, multiple project affected families (PFAs) informed about forestland situated in the project site, which is not contextualised to exhibit whether these families, due to the

reason of deforestation, objected to the project land acquisition for these areas.³² However, this seems unlikely, given that in one instance, diversion of forestland for accommodating the railway project was actively suggested in a PAF meeting³³ and the green flag given by the final report to the BBB project.³⁴

The only available approved forest clearance on Himachal Forest Department's website under the Forest Conservation Act, 1980 regarding the BBB railway project is for its Phase-IV, covering about 12.04 hectares of forestland.³⁵ The forest clearance was awarded via an order dated April 1, 2023. An interesting aspect of this forest clearance exhibits a tendency to abuse the ambiguities of law and judicial pronouncements. The forest clearance cites a Supreme Court interlocutory order dated 08.02.2023, claiming its legitimacy from the directions passed in it.³⁶ However, on a perusal of the cited Supreme Court order, where the State of Himachal Pradesh had disputed an embargo on diversion of forestland under the FCA and FRA, it becomes clear that the Supreme Court allowed diversion of forestland without the permission of the Court for 'developmental' projects which

²⁸ PLAN Foundation (n 20) 99.

²⁹ SR Asia, 'Social Impact Assessment: Land acquisition being done for the construction of Bhanupali-Bilaspur-Beri, New Broad Gauge, Railway Line, District Bilaspur, Himachal Pradesh' (2021)

³⁰ Paragraph 7(i) EIA notification, 2006

³¹ S R Asia (n 29) 6, 13-14.

³² *ibid* 202, 206.

³³ *ibid* 206.

³⁴ *ibid* 6.

³⁵ Himachal Pradesh Department of Forest, 'diversion of 12.04 ha f forest land for the construction of Bhanupali-Bilaspur-Beri (BG) Rail Line (Phase IV) in favour of Rail Vikas Nigam Ltd., within the jurisdiction of Bilaspur Forest Division Distt. Bilaspur, Himachal Pradesh (Online Proposal No. FP/HP/Rail/146861/2021)' (1 April 2024) <<https://hpforest.gov.in/storage/files/4/banner/fcapdf27-04-2023-1682580332.pdf>> accessed on 7 July 2025.

³⁶ *ibid* 1.

are essentially non-commercial and small-scale in nature, such as primary schools, public health centres and other public utility buildings.³⁷ The court specifically observed: 'We find that the requirement of seeking permission of this Court for even undertaking *minimal developmental activities necessary for the citizens residing in rural/hilly areas* has caused long delays in the execution of such projects' (emphasis added).³⁸ For those specifically defined projects, the court allowed the application for allowing diversion of forestland on the condition of following the statutory requirements under FCA, FRA and Compensatory Afforestation Fund Act.³⁹ Insertion of this Supreme Court order in the forest clearance is conspicuously erroneous, given that the order nowhere deals with commercial infrastructure projects such as roadways and railways construction. The embargo on forestland diversion was lifted at the altar of executing minimal developmental projects while the original order dated 11.03.2019 had imposed absolute restrictions on diversion of forestland in Himachal Pradesh.⁴⁰ Arguably, the Supreme Court

order's ambiguity and unqualified nature has led to optimisation by commercial ventures such as the BBB project in the state, even if such projects are justified by the principle of 'national security'.

The forest clearance provided permission to fell 2,143 trees under the supervision of the Forest Department personnel after deposition of Net Present Value (NPV) of the trees, a fundamentally anthropocentric utilitarian metric used to derive a tree's value for forest clearance.⁴¹ The HP forest department was directed to constitute a committee comprising forest personnel to examine alignment at the time of construction and approve removal of trees as per requirements.⁴² Moreover, it seeks environmental clearance for the project, 'if applicable', which implies another set of environmental inconsistencies regarding this railway project.⁴³ At least on paper, the order prohibited creation of new routes through the forest area for transportation of construction material.⁴⁴ The order also directed disposal of excavation debris on the project site itself⁴⁵, without exploring the practical possibilities of doing it, given that muck disposal has repeatedly caused substantial changes in the geological and environmental equilibrium of area

³⁷ In Re: *T N Godavarman Thirumulpad v Union of India add Ors.* (Writ Petition(s) (Civil) No. 202/1995), Interlocutory Application No. 132892/2022, <https://api.sci.gov.in/supremecourt/1995/2997/2997_1995_8_21_41670_Order_08-Feb-2023.pdf> (accessed on 7 July 2025) 20-22.

³⁸ *ibid* 21 (¶ 4).

³⁹ *ibid* 21-22 (¶ 5).

⁴⁰ In Re: *T N Godavarman Thirumulpad v Union of India add Ors.* (Writ Petition(s) (Civil) No. 202/1995), Interlocutory Application No. 3840, (11 March 2019) <https://api.sci.gov.in/supremecourt/1995/2997/2997_1995_Order_11-Mar-2019.pdf> (accessed on 7 July 2025) 5, 6.

⁴¹ Himachal Pradesh Department of Forest (n 35) 2 (¶ 5, 6); See *T N Godavarman Thirumulpad v Union of India* (2006) 1 SCC 1, ¶ 44.

⁴² *ibid* 2 (¶ 9).

⁴³ *ibid* 2 (¶ 11).

⁴⁴ *ibid* 3 (¶ 16).

⁴⁵ *ibid* 3 (¶ 20).

around the project sites. In this regard RVNL had submitted a muck disposal plan while seeking the forest clearance order, which stated that all the muck generated as a result of tunnel creation and cutting of other stretches along the site would be used for filling along the alignment, leaving no requirement for dumping.⁴⁶

An important parameter that decides whether forest clearance should be given or not remains a *cost-benefit analysis* where the economic benefits emanating from a project are compared to forest destruction and environmental depreciations to assess what is more promising. RVNL submitted its Cost-Benefit Analysis report while applying for the forest clearance.⁴⁷ Incomprehensibly, this method converts the ecological standing of forests, wildlife and other environmental components into economic terms, that too in terms of monetary value. Quantitative documentation of the costs and benefits of a development project vis-à-vis forests and environment, apart from reducing the 'intrinsic' value of the non-human biospheric environment to 'objective' numbers, misses the point that such commodification is severely inclined towards human welfare (that is parochial in its objective nature) rather than preservation of natural

environment.⁴⁸ To exemplify, the cost-benefit analysis submitted by RVNL converts 'ecosystem services losses due to proposed forest diversion' to a monetary value using the Net Present Value formula to 95 lakh Rupees for diversion of 12.04 hectares of forestland.⁴⁹ Additionally, loss to animal husbandry, loss of public facilities, possession value of forestland diverted, *inter alia*, are all converted to monetary values to be compared with the benefits of the project.⁵⁰ The benefits of the project include direct and indirect employment (82,560 lakh Rupees), benefits to the economy (57,487 lakh Rupees), 'tangible increase in productivity' and economic benefits due to compensatory afforestation.⁵¹ The benefits were showcased as unquestionably outweighing the costs by a margin of approximately 1,50,000 lakh

⁴⁶ Himachal Pradesh Department of Forest, Letter to Ministry of Environment, Forests and Climate Change from Pr. Chief Conservator of Forests, Himachal Pradesh (13 July 2022) < https://forestsclearance.nic.in/writereaddata/eds_UA/2014_27_13_Jul_2022_111054917_edsletter_BHANUPALI2.pdf > accessed on 7 July 2025.

⁴⁷ *ibid* 4.

⁴⁸ Christopher D Ives and Sarah A Bekessy, 'The Ethics of Offsetting Nature' (2015) 13(10) *Frontiers in Ecology and the Environment* 568; Lowell Pritchard, Jr. Carl Folke and Lance Gunderson, 'Valuation of Ecosystem Services in Institutional Context' (2000) 3 *Ecosystems* 36; Preeta Dhar and Parul Gupta, 'Prevention, Precaution, and Polluter Pays Principle' in Phillipe Cullet, Lovleen Bhullar and Sujith Koonan (eds), *The Oxford Handbook on Environmental and Natural Resources Law in India* (Oxford University Press 2024) 231; See A Da Tarlock, 'Is there a there there in Environmental Law?' (2004) 19(2) *Journal of Land Use & Environmental Law* 249 (regarding overbearing emphasis on impact assessments): 'Assessment has too often become an end in and of itself rather than a means to obtain the necessary information for long-term, informed decision-making to achieve the necessary changes in the way that resources are used and managed. The duty to minimize uncertainty is a continuing one during all phases of an activity'.

⁴⁹ Himachal Pradesh Department of Forest (n 46) 4.

⁵⁰ *ibid*.

⁵¹ *ibid* 6.

Rupees.⁵² A margin of 2,00,000 lakh crore Rupees is seen in another cost-benefit analysis submitted for another stretch of the project site (54.2487 hectares of forestland) by RVNL.⁵³

The question of acquiring environmental clearance has been by far one of the most infuriating aspects of the BBB project which has revealed the malignancy of a seemingly benign statutory provision not known much about, namely section 11 of the Railways Act. A letter dated 12.08.2019 by RVNL to the Divisional Forest Officer of Rupnagar, Punjab, RVNL cites a notification issued by the Ministry of Environment, Forest and Climate Change (MoEFCC) dated 14.11.2006 which states that environmental clearance is not a requirement in case of railway projects by implication as the schedule for projects requiring the same did not mention railway projects.⁵⁴ This implied exercise is supported by section 11 of the Railways Act, 1989 and the judgment in *Ganv Bhavancho Ekvott v South Western Railways* (2022). Section 11 of the Railways Act, 1989 clears the way for railway construction and maintenance without any interference of other provisions of law with the potential to impede the said objective. The *non-obstante* clause (which establishes supremacy of the said statutory provision by overriding other statutes) in section 11 broadens its scope, overriding every other statute, and not

getting compartmentalised. This was clarified by the Bombay High Court in *Ganv Bhavancho Ekvott v South Western Railways* where the dispute was around double-tracking of railway stretch in the Western Ghats which had clearly foreseeable repercussions about disturbing ecological stability and sensitivity of the region.⁵⁵ The HC took refuge in the *non-obstante* clause and exempted the railways from seeking environmental clearance given that the Act came after the EPA came into effect.⁵⁶ However, it emphasised that forest and wildlife clearances would still be required due to the fact that Supreme Court's edicts on their mandatory requirement overrode section 11 instead. Moreover, another MoEFCC notification dated 06.10.2023 reiterated the exemption of railway projects from obtaining environmental clearance and coastal regulation zone clearance (under the CRZ Notification, 2011).⁵⁷

III. POPULAR RESISTANCE AND THE ROLE OF ASSIMILATORY MODEL OF DEVELOPMENT

Upon following the trajectory of legal processes involved in giving the BBB project a green light, the Kafkaesque functioning of environmental law, bereft of an ethics-based foundation, becomes crystal-clear. Myriad illogical loopholes and

⁵² *ibid.*

⁵³ Parivesh, 'Cost Benefit Analysis (CBA)' <[https://forestsclearance.nic.in/Download-PdfFile.aspx?FileName=511212171214NY9P-5COSTBENEFITANALYSIS\(CBA\).pdf&File-Path=../writereaddata/FormA/Wildlife/511212171214NY9P5COSTBENEFITANALYSIS\(CBA\).pdf](https://forestsclearance.nic.in/Download-PdfFile.aspx?FileName=511212171214NY9P-5COSTBENEFITANALYSIS(CBA).pdf&File-Path=../writereaddata/FormA/Wildlife/511212171214NY9P5COSTBENEFITANALYSIS(CBA).pdf)> 4 accessed on 7 July 2025.

⁵⁴ Parivesh, Letter to Divisional Forest Officer, Rupnagar by RVNL (12 August 2019) <https://forestsclearance.nic.in/writereaddata/Addinfo/O_Q_10112112112181proposal-fordiversion.pdf> accessed on 7 July 2025.

⁵⁵ *Ganv Bhavancho Ekvott v South Western Railways*, 2022 SCC OnLine Bom 7184.

⁵⁶ *ibid* ¶ 55, 57, 77.

⁵⁷ Ministry of Environment, Forest and Climate Change, 'Office Memorandum F. No. IA3-12/3/2023-IA.III (E-220190)' (6 Oct 2023) <https://www.ircen.gov.in/ircen/other_manual/ircm_ref_docs/0321.pdf> accessed on 7 July 2025.

anthropocentric nature of environmental law, that instead of introducing positive obligations towards preserving ecological integrity of nature, enumerates instances where human-centrality could legalise decimation of nature, should be under serious questioning. In Himachal Pradesh, multiple hydroelectric projects, road widening projects, cement factory establishments and now, the BBB railway project have been approved and even allowed forestland diversion. While these forest clearances impose an obligation to conduct compensatory afforestation, the scheme's failure as outlined earlier is complemented by shortage of land for successful execution in Himachal.⁵⁸ However, the approvals to these projects that are termed as public infrastructure but are essentially commercial (in contradistinction to welfarist) must also be questioned at a fundamental stage based on discerning their necessity, actual beneficiaries, geological safety and environmental sensibility. The clearances must also be viewed with suspicion when four-laning and railway projects are undertaken to enhance 'national security'. Himachal's location is indeed aggravated by this fact where its border with China justifies developmental projects undertaken to seemingly aid quicker mobilisation of armed forces, *inter alia*.⁵⁹

The hallowed principle has justified the Char Dham project in the adjacent state of Uttarakhand, where the route exhibited an uncanny superimposition of the pilgrimage sites and tourist map that has increasingly seen more tourist inflow.⁶⁰ Similarly, the tourist hotspots of Manali, Lahaul and Spiti and Kinnaur uncannily fall in the route of reaching the Indo-Tibetan border, justifying the road expansion projects.⁶¹ This justification again props up while talking about the BBB railway project which will eventually be extended till Leh, for 'national security' purposes, as connoted by 'strategic importance' in the concept note of the project.⁶²

The concept of national security has been conceptually skewed with its parochial and convenient understanding. The amendments brought to FCA, 1980 in 2023 allow for diversion of forestland for non-forest purposes (specifically 'strategic linear projects') without the need for forest clearance for up to 100 kilometres from the national border.⁶³ This entails that a huge portion of Himachal's forestland is open for exploitation by unsustainable linear projects that face the double jeopardy of remaining vulnerable to geological sensitivities (landslides, earthquakes, flooding, subsidence events) while destroying one

⁵⁸ Manshi Asher and Prakash Bhandari, 'Mitigation or Myth? Impacts of Hydropower Development and Compensatory Afforestation on Forest Ecosystems in the High Himalayas' (2021) 100 Land Use Policy.

⁵⁹ Ministry of Home Affairs, 'Management of Indo-China Border' <https://www.mha.gov.in/sites/default/files/INDO%20CHINA_05052017.pdf> accessed on 7 July 2025; TOI Business Desk, 'Boost for Security Forces! Phase 3 of India-China Border Roads Project Started; to Give Impetus to Road Network in Eastern Ladakh' *The Times of India* (29 July 2024) <<https://timesofindia.indiatimes.com/business/india-business/boost-for-security-forces-phase-3-of-india-china-border-roads-project-started-to-give-impetus-to-road-network-in-eastern-ladakh/articleshow/112100429.cms>> accessed on 7 July 2025.

⁶⁰ Scroll staff, 'Char Dham Project: SC Allows Defence Ministry to Widen Roads, Cites National Security Concerns' (*Scroll.in*, 14 December 2021) <<https://scroll.in/latest/1012772/char-dham-project-supreme-court-allows-defence-ministry-to-widen-roads>> accessed on 7 July 2025.

⁶¹ Parivesh, 'Justification' <<https://forestsclearance.nic.in/writereaddata/FormA/Justification/211112191214A16Y4Justification.pdf>> accessed on 7 July 2025.

⁶² Parivesh (n 13) 2.

⁶³ The Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980, Section 1A(2)(c)(i).

of the densest carbon sinks of the country. Merely claiming to undertake sustainable development in international forums and policy documents does not necessarily imply that it fructifies in practice;⁶⁴ this is palpably clear in development trajectory of Himachal Pradesh.

Amidst the failure of law in restraining ecologically destructive projects in Himachal, popular resistance becomes a crucial element to discern whether law and people's perception have overlapped. Popular resistance against multiple projects bases itself primarily on detrimental consequences faced by the affected communities either directly through displacement or deprivation of economic opportunities (such as *Four Lane Sangharsh Samiti*⁶⁵ and *Four-lane Visthapit and Prabahavit Samiti*⁶⁶ opposed four-laning project due to different road alignment that took away livelihoods of people situated in the earlier two-lane highways), or through ecological decimation that is integral to their sustenance such as water and air pollution, *inter alia*. These affected

communities have constantly lodged their collective disapproval through protests and court petitions in multiple projects in Himachal notably in Seli hydroelectricity project (Lahaul), Jispa Dam Project (Lahaul and Spiti), Lafarge Cement Plant (Mandi), among others, both successfully and unsuccessfully.⁶⁷

However, in the case of four-laning and railway expansion, an uncanny conundrum arises where the role of perception of 'development' becomes instrumental in shaping people's opinion. Four-laning and railways are seen as signs of economic development where secondary opportunities of commercial businesses and patterns of extractivism are introduced; thus, a road expansion or railway project is not benign in its limited nature of a linear project.⁶⁸ Local communities in Himachal are primarily dependent on agriculture;⁶⁹ however, the expansive business opportunities, including land acquisition compensation, unlocked by these linear projects are viewed affirmatively by some sections, as a sign of development as modelled by neoliberal growth. Creation of a perception of prosperity through luxury consumption for instance shapes how people want to

⁶⁴ Nupur Chowdhury and Haaris Moosa, 'Sustainable Development: Exploring Jurisprudential and Policy Trajectories' in Phillipe Cullet, Lovleen Bhullar and Sujith Koonan (eds), *The Oxford Handbook on Environmental and Natural Resources Law in India* (Oxford University Press 2024) 197, 214.

⁶⁵ Tribune Correspondent, 'Jogindernagar: 4-Lane Sangharsh Samiti Threatens to Boycott Lok Sabha Poll' *The Tribune* (12 March 2024) <<https://www.tribuneindia.com/news/himachal/4-lane-sangharsh-samiti-threatens-to-boycott-lok-sabha-poll-599580>> accessed on 7 July 2025.

⁶⁶ Rohit Mullick, 'High Court Asks NHAI to File Report on Deviations in Road Alignment' *Times of India* (17 June 2024) <<https://timesofindia.indiatimes.com/city/shimla/high-court-asks-nhai-to-file-report-on-deviations-in-road-alignment/article-show/111046391.cms>> accessed on 7 July 2025.

⁶⁷ EJ Atlas, 'Environmental Justice in Himachal Pradesh, India' <https://ejatlas.org/featured/himachal_pradesh> accessed on 7 July 2025.

⁶⁸ Katie L Spencer and others, 'Implications of Large-scale Infrastructure Development for Biodiversity in Indonesian Borneo' (2023) 866 *Science of the Total Environment* 9 <<http://dx.doi.org/10.1016/j.scitotenv.2022.161075>> accessed on 7 July 2025. This research is about environmental impacts of Indonesian government's decision on shifting the national capital to Borneo Islands. Regarding road development, it interestingly argues that such projects are not limited to that and open an unrestrained avenue for commercialisation.

⁶⁹ Singh and Kumar (n 3) 23.

see themselves and thus, aspire, attaching an absolute rather than relative value to reclusive financial prosperity.⁷⁰ This in turn fuels acquiescence to infrastructure development that forms the foundation for catalysing and expanding scope of commercial prosperity as parochially defined by neoliberalism.

The direct benefits accrued rather than direct disadvantages, apart from non-linear projects such as hydroelectric dams and cement plants, are optimised by way of establishing hotels, and spots of tourist activities, among others, that have instilled consumerism and extractivism in this part of Himachal's political economy.⁷¹ Flattening of mountaintops here connotes replication of the development model of urbanised plains that has been projected and now perceived as positive growth, owing to neoliberalism's reliance on psycho-social uniformity on the ideation of development. However, this conception of development must be problematised, especially when it is simply imitated in a region where the ecological, social and geological dispensation is fundamentally distinctive and incapable of replicating the typical celebration of large-scale infrastructure projects as a sign of economic progress.⁷² Development need not be mere construction of roads, railways and buildings, but continuing nature-human compatibility in rural communities of Himachal through preserving ecological diversity, traditional forms of livelihoods and building basic welfarist publicly-run infrastructure such

as hospitals and schools for the benefit of Himachal's people. The idea of a model of development that supports traditional livelihoods and safeguards the indigenous people is already palpable in the FRA, 2006, that seeks to empower forest-dependent communities that harbour a harmonious relation with forests and are instrumental in forest conservation. Effective implementation of FRA, 2006 in Himachal has faced bureaucratic inertia and unjustifiable suspicion against the tribal communities.⁷³

In light of cloudburst events, ensuing floods and landslides in Himachal in the monsoon season of 2025, that has already caused widespread damage to Himachal's population, people have started questioning the feasibility of four lane expansions of national highways in the state. With respect to BBB railway project, a public interest litigation has been filed in the Himachal Pradesh High Court, stating that the tunnel work being undertaken in Bilaspur district has caused damage to houses of families belonging to the Below Poverty Line (BPL) category, without any rehabilitation and resettlement. Even if this litigation does not challenge the construction of the railway project itself, and agreeing that public railway projects are ideally for public benefit vis-à-vis four-lane highways that boost private commute for those who can afford it, this conundrum must be rethought in

⁷⁰ Soumyajit Bhar and Sharachchandra Lele, 'Luxury Consumption in India: Exploring the Environmental, Social, and Cultural Dimensions of Affluence' (2025) 60(2) *Economic & Political Weekly* 86, 87.

⁷¹ Chakravorty (n 12) 155.

⁷² Chowdhury and Moosa (n 64) 210.

⁷³ Aditi Vajpeyi and Vaishnavi Rathore, 'Forest Rights Act in Kinnaur, Himachal Pradesh: A bureaucratic Unmaking' (2020) 55(4) *Economic and Political Weekly* 16; Saurabh Parashar, 'Explained: Implementation of Forest Rights Act in Himachal Pradesh; Row Over Letter from State's Principal Chief Conservator of Forests' Office' *The Indian Express* (19 April 2025) <<https://indianexpress.com/article/cities/chandigarh/forest-rights-act-himachal-pradesh-letter-chief-conservator-forests-office-9953170/>> accessed on 7 July 2025.

Himachal's context. In a region such as Himachal that has recurrently faced disasters, exacerbated by climate change, a crisis emerges annually on the arrival monsoon, when infrastructure such as the four-lane highways, potentially BBB railway project, and private structures, built on unsuitable model of development, get damaged due to landslides, mudslides and flooding. Despite this, new funds are fuelled to remake those structures rather than contemplating whether it benefits Himachal's ecology and people in the long term, vis-à-vis short-term benefits.⁷⁴ Questions must be asked- whether extractive tourism, rhetorically claimed 'public benefit' and 'national security' justify the assault on Himachal's ecology, geology and its people? Whether the development model that seeks to replicate plains-centric urbanisation framework in Himachal, a prudent policy decision? Whether environmental law in its current state is equipped to take Himachal's ecological and geological fragility into account while approving projects like the BBB project? These unpopular questions linger while infrastructural development continues despite annual annihilations.

As an apparently affirmative development in the realm of judicial pronouncements contesting extractive model of development, a recent order of the Supreme Court took serious note of ecological destruction and attendant socio-economic repercussions for local communities residing proximate to infrastructure such as four-lane highways, hydroelectric projects, *inter alia*, in

Himachal Pradesh.⁷⁵ The order questioned revenue-centric priorities of the State and the Union Governments that have been aggravating ecological imbalance, particularly amidst the climate crisis, and creating an atmosphere of unpredictability in terms of recurrent destruction of publicly-funded infrastructure with far-reaching implications for the state's geology and society.⁷⁶ Significantly, the order distinguished the Himalayan states in terms of their geological, ecological and socio-cultural peculiarities to accordingly reconceptualise the notion of 'development'.⁷⁷ Unregulated growth and promotion of tourism was questioned, that ineluctably shaped the state's infrastructure development policy, along with illegal existence of the mining industry.⁷⁸ The order questioned the emphasis on hydroelectricity projects, that despite being relatively cleaner than conventional energy sources, overlooks the hazardous ecological, geological and social consequences that ensue.⁷⁹ To address these concerns, the Supreme Court has instituted a *suo moto* Public Interest Litigation ('PIL'), conjecturally in the form of a continuing mandamus, that will entail addressing the concerns related to assimilatory model of development that Himachal Pradesh is pursuing.⁸⁰

⁷⁴ Information & Public Relations, Government of Himachal Pradesh, 'Centre Approves Annual Road Plan of Rs. 3,667 Crore for Himachal: Vikramaditya Singh' (30 June 2025) <[http://www.himachalpr.gov.in/\(S\(lpj1aqyzzchyrvjbskrusotm\)\)/OnePress-Release.aspx?Language=1&ID=41351](http://www.himachalpr.gov.in/(S(lpj1aqyzzchyrvjbskrusotm))/OnePress-Release.aspx?Language=1&ID=41351)> accessed on 7 July 2025.

⁷⁵ Order dated 28.07.2025 in *M/s Pristine Hotels and Resorts Pvt. Ltd. v State of Himachal Pradesh & Anr.* [SLP(C) No. 19426/2025] <https://api.sci.gov.in/supremecourt/2025/37248/37248_2025_9_32_62686_Order_28-Jul-2025.pdf> accessed on 12 August 2025.

⁷⁶ *ibid* ¶ 14, 16, 24.

⁷⁷ *ibid* ¶ 19.

⁷⁸ *ibid* ¶ 17, 21.

⁷⁹ *ibid* ¶ 15.

⁸⁰ *ibid* ¶ 27.

CONCLUSION

Naomi Klein writes that public transit that is regulated and subject to public control through the state is integral in combating the climate crisis given the power to mitigate usage of fossil fuels.⁸¹ Under this premise, in contradistinction to four-lane highways, the BBB railway project should be supported as a more prudent transportation network to build in Himachal. However, the choice between the railway project and a four-lane highway network must be preceded by a preliminary enquiry into sustainability, ecological benignity and longevity of either of these in Himachal Pradesh. Tracing the history of increasingly repeated encounters with EWEs every year during monsoons that destruct unsustainable infrastructure development in the state, the replication of a development model

that equals proliferation in infrastructure at a commercial scale with economic development must be seriously contended against. Reductionist approach to approve forest clearances, exemption from seeking environmental clearance, and severely biased social impact assessment of the BBB project further exemplifies that the environmental law processes does not account for peculiarities of the hill region. While the BBB project may be a seemingly unproblematic project, given that it is a linear project and not privately-run, it must be reiterated that it is a first step towards building railway connection all the way to Indo-China border despite concerns of landslides and floods. Moreover, the larger issue lies in pursuing an assimilatory model of development rather than a region-based development model that is ecologically prudent, and aiding traditional cultures and livelihoods.

⁸¹ Naomi Klein, *This Changes Everything* (Penguin Books 2015) 124.

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